PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-FOURTH PARLIAMENT

FIRST SESSION

4 October 2000

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WEDNESDAY, 4 OCTOBER 2000

Wednesday, 4 October 2000

The ACTING PRESIDENT (Hon. B. W. Bishop) took the chair at 2.03 p.m. and read the prayer.

QUESTIONS WITHOUT NOTICE

Public sector: enterprise agreement

Hon. M. A. BIRRELL (East Yarra) — This morning's newspapers reveal that the cost of the new teachers' industrial relations agreement is about $325 million per annum. Therefore, why is the Minister for Industrial Relations covering up the annual recurrent cost of the CPSU industrial agreement?

Hon. M. M. GOULD (Minister for Industrial Relations) — The honourable member has again raised the question of the agreement with the CPSU. As I have already indicated to the house, that agreement is for a 3 per cent pay rise over three years, and it implements performance-based pay in exactly the same terms that the previous government had agreed to.

Hon. M. A. Birrell — On a point of order, Mr Acting President, the question was quite clear: why is the minister covering up the annual recurrent cost of the CPSU industrial agreement? We have not asked about anything other than what the cost is and why it is being covered up. I ask that the minister direct herself, eventually at least, to the question.

The ACTING PRESIDENT — Order! On the point of order, the minister had just begun her answer. I think she was drawing that to a close, and I invite her to do so.

Hon. M. M. GOULD — As I have indicated, the performance-based pay that has been agreed to is in the same terms as that entered into by the previous government. It is an amount of money that all departments put aside through savings and distribute to the work force. We have ensured that the distribution of that performance-based pay, unlike what was done by the previous government — —

Hon. Bill Forwood — On a further point of order, Mr Acting President, the minister is deliberately skirting the issue of the actual dollar cost of the agreement for which she has taken responsibility.

Hon. T. C. Theophanous — On the same point of order, Mr Acting President, first of all the question asked by Mr Birrell had an incorrect preamble; and secondly, the minister is addressing the issue. In accordance with the practices of the house, she is able to develop and give an answer to the question as put as she sees fit, and she can address both the question and the preamble during her response.

There is no requirement on any minister to do anything other than respond in his or her own way to the question put by any member.

Hon. M. A. Birrell — On the point of order, Mr Acting President, I asked why the minister is covering up the annual recurrent cost of the CPSU industrial agreement. The explicit question was, 'What is the annual recurrent cost of the CPSU industrial agreement?', to which the minister has responded by saying that it is a landmark deal which she is proud of but which she is keeping a secret. That is the issue before the minister, no other, and she should be asked to direct her attention to it — that is, the cost to the taxpayer — particularly as the government and the minister that leads the government in this house said — —

Hon. T. C. Theophanous interjected.

Hon. M. A. Birrell — It is exactly the question, Mr Theophanous. If you want to be Leader of the Government, keep stacking — but you're not yet, all right?

Hon. T. C. Theophanous — Mr Acting President, I take exception to the comment made by the Leader of the Opposition.

Honourable members interjecting.

The ACTING PRESIDENT — Order! The honourable member has taken exception. I invite the Leader of the Opposition to withdraw.

Hon. M. A. Birrell — I withdraw unequivocally, because there is Buckley's chance he will be Leader of the Government! My question is why the minister is covering up the annual recurrent cost of the CPSU industrial agreement. The minister should be asked to address herself to it.

The ACTING PRESIDENT — Order! On the point of order, I believe the minister is being relevant in her response so far, and I invite her to continue.

Hon. M. M. GOULD — Thank you, Mr Acting President. The agreement is for a 3 per cent pay rise for public servants over a one-year period. It also includes the opportunity for performance-based pay to be paid to some public servants by the departments from savings they have been able to achieve. We have ensured that that performance-based pay is distributed in a fair and

equitable manner, compared with the way it was distributed by the previous government. The way the previous government introduced paid-out, performance-based pay was on the basis — —

Hon. K. M. Smith — On a point of order, Mr Acting President, a direction has been given by the President and you in your capacity as Acting President in regard to relevance. The minister is not being relevant to the question that has been asked, on the basis that she was asked a specific question about the costs. I ask you to bring her back to the question and to give us an answer.

The ACTING PRESIDENT — Order! On the point of order, I ask the minister to come back to answering the question, but up to this time she has been responsive to the question.

Hon. M. M. GOULD — Under the previous government performance-based pay was commonly known as the marijuana-based pay — the more you suck the higher you go! This government has ensured that the distribution of performance pay is within the parameters of department savings and is distributed fairly.

Honourable members interjecting.

The ACTING PRESIDENT — Order!

Hon. M. M. GOULD — Performance pay increases are paid in varying forms — some ongoing and some bonuses. The savings made by departments are managed by the departments in line with the same principles introduced by the previous government.

Office of the Chief Electrical Inspector: Ballarat

Hon. D. G. HADDEN (Ballarat) — Can the Minister for Energy and Resources advise the house how the opening of the Ballarat branch of the Office of the Chief Electrical Inspector will help to improve the quality of electrical safety services in rural and regional Victoria?

Hon. C. C. BROAD (Minister for Energy and Resources) — I thank the honourable member for her question and take this opportunity to congratulate her on her birthday.

Independent research by the Office of the Chief Electrical Inspector (OCEI) indicates that a significant proportion of electrical safety incidents occur in rural Victoria compared with those that occur in metropolitan Melbourne. The government is concerned about the research and is taking steps to address the issue.

I am pleased to report that on 26 September Geoff Howard, the Parliamentary Secretary for Natural Resources and Environment and the honourable member for Ballarat East in the other place, officially opened the first regional office of the Chief Electrical Inspector in Ballarat, which is more than the previous government managed to do. The Ballarat office is an important initiative — firstly, from an electrical safety perspective, and secondly, with regard to the government's fundamental commitments to the people of country Victoria.

Honourable members interjecting.

Hon. C. C. BROAD — I am not surprised that members opposite do not want to hear about what the Bracks government is doing for the people of country Victoria, because it demonstrates the former government's lack of effort. The government remains concerned about the quality and quantity of services provided for regional Victorians and is committed to enhancing the services in regional areas. The opening of the Ballarat office will improve the quality of electrical safety services in western Victoria and provide rural Victorians with better access to electrical safety advice. It will also promote awareness of key electrical safety issues affecting country Victorians, including the dangers of working near overhead powerlines, and the need for electrical work to be undertaken only by qualified electrical workers.

The OCEI has launched major safety initiatives to address those issues. The certificate of electrical safety is improving the quality of electrical installation work being undertaken throughout the state. That is particularly being achieved through the identification of work where safety problems have become evident through the audit process enabled by the scheme. The opening of the Ballarat office will further enhance the effectiveness of this campaign by increasing community awareness and by providing greater support to electrical workers in western Victoria. The office will work with the electrical community to encourage and assist in the training of new electrical inspectors to further improve services to regional Victorians.

The government also supports a number of other initiatives being implemented by the OCEI. These include: promoting the installation of safety switches, the Look Up and Live campaign, and the introduction of No Go Zones. They are all important initiatives that will help save lives, especially in rural and regional Victoria.

Snowy River

Hon. E. G. STONEY (Central Highlands) — My question is also to the Minister for Energy and Resources. It is widely rumoured that very soon the government will announce about a 10 per cent environmental flow for the Snowy River. In light of that, will the minister reaffirm that the state government will settle for absolutely nothing less than a 28 per cent environmental flow for the Snowy River?

Hon. C. C. BROAD (Minister for Energy and Resources) — Final negotiations between Victoria, New South Wales and the commonwealth on an outcome for environmental flows for the Snowy River are continuing. The government's commitment to increasing environmental flows to the Snowy in order to achieve environmental objectives, which is what the 28 per cent commitment is designed to achieve, is a real one. We have already identified potential sources of water savings which will enable increased flows to the Snowy River. We have already allocated an initial budget funding amount of $12.3 million to provide water savings, and we believe we have the support through the commonwealth's environmental impact statement (EIS) on corporatisation.

The EIS has served to reconfirm that increased flows to the Snowy offset by water savings will not harm the Murray–Darling Basin environment, the security of existing water entitlements, or the quality and quantity of South Australia's water. We also have the commitment of the New South Wales government to return, most importantly, a level of environmental flow to the Snowy River.

Freeza program

Hon. E. C. CARBINES (Geelong) — Will the Minister for Youth Affairs inform the house of the results achieved by the Bracks government's Freeza Live @ The Royal Melbourne Show exhibit?

Hon. J. M. MADDEN (Minister for Youth Affairs) — As part of the Victorian government's expo at this year's Royal Melbourne Show, Freeza Live @ The Royal Melbourne Show encouraged statewide participation from various Freeza communities. I was fortunate to attend the royal show and see them in action. Not only was the manner in which the Office for Youth's Freeza event delivered impressive, but also the event gave Freeza committees and regional bands a chance to perform live and get involved in music industry training at the show.

Aspiring musicians were given the opportunity of having a free crash course in sound mixing, song writing and performing live. One of the highlights was that their performances were broadcast live on the Freeza web site. During the course of 11 days at the show the Freeza web site escalated in popularity and was rated as high as the third most popular community web site in Australia for the week ending 23 September. The Freeza web site currently rates as the 10th most popular community web site in Australia.

On behalf of the government I would like to acknowledge Ausmusic Workshops for its high quality training support and The Push for its committee and band coordination assistance. Members of the 15 Freeza committees participated in the show program, and 55 bands travelled from metropolitan and regional Victoria — from Lakes Entrance to Wangaratta to Colac — to perform on the Freeza stage. Every band will receive a CD recording of their performance, which will no doubt assist them with future demos and promotions. The Freeza program continues to support young Victorians to develop and run their own youth music events in safe, secure, and drug-and-alcohol-free venues across the state.

World Economic Forum

Hon. W. R. BAXTER (North Eastern) — I refer the Minister for Industrial Relations to the World Economic Forum held in this city last month and ask whether she endorses the Premier's colourful description of the S11 protesters and the treatment meted out to them.

Hon. M. M. GOULD (Minister for Industrial Relations) — I support the comments of the Premier and request that the honourable member ensure he understands the full context of all the comments the Premier made and his support of how well the trade union movement behaved and set the example on how a proper protest ought to take place.

The government supports the right of people to protest in a manner that is within the law. It also supports the way the trade union movement set the example to all the protesters. It is unfortunate a small group of protesters did not follow the protocols in place, but as I have indicated I support the Premier in his stance of being in agreement with the police.

Fishing Week

Hon. R. F. SMITH (Chelsea) — Will the Minister for Energy and Resources advise the house what contribution the Department of Natural Resources and

Environment is making to Fishing Week and the research developments that will benefit fishing in the future?

Hon. C. C. BROAD (Minister for Energy and Resources) — This week is indeed Fishing Week, and a wide range of activities that celebrate and promote recreational fishing are scheduled to take place across Victoria. It is pleasing to note that for the first time an extended range of activities will also take place in rural and regional Victoria.

I had the pleasure last week of participating in the launch of Fishing Week, along with Rex Hunt and Paul Salmon. I was the small person in the group. It was a great start to an exciting week that has been organised by the Rex Hunt Futurefish Foundation in collaboration with the Victorian recreational peak body, VRFish and Fisheries Victoria, the relevant part of the Department of Natural Resources and Environment.

In addition to those activities research into the King George whiting fishery — one of our most important recreational and commercial fisheries — will allow resource managers to make predictions of catch levels up to three years in advance. The species spawns in the coastal water of Bass Strait and each spring larvae spread into Victoria's bays and inlets and settle into seagrass beds. It has been found that the variation in catches of whiting in Port Phillip Bay has a close relationship to the larval number three years previously, and that information can be used to predict whiting catches up to three years in advance. That will be a great tool for fisheries managers, who will be able to explain unexpected increases or declines in catches that would otherwise be attributed to other factors.

In addition to that research, the snapper fishery of Port Phillip Bay is also an important Victorian fishery. The staff of the Marine and Freshwater Resources Institute have begun a new project that uses a natural chemical tag to investigate movements of snapper, and therefore provides valuable information about that resource. It is anticipated that the natural chemical tag will work because Port Phillip Bay has a different chemical composition to other areas of Victoria and it has been identified that the difference is reflected in the chemical composition of the fish. Following further development the chemical tag should be able to be used to answer questions as to whether individual fish were spawned in Port Phillip Bay or elsewhere, and what the movement patterns to and from the bay have been over time.

The research conducted by the department will provide valuable information to ensure the sustainability of Victoria's recreational and commercial fisheries and will ensure there are plenty of fish for future generations.

Victorian Masters Games

Hon. I. J. COVER (Geelong) — Following the outstanding success of the Sydney Olympics the Premier said on radio yesterday that the government would be working equally hard to attract new sporting events to Victoria and to retain existing ones. In that light, will the Minister for Sport and Recreation explain why financial support provided in the past by the Kennett government for the Victorian Masters Games at Ballarat has been withdrawn, forcing next year's fifth staging of the event to be cancelled?

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Following discussions between the state government and the City of Ballarat the council made a decision not to continue with the staging of the Victorian Masters Games.

In 1999 and 2000 the total public sector allocation for the 2000 Victorian Masters Games was $27 500. The figure comprised $12 500 from Sport and Recreation Victoria, $10 000 from Tourism Victoria and $5000 from Vichealth. In allocating the funding for the 2000 event the organising committee for the Victorian games was advised by Sport and Recreation Victoria and Tourism Victoria that the provision of ongoing funding was entirely dependent on the financial viability of the event and a demonstrated increase in both the event's media profile and the percentage level of interstate and international participants attending the event.

The final report on the 2000 games identified that the event had failed to attract an increase in competitors and accompanying persons in comparison with the 1998 and 1999 events and had fewer competitors than the 1997 event. I was unable to determine the extent of increase in the percentage level of interstate and international participants and media profile, and the final report did not draw a comparison with the visitation figures for the previous event. There was a lack of information from that point of view.

The event was originally established — members of the opposition will appreciate the fact because it was established in their time in government — on the assumption that it would achieve significant sponsorship support. It failed to achieve that. Based on the outcome in the report the City of Ballarat was advised that government funding would not be available for the 2001 and 2002 events. The government has discussed with the city the potential for

making the games a biennial event, and conducting the event and providing assisting in support of it so that it will be a better event than has previously been the case.

Industrial relations: task force

Hon. G. D. ROMANES (Melbourne) — I refer the Minister for Industrial Relations to the recent industrial relations task force report and ask her to inform the house of the findings of the report as it relates to outworkers.

Hon. M. M. GOULD (Minister for Industrial Relations) — The industrial relations task force report made some interesting findings about outworkers, particularly in the Victorian clothing industry.

The report notes the estimated growth in the number of outworkers to be between 20 000 and 140 000 workers employed in the textile, clothing and footwear areas in Victoria alone. That growth has been a result of the restructuring of manufacturing industry over the past 10 to 15 years. Many of the factory workers who were employed in that area now find themselves working from their own homes as outworkers. More recently they have been joined by new arrivals into this country — refugees or migrants — who often find their first job in this country is that of an outworker in the clothing industry.

As a result, most clothing outworkers work from home and get support from their spouses, family members and in some cases even their children to assist them to get their work quotas done in the allotted time. The task force found that many of these outworkers are faced with extreme difficulties, including low wages, excessive hours of work, non-compliance with award conditions and little job or income security. Many outworkers are new arrivals into Australia as refugees and migrants with limited English skills and have that barrier to contend with. They also face cultural barriers as they are isolated from the broader community and they lack information and access to child care and community support.

This means that a significant number of Victorians are working in conditions reminiscent of Third World countries. Unfortunately, the federal coalition government has turned a blind eye to this issue. As a result many outworkers have continued to fall through the cracks of federal regulation and have not been properly looked after. The report of the industrial relations task force made a number of recommendations seeking redress of these problems. I can assure the house that I will be examining the options very closely along with the other findings of the task force.

Youth: suicide prevention

Hon. A. P. OLEXANDER (Silvan) — I refer the Minister for Youth Affairs to the very important commitments the ALP made during the state election in relation to the critical issue of youth suicide. Labor pledged to spend $500 000 to address the problem statewide, with half of that money to be spent in metropolitan Melbourne and the other half in rural and regional Victoria. The government has been in office for a year and I am concerned to know how much of the $500 000 has been spent and whether the expenditure of these funds has had any impact on the serious incidence of youth suicide in this state.

Hon. J. M. MADDEN (Minister for Youth Affairs) — I thank the honourable member for his question. The honourable member and members opposite would no doubt appreciate that youth suicide is a complex issue and no single remedy will rectify the situation, particularly given the specific issues affecting communities in regional and metropolitan Victoria. I continue to work with my ministerial colleagues in their respective portfolios to ensure that programs are delivered to enhance the self-esteem of young individuals in those complex areas where they may fail to establish levels of self-esteem that will assist them to progress through life. A number of community organisations act in that manner, but the key is the facilitation of programs.

Hon. A. P. Olexander — On a point of order on the matter of relevance, Mr Acting President, my question addressed a very specific issue — the single issue of the ALP's highly specific election commitments to the people of Victoria concerning youth suicide. The minister has not answered my question, which was how much of the program expenditures have been made and whether that has had any impact. He has not addressed that matter; he has addressed community organisations and issues of self-esteem but not the core of my question. I submit that the minister is not answering my question and I ask you, Mr Acting President, to direct him to do so.

The ACTING PRESIDENT — Order! On the point of order, the minister is partway through his answer. I suspect he will come to the nub of the member's question and I will give him the opportunity to do so.

Hon. J. M. MADDEN — Thank you, Mr Acting President. If members opposite will allow me to

continue answering the question, I will do so. As I was saying, campaigns to reduce the level of youth suicide in the community relate very much to developing programs aimed at increasing the level of self-esteem of individuals. The Office for Youth is working very closely with my ministerial colleagues to enhance and further develop existing programs. If members opposite have not appreciated this, I point out that the Office for Youth is about opportunity and about being proactive rather than reactive in the manner of the former government. The former government located the Office of Youth Affairs in the Department of Human Services, where it was waiting for reactions and for suicides to happen.

Hon. A. P. Olexander — On a point of order of relevance, Mr Acting President, my question had nothing to do with the previous government's arrangements in the area of youth or youth suicide. My question was specifically: what has this government done with its very specific pledge? Has it spent the money, and has that had an impact on youth suicide? The minister is not answering the question by any stretch of the imagination and I ask you, Mr Acting President, to direct him to do so.

Hon. T. C. Theophanous — On the point of order, Mr Acting President, it is a long-established practice of this house that when asking a question, if a member chooses to include a preamble he or she invites the minister to make any kind of comment, extensive or not, on that preamble. In this case the member began his question with a preamble relating to Labor Party policy. I would have thought that that preamble was so general that it invited a response from the minister about the Labor Party's policies and the achievement of those policies on youth suicide. If the member did not want any comment about his preamble, he should not have put it into his question — he should have asked a very specific and narrow question. This practice is something on which we were lectured time and again when we were on the other side of the house and included a preamble in a question.

An Opposition Member — You didn't learn much.

Hon. T. C. Theophanous — We learnt enough to win government, you idiot.

Honourable members interjecting.

The ACTING PRESIDENT — Order! On the point of order, the Chair understands quite clearly the question raised by the member. I believe the minister has been responsive to that question. He is quite entitled to draw comparisons as he answers the question, and I invite him to continue.

Hon. J. M. MADDEN — To pursue my answer, if the members of the opposition will allow me, I will put it simply for the member. The Kennett government had the former Office of Youth Affairs hidden away in Human Services as a reactive organisation that never worked on developing the self-esteem of young people.

Hon. K. M. Smith — On a point of order, Mr Acting President, the minister is now debating the issue and is not answering the question. I ask you, Mr Acting President, to direct him to answer the question.

The ACTING PRESIDENT — Order! On the point of order, I suggest the minister come back to his answer, and I invite him to continue.

Hon. J. M. MADDEN — If the opposition would allow me to finish the answer rather than subjecting the house to points of order, I might get to the answer. As I said, we have spent an enormous amount of money on developing proactive programs which will develop self-esteem among young people. The former government left it lying in Human Services as a welfare issue. The former government saw youth as a welfare issue.

Honourable members interjecting.

Hon. J. M. MADDEN — We have located — —

Honourable members interjecting.

The ACTING PRESIDENT — Order! I am quite happy to stand for any amount of time until the house settles down. I ask the minister not to debate the question but to continue with his answer.

Hon. J. M. MADDEN — I did not think I was debating it. I was animating the answer. We have spent substantial amounts of money on developing the Office for Youth — the figures are in the budget papers — and on locating it in the Department of Education, Employment and Training so that young people will be provided with opportunity. Opportunity allows for self-esteem and counters suicide. If members of the opposition appreciated that we are taking a far more proactive stance than they ever did they would see where the value lies in the work we are doing.

Estate agents: trust accounts

Hon. T. C. THEOPHANOUS (Jika Jika) — My question is to the Minister for Consumer Affairs — —

Honourable members interjecting.

The ACTING PRESIDENT — Order! I say again: I am prepared to stand here so long as the house requires it to get silence.

Hon. T. C. THEOPHANOUS — Will the minister inform the house of the measures the government is taking to protect the interests of members of the public who place substantial amounts of money on trust with estate agents?

Hon. M. R. THOMSON (Minister for Consumer Affairs) — Consumer and Business Affairs Victoria administers the Estate Agents Act, which contains a number of provisions designed to ensure that consumers can be confident about the estate agents with whom they deal and that their money is safely put in trust.

However, it was recently reported to me that deficiencies of approximately $100 000 have occurred in the trust accounts of Philip James Bedford trading as Home Zone Real Estate in Harkaway Road, Berwick. This deficiency was discovered upon an inquiry to Consumer and Business Affairs Victoria by a solicitor acting on behalf of a client of Home Zone. After investigations by the department the deficiency has been confirmed, and there has been a misappropriation of deposits.

I have now invoked section 89 of the Estate Agents Act, which enables me to freeze the trust accounts of that estate agency and effectively put in place a receiver to wind up the estate agent's business.

We are concerned that consumers should have confidence in the estate agencies with which they are dealing. Let it be said that most estate agents with whom people deal look after their trust accounts appropriately and ensure that funds are properly banked and monitored. Consumers can feel confident that most estate agents are dealing appropriately with their funds. However, the industry is concerned.

Hon. B. N. Atkinson — On a point of order, Mr Acting President, I am concerned about the specific nature of the answer. I understand what the minister is trying to do by way of example to give consumers confidence in real estate agents, but I am concerned about the information being led to the house and whether there may be legal proceedings against the particular person and firm. I suggest the minister should not be discussing the details of the case outside the courts because it is sub judice if legal proceedings are being brought against the firm and the individual. Also, I wonder whether a receiver has been appointed and has yet filed reports that may also be prejudiced by the information being led to the house today.

Hon. T. C. Theophanous — On the point of order, Mr Acting President, the matter raised by the honourable member is important. However, it has been a longstanding practice for consumer affairs ministers in this house, and certainly when I was a consumer affairs minister — —

Hon. M. A. Birrell interjected.

Hon. T. C. Theophanous — You may not like it, but this is a serious issue. I believe a previous fair trading minister in another place also took this line. Ministers for consumer affairs, and often other ministers, may use the forms of this place to put an issue before the public in a way that allows the public to be warned about specific individuals without subjecting the minister or the government to the risk of being sued by the individuals or companies concerned. This is a matter of public interest.

If the matter is not sub judice — and there are a number clear rules that apply if it is sub judice — and unless Mr Atkinson has some reason for believing it is sub judice the minister is within her rights in bringing the matter before the house. It is in the interests of this house and of the general public for her to continue to do so.

The ACTING PRESIDENT — Order! A similar point of order was raised some time ago. The President's ruling, if I remember rightly, was that if a court case is pending at the time of the raising of the particular issue the minister should be careful of what comments she makes in the house, as the matter could be classed as sub judice.

I again remind the minister of the previous point of order, which I believe concerned her portfolio, and ask her to take care in the answer she gives in the house on this subject.

Hon. M. R. THOMSON — I thank the Acting President for his comments. There is, to my knowledge, no court case pending. What we are doing is acting under current legislation and exercising the powers it gives us to take action against the firm. In this case we are acting under section 89 of the Estate Agents Act to place a receiver in the firm and to freeze the trust accounts.

Hon. B. N. Atkinson — Is the receiver there now?

Hon. M. R. THOMSON — A receiver has been appointed.

The ACTING PRESIDENT — Order! I am concerned about the uncertainty associated with the issues that are now being discussed. I ask that the answer cease at this stage because of my concern for the sensitive nature of the position of the house.

PAPER

Laid on table by Clerk:

Parliamentary Officers Act 1975 — Statements of appointments, alterations of classifications and of persons temporarily employed in the parliamentary departments for the year 1999–2000 (ten papers).

ASSOCIATIONS INCORPORATION (AMENDMENT) BILL

Second reading

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

That this bill be now read a second time.

The bill before the house seeks to deal with a technical oversight in the Associations Incorporation Act 1981 which was highlighted by the winding up last year of a non-profit association, the sale of its premises to a developer for $1 305 000, and the distribution of the proceeds to its members.

Like all non-profit, community associations, the association had rules preventing the distribution of assets to members and, on its dissolution, requiring surplus assets to be distributed to another non-profit body.

Rules preventing the distribution of a club's assets to members and requiring distribution of surplus assets on a dissolution to another income-tax exempt body are required by the Australian Taxation Office for income-tax exemption.

However, the act currently provides that on a voluntary winding up of an incorporated association, surplus assets may be distributed according to a special resolution. The act therefore allows a distribution contrary to a rule against the distribution of assets to members. If there is no special resolution or a rule about distribution of assets, the act currently provides for the assets to be distributed by default equally among the members.

The distribution of the surplus assets of a non-profit, community association to its members raises issues of abuse of income-tax-exemption status, windfall gains to members, and the legitimate expectations of local communities about the continued use of community assets.

If an association seeks income-tax exemption and complies with the Australian Taxation Office's requirement of a rule preventing distribution of surplus assets to members, the act should not be able to be used by the members effectively to flout that.

Many non-profit clubs are long established and are almost invariably income-tax exempt. Members come and go over the years. The members who decide to wind up a club, sell the club's premises and distribute the proceeds among themselves will either not have contributed to the purchase of the premises or not have been the only ones to have contributed, and therefore will usually have no greater right to those assets than ex-members of the club.

For these reasons, the further Australian Taxation Office requirement that on the dissolution of a club, the surplus assets should go to another income-tax exempt body, should also be supported. The club can, of course, choose the tax-exempt body to which its surplus assets go.

There is also the question of the possible use by charitable associations of the voluntary winding up provisions of the act to circumvent other provisions of the act requiring them to have a rule distributing surplus assets to another charity, as a condition of their ability to trade.

The government believes that the act should be clarified to prevent the members of a non-profit incorporated association, or of a trading charity, from distributing the association's assets to themselves on a voluntary winding up. In doing so, the act would reinforce the Australian Taxation Office's requirements for income-tax exemption.

In effecting the necessary changes to the act, the government intends to continue the traditionally light-handed approach to the regulation of incorporated associations, an approach that has contributed to the relatively high number of incorporated associations in this state.

It also believes that it is unnecessary and undesirable to have a blanket prohibition on the distribution of assets to members, which is a feature of the legislation of the states and territories that already regulate in this area, and that there should be recognition of private associations that do not seek income-tax exemption and whose members wish to retain the association's assets after its dissolution.

The bill achieves these aims:

firstly, by providing that if the rules of an incorporated association include, or have included at any time within five years prior to a voluntary winding up, a rule that prevents the distribution of assets to members on a voluntary winding up, a special resolution will be of no effect if it purports to allow such a distribution, or has that purpose or effect;

secondly, by providing that in the situation where no special resolution is passed dealing with surplus assets, the act does not allow a distribution to members by default, if the rules of the association include, or have included at any time within five years prior to a voluntary winding up, a rule that prevents the distribution of assets to members on a voluntary winding up;

thirdly, by providing that if a trading charity has the required rule providing for distribution of surplus assets to another charity, the members cannot resolve under the winding up provisions to distribute assets in a contrary way; and

fourthly, by providing that if the minister does, in fact, approve of a trading charity changing that rule, the winding-up provisions do not fetter that power.

The five-year rule operates so that if an association no longer desires to be non-profit, any change to the rules to provide for members to receive surplus assets on a voluntary winding-up will not be effective for five years.

The period of five years is sufficiently long to discourage opportunistic changes of rules and identifies those associations that have legitimately altered their basis from non-profit, community associations to private associations. It is also a sufficiently long break between the time the association received the benefits of income-tax exemption and the time when it would be permitted to distribute surplus assets to members.

The government believes that the bill achieves a balance between the interests of the community in seeing that the non-profit or income-tax-exempt status of incorporated associations is not abused, and the interests of associations that are private in nature or that wish to change to that status, for legitimate reasons.

Because the necessary changes to the winding-up provisions of the act would have made the present layout of division 1 of part VIII of the act cumbersome and difficult to read, the bill reorganises the relevant provisions and substitutes a new division.

I commend the bill to the house.

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

Debate adjourned until next day.

CHILDREN AND YOUNG PERSONS (RECIPROCAL ARRANGEMENTS) BILL

Second reading

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

That this bill be now read a second time.

I am proud to present this bill which assists children and young people who are in need of protection and move to or from Victoria.

The bill is part of this government's commitment to protect children's rights and promote their welfare.

The bill is also part of a collective response by New Zealand and the Australian states and territories to jurisdictional problems that arise in child protection due to movement across state, territory and national borders. New Zealand and all of the other states and territories of Australia will enact, or have enacted, corresponding legislation.

Background

This bill principally addresses the current inability to effectively transfer most child protection orders or transfer any child protection proceedings between Victoria and other states and territories of Australia and between Victoria and New Zealand.

The inability to effectively transfer most child protection orders means that children may be subject to Victorian child protection orders but are permanently placed interstate. Such orders are difficult to administer or supervise. In these situations it may be difficult for the Department of Human Services to provide the child with an appropriate level of support and assistance.

The inability to effectively transfer child protection proceedings means that the Children's Court often cannot appropriately address matters where a child is only temporarily in Victoria and a child protection proceeding is before the Children's Court in this state. In these situations, the court may be unable to adequately protect a child.

The bill also addresses other jurisdictional problems that arise in Victoria in relation to child protection.

First, it can be difficult to legally transfer confidential information which is needed by interstate departments responsible for child protection.

Second, it is not sufficiently clear that the Children's Court has jurisdiction to grant child protection orders if the harm to the children which the application is based on occurred interstate or the placement is interstate.

Third, whilst it is an offence for a parent to remove a child from a court ordered placement when the child is placed in Victoria, it is unclear whether it is an offence for a parent to remove a child who is placed interstate but on a Victorian child protection order.

These issues are of course more acute in regional Victorian communities that are near the New South Wales or South Australian border. Furthermore, interstate placement of children is likely to grow in future as a result of the increased emphasis on placing children with relatives for both temporary and longer periods of time if they are not able to remain in the care of their immediate family.

Overview of transferring child protection orders and proceedings

The bill provides for administrative and judicial transfers of child protection orders. An administrative transfer involves the Secretary to the Department of Human Services transferring a child protection order interstate or to New Zealand. The bill restricts when the secretary can transfer the order, including a requirement that the secretary in the receiving state must consent to the transfer of the order and there must be an equivalent order in the receiving state. Depending on the child protection order, the secretary may not be able to transfer the order without the consent of a parent.

When deciding whether to administratively transfer a child protection order, the bill emphasises that the welfare and interests of the child must be given paramount consideration. The bill also emphasises that the child and his or her family must be encouraged to fully participate in the decision about the transfer of the child protection order, except to the extent that such involvement would be detrimental to the safety or wellbeing of the child.

The secretary may also apply to the court for a judicial transfer of a child protection order. The secretary could make such an application if he or she is unable to transfer the order administratively, or the secretary wanted to obtain an order in the receiving state which is not similar to the current order; or the secretary otherwise believed it would be more appropriate to apply to the Children's Court.

The court would determine what the order would become in the receiving state. If it is in the interests of the child, the order could be different to the order that exists at the time of the application to transfer.

The court may specify an order which is different to the order that exists at the time of the transfer application in various situations. First, there may be an appropriate order in the receiving state which is not available in the sending state. Second, transferring the order interstate may mean that a different type of order is more appropriate to the proposed circumstances of the child and family in the receiving state. And third, circumstances may have changed since the original order was made and the transferred order should be a different type of order to reflect these changes.

The bill also provides that the secretary may apply to the Children's Court seeking the transfer of child protection proceedings. If the court transferred a child protection proceeding, the court could grant an interim order which determines the powers and responsibilities of the parties on an interim basis.

For instance, a parent in Albury may assault his or her child and the child could be flown to the Royal Children's Hospital in Melbourne. In order to ensure the immediate protection of the child, the Secretary to the Department of Human Services could initiate child protection proceedings in Victoria. The bill provides that this proceeding could be transferred to Albury and the child protection application could be determined in New South Wales. This would enable the needs of a child to be addressed in the court which is located in the state where the child and his or her parents reside.

Australian New Zealand agreement and the model bill

The bill is based on a model bill which was approved by the Australian New Zealand Community Services Ministerial Council in August 1999. The model bill contained some mandatory provisions that each jurisdiction was required to implement and there were other provisions that were optional and at the discretion of each jurisdiction.

The Victorian government supports most of the provisions that were contained in the model bill. However, there are two areas where the government proposes taking a slightly different approach.

First, the Victorian bill provides for a practical method for a child to oppose an administrative decision to transfer a child protection order.

Second, the Victorian government believes that parents and children should be able to apply to the court for the transfer of a child protection order or proceeding.

Children opposing administrative transfers of a child protection order

The government has ensured that the bill contains a simple method for a child to oppose an administrative decision to transfer a child protection order.

The bill provides that if the secretary decides to administratively transfer the child protection order for a child of at least seven years of age, the child must be given notice of the decision and an outline of how to challenge it. The child must also have the opportunity to seek legal advice in relation to the proposed transfer of the order. The order cannot be administratively transferred if the child opposes the transfer.

The reference to seven years reflects the practice in the Family Division of the Children's Court where children are generally legally represented if they are of at least seven years of age. Specifying an age ensures that it is clear when such notice must be provided.

If the child opposed the administrative transfer of the child protection order, the Secretary to the Department of Human Services would need to decide whether it was appropriate to apply to the Children's Court for a judicial transfer of the child protection order. If the secretary applied to the Children's Court, the court would decide whether it would be in the interests of the child to have the order transferred interstate.

Parents and children applying for a transfer of an order or proceeding

In 1998 the Australian New Zealand Community Services Ministerial Council agreed that all jurisdictions must have legislative provisions that a court can only transfer a child protection order or proceeding if the secretary (or his or her equivalent) in the sending state sought such a transfer.

The government believes parents and children should be able to apply for the transfer of a child protection order and proceeding. However, the Victorian government also believes that national cooperation in child protection is imperative and that national agreements in this field should be respected.

Accordingly, in July of this year, the Victorian Minister for Community Services advised the Australian New Zealand Community Services Ministerial Council that Victoria believes children and parents should have standing to apply for the transfer of a child protection order or proceeding.

This matter will be debated at the meeting of the Australian New Zealand Community Services Ministerial Council in July 2001.

At this stage it is therefore appropriate to comply with the national agreement, and the bill provides that only the secretary can apply for the transfer of a child protection order or proceeding.

New Zealand Australian protocol

The bill relies on the cooperation of child protection departments from New Zealand and the Australian states and territories. A child protection order or proceeding can only be transferred if the secretary (or his or her equivalent) in the receiving state consents to the proposed transfer.

A protocol entitled the 'Protocol for the transfer of child protection orders and proceedings and interstate assistance' contains an agreed process to address the transfer of child protection orders and proceedings. The protocol also stresses the need for the careful planning of transfers and thorough cooperation between the states.

Section 85 statement and limiting appeals to the Supreme Court

I now wish to make a statement under section 85 of the Constitution Act 1975.

Clause 7(7) of the bill inserts a new section 279A(5) in the Children and Young Persons Act 1989. Section 279A(5) provides that it is the intention of clauses 7, 13 and 18 of schedule 2 to the Children and Young Persons Act 1989 to alter or vary section 85 of the Constitution Act 1975.

The bill inserts clause 7 into schedule 2 to the Children and Young Persons Act 1989**.** Clause 7 limits the time during which a person can seek judicial review of a decision of the secretary to transfer a child protection order under schedule 2.

The bill also inserts clauses 13 and 18 into schedule 2 to the Children and Young Persons Act 1989. Clauses 13 and 18 limit the time during which a person can appeal to the Supreme Court from a decision of the

Children's Court regarding the transfer of either a child protection order or proceeding.

These clauses reflect the view that there would be significant problems if an order or proceeding could be registered in the receiving state and then subject to an appeal in the sending state. If this occurred, there could be:

confusion regarding which court has jurisdiction in the case;

confusion regarding the responsibilities of the respective departments; and

instability for the child and the carers of the child.

The bill addresses this concern in two ways.

First, the bill provides that a child protection order or proceeding cannot be transferred interstate whilst a person could appeal against the transfer of the child protection order or proceeding.

Second, the bill limits the time during which an appeal can be initiated against the transfer of a child protection order or proceeding. The appeal period is shorter for transfers of child protection proceedings because it is essential that transfers of child protection proceedings are expeditiously dealt with by the courts.

I commend the bill to the house.

Debated adjourned for Hon. M. T. LUCKINS (Waverley) on motion of Hon. Bill Forwood.

Debate adjourned until next day.

PLANT HEALTH AND PLANT PRODUCTS (AMENDMENT) BILL

Second reading

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

That this bill be now read a second time.

This proposal will amend the Plant Health and Plant Products Act 1995 to bring it in line with contemporary commercial and enforcement requirements.

The amendments will aid the interstate movement of produce, ensure effective and safe recycling of used packages for fresh produce and improve offence provisions.

I shall now provide background on each of the areas where amendments are proposed.

Operation of interstate certification assurance schemes

The bill proposes to amend the Plant Health and Plant Products Act 1995 to administer the interstate certification assurance scheme, known as the ICA scheme, for certifying the disease status of plant material to be moved to other states or within Victoria.

The ICA scheme was developed on a national basis following the outbreak of papaya fruit fly in Queensland in 1994 and it allows growers and packers to be accredited to issue ICA assurance certificates under procedures that are subject to audit by the accreditation authority.

The ICA scheme is now operational in most quarantine jurisdictions including Victoria. It has resulted in considerable cost savings to industry because it allows operational flexibility for both the importer and exporter.

National guidelines set out the basis of this quality assurance scheme which the states and territories have undertaken to comply with under agreement by a memorandum of understanding.

The next step in the development of the scheme is for each state to establish mechanisms to give effect to the agreement by providing a basis on which the ICA scheme can operate.

The bill makes new provisions for the Secretary of the Department of Natural Resources and Environment to accredit Victorian growers and packers to issue ICA assurance certificates for produce grown, packed or treated within Victoria for transport to other states or within Victoria; e.g., delivery from regional Victoria to the Melbourne markets. This means that producers need not rely on government inspectors to have produce examined and certified for its disease status.

For produce coming into Victoria, the current legislation only recognises plant health certificates issued by a government inspector or plant health (grower) declarations issued by approved growers for the import of prescribed material. Amendments will allow for mutual recognition of ICA assurance certificates issued in other states or territories.

These amendments will allow greater flexibility for producers who will be able to consign produce with assurance certificates under the ICA scheme in addition

to the current plant health certificates or grower declarations.

It is proposed that assurance certificates under the stricter ICA protocols will replace grower declarations for high-risk situations such as fruit fly host material, and grower declarations will only be allowed for low-risk situations.

New provisions under section 43 will require the secretary to keep a register of current accreditations. Other amendments will allow the register and other relevant information to be provided to other quarantine jurisdictions.

Amendment to section 51 will allow inspection agents to audit the business operations of accredited persons to ensure effective operation and compliance with the conditions of the scheme. The new arrangements are expected to be less expensive and more convenient to growers, especially those in remote areas.

Reconditioning of used packages

Whilst recycling is to be encouraged, it is essential that the increased risk associated with the use of second-hand packages for fresh produce be managed effectively to minimise food safety problems and to reduce the spread of pests and diseases.

Some sectors of the fresh produce industry have been concerned about the use of unhygienic used packaging for wholesale produce. The current legislation requires that packaging be new or reconditioned to appear as new. It is difficult to obtain objective agreement about what this standard actually means.

An amendment to section 34 of the act will enable regulations to be made to set standards for the reconditioning of packages.

Enforcement provisions

Powers of inspection under the current legislation are deficient. Further, if a person denies the existence of documents that could provide evidence of non-compliance with the act, inspectors have no power to access those documents.

The act currently allows inspectors to enter and search a place where plants, plant produce and used packages are kept for propagation, sale, storage, delivery, treatment, packaging or preparation for sale. However, recent experience has shown that the legislation does not empower inspectors to enter a place kept for the growing of plants such as an orchard. An amendment is proposed to section 52 to remedy this situation.

Section 52(1)(e) currently allows an inspector to require a person to produce any document and, once produced, can examine or remove the document to make copies. However, where this request is not complied with the inspector has no powers of entry, inspection or seizure.

Powers to deal with such circumstances already exist under the animal health and animal welfare legislation. New sections 52A to 52E have been added to allow an inspector, after obtaining a search warrant, to enter any premises to inspect for documentary evidence and to seize, examine, make copies or extracts of such documents. These provisions are modelled on the Fair Trading Act 1999.

Offences

New provisions make it an offence for a person other than an accredited person to issue assurance certificates. It will also be an offence to knowingly make false statements in any certificate or declaration or to alter these documents without the approval of the person who originally issued them.

The amendments proposed in this bill reflect the need to respond to a changing commercial environment where there is increasing movement of produce between major interstate markets and where industry requires greater flexibility to provide pest and disease certification. It also addresses inadequacies in the current legislation which hamper the enforcement of the act.

I commend the bill to the house.

Debate adjourned for Hon. PHILIP DAVIS (Gippsland) on motion of Hon. M. A. Birrell.

Debate adjourned until next day.

TRANSPORT (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.

This bill will amend the Transport Act 1983 to facilitate the investigation of railway accidents and to generally improve the operation of that act, and will amend the Rail Corporations Act 1996 to improve the operation of the access regime relating to rail and tram transport services.

Division 3 of part 6 of the Transport Act 1983 provides for rail safety in Victoria and was introduced by the Transport (Rail Safety) Act 1996. This act implemented Victoria's commitment to the Intergovernmental Agreement on Rail Safety. Central to this agreement was the endorsement by the commonwealth, the states and the territories of the need for a cost-effective, nationally consistent approach to rail safety which ensures that there are no barriers to entry into the market for other operators.

As a result of a collision between two trains at Ararat on 26 November 1999, the secretary to the Department of Infrastructure established an inquiry into the incident, exercising powers under section 129U of the Transport Act. The inquiry was conducted by investigators from the Australian Transport Safety Bureau, in accordance with recognised Australian standards. The inquiry report made a number of recommendations, some of which relate to operation of the Transport Act 1983. That report was critical of the Victorian rail safety regime in the Transport Act in that, unlike the relevant legislation in other states, section 129S of the act entitles a person to refuse or fail to give information if the giving of the information would tend to incriminate the person. No other state's legislation affords the same protection in response to requests for information during an investigation of a rail incident or accident. Instead, other states' legislation generally provides that self-incrimination is not a reasonable excuse for failing to give information, and that information given is not admissible in evidence against the person in any civil or criminal proceedings (other than proceedings arising out of the false or misleading nature of the answer). In response to this criticism, clause 3 of the bill will amend section 129S to bring it into line with the legislation in other states.

The inquiry was also critical of section 129U of the Transport Act, which gives the minister the power to direct that an investigation of a rail incident be conducted, on the basis that it is silent on the powers to obtain information during the course of the incident investigation. In response, clause 4 of the bill will amend this section to bring it into line with other states so that there are sufficient powers in the act to obtain all information relevant to investigate a rail accident.

The remaining clauses of part 2 of the bill make various amendments to improve the operation of the Transport Act and to correct some minor errors in the act and related legislation.

Part 3 of the act sets out amendments to the Rail Corporations Act 1996 that will clarify and improve the operation of the access regime relating to rail and tram transport services.

Under the access regime, if an access seeker and an access provider fail to negotiate the terms of access to rail infrastructure services which have been declared under the Rail Corporations Act 1996, either party may refer the dispute to the Office of the Regulator-General for determination.

The amendments will enable the Office of the Regulator-General to ensure that access seekers are provided with information approved by the office to assist them in negotiating access. It will also provide the Office of the Regulator-General with the powers to obtain the necessary information from operators to enable it to determine the appropriate price in the event that a dispute over the terms of access is referred to it for determination.

I commend the bill to the house.

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

Debate adjourned until next day.

BUSINESS OF THE HOUSE

Sessional orders

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

CONSTITUTION (AMENDMENT) BILL and CONSTITUTION (PROPORTIONAL REPRESENTATION) BILL

Concurrent debate

Debate resumed from 6 September and 3 October; motions of Hon. M. M. GOULD (Minister for Industrial Relations).

Hon. M. A. BIRRELL (East Yarra) — Ordinary Victorians have every right to be concerned about the threats posed by the plan of the minority Labor government to emasculate or abolish the Victorian Legislative Council and end the vital scrutinising role it plays.

The Legislative Council has a purposeful future, and especially over the past 50 years it has played a vital and constructive role in the state's public administration and public affairs.

It is for those reasons and more, as my colleagues and I will outline, that the Liberal Party has decided to oppose the bills before the house. In particular we are concerned that a minority Labor government has no mandate to meddle with the state's constitution and that the two bills before us enjoy only a minuscule level of public support. Most importantly, we are concerned that if the bills were passed and the state constitution amended as a result, these flawed proposals would weaken many of the fundamental pillars of the state's democratic system.

It is ironic that after a year of inactivity it now seems the Bracks government's hottest priority is to cripple the Legislative Council, weaken a democratic safeguard that monitors the Bracks government's expenditure of money, and effectively silence a body that calls government to account.

Given that it was this upper house that helped expose the Tricontinental, Victorian Economic Development Corporation and Pyramid Building Society scandals of the previous Labor government in the 1980s, I can understand why the Labor Party is so keen to silence the Legislative Council today.

Having won only a minority of seats in the Legislative Assembly at the last state election, the government obviously has no mandate to change the constitution in this way; nor has it been called upon to do so by the people of Victoria. Indeed, the ALP's radical proposals, even with the little support they have, have not been the subject of the community consultation the government pretends it supports. Indeed, they have been the subject of minimal publicity and minimal consultation.

Some dangerous themes are clear. Firstly, the minority government now wants absolute power by ridding itself of a house of Parliament that has the capacity to call it and its ministers to account. Secondly, Labor clearly fears scrutiny of its suspect financial management. That is why it regrets the impact and presence of the upper house; that is why, when in 1987 the upper house moved to establish Victoria's first estimates committee, Labor opposed it; and that is why, when in 1999 the upper house sought to bring in further and stronger parliamentary committees, the Labor Party opposed it. The Labor Party talks about scrutiny, but it opposes initiatives that achieve that and wishes to shut down the house that secures it.

Those troubling themes are all the more important when you consider that the system used to elect members to the Victorian Legislative Council, including terms of office of up to eight years, was introduced by no less a figure than John Cain, Jr, in the mid-1980s as a result of bipartisan reform. Along with some of my National Party colleagues in this house I was part of the reform of the Legislative Council in the mid-1980s that had public consultation behind it, that sought bipartisanship and that resulted in a proposal that John Cain, among others, praised.

But today this minority Labor government wishes to undo the actions of the majority Cain Labor government; and more significantly, it wishes to undo a house of Parliament that has done nothing but behave properly.

If the Labor Party were to be successful in its grab for power the state would be the long-term loser. Both major newspapers in this state hold that view. As we will outline in the debate my colleagues and I have a number of reasons for concern, but it is appropriate to point out that even though the *Herald Sun* and the *Age* have completely different perspectives on the topic, they are united in their view that these bills are no good.

As the *Age* said on 31 May 2000 in its editorial headed 'Upper house plan is a poor result':

> The deal between the Victorian government and Independents is flawed and inequitable.

The article was referring to the fact that the pro-Labor Independents in the Legislative Assembly had entered into a deal with the minority Labor government to try to rid the state of its current Legislative Council.

The *Age* editorial disagreed with the deal done between the Labor Party and the Independents behind closed doors. It went on to say:

> Unfortunately, the government's dealings with the Independents have produced their first disappointment, in the package of measures designed to reform the Legislative Council.

I share the disgust of the *Age* for the deal; that is one of the reasons my colleagues and I are opposed to the bills before the house. In simple, practical terms — forgetting the rhetoric and the philosophy — the bills are not technically acceptable, even when one puts aside some of the aims and motives behind them.

The *Herald Sun*, coming from a completely different perspective, reached an identical conclusion about what should be done with the bill. The *Herald Sun* editorial of the same day states:

> In general, the Liberals have a responsibility not to frustrate legislation put forward by the Bracks government …
>
> But the Liberals' obligation does not extend to allowing reforms that could paralyse government in this state.

It was the view of the *Herald Sun* that the bill the minority government wants us to pass today would 'paralyse government in this state'. The opposition agrees with that, because the outcome of passing the legislation would be the imposition on future generations of Victorians a completely inadequate, more costly and less democratic form of parliamentary government. The state would be a loser because of the political instability that Labor's proposed system would create.

In effect future governments, of whatever political persuasions, would be held hostage to a Legislative Council that would inevitably be controlled by perhaps one or two people — not by the Labor Party, the Liberal Party or the National Party but by, as occurs in many other states or countries that have the model that Labor wants to impose on this house, a sole individual often elected last at the election on 16th, 17th, 18th or 50th preferences. That person would control the destiny of the state. Worse than that, it could be a sole upper house politician who happens to peak in popularity at the precise time a state election is called and who may never be popular again.

As an example we need look no further than the fruitcake candidates who have got up in states such as New South Wales and South Australia. Anyone would objectively regard them as embarrassing whackos who happened to be elected under the proportional representation system and who, despite their pitifully low support, secured absolute control over legislation or budgets as a result of their single significant vote in the upper house.

Anyone who has met the Outdoor Recreation Party member who won a seat in New South Wales on 20th preferences, and who had no public standing but fluked it into Parliament would have to reach a conclusion that it is dangerous to a democracy to give such people 100 per cent control. Another example would be some of the nuts who won seats on behalf of Pauline Hanson's One Nation at the momentary peak of its power, who only got into Parliament because of the freak coincidence of snap popularity at the time of an election.

The electoral system proposed today for the Victorian Legislative Council would institutionalise such an outcome forever and would give, not the majority Liberal, National, or Labor parties, but those people absolute, and therefore disproportionate, power. It would be a sad day indeed if we were mug enough to accept that outcome.

The state would also be a loser if the proposal were passed because the voice of rural and regional Victorians would be immediately diluted. The number of non-metropolitan electorates in the state would be slashed from eight to three and access to local members of Parliament would obviously suffer. Today one of the strengths of the Victorian Legislative Council is that in places such as Hamilton, Sale, Wodonga, or Mildura local upper house members of Parliament are immediately accessible. They are not all living in Melbourne or in places such as Geelong; they are living in areas away from the largest urban or rural population centres, and as a consequence are accessible.

Under Labor's planned electoral boundaries that would all end, and under Labor's proposed electoral system that could never occur. Under the scheme Labor proposes, for electoral success it would be essential to be located within or immediately adjacent to the largest urban population centres. Worse still, it would be impossible to try to just service one great regional centre such as Ballarat, Geelong or Bendigo, because under Labor's proposal most or all of those places would just be in one electorate. Instead of there being, as is the current case, an electorate of Geelong Province, there would be a mega-electorate that stretched from Werribee to Portland — and that is what Labor calls a community of interest!

Labor would just preselect people — perhaps as it normally does — who did not live in the electorate, or if they did they would live at the Werribee end. God forgive anybody living in Portland, Hamilton, Warrnambool or other places at the other end of the electorate who would seek immediate access to their member of Parliament, because their MP would be several hundred kilometres away. The existing distinct and separate representation in the Legislative Council for country voters would be abolished. One huge electorate would replace several existing country electorates, and there would be completely contradictory geographic loyalties for the relevant MP.

As the Minister for Industry, Science and Technology I experienced the benefits of the current system when I was vigorously lobbied by Geelong, Ballarat, or Bendigo upper house members to get industry, business and jobs into their cities. They had no contradictory loyalties or misunderstanding about who they were meant to serve, because they were the honourable members for Ballarat Province, Geelong Province, and so on. But under Labor's scheme a member would be

responsible for Geelong and Ballarat and Portland and Warrnambool, and perhaps even Mildura — and perhaps, depending on the boundaries, even Bendigo. That would make it impossible to have any geographic identity or loyalty or to fulfil a proper job as a local member. This is not only unacceptable but a window to the compromise that led to this botched package.

Labor wants a system in which it controls the upper house. It wants the upper house to be a rubber stamp for Labor governments. It had to compromise on these bills with the Independents, and as a result we have a shandy that no-one accepts — most notably the *Age* with its trenchant criticism and which is otherwise on the record as supporting some changes.

A further reason we would all lose if Labor's proposed changes to the constitution went ahead is that the existing structure of the upper house is both democratic and relevant to Victoria's long-term interests. As I said in my opening remarks, for the past 50 years or so it has been an essential element in delivering stable government to this state.

Let us never hear the argument that a government cannot operate properly if it controls the upper house as well. It never held back Henry Bolte or John Cain, and as a consequence we have perfect evidence of John Cain's government being able to govern in the 1980s even though it did not control the upper house and Henry Bolte's government being able to govern in the 1960s even though it did not control the upper house. There is no doubt as to whether the Bracks government can govern, unless its real aim is simply to get rid of scrutiny.

The Legislative Council is democratic and operates on the basis of one vote, one value and independently drawn electoral boundaries. It is just as democratic as the Legislative Assembly. Labor's myopic argument to the public that the electoral system of the Legislative Council is crook only begs the question that it must think the Legislative Assembly's electoral system is equally crook. Neither is, because both are based on the fundamental idea of one vote, one value and each house has its electorate boundaries drawn by people who are well away from the process and are not politicians. The Liberal Party supports that.

The upper house has longer terms of office than the Legislative Assembly, similar to the Senate. Terms of up to eight years are cemented in place directly as a result of the initiative of the Australian Labor Party in the 1980s when John Cain, Jr, introduced legislation in this chamber with bipartisan support. The current Labor government would wreck all of that by providing Victoria's upper house with different rules from those operating for second chambers virtually everywhere else in the world.

I will concede up front that there is one state that is different to us all, and I suspect Labor would like its system to operate here. Queensland has no upper house at all. But why would Victorian Labor want us to follow a model that gave such wide freedom to the Bjelke-Petersen government? Why would Labor not want to have a house of review? Perhaps it can explain its true agenda.

I believe the motivation for the ALP's attack on the Legislative Council in 2000 is the same motivation behind its attack in the 1980s. It desperately wants to nobble the one key body that can keep an eye on it. It wants to abolish or emasculate the upper house and ensure it has an unquestioned right to do as it pleases in government. On behalf of ordinary Victorians, the Liberal Party will not give them a blank cheque. On behalf of all Victorians Liberals have consulted over the past few months and have found an overwhelming degree of concern about the government's proposal and an overwhelming belief that it should be defeated.

If the ALP's plan to abolish the Legislative Council went ahead there would be no effective scrutiny of its moves to increase taxes or boost union power and no effective scrutiny of legislation that was excessive or without mandate. If its alternative plan of watering down the upper house were to go ahead and the electoral system were changed in the way proposed today the upper house would be less representative, would have fewer rural and regional members and would have a much more expensive electoral system for the taxpayer to fund. That is not acceptable.

The ALP's real agenda is to abolish the upper house. The Premier is on the record, having indicated in his discussion with 3AW on 15 August that he is considering the option of putting to a referendum the idea of abolishing this place. That is the true agenda. I urge the ALP to come clean and to campaign on that topic. The Liberal Party would be delighted to have Labor campaign on that specific issue.

The Victorian Legislative Council has a distinct value and plays a distinct role in the state's electoral and democratic systems. I find one of the rich ironies of the ALP plan to emasculate this house is that this house has always given Labor its best opportunities to scrutinise government and to hold ministers to account. In the 1990s it was common for the more assertive and capable members of the Labor Party, such as the Honourable David White, to initiate in the upper house

debates on such matters as Crown Casino, school closures and Workcover, because the Legislative Council's unique powers give any opposition more scope to scrutinise a government than can occur in the Legislative Assembly. Capable members of Parliament can use the freedoms and the scrutiny devices that are available only in this house to hold a government or minister to account.

Although honourable members on this side might not have liked the individuals, such as Mr White and Mr Landeryou, who used the house in that way, I noticed the impact they had when they did so. This is the house where those issues have been raised, and they can be raised only here. The gags, guillotine, oppressive standing orders and uninterrupted practices of the Legislative Assembly mean that such analysis, exposure and debate cannot occur in that house. It is ironic indeed that in trying to distort the public debate about its motives the Labor Party has also to ignore the history — that is, that this house is the place that actually holds governments to account.

Just as in the 1990s it was David White and Bill Landeryou and others who did that work against the then coalition government, in the 1980s it was the coalition in opposition that used this house, not the Legislative Assembly, to successfully raise issues as diverse as the Victorian Economic Development Corporation scandal and the mandatory reporting of child abuse. The Legislative Council was the forum for debate on those issues, and it did not occur and could not have occurred in the Legislative Assembly. I could also go back to another decade, to the 1970s, when this was the forum the Labor Party used to abolish capital punishment. The then Labor leader, John Galbally, realised that if the issue were to be raised it would have to be raised in the Legislative Council, because it would never be raised in the Legislative Assembly.

A further irony of Labor's plan is that the house it now wants to abolish or emasculate is the very place it relies upon to groom its future leaders. The Labor Party has sourced its talent from the Legislative Council, not the Legislative Assembly. Joan Kirner began her career here. John Brumby began his career here. Jim Kennan began his career here. All were to become leaders of the Victorian Labor Party. The Liberals have done the same. We sourced such fine talent as Dick Hamer and Lindsay Thompson from this chamber. To go back earlier, we sourced the greatest talent of all in this chamber, being Sir Robert Menzies, a former member for East Yarra Province.

Background facts such as those offer an insight to the distinct value and vital role of the upper house. It is those often unpublicised strengths that will see the Legislative Council through the current ALP attack. In simple terms the Legislative Council is different from the Legislative Assembly. It operates differently. It attracts members from a broader range of backgrounds and gives them greater parliamentary rights. The result is that this is a better place, but at the very least it is a distinct and valuable place. It offers a powerful platform for the scrutiny of ministers and the use of taxpayers' funds. It gives a fairer voice to the concerns and hopes of Victorians who live outside Melbourne. It has been an essential element in securing stable government, not just good government.

Given that it is not the home of the Premier or opposition leader of the day and because, like the Australian Senate, its terms are longer than those of the Assembly, the Council also provides opportunities for more reflective and sustained debate.

The procedures of the house are the best proof of the differences between the two chambers. They reflect the fact that the house has worked well for 50 years no matter who was in government in the Legislative Assembly. The procedures of the house could not be more different from those of the Legislative Assembly. No debates on legislation are guillotined in this house, thereby ensuring that an aggrieved backbencher is not stopped by the executive from pursuing a controversial issue. Contrast this with the rules in the Assembly, where governments of all persuasions regularly guillotine or gag debates.

In the Council there are no time limits on speeches, so members of Parliament are able to pursue complex and detailed issues free of the rigid constraints imposed by the Assembly's standing orders. All through the Kennett years Labor MPs used these rights in the upper house, and any opposition party can use them to scrutinise ministers. This includes the right to move a weekly censure motion against the government of the day. This right does not exist in the Assembly, where at best one can take such action fortnightly if one is lucky.

A further profound difference is the way only the Council forces ministers to answer questions on notice and insists that all ministers subject themselves to the scrutiny of the daily adjournment debate. Such accountability is unheard of in the Assembly, where ministers can simply evade tough interrogation and ensure that they are not asked the embarrassing questions.

These scrutiny mechanisms were pioneered by the Victorian Legislative Council; they are the creature of this house, the outcome of its strengths and at the heart

of its long-term value. They are inextricably linked to its current powers and rights in the state constitution, and they were opposed by Labor. None of these mechanisms were initiated as a result of ALP action — all were initiated as a result of our action.

When we took action to have an estimates committee established, as I mentioned before, the knee-jerk Labor response was to say no. When we were last in opposition ministers were not answering questions on notice and I introduced a standing order to ensure that they had to answer them within 30 days, and until Labor realised that we had the power its response was to oppose it all the way.

The scrutiny, the questioning and the reflective debate are unique to this chamber and the current constitutional arrangements and must continue. As I indicated, many of these features are unpublicised or underpublicised, but this chamber will not be a victim of that fact; we all have to ensure that we have a rounded debate on this issue, not one that is simplistic.

I want to deal with some myths and facts about the Legislative Council. In particular I will cite eight myths that are being put about by the ALP and I will put on the record the facts and background to deal with them. I might say as an aside that I am delighted that those myths have found no public response. I know how disappointed the Labor Party is that its attempts to get publicity on this bill have failed and that it has found massive public disinterest. However, we should always guard against any myth gaining some credence through lack of rebuttal.

The first myth is that Labor has a mandate for changes to the upper house. The facts could not be more different from the myth, but that should not surprise us. The Labor Party is a minority government: it won a minority of seats at the 1999 state election. Therefore, it has no mandate to change the state's constitution. In the 1999 election Labor won 42 seats, the Liberals 36, the Nationals 7, and the Independents 3. To this day the ALP governs only courtesy of the so-called Independent members of Parliament. It is the classic minority government and it is, therefore, a government that cannot claim a mandate at all. It is a government that cannot claim any right to meddle with the state's constitution.

The second myth is that the coalition-controlled upper house was a rubber stamp for the Kennett government; that is also untrue. The fact is that coalition MPs moved over 470 separate amendments to a total of 54 coalition government bills between 1992 and 1999. Of course, members of the Labor Party are hypocrites: they would have us believe that the only test of whether a house is scrutinising a government is whether members of one political party defeat their own political party's bills. If that is the test, I ask members of the Labor Party to give us evidence of the number of Labor Party bills that Labor members of Parliament voted to defeat in this house under the Cain and Kirner governments. There was not one. The Labor Party in this house supported every one of the bills that emanated from the Legislative Assembly under the Cain and Kirner governments. If that is the test Labor members want to set, they fail it themselves. The test is a nonsense.

The third myth is that only Victoria has an upper house with eight-year terms. That is the myth, and we have a pretty good source for it in the Premier. On 15 August 2000 Premier Bracks said on 3AW:

> In fact, we did a survey recently of about 100 countries on their duration and length of term of office, of elected officials. And not one of those 100 countries have an eight-year term. If you look at around Australia, there's no one who's got an eight-year term, it's the only Parliament we can discover, there's a couple, I think one in Turkey and one somewhere else, which have something like an eight-year term or seven-year term.

The Labor Premier says not one Parliament in Australia has an eight-year term. What about New South Wales? The Premier need look no further than Premier Carr's Labor state of New South Wales and the Labor government's constitutional amendments that introduced eight-year terms of Parliament in New South Wales. This is the level of research done by the ALP — what a complete laughing-stock it is! Eight-year terms in this country are solely the outcome of the actions of Labor governments. The Wran government introduced them in New South Wales, the Cain government introduced them in Victoria and now today's minority Labor government says there is something crook about them. Labor members should talk to their predecessors, not to us. They should talk to their Premier because he got it wrong. I think the statement is rubbish.

Of course, if members want to look somewhere else because they are concerned about the upper house having longer terms of office than elsewhere, they could go to the United States of America, which is a little more relevant to us than Turkey. Does the United States Senate have longer terms than the United States Congress? Yes, it does. We can come back home. What about South Australia, the Don Dunstan state? South Australia has longer terms in its upper house than in the lower house. In Tasmania they have longer terms. It is common throughout the world — indeed, it is a feature of upper houses that they have longer terms. The

government should not blame us for bringing them in; Labor brought them in, so the belief is a myth.

Myth no. 4 is that the current upper house electoral system is unfair. No argument could be more obscure. As I suggested earlier, if one is to sustain that argument one has to argue that the lower house electoral system is unfair. Who introduced the current upper house electoral system? John Cain, not us. We did not rig it. You people tried to get what you called a fair system and we agreed to it. It remains fair today, with one vote, one value, independently drawn electoral boundaries. We do not have the excesses of fruitcake candidates being given absolute power! Your system would. Ironically, it would not be easy for a Democrat to be elected under the proposed system because he or she would not reach a quota, but the nutter who is at the passing peak of popularity probably would.

Back in the mid-1980s it would not have been the Democrats who won under such a system, it would have been the Nuclear Disarmament Party. We would have one of their fruitcakes, the real ones not the fake ones, the absolute fruitcakes. If it had been a few years ago, tragically, it would have been One Nation, and we would have sitting in this room someone with a stale mandate who happened to get in because of a mad wave of popularity. The Labor Party would like to impose that upon us.

Myth no. 5 is that the upper house has obstructed the Bracks government. The Liberal and National parties in the upper house obviously have not. We have not defeated any legislation of the Bracks government. We will continue to behave fairly in the upper house. That is our job; it is why we were elected. We will amend bills if it is in the public interest. We will defeat them if it is in the public interest, but it was tactically unwise of the Labor Party to bring this debate on now and to try to use an argument that is so clearly wrong.

Let us look back to the last era when we were in opposition: 97 per cent of the legislation of the Cain and Kirner governments was passed through this place. Some obstruction! You deserve what you got! I would have thought that the role of the upper house is that every now and then it may defeat some legislation.

Hon. W. R. Baxter — They say they want it to be a house of review.

Hon. M. A. BIRRELL — They do, but they want it to pass everything they pass through the Legislative Assembly.

Myth no. 6 is that the Legislative Council costs too much. One thing we know is that if this bill were to be passed the Legislative Council would cost more, the electoral system would cost more and the house would cost more. So if we were doing it based on value for dollars, which is the most corrupt way of measuring democracy, you would vote for the current system over Labor's system. Labor's electoral system is more complex, more costly to run, more costly to count, more costly to administer and the electoral period has to be longer. There would be a massive changeover of politicians and their electorate offices, which would cost millions of dollars. There is no doubt about that.

You would not have your electorate office in Hamilton or Mildura. If your electoral base was Werribee I know where you would have your electorate office. It is only a problem perhaps for Liberal and National party members who want to live in their electorates, but it is a problem we do not want to encounter.

Myth no. 7 is that there is no need for by-elections in the upper house. Part of the unspoken agenda of the government is to abolish by-elections. Members of the government want to move towards a situation where there would be a countback of candidates for appointments by Melbourne-based political parties. That is far less democratic than the current electoral system. It could easily result in the election to Parliament of people who do not have popular support and could in the most likely circumstance, because you would probably be counting the last person elected, result in a Green candidate who had won being replaced by a Forest Protection Society candidate. That would clearly be against the public interest.

These fatal flaws in Labor's legislation are evidence that the people who drafted the legislation have not thought it through. The secret attempt to abolish by-elections is particularly improper. It is extremely relevant in country Victoria. As if it is not bad enough that you live in Portland and your local MP lives in Werribee, wouldn't it be insulting if that local MP resigned and caused a by-election at which he or she was replaced by the appointee of a Melbourne-based political party?

Myth no. 8, the last one I want to mention, is: the upper house is an exclusive club. I left that to last because it is the one that is easiest to demolish. There are currently 44 members of the Legislative Council. It has been argued by the Labor Party, depending on which spokesperson has tried to get this up in the news and failed — it is clear if one reads the press releases rather than look for press clippings — that this is an exclusive club, that it is a men's club, that it is out of touch and that it is old.

The facts are quite to the contrary. It is diverse, it has a great spread of age, it has been a pioneer in terms of gender and occupational background. Some 27 per cent of upper house members are women as against 25 per cent in the Legislative Assembly. That proportional representation is far higher than the representation of women in most other professional groups. Broadly speaking, 13 per cent of company board members are women, 10 per cent of Federal Court judges are women and 18 per cent of dentists are women, whereas we have more than a quarter of the members of the house being female.

With regard to age groupings, 4.5 per cent of members of this house are under the age of 30 years against 2.3 per cent in the Legislative Assembly; 13.6 per cent of the members of this house are between the ages of 30 and 40 years as against 5.7 per cent in the Legislative Assembly. It has often been the case that because of the different electoral structure and therefore the different preselection systems that have to occur this house has been more receptive to preselecting people whose age or ethnicity or gender would have been a subliminal barrier in a Legislative Assembly preselection.

I came here as an unmarried 25-year-old in the early 1980s. I do not expect my course would have been as easy in a Legislative Assembly preselection at that age. Other members have come into this place recently at a similar age. We have had women coming in here at an early age, and thankfully we have a higher representation of women now. We had people of different ethnic backgrounds in the 1980s and 1990s who acted as a beacon for others and who came into this house because the preselection system was different in style, not in legal construct, in all the political parties, and they took a slightly different approach with the individuals who came into this chamber.

The upper house, far from being an exclusive club, is diverse and welcoming. That is part of the distinct value and role I believe it plays. Of course the Labor Party will seek to argue that none of that is relevant, because deep in the Labor Party's motives is what I call an orange-and-green debate about its members philosophical views on the Legislative Council.

There is one thing the Labor Party can do; it can hate well, and remember.

Hon. R. A. Best — Particularly their own.

Hon. M. A. BIRRELL — Yes, particularly their own.

When one scans the Legislative Assembly debates on this legislation one sees constant arguments put forward by Labor Party members about what happened in the past in the Legislative Council and how it was unfair to Labor governments.

One can see that the motivation is anger rather than rationale; the motivation is political rather than looking to the public interest. All honourable members have heard the story ad nauseam about how back in the early 1950s the Legislative Council blocked supply on the John Cain, Sr, government. Often obliging journalists write up the story as if that were the only time supply was blocked in the Legislative Council and that the only people who blocked supply were the conservatives.

In this debate one should also deal with the pejorative and hate-based myth which the Labor Party tries to spread and which fuels its anger. Supply had been blocked against a number of governments. Some of those governments lasted for a very short time in the 1950s. However, who blocked supply on the majority of occasions? It was the Labor Party! Who initiated an act that it regards as outrageous? It was the Labor Party. Who moved the motion in this house to block supply? It was the leader of the Labor Party, not the dreaded conservatives who walked up to the crimson velvet seats from their stock market offices in the 1950s and knocked off poor John. It was the workers' allies who came up here and corrupted the system by blocking supply.

Hon. G. R. Craige — Tell us about it; I want to hear about that!

Hon. M. A. BIRRELL — All right. I often go to bed with a book entitled *A People's Counsel — A History of the Parliament of Victoria 1856–1990*, written by Raymond Wright. The interesting thing about this dry text is that it tells the truth about the blocking of supply in the Legislative Council, and does not give some Labor Party story. It points out that the majority of times supply was blocked it was as a result of the initiative of the ALP. Page 188 of part IV, which is the chapter entitled 'Post-war parliaments', states:

> On 21 October 1952 in the Legislative Council the motion was put that the McDonald government's supply bill … be now read. Labor upper house leader, Pat Coleman, put a counter motion:
>
> > In view of the inequitable electoral system at present operating in this state and of the government being not fairly representative of the people, the supply sought by this Bill should not be consented to at the present.
>
> Coleman's motion was successful (with a 17–16 vote). Thus did Labor block Supply (the seventh time since 1856).

That was the principled Labor Party. The reality is that the blockers were not from the Liberal ranks but from the Labor ranks. Page 211 states:

> From 1955 to 1970, Labor and Country Party Legislative councillors, rejected 30 bills passed by the Assembly. Other legislation was modified or delayed; attempts to regulate the bread industry, for example, were frustrated for eight years. In the Assembly on 20 October 1964 Labor and the Country Party voted against the passage of supply. They were defeated by weight of party numbers. In April and May 1965 the government suffered a succession of upper house defeats, not the least being the delay of supply for 24 hours.

So, up until 1964 supply would not have been blocked in the times I have mentioned other than for the support of the Labor Party. That piece of history is neatly missed out of the stirring speeches given to rally the troops at Trades Hall. It is left out because it does not help the overall story that the upper house must be demonised. History has to be misconstrued as a way of strengthening the ALP case.

I do not think supply is a pivotal issue in the bills before the house as I do not think it has been mentioned in any press commentary in the past 10 months. Certainly as Leader of the Opposition in this place, along with my colleague the shadow Attorney-General, the honourable member for Berwick in another place, and my deputy, Bill Forwood, who have been handling the matter for the Liberal Party, we have not been asked about the issue. The public is not interested in it, so I do not regard it as a pivotal issue in the debate. However, it is part of the proposed legislation and, more importantly, I believe it is the motivating force.

I conclude on two points. Firstly, under no circumstances, and regardless of what I have said in the debate, could the opposition accept the bill because it weakens the voice of rural and regional Victorians. The second point I make is that times change, and the Labor Party should engage in genuine dialogue rather than think it could never have an influence in this chamber.

On the first point, rural and regional representation has been a strength of this place, which has eight rural and regional electorates and distinct representation for places like Geelong and Ballarat, with strong country representations and a real voice. Whether members opposite have liked the voice or not — and I do not expect the Labor Party to like the voice of the Liberals or Nationals from country Victoria — one has to concede that it is here. If it is reduced to 3 rural mega-electorates that effectively have metropolitan chunks in them, that will go. It is a major reason for getting rid of the bill, as I have no doubt that is a major aim of the bill. In that context I refer to the comments of Ray Cassin, the chief leader writer for the *Age*, in an article in the *Sunday Age* of 4 June. Mr Cassin is an outstanding journalist. Although on some issues his views differ from mine, that does not reduce his quality as a journalist; it is simply a case that at times we disagree. He writes the editorials for the *Age* — he is a powerful man. It is unusual and refreshing for an editorial writer to write a column in the *Sunday Age* that tells us why he wrote his editorial. It is a signpost to what the Labor Party was on about. Mr Cassin's view is as follows:

> … rural voters continue to be overrepresented —

that is, in the Parliament, and in particular in the Legislative Council. He believes there should be lesser representation for rural voters. In his column of 20 August Mr Cassin states:

> The proportional representation bill would introduce a serious overrepresentation of rural voters.

He is not only unhappy with the current representation of rural voters; he believes Labor's alternative would see an overrepresentation of rural voters. I welcome that insight because it goes to the heart of regional concerns about the bill — that if it were passed there would be less voice for people than there is now, but the debate would still go on about whether there should be any voice of that scale for rural people in the future.

The opposition believes it is an absolute strength rather than a weakness that there is a strong representation of rural and regional people in the Legislative Council, and that they happen to be different people from those who sit in the Legislative Assembly.

The final matter I refer to is that times change. The Labor Party should calm down, take a deep breath, and not meddle with the constitution without consultation as it is trying to do. It should recognise that its way of getting control in the upper house is to win some seats — and it can happen.

I am vastly disappointed and was devastated when the Liberal Party lost both seats of Ballarat Province at the last state election; however, it was an indication that seats change and that Labor can win if it campaigns and the circumstances are right.

History indicates, though, that Victorian voters, when given the chance, will often choose to vote for the Liberal or National parties in the upper house if they vote for the Labor Party in the lower house. They do that knowingly and willing, and it is one of the reasons that the Labor Party does not have control of the upper house.

As evidence of how times change I refer to an article in the *Age* of 14 January 1985 by Tim Colebatch entitled 'Labor likely to control Council' states:

> Labor stands to win control of the Legislative Council for the first time in Victoria's history unless there is a big swing away from it at the coming state election.

The Labor Party could have had a majority in this place, but it was not popular enough. In Tim Colebatch's lengthy article analysing Council seats he points out that Labor Party-controlled Monash Province required a swing of 1.5 per cent and Boronia Province required a swing of 2.1 per cent. Liberal-controlled provinces such as Templestowe required a swing of only 0.5 per cent, Central Highlands a swing of 0.9 per cent, Ballarat a swing of 1.9 per cent and Gippsland a swing of 2.4 per cent. It was there to be won, but the Labor Party lost the upper house and won the lower house because of the deliberate voting intentions of Victorian voters. One vote, one value, independently drawn electoral boundaries, but people voted differently.

Tim Colebatch's incisive article was true at the time. What happened was that people said they did not want the Labor Party to control the upper house. If you analyse the electoral results you can see that people were sending the message that they value the scrutiny function, the distinctive difference and the different emphasis of the Victorian Legislative Council.

We have seen no evidence of public support for the bills before this chamber. We have seen no inspired public debate as a result of the Labor Party dropping on the table these ideas and the many abandoned ideas that preceded these bills. We have seen no public uprising in support of this so-called reform.

As a consequence of all the misgivings we have about these proposed changes to the state's constitution, as a consequence of our belief that we have to stand up for the long-term interests of democracy, we look forward to defeating these bills.

Hon. G. W. JENNINGS (Melbourne) — When I awoke this morning and thought about my opening contribution for the cognate debate on these constitution bills I considered trying to establish some sense of proportion about the two bills before the house and put them into the context of political institutions both within Australia and around the globe.

In establishing that sense of proportion I wanted to define the scope of the bills. In trying to construct how I would present that sense of proportion I thought of a number of major political developments occurring throughout the world. I was amazed some hours later on reading today's edition of the *Herald Sun* and particularly the editorial page to find some articles on the very issues I was concerned about and wanted to direct to the attention of the house. The page also has an article by the Leader of the Opposition setting out his views of the bills, which were repeated in the course of his contribution today.

I seek the indulgence of the house to enable me to read some extracts from today's *Herald Sun*, particularly from an article by Paul Gray under the heading 'All we need now is to realise how blessed we are'. The article talks about what a luxurious position Victorians are in because we live in a civilised society with a functioning democracy compared with our fellow citizens around the globe who are confronted daily with political atrocities, acts of violence and tragedies of the sort set out in the article. The most tragic of those referred to is accompanied by a series of photographs. It depicts a young Arab boy, Rami Aldura, who was killed earlier this week when he was caught in crossfire. The hearts of all parents and citizens would go out to the family of this young boy, who died in tragic circumstances through no fault of his own because he was caught in political and literal crossfire.

In Yugoslavia the current regime is desperately holding on to power despite a recent election result that should have seen a change of government and that has led to calls by the people of that country to comply with the election result. In East Timor, which is celebrating the anniversary of its independence at about the same time as the anniversary of the current Labor administration in Victoria, there are ongoing incursions and activities by the militias that have led to the deaths of not just Australian and United Nations peacekeepers but also citizens of that country.

In the context of those three examples — three of the six examples in the article — Paul Gray sums up the situation in Australia and Victoria by saying:

> These are just a few of the world's trouble spots where people face violence, death and man-made destruction as part of everyday life.
>
> …
>
> Some might argue that the recent World Economic Forum protests in Melbourne, with their intimidatory tactics by protesters and tough responses from police, suggest a worrying trend that political violence is coming here.
>
> They've got to be kidding — and I say that thankfully.
>
> Even in the WEF protest's worst moments, nobody looked like getting killed.

> Even the chances of the forum being cancelled were remote — unlike the annual meeting of the International Monetary Fund and World Bank in Prague last month.
>
> Its final sessions were abandoned after fierce protests around the venue involving up to 12 000 demonstrators.

These events occur daily around the globe. The democratic institutions we have in place in Victoria are stable and provide overall sound administration and proper government.

The bills will not destroy those institutions, as the opposition may be suggesting, but they are designed to improve those institutions, to add value to the way Parliament operates and to improve the accountability of Parliament and the government to the people of Victoria. Indeed, they will create a better and more representative house of review to protect the interests of Victorians.

I agree with many elements of Mr Birrell's contribution regarding the virtues of our parliamentary institutions. I similarly support some of the enhanced features of the way this chamber works and the role it plays in protecting the interests of all Victorians by ensuring accountability in the parliamentary process.

However, when considering the scope of the legislation, it is important that we concentrate on the elements of reform and not the hysteria generated by the opposition as reflected in Mr Birrell's contribution. We should debate the substance of the bills and not refer to agendas that suit the purpose of the opposition. We should not ignore the content of the bills but use this opportunity to reflect on how the procedures of this place could be improved and the constitution amended to lead to new practices in electing members of this chamber and the way it functions as part of the parliamentary process.

It is worth restating what the legislation does. The Constitution (Amendment) Bill will establish fixed four-year terms for both houses of Parliament. It will set the life of the Legislative Council to make it the same as that of the Legislative Assembly, and it will constitutionally end the ability of the Legislative Council to block supply. My reference to constitutionally ending that ability of this house was made because it must be recognised that the way governments have by design structured appropriation bills over a number of years has in effect diminished the capacity of the Legislative Council to block supply.

Under the current constitution the Governor is empowered to dissolve the Legislative Assembly in certain circumstances after the expiry of three years — that is, if supply bills have been rejected, if a bill of special importance under section 66 is twice rejected by the Council, or a vote of no confidence has been passed by the Assembly.

The Constitution (Amendment) Bill, if passed, would alter that situation to mean that the Council would have fixed four-year terms unless the government lost the confidence of the lower house. The important element is that the current arrangements that apply under the constitution, read in accordance with the Constitution Amendment Act, mean it is within the province of the Council to reject supply or bills of significance; and the Assembly pays the price of that rejection because the Assembly — the people's house and the house where the government is made — would be forced to dissolve, with only half the members of the Legislative Council being required to go to the people. The sanction of the rejection of a bill of significance or supply in this chamber is meted out on the government in the other chamber, and this chamber, which can exercise that power, is brought to account for only half its members.

The bills deal with the supply situation. The model proposed by the government, which would allow the council to consider and debate an appropriation bill, is the current practice in the United Kingdom and New South Wales jurisdictions. It would enable the appropriation bill to be presented for assent if the Council had either rejected or failed to pass the bill within one month of its being sent to this house.

The Leader of the Opposition in this place said that blocking supply has not loomed large on his horizon, and that by implication his intent in normal circumstances would be not to block supply. The government appreciates that contribution. The practice of how appropriation bills have been prepared by governments over a succession of years in Victoria would mean it is extremely unlikely that an appropriation bill would be successfully blocked in this chamber.

However, the measures in the two bills are meant to be seen as a suite of complementary measures to provide a different focus and a different reason for the existence of the chamber. Not for the first time are the functions of the Council coming under review. During my contribution I can provide the house with some evidence of how the practices and membership of this house have been altered on a number of occasions in the past 150 years.

The clear intent of the government is to change this place to become an effective house of review that can — in the election of its members, its membership and its processes — more demonstrably show

Victorians that it recognises the scope of its activities to provide the effective scrutiny and review of government, and that it is a house representative of the hopes and aspirations of Victorians.

We cannot run away from the rhetoric from both sides of the house that this house operates within Parliament in the interests of all Victorians; yet, it is difficult for all honourable members, no matter what their party affiliations may be, to demonstrate that this house practises in that way. It is important for honourable members to show they are prepared to be accountable to all constituencies in Victoria.

Proportional representation as the model of election is a method by which that can be put into practice. We can demonstrate our commitment by agreeing to the introduction of proportional representation, even though there may be winners and losers in the exercise. The presentation of the argument as portrayed by the opposition is a grab for power by the Labor administration. I reject that.

I entered the debate in the spirit of believing proportional representation is a more appropriate model to elect members to a house of review within any parliamentary jurisdiction.

Through the Constitution (Proportional Representation) Bill, which is part of the debate, the intention of the government is to introduce 8 electorates within the Legislative Council, each with 5 members who can be elected by quota, totalling 40 members of the Council chamber. The net reduction would be 4 members from the current model of 22 electorates, each represented by 2 members who are elected in rotation, but with only half of the chamber being accountable to the people at any one election.

The two bills would lead to an effective and more accountable house of review. It would be able to demonstrate that all Victoria is represented at any one time in the consideration of matters in this house. Public interest criteria for accountability and this house operating as an effective house of review would be met through fixed four-year terms for both the Legislative Assembly and the Legislative Council.

The original constitution reform bill was introduced in November last year. After a number of alterations were made to the original proposal, the political gestation of these bills followed, resulting in their introduction into the Assembly in June this year.

The intent at the time was to reach agreement with the opposition parties and the Independents on the ways in which Parliament could be made more accountable to the people of Victoria. They were determined in the lead-up to the last election and immediately thereafter, including the time between the general election and the Frankston East supplementary election.

As I said, after the introduction of the Constitution (Reform) Bill in November 1999, a number of changes were made that led to its being replaced by the two bills the house is currently debating. They are, by design, intended to enhance the representation of regional and rural Victoria. For example, the Constitution (Proportional Representation) Bill will not have the same net effect as the original bill because it will reduce the number of upper house members to 40, compared with the original intention to reduce the number to 35.

The Constitution (Proportional Representation) Bill will amend the Electoral Act of 1982 to ensure that a number of provinces are based in non-metropolitan Melbourne in a way not envisaged in the original reform bill. At all times the government has attempted to accommodate the legitimate concern of members of this place to allow for the fair and equal representation of Victorians living outside the metropolitan area.

A number of other changes were made to assist Parliament to reach an agreement on the safe passage of these reforms in a way that added to Victoria's political institutions rather than threatened them, as the opposition seems to be claiming — and the government rejects that claim.

The reforms are designed to make Parliament more accountable to the people. The opposition has attempted to make much of its claim that the issue is a sleeper and is a recent arrival on the political horizon. I direct the attention of the house to the fact that the reforms have been on the Labor Party's agenda since 1991. That policy was taken to the 1992 election and again to the 1996 election; and in the lead-up to the 1999 election the then Leader of the Opposition, the current Premier, Mr Bracks, entered into an alliance with the Democrats, the Greens and a number of Independents, launching a reform campaign under the banner of the Victorian Democracy Alliance.

Interestingly enough, the coalition did not respond to the proposed reforms at the time — at some cost, because at the general election of September 1999, the subsequent Frankston East supplementary election and the Burwood and Benalla by-elections they were part of the policies for which the Labor Party was seeking a mandate from the people of Victoria. In fact, the consistent electoral support for the government over the period between the general election and the Benalla by-election demonstrated the people's support for

Labor's clearly articulated intention to reform Parliament.

Members of the opposition have relied on a number of editorials and comment pieces in the press to put their case. However, in the lead-up to the Frankston East supplementary election the *Age* commented on the issue of parliamentary reform on a number of occasions, including 6 and 9 October. It argued that a change to proportional representation was worthy of the then coalition government's consideration.

In its editorial of 9 October the *Age* warned the Kennett administration of the need to address the issue, saying in part:

> As the *Age* has noted before, the coalition has obvious reasons for not wanting to change an electoral system that gives it a two-to-one majority in the Legislative Council … But Mr Kennett should beware of treating the coalition's upper house numbers as his toehold on power.

That was a salutary warning that members of the opposition seem not to have heeded, given the massively disproportionate results at the last election. Later in my contribution I will refer to those electoral results, which I believe are empirical evidence of the need to reflect on whether the current electoral arrangements for the Council provide a clear and ongoing mandate for the role we sometimes seek to carve out for ourselves. Do they demonstrate that our mandate is crisp rather than stale? Are they a basis for satisfying the expectation we often set for ourselves that we are here to represent the interests of all Victorians? They are questions that we as members of this place should reflect on.

The council has had any number of opportunities to reform itself over the past 150 years. The government is calling on the Council to revisit those opportunities rather than being defensive and attempting to hold on to the role for which the chamber was originally designed. The government is asking us to reflect on whether the current arrangements satisfy the expectations that the people of Victoria have for the chamber.

I will draw on some historical references to describe how the chamber was created.

I am informed by a 1984 Victorian parliamentary background paper entitled *The Legislative Council: Retain Reform or Abolish?* that Victoria's first part-elected, part-nominated Legislative Council met on 11 November 1851 and its first elected bicameral Parliament assembled on 21 November 1856. Since then an ongoing debate has occurred between the Assembly and the Council about what the appropriate powers, obligations and privileges of the Legislative Council should be. So from 1856 we have revisited the question of what the appropriate powers and obligations of this chamber should be.

The history is that the English government in 1852 suggested that this Parliament have two chambers. A review ensued between 1852 and the establishment of the two-chamber Parliament in 1856 on what form this chamber should take. In those days the debate centred around whether this should be a fully nominated Council based on the House of Lords model; a part-elected, part-nominated house, as had been employed in New South Wales for about 10 years previously and by Victoria since the house's inception on 11 November 1851; or a fully elected house, in keeping with the then popular demand for members of Parliament to be fully elected.

The model adopted in 1856 was a hybrid model that accommodated both the need for there to be some electoral mode as well as an appointment mode. That is what occurred at the very beginning of this Council. Debate then ensued about the proper make-up of this chamber and how members were elected to this chamber and the role they played. According to the background document the Legislative Assembly was seen to be:

> … the popular house and seat of government while the Council, through stringent membership and voter eligibility criteria … was designed to act as a sobering influence on the anticipated demands and excesses of the lower house.

Surprisingly, that seemed to be the tenor of the contribution made today by the Leader of the Opposition. Specifically the Council was assigned two major responsibilities at the very beginning by design. The first was to protect the interests of and the property of the wealthy and the educated; the second was to check the inevitably more radical Assembly by acting as a house of review.

So from the very beginning a method was established whereby there were membership qualifications requiring members of the Council to hold certain property of a certain value, to be male — obviously, in 1856 — and to be at least 30 years of age. Those membership qualifications existed right up until 1950, when they were finally abolished.

Hon. W. R. Baxter — By whom? A Country Party government?

Hon. G. W. JENNINGS — I am happy to give credit where credit is due as to who made the changes.

Hon. C. A. Furletti interjected.

Hon. G. W. JENNINGS — That is always the case, Mr Furletti. If you listen to my contributions in this place you will find that I always give credit where credit is due.

By that stage the significant reforms were well and truly beyond their time. Clearly, the Legislative Council was catching up with some view of democracy. At the same time the qualifications on voters were removed; not only did members have to have property and be of a certain age and standing in the community, but voters had to have property or certain academic qualifications to be entitled to vote for the membership of the Legislative Council.

Hon. W. R. Baxter — What is the point you are trying to make?

Hon. G. W. JENNINGS — The original intention or design of this place has altered over a number of years and has evolved consistently. The government contests that the two bills before the house should be understood to be part of the evolutionary process of this chamber in terms of ensuring that it plays a proper role in reviewing government legislation and making the government accountable. It should continue the evolutionary cycle by looking at the appropriate membership of the chamber. I assume that no members of this chamber would defend the original design of the Legislative Council. My argument is that it is not acceptable to say that the Council is immutable and should not be subject to scrutiny, argument, debate and evolution in terms of being a more effective house of review.

Hon. W. R. Baxter — No-one is objecting to that, if the changes are acceptable.

Hon. G. W. JENNINGS — On that basis, I encourage the opposition and all other members of this house to examine what aspects of the two pieces of legislation before the house are acceptable. That is the challenge.

Hon. C. A. Furletti — Why didn't you do it before drafting the bills?

Hon. G. W. JENNINGS — In response to the interjection I indicate that there were many months of discussion between the government and the opposition on the development of these bills.

Honourable members interjecting.

Hon. G. W. JENNINGS — There were months of discussion between the government and opposition parties during the preparation of this material.

An Honourable Member — We must have missed that.

Hon. G. W. JENNINGS — I am confident that discussions took place.

Honourable members interjecting.

Hon. G. W. JENNINGS — There is opportunity in this debate, if you want me to take it up. Let me respond to that opportunity.

Hon. W. I. Smith interjected.

Hon. G. W. JENNINGS — Many pieces of legislation in their passage through Parliament can be subject to consideration, and arguments can be put forward by the opposition on what aspects may be acceptable. As a member of the government I am happy to have discussions within or outside the chamber and to hold these bills over until agreement can be reached and there can be safe passage of key elements of the legislation.

I wholeheartedly welcome any suggestion from any member of the opposition who wants to seriously deal with any aspect of these two pieces of legislation to take up the opportunity to have constructive dialogue with the government. When and if that discussion takes place, and I look forward to it, I will attest that there is very good reason why we as a Parliament should look at having fixed four-year terms. The justification is that as members of Parliament, as persons in public life, we should be accountable to the people each and every day of our existence. To deliver on a mandate of a program of reform and provide some degree of certainty, elections should take place regularly. The government's proposal is that to implement four-year terms set from the time of the general election is the most effective and efficient way to deliver government administration overlaid by clear accountability to people.

I encourage the opposition to seriously contemplate the virtues of fixed four-year terms to provide predictability for business and the community and to reduce the often disruptive anticipation of the electoral cycle, with the degree of uncertainty that is often generated in the later period of an election cycle. Fixed four-year terms would provide the opportunity for Parliament to remove that uncertainty and enable all citizens, businesses and administrators of government programs to operate on a predictable basis.

Surprisingly the issue has not been the subject of much debate in Parliament so far in the debate that has occurred in the other place and the contribution today of the Leader of the Opposition in this house. The

opposition has not taken up the opportunity to provide some degree of certainty and predictable accountability. I therefore welcome any consideration of opposition members to the very worthy initiative contained in the Constitution (Amendment) Bill. Bringing the Legislative Assembly and the Legislative Council into line would provide the opportunity for not only the government but also Parliament to be accountable to the people.

Hon. W. I. Smith — Why don't you bring proportional representation into the Assembly, then?

Hon. G. W. JENNINGS — The Honourable Wendy Smith makes a valuable interjection. The answer is that the well-established Westminster system on which the traditions of this Parliament, and all Australian parliaments, are based is a system of single-member electorates making up the lower house, whether it be the House of Representatives federally or the Legislative Assembly in Victoria, and forming the government.

Hon. Bill Forwood — Tasmania? ACT?

Hon. G. W. JENNINGS — The house is dealing with world best Westminster practice! The model of basing lower houses such as the House of Representatives and the Legislative Assembly — people's houses — on single-member electorates is the model that has served Australia and other countries that use the Westminster system well. It is not something I would abandon. The Senate model of proportional representation adopted throughout the history of the federation has been shown to be effective for a house of review.

Sometimes the intrigue surrounding the blocking of supply has bedevilled the federal jurisdiction and has muddied the waters for considerations of the effectiveness and appropriateness of a proportional representation model. It has led to a number of concerns, which the Leader of the Opposition amplified in his contribution today, that it would allow, to use his words, the capacity for nutters to be elected to Parliament. I share concerns opposition members might have that a member of an upper house in any Australian jurisdiction could play a destructive or irrational role that would be inconsistent with the mandate they had sought from the people. However, if the role of the upper house is to review legislation with the aim of providing proper scrutiny and proper accountability on behalf of all Victorians proportional representation provides an opportunity of doing that.

At the hub of the issue is that it is critical to appropriately define the powers and obligations of the chamber in satisfying the expectations that the people may have of it.

An Opposition Member — So you set the quota so high that other smaller groups cannot be represented?

Hon. G. W. JENNINGS — I will take up that interjection, because the government would be happy for members of this chamber, the parties within Parliament and members of the community to discuss the appropriate size of the quota. One of the reasons this bill varies from the original is considerations about the size of the quota.

Hon. K. M. Smith — You had 12 months to do it!

Hon. G. W. JENNINGS — No.

Hon. W. I. Smith interjected.

Hon. G. W. JENNINGS — To answer the interjections from the Honourables Ken Smith and Wendy Smith and other opposition members, on behalf of the government I would be happy for us to have appropriate, constructive discussions about ways to enhance the present legislation — in any way, at any time and anywhere. The government is prepared to enter into constructive discussion about ways of improving the bill in the agreed agenda to improve the Victorian constitution and the way in which the Parliament of Victoria operates. I would be happy to take up that opportunity on any occasion and I look forward to the enthusiastic contribution of members of the opposition to improving Victoria's constitution.

I am pleased opposition members are champing at the bit for the opportunity to play a constructive role in the reform of Victoria's constitution and the improvement of accountability and the performance of Parliament in the name of the people of Victoria. Let us have those discussions. If after the discussions we want to hold over the vote so that together we can amend the bill, let us take up that opportunity. I look forward to hearing positive contributions from opposition members to make the constitution more effective and efficient and Parliament more accountable.

There are several ways in which the current electoral system operating for the Legislative Council may be reformed. I will be listening to any opposition members who, apart from encouraging the government to go out there and win seats to demonstrate its mandate — —

Honourable members interjecting.

Hon. G. W. JENNINGS — Coming off the back of the result of the 1999 general election, where the coalition parties received a minority of the two-party preferred vote across the state in the Legislative Council yet received — —

Hon. W. I. Smith — One vote, one value.

Hon. G. W. JENNINGS — Yes, the Honourable Wendy Smith interjects and says, 'One vote, one value'. In fact it is very hard to see under the current circumstances how there is one vote, one value, when the coalition parties received less than 50 per cent of the two-party preferred vote yet returned 14 of the 22 seats that were contested at the general election of September 1999.

No clear system of one vote, one value operates within this jurisdiction, and that is the major problem. Within the 22 seats contested at the general election in September 1999, leaving aside the three by-elections, the coalition parties received 49.88 per cent of the two-party preferred vote, yet they were successful in electing 14 of the 22 members elected at that time. This is according to the Victorian Electoral Commission's publication *Results of the 1999 Victorian State Election*. If members look at the alternative view, they see that the non-coalition two-party preferred vote — which includes a substantial two-party preferred vote for the Labor Party — was 50.12 per cent, a majority of votes, but it elected only 8 of the 22 members elected at the general election.

Hon. R. M. Hallam interjected.

Hon. G. W. JENNINGS — There are a variety of options. During last night's adjournment debate I looked at the electoral maps published in the aforementioned Victorian Electoral Commission publication. By realigning a number of the contiguous seats in the state of Victoria — —

Hon. C. A. Furletti — You can create a gerrymander.

Hon. G. W. JENNINGS — Exactly! I am not interested in a gerrymander at all and that is why I am an advocate of proportional representation.

Hon. C. A. Furletti — That is what you are trying to do, but you will not fool Victorians.

Hon. G. W. JENNINGS — No, Mr Furletti, but I thank you for your contribution as it is useful to amplify the issue. I am not an advocate of the current system, I am an advocate of proportional representation. Last night during the adjournment debate — which lasted about an hour and which sometimes seems an interminably long time, but is not in terms of electoral reform — I was looking at the way the current boundaries could be realigned to give a very different result.

Hon. W. I. Smith — I'll bet you were.

Hon. G. W. JENNINGS — I reject that model. I think it is totally irresponsible for anybody within the Victorian political regime to argue that — —

Hon. C. A. Furletti — The only purpose for passing the bill is to get rid of people like you!

Hon. G. W. JENNINGS — That is a most uncharitable contribution. What worries me about this debate is the abolitionists who feel that the sum total of the debate and this contribution may assist their cause. It will be a tragedy if during this debate we cannot clearly outline what benefits we provide to the Victorian community and the accountability of this Parliament. There is a challenge for all of us to demonstrate in our contributions that we have a coherent approach and argument that supports our position rather than just coming here and saying we seek a just outcome for ourselves through a gerrymander of the existing boundaries. I am not a proponent of that but I suggest that it is not hard to orchestrate.

Clearly what the government is advocating through the reforms before the chamber today is a move to proportional representation as a means of election that is more accountable to people and more in keeping with the roles and responsibilities that we desire for the house in terms of its being an effective house of review but does not lead to the electoral imbalances that currently exist. We are living in denial as a chamber if we do not acknowledge the fact that there is a skewing of electoral outcomes in relation to this chamber. There is no gerrymander in operation by design, but over time there is a clear disparity between the two-party preferred vote across the state and the outcomes that occur because of the existing electoral boundaries.

An Opposition Member — So John Cain got it wrong?

Hon. G. W. JENNINGS — This is a no-blame situation. I am not alleging anything against the Electoral Commissioner or any government; it is an historical consequence of the way the boundaries have been aligned and the fact that they are not fixed. In my view, the challenge for us is to find a model that best fits our expectations of how this chamber should operate, the relative powers of this place versus those of

the Assembly, the role we play in the constitution, and the values we bring as members in terms of our attributes, knowledge base, constituency and mandate. I believe that proportional representation as outlined in the bill is the best model to fit those expectations.

I challenge the opposition, during the course of this debate and in any public or private place, to discuss the ways that we, as members of this place, contribute to a net improvement in the way the Parliament and the constitution of Victoria work and how we fulfil the expectations we bring to this place. This is not a contest between the government and the opposition about the appropriate role of this chamber in terms of scrutiny of the executive arm of government and degrees of accountability. We often argue the toss about that for a variety of reasons. We sometimes get distracted by the colour and movement rather than the substance. In their contributions I urge all members of this chamber to go back to their heart of hearts, their political philosophy, their constituency and what they hope to achieve as members of Parliament in this place.

I think that on reflection members will see that the intent and the scope of the bills will not injure the integrity and function of this chamber but will enhance it. My support of the government's legislation is given in that spirit. I encourage every member of the chamber, particularly those who have not sought a mandate from the people since 1996, to reflect on how crisp, clean and definitive their mandate is. If they are fair in considering my contribution people will recognise that I have not laboured the point that a number of members of this place sat by and allowed reforms that were very unpopular within rural and regional Victoria to take place.

Hon. W. R. Baxter — It does not mean they were wrong. Are you saying that we should not have restructured local government?

Hon. G. W. JENNINGS — I suggest members reflect on the reforms of local government. The Kennett administration reformed local government and removed the concept of the stale mandate. It removed the opportunity for local councils to be elected on a staggered basis. I applaud that reform of the Kennett administration and think we should reflect on whether it would suit the practices of this chamber. I think the Kennett administration got that issue right.

The stale mandate theory applies there just as it should apply here. We should encourage all the physicians to heal themselves on this issue. If we are to discuss mandate we should look to our own back yard. Clearly the 1999 election had a different result from the 1996 election. Members of this chamber elected in 1996 and who lived through the last term of the coalition administration had many reasons to reflect on their role in the chamber and in government. That is in no shape or form moralising upon their performance, it relates to what they see as their role today.

It is a challenge for the 19 members of this chamber who have not gone to the people since 1996 to be clear in their own minds before they vote on these bills about what their mandate is on this issue. On reflection I am sure those 19 members will vote with the 3 government members who were elected at by-elections and the 8 new members of the government who were elected at that time to provide a clear majority of 30 voting in favour of these bills.

Despite what the Leader of the Opposition said, when those 19 members add critical mass to the voting intention of government members there will be a different result than has been anticipated.

Hon. W. I. Smith interjected.

Hon. G. W. JENNINGS — Taking up the interjection of the Honourable Wendy Smith, I would not anticipate that occurring. I challenge opposition members who have not been elected since 1996 to reflect long and hard on their mandate and their ability to demonstrate what their mandate is in this context. They should play a positive part in finding an appropriate role for this chamber during this term of government. If these bills meet their demise I hope over time that they may lead to an effective review and appropriate constitutional change in the not-too-distant future. In the meantime, I am happy to support the two bills before the house.

Hon. R. M. HALLAM (Western) — I begin my contribution to the debate by extending my congratulations to the Honourable Mark Birrell on his powerful and compelling speech, and I suggest that those who wish to consider the crucial role of the Legislative Council and the way that has evolved over time could do no better than read his contribution.

I intend to handle my contribution slightly differently. I will provide the chamber with a critique of the bills being considered today. I acknowledge at the outset that the government has initiated the cognate debate to enable the house to consider both bills as part of the same legislation. I intend to consider them in a technical way and will handle them each in turn. I begin with the first listed on the notice paper, the Constitution (Amendment) Bill, and I will discuss not only the bills

but also the circumstances that caused them to arrive in their present form.

The government should not be surprised that the National Party does not support the first of the bills, just as members of the National Party are not surprised that our opponents seek to dismiss and denigrate our stance by characterising it as being driven by selfish and personal factors. Members of the National Party oppose the bills, and my purpose is to demonstrate that our stance is not the result of some mercenary, hip-pocket response but is rather a considered and logical defence of Victoria's bicameral parliamentary system and is a faithful representation of the views of the vast majority of our constituents.

We in the National Party take our role as representatives seriously. Against that background I was personally incensed by the claim made by the honourable member for Mildura in the other place that we in the conservative ranks in this chamber were only interested in protecting the sinecure of membership of the Legislative Council rather than the best interests of our electors.

I say to government members that, notwithstanding that they have been convinced that they should fall on their own swords in respect of the current term, they also should be unhappy with the description of our membership of this chamber as a sinecure because it implies that our membership carries no responsibility. That is hardly consistent with the notion that this is a house of review, a position taken by members of the government without exception. Much of the criticism that has come our way is both ignorant and insulting.

The Constitution (Amendment) Bill has but one purpose, to implement a package of reforms to the Parliament. The merit of the bill turns on whether the changes proposed constitute reform. I took the opportunity to look at the definition of reform. According to the *Australian Concise Oxford Dictionary* reform represents the removal of abuse. On that definition none of the changes qualify. We could reject the bill out of hand and rest our case at that point.

The Constitution (Amendment) Bill proposes three major changes: the reduction of the term of the Legislative Council to one term of the Legislative Assembly; the fixing of the term of Parliament to four years unless there is a vote of no confidence in the government — to which I shall return because there is a sting in the tail of that — and the removal of the power of the Legislative Council to block supply. I say to the chamber, and in particular for the benefit of the Honourable Gavin Jennings, that although we may not agree with the existing features of the constitution to the extent that they specify the operational rules in relation to Parliament, we all would have to agree that they come to us after careful consideration by other people in this place and that they are underpinned by logical reasons. On that basis it is hard to sustain an argument that the amendments are required to overcome abuse.

I shall go to each matter in turn, but it is appropriate to go back one step and set the scene. Last November the Bracks government introduced into the Legislative Assembly a bill entitled the Constitution (Reform) Bill. We are informed that that original bill contained all the features of this bill and those contained in the companion bill, the Constitution (Proportional Representation) Bill. It is clear that the Constitution (Reform) Bill was radical. Not only did it suggest a reduction in the term of Legislative Councillors to coincide with the term of Legislative Assembly members, fix the term of the Parliament to four years and remove the power of the Legislative Council to block supply, it also proposed that proportional representation be introduced to the Legislative Council, reduced the number of Legislative Council members from 44 to 35, changed the existing 22 provinces that elect two members to five provinces electing seven members and reduced the membership of the Legislative Assembly from 88 to 85 members with each of the new Legislative Council provinces taking in 17 complete contiguous districts.

The house now has two bills before it, and my point is that the confused observer could be forgiven for being so, because initially those two bills were one bill.

There are several notable features of the process by which the initial bill became superseded and was withdrawn, and I shall spend time on each feature. The first significant point is that the original bill languished at the bottom of the notice paper in the Legislative Assembly for more than six months. Despite all the rhetoric and florid terminology at the time of its introduction, it was not debated. I know there was some excited toing and froing behind the scenes and there has been plenty of speculation, but there was no debate in the house. Then the government had to suffer the embarrassment of withdrawing the bill.

In my view the obvious and quite legitimate question, and that of my colleagues in the National Party, is why was that the case when not a single shot had been fired?

The second feature that I believe is worthy of note is the decision to split the bill. One can start to get some idea of the strategies being pursued by the Bracks government. Apparently it had been argued that if some

of the nasties were taken out of the original bill and put into a separate bill, it was hoped that at least some part of the agenda would get through Parliament. Perhaps that was the argument being used by the Bracks government, and it appears to have some logic.

However, the situation becomes even more confused when one notes that both replacement bills have displayed some differences in respect of the features ostensibly transferred from the original bill. There are no longer 5 provinces electing 7 members, and therefore a house of 35 members in this place. The house is now asked to agree to a structure that would see 8 provinces electing 5 members, thus constituting a membership of 40 members. Critically, 3 of those 8 provinces will be primarily outside the metropolitan area — whatever that means — and I quote directly from the bill. I will come back to that point.

There is now to be no reduction in the number of members of the Legislative Assembly. Now one begins to comprehend the driving reason behind the initial bill's withdrawal before it was debated. I will have more to say on that subject specifically in respect of proportional representation.

The big issue underpinning that change apparently emerges from the realisation by the Independents that both the reduction in the membership of the Legislative Assembly and the original concept of having five provinces of seven members in this place would dramatically reduce country representation. I suggest to the chamber that that is certainly inconsistent with the claimed charter of either the Independents or the Bracks government. So, the penny began to drop that both changes represented a rotten deal for country Victoria and therefore became the best possible reason for the National Party dragging its heels. I suggest the stance it is taking in that context is both legitimate and responsible.

Two bills are before the house. The first to be introduced, the Constitution (Amendment) Bill, provides for the election of two members to each current province making up this chamber. That change needed to be introduced to accommodate the proposal that the term of each member in this chamber coincides with that of the Legislative Assembly. However, the complication is that even if this chamber were to pass the bill, that feature would be repealed by the next bill on the notice paper — the next one listed for debate — or if one looks at it in reverse, a bill is now on the notice paper that repeals an act that has not yet been enacted.

One must ask: what sort of system are we running? This is not some corner pie stall, and it is no wonder the average observer is confused. It is an absolute shemozzle. Further, when the Constitution (Amendment) Bill was introduced in this chamber, the second-reading speech noted:

> The provisions in this bill concerning the term of Parliament are substantially the same as those in the reform bill.

At the time the National Party presumed that the 'reform' bill was the earlier Constitution (Reform) Bill — that is, the bill that was withdrawn from the Legislative Assembly before it was debated. The government is introducing a bill into this chamber and describing its contents as similar to another bill that was never presented to the house, much less debated.

I have previously raised the issue of the appropriateness of second-reading speeches in this chamber. I know that sometimes the changes I have been advocating have been minor and grammatical rather than affecting the bottom line. However, this one goes absolutely over the top. Victoria has a bicameral system, and the government should understand and appreciate that. Honourable members should be able to expect that legislation and associated commentary coming to this chamber are respectful of the process and the protocols of the Parliament.

The second-reading speech refers to a withdrawn bill and relies on terms and concepts that were never introduced in this house. In my view that, if nothing else, is contemptuous on the part of the government. I know the Bracks government has little experience in parliamentary procedures and I know it is on a steep learning curve, but after two parliamentary sessional periods I suggest that what took place in respect of the bill is absolutely unacceptable, and on behalf of the chamber I exhort the ministers present to lift their game. The bills have had a very difficult gestation.

I turn to the changes the government seeks via the Constitution (Amendment) Bill. However, before responding to the specifics of the bill I turn to two generic issues. I am pleased to have the opportunity to rebut some of the comments of the Honourable Gavin Jennings. I firstly go to the rule book in respect of any change to the constitution of Victoria. At the outset I make the point that the government does have the right to pursue changes to Victoria's constitution. There is nothing untoward or uncommon about that right. The fact that changes to the constitution do not require a referendum should be well known to each member of the chamber. But, and it is a very big but, that does not mean the government has an automatic right to constitutional change. That right belongs to the

Parliament, and it is not only quite proper for the Legislative Council to have a say in any application for change by executive government, but in my view it would be totally irresponsible on our part not to ensure that any prospective change was carefully considered.

In that context I turn to what I believe to be some pivotal points. Firstly, the changes being advocated by the Bracks government are absolutely fundamental and go to the way Parliament operates: whether this upper house is to have any real teeth; whether there will be any real checks and balances on executive government; how Victorians are to be represented in their Parliament; the circumstances under which a government's commission may be terminated; and the mechanisms available to address any future constitution deadlock. There could be no more fundamental changes contemplated.

They are not procedural issues. We are not talking about something that is cosmetic; we are not tinkering at the edges. In my view the constitution should not be subject to wholesale change at the whim of a particular government. The National Party would not support such dramatic change unless the specifics of that change were put to the community and approval was gained. That is the National Party's starting point. I suggest that against that background the strategy of the Bracks government is interesting. It seems to me that the program that was played out was, 'Negotiate what you can with the Independents and then go straight to Parliament with the changes. If you can't get your way talk about the establishment of a constitutional commission and the development of an options paper. Then, finally, talk about a plebiscite and suggest that people might be asked to respond to specific alternatives'.

This bill, which pre-empts the Premier's own processes, is arrogant and should be dismissed on that ground alone. After all, the purpose of framing and adopting a constitution is to establish the ground rules that underlie the assumptions on which the Parliament operates. We are not talking about the rules of debate or matters of precedence, which are settled by sessional orders that are periodically reviewed with little pain. The constitution is the framework against which those procedural rules are designed, and it is meant to be an enduring document. Its purpose becomes clearest at a time of crisis and instability. It should not be seen as a formula for some quick-fix remedy to accommodate an unhappy executive government. No evidence has been put before this chamber or the other place to suggest that the system we have is not working precisely as intended. That is the first issue, the constitutional change rules.

I refer briefly to the issue of a mandate, the oft-quoted justification and theory that governments have a right to do anything they said they intended to do in the run-up to an election. I acknowledge, as I have done on a number of occasions in this place, that it is a factor in considering a policy shift and a legislative program, but it should not be seen as written in stone. After all, if 'because we told you so' is the justification for the legislation, why should the electorate not expect the government to deliver on all the promises it made when in opposition? If changes in the bill are justified as part of the mandate theory, I want to debate the reintroduction of common law to workers compensation and the provisions for pain and suffering in the victims of crime legislation. They were both token changes.

Where is the 28 per cent environmental flow promised for the Snowy River and the detailed costings for the grand prix? I am still waiting for the royal commission into the Crown Casino tender and the honouring of many other promises made from the luxury of opposition. If the mandate theory is the justification for the passage of these bills, it should not be selective. It is either applicable in every case or none. It does not give carte blanche to executive government; it is a handy debating point and nothing more.

The other issue is whether a mandate even exists for these bills. I argue strenuously that it does not. The grounds for my argument are that while reform of the Legislative Council appeared in Labor's manifesto *Restoring Your Rights*, I cannot recall the issue being canvassed at all during the election campaign. Indeed, my impression is that Labor went quiet on the issue. I acknowledge that there were some interesting commentaries after the election, but there is nothing to indicate it was an issue during the election campaign. My copy of the manifesto *Restoring Your Rights* is dated 16 September 1999, two days before the election. I looked at Labor's plan for 'A harder working and more democratic Parliament' subtitled 'Making Parliament work' issued in May 1997, but it is absolutely silent on the changes the Labor Party now says it has a mandate to introduce in this chamber.

In addition, what did appear in the manifesto does not appear in the bill, so the proposal the Labor Party was pursuing at the time has been amended. We no longer have five provinces of seven members each and a membership of 35, but eight provinces of five members each and no reduction in membership of the Legislative Council. At least it must be said that the government does not have a mandate for this version of reform, because it is quite new to the Victorian community. Anyway, as Mr Birrell pointed out so poignantly, the

Labor Party did not win a majority in the lower house — it needs the support of the Independents to govern. I read what the Independents had to say about these bills. Two of the three Independents do not agree with the removal of the right of the Legislative Council to block supply. Where is the mandate? There is no mandate.

I refer now to the specifics of the bill. The first major change is the reduction of the term of the Legislative Council to equate it with one term of the Legislative Assembly. I ask rhetorically: where is the clamour coming from? Where are the masses in the streets agitating for change? I find evidence of it only among government members. We are told that eight years is too long and that it makes us fat and lazy; that we become more interested in our golf handicaps and our MBA studies than the welfare of our constituents. I have neither a golf handicap nor am I studying for an MBA.

The point I make is that there is no member of this chamber who has served for eight years between elections. The rules say that membership of this place shall be for two terms of the Legislative Assembly — therefore, a minimum of six years and a maximum of eight years — unless the government's commission is withdrawn earlier. It is ironic that Premier Bracks wants to guarantee eight years of membership of this place but then complains it is too long. It is an interesting twist. It is even more ironic that prior to my entry into this place members of the Legislative Council had a term fixed at six years, so Legislative Council elections did not necessarily coincide with those of the Legislative Assembly. The point has been made, but it is important to reinforce it: in the early 1980s Premier Cain changed the period from a fixed six-year term to two terms of the Legislative Assembly. There is a twist in the logic. It is logical to have common election dates for both houses but it is apparently illogical to have anything other than four years for one term. The logic escapes me. The National Party is not persuaded.

A common feature of bicameral systems of Parliament throughout the western world is that membership is deliberately staggered. The only bicameral system I am familiar with that does not have staggered membership is in Western Australia, where it was recently changed. Some variations occur on the theme, but invariably the bicameral system includes a staggered term in the upper house.

I note that the New South Wales system is not quoted by the government in this context — for very good reason: the New South Wales system introduced under a Labor government is identical to the current system in Victoria. I make the point that the rationale that underpins the difference in terms of upper house members is well documented and is not complicated. This place is meant to be a house of review. Having a membership with a term longer than membership of the lower house is, I suggest to Mr Jennings, not designed just to address the issue of continuity. That has never been the argument. Therefore, his comparison with local government is irrelevant.

When the rules were devised a specific arrangement was entered into by which the upper house would be deliberately conservative with a small 'c'. If one looks at the parliamentary debates of the time one finds the arrangement was deliberately designed to put a brake on the unbridled power of executive government and to iron out political fluctuations.

The bottom line is that if we were to embrace the changes proposed by the government and have the term of members of the Legislative Council identical with those in the Legislative Assembly, this house would become a mirror image of the other house, which would be totally inconsistent with the notion of this house's role as a house of review. I suggest that in those circumstances we may as well follow the Queensland route — in fact, there is room to argue that the abolition of the upper house may be a better outcome for Victorians.

The National Party does not intend to blithely abandon a carefully thought-through objective of the constitutional architects. The system has worked well in Victoria. Plenty of governments have ruled here with what they called hostile upper houses. As was noted earlier in the debate, Premier Bolte did it for 15 years, as did premiers Cain and Kirner, who had the vast bulk of their legislation passed.

Now the house is told that the Kennett government was dismissive of the Legislative Council. That is hard to comprehend given that the Kennett government won the majority of seats in both houses, particularly in the Council — that is hardly dismissive of its role. It is true that the Kennett government had substantial majorities in both houses, but that is a fact of life and by virtue of the vote secured from the electorate. It is hard to argue against those facts.

I also note that in this debate the Kennett government has been accused of arrogance and it is implied that nothing that happened in this place had any relevance. I point out, as did the Honourable Mark Birrell, that during my early days in Parliament this house was not a bad debating forum for the Labor minority.

When the coalition was in government the Labor opposition used this place to the nth degree. The house spent hours in the committee stage of bills and I well remember one debate, which happened to be about workers compensation, lasting for 27 hours straight. I make the point to government members that they then had the opportunity to debate opposition business every Wednesday, they had access to ministers at question time and on the adjournment debates, they had unlimited speaking time, and they had all their hard questions put on notice and expected them to be answered under the 30-day rule. They had a chance to make their case, if they had one to make.

This is the same house that the new Labor government wants to nobble and render harmless. However, in the same breath it says it needs it to be a house of review. How can it be a house of review if the government wants to pull its teeth? Common terms in office for the Council and Assembly would mean the role of this place as a house of review would be diminished, at least, and maybe terminated. All that comes from a government that says it craves transparency and honesty, but turns out to be totally opportunistic and illogical. On the question of a reduction in the term of the Legislative Council the National Party is far from persuaded.

The next feature is that the bill fixes the term of Parliament to four years until there is a vote of no confidence in the government. At first glance that appears rather innocuous. It simply replaces the current system that provides there shall be a minimum of three years and a maximum of four years, to apply from the date the house first sits.

I am sorry Mr Jennings is not here to hear me say there is room to argue for that one way or the other. I acknowledge that it can be argued on one hand that it reduces uncertainty and speculation and on the other that it provides some flexibility. In any event, in the eyes of members of the National Party it is not a big deal one way or the other.

Under the present system the Premier has some discretion in determining the election date. Some would describe the product as political opportunism, others as realistic and appropriate flexibility. I suspect the arguments simply swap across the spectrum, depending on who has the opportunity to exercise discretion. The National Party considers the proposed shift in terms is much of a muchness. For those who say, 'Because it is much of a muchness we should support the change' the National Party's response is that if it is much of a muchness, why change it in the first place?

The proposed version of fixed term is rather ironic, anyway, because the fixed term prescribed in the bill is not fixed at all. The Premier still has the manoeuvrability of the duration of an election campaign. Under the terms of the bill it can be from 25 to 58 days. In this context 'fixed' is anywhere between 4 years plus 25 days and 4 years plus 58 days. In other words, the Premier has a month in which to come and go.

The New South Wales system is not fixed to that extent. In New South Wales the election date is nominated and is consistently known from election to election. It is known in advance. All the commentary about the introduction of a fixed term of Parliament assumes a bit of licence.

The second point to be made in that context is that if the Bracks government is really worried about the uncertainty over the date of the next election, the Premier can fix it. He can go out today and announce the date of the next election, thereby putting all the uncertainty behind us. All he has to do is go to an election between three and four years from the date the house first resumed sitting after his election taking into account the specified terms for the election campaign, choose a date within that range, and fix the next election date. If there is a problem, he has a simple solution at his call. Either way the National Party sees no compelling reason for changing the existing rules.

The National Party is ambivalent about the question of making the term fixed at four years. However, it is the rider to the change in the term as contained in the bill that grabs the attention of the National Party. It provides that the term shall be fixed at four years unless there is a vote of no confidence in the government. That is the issue that has the real sting. It means that all the other grounds for early election are abandoned. I suggest that is the real purpose of the bill because that provision would effectively emasculate the Legislative Council.

On that basis, it is appropriate to move to the third nominated change in the amendment bill. Here come the big guns! The third provision is the removal of the power of the Legislative Council to block supply — that is, to refuse to pass an annual appropriation bill and, therefore, bring down a government. I acknowledge at the outset that that is a quite drastic remedy; but I also place on record that that remedy would be contemplated only in drastic circumstances. If it were deployed at whim there would be severe repercussions from the electorate. I and I suggest many others would remember vividly the circumstances

surrounding the dismissal of the Whitlam government in 1975 and its ramifications across the electorate.

Whatever else is said in the rule book, the Council could not refuse supply with impunity. There would be massive ramifications, the most obvious of which would at best be that the members who brought that about would have to go back to the electorate, having cut short their terms in this place. If the members of this place are as self-centred as many critics suggest, there is a sobering downside in any blocking of supply. History shows that that strategy has been employed only sparingly — in fact, only five times since this Parliament was established, with the last time being nearly 50 years ago. I hope all honourable members would agree that the circumstances in each case were certainly drastic.

My point is that the value in the ability to block supply lies not so much in its application but in its existence. The National Party understands well that Labor should be unhappy about the government being subject to effective dismissal by the upper house, but that power is quite common across bicameral systems of Parliament. It was introduced for quite rational reasons. I say to the Labor government, with the best will I can muster: you can either work within the system with the numbers you won in a democratic sense or you can try to improve them.

The obvious question has to be asked: why has Labor concluded that it cannot win a majority in the Legislative Council? No-one will fall for the complaint that the system is undemocratic. It is a facile argument because the members of the Legislative Assembly are elected using exactly the same system, based on the same electorates. I make the point, as Mr Birrell did, that Labor has just won two Ballarat seats — I do not enjoy reporting that — so why can it not win others?

Why is Labor resigned to the belief that it cannot gain a majority in this place? I suggest the answer lies more in the organisation and structure of the Labor Party than in any rule that applies to this house. To me the proponents of the argument sound like spoilt kids: because you can't win you want to change the rules. In other circumstances we would offer the advice that Labor should grow up!

Members of the National Party are certainly not persuaded to remove the power of the upper house to block supply. We do not want the Legislative Council to become a toothless tiger. We think the charter of this place would become pointless, given that the bill removes the two other grounds on which the Governor may withdraw a government's commission — and there has not been a lot of airplay about that. Clause 7, which repeals section 66 of the Constitution Act, removes the special election trigger provided by an issue of importance being twice refused by the Council — and as a result we would be left with some very strange possibilities.

All the election triggers are to go, other than a lack of confidence in the government. Not only would the bill emasculate the council, it would also strip the Governor of his current powers. Should, heaven forbid, a crisis emerge under the proposal presented to the chamber by the Bracks government, the Governor would have to sit on his hands unless and until the government had lost a motion of no confidence in the Legislative Assembly — where it has the numbers. What arrant nonsense!

Alternately, the Governor could sit and wait for the expiration of four years from the crisis. What sort of solution is that? In that context honourable members should remember that the constitution, which the bill would change, was designed specifically to address such a crisis.

The bottom line is that the bill would leave no mechanism by which the Governor could get involved in addressing a constitutional crisis. He would become just another interested bystander. The bill would not only nobble the Legislative Council, it would nobble the Governor as well. If there were a crisis — that would be the only circumstance in which the refusal of supply would even be contemplated — would it be realistic to expect the government to go quietly by initiating or supporting a motion of no confidence in itself? Of course the answer to that is a resounding no!

The bill also presents some technical problems. I am reminded that there can be only one motion of no confidence in each session of Parliament. Therefore, if a government survived such a motion early in a session — I remind honourable members that we are contemplating some sort of crisis — there could be no further motion moved to that effect in that session. We are talking about Parliament having to be prorogued to overcome that rule. In those circumstances, even if the government were prepared to initiate a motion of no confidence in itself, it could not do so, which would leave Parliament with a crazy crisis-relief structure.

I am hardly comforted by the changes in the bills. The intent of the original Constitution (Reform) Bill was to prevent members of the chamber from having the chance to consider the annual budget, which was to be passed on the vote of the members of the Legislative Assembly. That came from a government that says it is

about transparency and responsibility, yet its first attempt at constitutional reform involved completely removing this chamber's chance to even think on, much less debate, the annual budget!

In introducing the Constitution (Amendment) Bill the government in effect said, 'Hang on, we have heard your complaint and your criticisms. We will let you debate the budget, so as long as you don't get any big ideas. One month after the budget is passed by the Legislative Assembly, irrespective of what your views might be, it will be presented for royal assent, anyway. We still intend to nobble the Council's ability to examine the budget, but we will be a little less blatant in how we do it'.

National Party members are certainly not prepared to support the bills. There is nothing to be gained by supporting them, and they have some substantial downsides. It is preposterous for the government to contemplate such fundamental changes without referring them specifically to the community. I again make the point that this is a government purportedly committed to consultation.

The community should be insulted, because it was only after the government found that it could not negotiate the passage of these bills through the Parliament that it suggested a process by which the options might be developed publicly and referred to the community. I will say more about that when I comment on the proportional representation bill.

The best that can be said for the Constitution (Amendment) Bill is that it puts the cart before the horse. It is hard to argue that the consultative process the government speaks of by way of the constitutional commission is genuine, because it has already nailed its colours to the mast. The cards are already on the table!

There is an even more insidious side to the Bracks strategy: the amendment bill would neuter the Legislative Council and sideline the Governor. On that basis it will be vigorously opposed.

I refer briefly to the Constitution (Proportional Representation) Bill, the second in the package. As I explained, when the government discovered that its original bill was not likely to meet with the enthusiastic support of this chamber, it decided to take some of its eggs out of one basket and put them in another in the hope that it could salvage something in the process.

Members of the National Party do not like any of the eggs, and no matter how hard the government tries to camouflage them we will oppose the bill, because the eggs are all off! Our view is that the amendment bill is not worthy of support, even though it ostensibly is the lesser of two evils. If the government is relying on the support of the National Party, the second bill has Buckley's chance of getting through this place!

In any event, the proportional representation bill has a clause which, if it were passed, would amend a clause in the bill that heads it on the notice paper. What we have is a nonsensical situation. The bill seeks to change the system of 22 two-member provinces to one of 8 five-member provinces, so the bill's starting point is absolutely wrong. It anticipates a change in legislation because it relies on the passage of the first bill. It is so contemptuous of Parliament and so arrogant that it should be dismissed.

We might be prepared to make some allowance on the ground of the government's inexperience, except for two factors. The first is the one I spoke of earlier — that these are constitutional changes of such fundamental import that they deserve to be referred to the Victorian community, particularly as they represent the emasculation rather than the reform of the chamber.

The second factor that dissuades me from offering anything that looks like an allowance in respect of the incompetence of the government is that it is an undeniable fact that Premier Bracks could not wait to introduce his so-called reforms to the Legislative Council. The ink was hardly dry on the deal he struck with the Independents to bring him to power when the first bill hit the Parliament — the Constitution (Reform) Bill. As I have said, that was a radical bill which went to the issue of the four-year term of Parliament, aligned the Council and the Assembly, reduced the numbers in both houses, introduced proportional representation (PR), did away with the blocking of supply, and removed the triggers for an early election.

All that was out on the table very early on. The government can hardly deny what its game plan was. It was only when it ran into trouble with the Independents that the process which brought the bill before the house began to emerge. It turns out that the Independents did not like the reduction of the number of Legislative Assembly members. Remember that the first bill said there should be 85 rather than 88 members. The Independents said, 'Well, we don't like that'. The same Independents who said there should be a reduction in Legislative Council numbers and accused us of selfish motivation said in their next breath, 'Hang on, there should not be any change in the number of lower house members.'

Hon. R. A. Best — From 88 to 85?

Hon. R. M. HALLAM — Yes, from 88 to 85 members. Guess why? Because if there was to be any redistribution the commissioner would have started at the three corners of the state and all the Independents would have been involved in the redistribution process. So the first penny began to drop. The Independents also apparently began to grasp the concept that if the electorates were geographically bigger there would be some disadvantage to rural electors and communities. Then we learnt that two of the three of them at least were not convinced about the blocking of supply. Then there was disagreement over the method of filling a casual vacancy under proportional representation and whether it should be done on the basis of countback or party nomination.

It is clear that Labor ran into trouble with its bill from day one. Then when it found the Liberal and National parties were unlikely to support it — I am not sure why it took so long to come to that conclusion — came the strategy of removing the original bill and replacing it with two bills shortly after, hoping that it would entice the Liberal Party to amend its stance. When that prospect appeared doomed then — and only then — we heard the talk about referring the entire issue to a constitutional commission. Then — and, critically, only then — we heard about the notion that the option should be developed publicly. And then — and, critically, only then — did we hear about the prospect that the issue would be referred to the people via plebiscite. Is that ironic or is it duplicitous?

I again make the point that all that was undertaken by a government that places great store on consultation. The fact, which is now clear for all to see, is that there would be no consultation, apart from that which took place with the Independents. That was to be the circumstance until it became clear that the government could not get its way. I suggest it is appropriate to ask: why would anyone trust this government on this issue when taking those facts into account? The motives of the government are clear for all to see, and I suggest that the objectives of the constitutional commission have already been prejudiced.

I suspect that what we have here is nothing more or less than a shoddy deal with the Democrats to change the rules in the Legislative Council to give the Democrats a chance to gain representation in return for their preferences. That is what has been driving this change — nothing more sophisticated than that. But there is also some irony involved.

In any event, on the question of Labor's concern for country Victoria the cat is well and truly out of the bag. From the National Party's point of view, even if it liked the bills it would not be prepared to support them without taking the specifics to the people. But we do not like the proposed legislation. We actively dislike the bills and shall vigorously oppose their passage. I cannot find one redeeming feature about the legislation.

I shall take the house to the three primary effects of the Constitution (Proportional Representation) Bill, all of which are said to be reform of the Legislative Council — a definition hotly contested by the National Party. The first is the introduction of proportional representation; the second is the reduction in membership from 44 to 40 members; and the third is the change in rules regarding the filling of casual vacancies in the Legislative Council.

I will go to the issue of proportional representation in the first instance. I want to put on the record that the National Party has no hang-up whatsoever about proportional representation. We are prepared to acknowledge it as an acceptable election method. We are prepared to acknowledge, Mr Jennings, that in some circumstances it may even be the most appropriate and most suitable form of election method. But we say that it is absolutely and totally inappropriate for the Legislative Council. Why? Because whatever its technical merits and advantages as claimed by its supporters might be, they are generally acknowledged to apply particularly to big fields such as one would expect in the Senate — where a Melbourne Cup field is traditionally seen.

I make the point that in determining the election of the last candidates — that is, those who do not have a quota on primaries — the process can be tortuous under PR. I immediately acknowledge that the exhaustive preferential is no simple matter either in those circumstances. But my point to the chamber, particularly to Mr Jennings, is that while it might be arguable that PR is most appropriate in respect of a statewide electorate — and it may be — the National Party does not want or support a statewide electorate in respect of this house, nor do the vast majority of country electors. They recognise that a statewide electorate would mean they would get swamped by the metropolitan vote.

The National Party does not even want the current electorates made bigger. My electorate of Western Province takes up more than a quarter of the state and is already virtually unmanageable. What is being contemplated with this bill is that those electorates be made dramatically larger again. There is no rationale to argue that proportional representation be selected and the bill that would introduce PR should be discarded on that basis.

I turn to the Bracks model of proportional representation, and I rely on comments made by the Premier himself. In a recent speech he said that reform of the upper house is needed to improve — and I quote him directly:

> the checks and balances against executive power.

By way of explanation he said that Australians:

> … don't like upper houses that obstruct the government. But they don't like upper houses that rubber-stamp everything …

So the charter becomes very tough indeed. According to the Premier, if we refuse everything we are obstructionist and if we pass everything we are useless. Where is the logic? Then comes the crunch. Beyond that was the complaint:

> At the last election —

an argument perpetuated by the Honourable Gavin Jennings —

> the Liberal and National parties received a combined vote of 47 per cent in the upper house. But they occupy 68 per cent of the seats.

And to make it even more personal was the comment that:

> … the Nationals received only half a per cent more than the Australian Democrats — but they have six upper house seats, and the Democrats have none.

Then the conclusion was drawn by the Premier on some very strange logic that the system is therefore unfair and not very democratic. They are not my words, but the words of the Premier: 'not very democratic'. I leave aside the question of whether democracy can be judged by degrees — and I suggest it cannot be.

Hon. W. I. Smith — It is either democratic or it is not democratic.

Hon. R. M. HALLAM — I am happy to take up the interjection. I think a system is either democratic or not democratic.

In any case the Premier would have us believe that it can be by degrees. Not surprisingly the National Party contests the logic of that complaint because the rules are the same for everyone. Here is your rebuttal, Mr Jennings — you asked for it. The upper house seats are multiples of the lower house electorates and they are determined by an independent electoral commissioner. The election system is exactly the same — in our electorates we need 51.1 per cent of the vote to be elected.

The fundamental question I pose rhetorically is: if the National Party can do it what is wrong with the Democrats? Surely Mr Jennings, among others, would not expect the National Party to be persuaded by the argument that the current system is undemocratic. That is patently absurd. Even if we go to Mr Bracks's second version — that is, eight provinces would elect five members rather than the original seven — the quota would still be 16.67 per cent, and that would not necessarily see any minority party elected. Indeed the Democrats would be likely to win a seat in this place only if we had a statewide electorate such as exists for the Senate. The Democrats have been sold a pup. They will not gain membership of this place under the Bracks proposal in any event.

Although the National Party has two fundamental concerns about the latest Bracks formula of eight provinces returning five members each, I admit that it is less unhappy with that than it was with the first version — namely, the five provinces returning seven members each — but only marginally so, because both would be a disaster for Victoria.

The first concern is that if Labor's objective is to have a minor party win a place in the upper house — as an aside, I cannot see how that would help Labor — I do not accept that it is a better model or more democratic or fairer than the current system. Perhaps the Senate model would provide a chance of the minority parties being represented. As the Honourable Mark Birrell suggests, it is likely they would thereby get to hold the balance of power. If that is what the government is trying to achieve why did it not say that in the first place?

The concept of replicating the Senate and the prospect of having the equivalent of a Senator Harradine or a Senator Colston might be Mr Jennings's version of improvement but it is certainly not mine. It would not qualify under the definition of fair, particularly for persons who did not get a chance to vote for or against the individuals who got to wield the ultimate power. I suggest it would be more frustrating, more divisive, more disruptive and more unpredictable, but I do not think it would be more democratic, even leaving aside the question of whether democracy can be judged by degrees.

The second issue is the reduction in effective representation of the country community, which in the view of the National Party is the big issue and the issue that determined its stance on the bill. Currently there are 22 provinces and the rural provinces have features in common. The first is that the representatives live in and maintain offices in the country. The second is that

they are regarded as local members. Today there are legislative councillors living and working in Mildura, Ballarat, Bendigo, Hamilton, Traralgon, Sale, Wodonga, Shepparton and Mansfield — and there may well be other locations across country Victoria, and without exception they are operating as local members in those centres. To me that is a very good system and this bill would destroy that because it would reduce the existing representation and access to that representation that is enjoyed by country communities. It has to be opposed on those grounds.

More importantly, the National Party cannot understand why the changes are being countenanced by the Independents, given that they all represent rural constituencies, or why they are being pursued by Labor, which in the next breath states it is interested in country communities. The government is busily turning its back on the very people it says it wants to represent across rural and remote communities. In that context the bill is not sensible; it is inconsistent, perhaps even hypocritical.

I am particularly critical of the Independents in another place. I know they are sensitive to criticism because of the changes for which they have campaigned so hard, which has seen the government soften its formula. The system now advocates 40 members, not 35 members. It must therefore be conceded that if the second model is better — in other words, if it is better to have 8 provinces rather than 5, and we say it is only marginally so — using exactly the same criteria neither of them can be as good as the current system, which has 22 provinces.

As an aside I want to put on the record that the fact that one model produced 40 members, a reduction of 4 from the current position, and the other produced 35 members, a reduction of 9, was not material to the National Party. It is not driven by the number of members in this place but by issues surrounding the location and role of members. That is the critical difference in the eyes of National Party members. The bottom line is that even under the eight by five rule country electorates would become so big they would be virtually unworkable and members would have to reside in the largest provincial or capital cities.

I invite honourable members who might not be persuaded by that argument to check out the situations in other states. No upper house member in New South Wales maintains an office outside Sydney. No upper house member in Western Australia maintains an office outside Perth. We in the National Party are not consoled by the second-reading promise that the bill will ensure that three of the eight provinces will be primarily outside the metropolitan area. In our view that proves only that the government is sensitive to our concerns.

I ask what 'primarily' means. It is not defined in the bill. Does it mean a simple majority of membership? If so, is that majority based on area or on the number of electors? It still means that we are likely to see the creation of one seat that would include Portland and Werribee. The electorates would be absolutely huge, covering nearly half the state. Worse still, both Ballarat and Geelong would be in the same electorate, and who is prepared to argue for that on the basis of community of interest? It is nonsensical. As the Honourable Mark Birrell has invited the chamber to think through, where would the representatives of the Portland electorate live? I suggest either Geelong or Ballarat, or even Werribee. How would that in the best interests of western Victoria? Probably all members would live and work in Geelong, where the majority of voters would reside.

If, as we are assured by Labor and the Independents, country representation need not be adversely affected by this process, I invite the government to produce the maps. I invite Mr Jennings, who argued so earnestly in support of this bill, to produce anything that looks remotely like a map to show the new formula could possibly work. It is nonsense. The bottom line is that the electorates would have to be absolutely huge and would become unworkable. I cannot for the life of me see why all upper house members would not gravitate to the larger centres, if for no other reason than simply to survive in the system. The National Party does not support what it regards to be a shoddy deal for country Victoria.

The second feature, the reduction of membership of the house from 44 to 40, is in the view of National Party members not of itself a major issue. However, it just happens to represent a very clean proportional relationship. It happens to be a by-product of the reform package introduced by the Bracks government, and I am not persuaded by the concept of some reduction in cost. There are two points to be made. Firstly, the system being advocated would be more costly, and secondly, if cost is a real issue why not reduce the numbers in the Legislative Assembly, particularly as that was advocated and became a feature of the first model of the reform package?

Sitting suspended 6.30 p.m. until 8.03 p.m.

Hon. R. M. HALLAM — Before the suspension of the sitting I listed the features of the Constitution (Proportional Representation) Bill, outlining the

criticisms of the National Party and explaining why it determined to oppose the bill in its entirety.

I come now to the third feature of that bill, which goes to the change in rules in respect of the filling of a casual vacancy in the Legislative Council. Members of this place would know that the current rules mean any casual vacancy triggers a by-election. We in the National Party acknowledge that there is at least an argument that this process is slow and costly, and we have some sympathy for those who want to find a solution to it. The problem is that we looked at the alternatives. The alternatives being offered by the Bracks government in the form of this bill do not give us too much comfort because they include having the party nominate a replacement for the retiring member and electing a replacement on a countback. There are points for and against both those alternatives.

Without going into those issues in detail, let me simply say that the common objection to the party nomination replacement process is that the person elected as the replacement may never have gone before the electorate; he or she may be an absolute unknown to the voters. On the other hand, the critics of the countback system point to the possibility that a replacement under that system might hold views exactly opposite to those of the member being replaced. It is not fanciful to suggest that a radical left-wing member might be replaced by a One Nation type.

Hon. N. B. Lucas — Or a Green replaced by a woodchipper.

Hon. R. M. HALLAM — That is another alternative and reinforces the point I would like to make. Of the two options, I personally favour the party appointment in line with the Senate system, but I acknowledge that that is not likely to console or comfort the Independents.

An opposition member interjected.

The ACTING PRESIDENT — Order! Without assistance.

Hon. R. M. HALLAM — It was very good assistance on this occasion. I also recognise that the countback is likely to elect a candidate from the same party as the retired member. It is important for members of this chamber to understand that the system proposed by the bill would see the recount conducted on the assumption that the retiring candidate's name was deleted from the process. It is not simply a matter of picking the person who missed election the first time around — the actual outcome is reconstructed. It is likely that a replacement would be elected from the same party that is being disadvantaged by the person retiring, but that does not necessarily follow. It is possible, as Mr Lucas said, for a greenie to be elected to replace a logger. There is no guarantee of how this process would unfold. The only way to provide a guarantee is to go back and seek the advice of the electorate, however difficult, time consuming and costly that may be.

The interesting thing in respect of the bill before the chamber is that the government determined that it should adopt all three strategies and cover all the bets. The bill says that first of all we should have the party disadvantaged by the retirement nominate the replacement. If there is no party involved, that is covered by arranging a countback. If the countback cannot locate someone who is ready, willing and qualified to take up the vacancy, we will have an election. It covers all the bases.

I understand that the Independents in another place are unhappy with the process by which a party would appoint a replacement. I note that the Independents moved an amendment in the Legislative Assembly deleting that alternative. What is remarkable is that the government accepted the amendment; it just rolled over. Here we have a circumstance in which apparently all of these alternatives were canvassed — in advance of the bill being constructed, if we are to believe the Honourable Gavin Jennings — but when the Independents ultimately determined that they did not like one of the variations, the government simply changed the bill. I find that extraordinary. We are told that that is quite appropriate and that here is a government responding to the views of the members of this place, if not of the electors, but why was that issue not canvassed in advance?

I note also that the Independent member for Gippsland East in the other place proposed an amendment to delete the above-the-line voting alternative. That is another feature of the bill. Just as surprisingly in my view, on this occasion the government decided not to accept the amendment. I was just as interested in the explanation for the decision in that case as I was in the explanation of why the first amendment was embraced by the government after what was described as a development process.

I make the point that the introduction of an above-the-line voting system as an option involved some very complex drafting, and my heart goes out to those responsible for bringing the bill before the chamber, partly because it was very complex and partly because in our view it now becomes hypothetical, given that the National Party is determined to retain the

current number of provinces and the mode of election. Therefore I have chosen not to canvass the issues relating to the option of above-the-line voting.

At the end of the process the single most important feature of the Constitution (Proportional Representation) Bill, and indeed the package of so-called reforms of the Legislative Council, is that it will inevitably, in our view, result in a dramatic reduction in the representation currently provided to country residents by members of this chamber. On that ground alone the National Party resolved to formally and vigorously oppose the package in its entirety.

Hon. KAYE DARVENIZA (Melbourne West) — I am pleased to have the opportunity to speak on the Constitution (Amendment) Bill and the Constitution (Proportional Representation) Bill, both of which are important and significant.

Hon. N. B. Lucas interjected.

Hon. KAYE DARVENIZA — Mr Lucas, I am strongly in support of both bills. This is another example of the government introducing bills that are in line with the commitments it made during the election campaign. It went to the electorate in 1999 with a clear policy and a concise view on reforms it wanted in this chamber, reforms that would make this place more democratic and end the stale mandate, changes and reforms that would strengthen the checks and balances and enhance the diversity of representation in this place.

Liberal and National party members have discussed the government's mandate to introduce the legislation. It has a clear mandate to implement the legislation. Members of the government took this policy to the electorate during the election campaign. We were clear. The proposals for reform were put to the electorate in September 1999, in the supplementary election in Frankston East and in the by-elections in Burwood and Benalla. Every time our policy on the reforms and changes we want to make in this house was clear.

Members of the opposition choose to ignore the fact that the government has a mandate and has taken its policy to the people of Victoria because opposition members are clearly motivated by their own self-interest and looking after their seats and keeping their six to eight-year terms. They are afraid of putting themselves forward.

Hon. C. A. Furletti interjected.

Hon. KAYE DARVENIZA — You are afraid, Mr Furletti, to put yourself forward to the people of Victoria and to ask them after four years if they still want you to represent them. Opposition members are interested only in securing their places in this house; they are not interested in whether their constituents want them.

It is interesting that Mr Hallam should go on about how it was not government policy. It was clearly government policy. In 1991 the government introduced reforms, and members of the opposition were opposed to them then just as they are opposing these reforms now. The government has had a policy of reforming the upper house since at least the 1980s. Its policy was clear in May 1987, and in 1992, 1996 and 1999 its policy was to have four-year terms and proportional representation to strengthen the diversity in this house and make it more democratic and representative of the electorate.

Mr Hallam's claim that the government had no policy is incorrect. The government has a mandate for a legislative program. Mr Hallam argued that the government has not taken the implementation of these changes to Victorians. I would put the government's mandate up against Mr Hallam's any day on that point.

I refer the house to an article in the *Age* Open Space column in March 1980, which a young, fresh-faced Mr Birrell, the state president of the Young Liberals, responded to an *Age* editorial on electoral reform. The editorial said it was timely that questions about the Victorian electoral system should be raised. It concluded with a challenge to 'those Liberals who genuinely care for a working democracy' to make their voices heard loudly in favour of reform. In his article Mr Birrell said:

> The Young Liberal movement accepts this challenge, and seeks to go one step further. Victoria is not only in need of immediate electoral reforms, it requires a number of constructive improvements to be made to its system of parliamentary democracy.
>
> There is an immediate —

this is back in 1980 and we are now in 2000, but Mr Birrell is opposing reforms in this house —

> need for a stocktaking to be carried out on our system of government. Parliament itself must be the first body to come under scrutiny.

Mr Birrell has had a number of opportunities since 1980 to rise to that challenge and bring about those changes and reforms, but he has not been up to it.

It is easy when one is young with the bloom of youth as the state president of the Young Liberals to have those high ideals and claim the courage to rise to the

challenge and bring about change, but it is another thing to carry those ideals into middle age.

The government has articulated a clear policy to the electorate on a number of occasions and has plainly set out its agenda for reforming this house. Members of the government want reform of this house because we believe it can operate as a genuine house of review.

In 1980 Mr Birrell shared some of those sentiments. He talked about members of the upper house spending more time and resources on critically assessing the value of legislation. He said:

> They have the important power, in the final instance, to reject bills …

To see the truth of that one has only to look at what happened in this house during the seven years of the Kennett government when the majority of members who are currently in this place were here with Kennett as Premier and in charge of the government.

Opposition members sat in the house and allowed piece after piece of legislation to be rubber-stamped. Some 716 bills were rubber-stamped by you, Mr Furletti — you were here. Of the hundreds of amendments put up by the opposition not one was carried.

Hon. C. A. Furletti interjected.

Hon. KAYE DARVENIZA — Mr Furletti, along with his opposition colleagues, passed bills. They rubber-stamped them. These bills had wide-sweeping effects on the Victorian community. Schools and hospitals were closed, nurses were given voluntary departure packages and power was stripped away from the Auditor-General. You people were responsible for one thing after another and you simply used this house — —

Hon. P. A. Katsambanis — 'You people'?

Hon. KAYE DARVENIZA — You people who were the former government. Honourable members opposite rubber-stamped many pieces of legislation.

The bills introduce a number of important reforms to the way the upper house functions and the way honourable members are elected. They introduce fixed four-year terms. They reduce the term for the upper house, prevent the upper house from blocking supply, introduce proportional representation and reduce the number of members in the Legislative Council.

I turn to the introduction of fixed four-year terms. Clause 3 of the Constitution (Amendment) Bill amends the constitution so that all terms are for fixed four-year periods. The only exception is when a no-confidence motion is carried by the Legislative Assembly. Clause 3 also sets out and defines the commencement of the term, which currently is from the first day of Parliament. In future it will be from the date of the general election.

I am incredibly surprised that opposition members oppose this clause when fixed four-year terms was an issue they were prepared to concede and agree to in negotiations with the Independents when they were seeking to form government. What has happened now? They have changed their minds and now they are not prepared to accept that provision.

What are members opposite afraid of? What is so scary about the prospect of being prepared to put yourself forward every four years and ask the electorate, 'Do you still want me to be your representative? Are you prepared to vote for me? These are the things I did during my last term and these are the things I stand for and intend to do in the future'. What is so fearful about doing that? Clearly the courage that the Leader of the Opposition had back in the 1980s has left him and certainly if it ever existed in any of the others it has well and truly gone as well.

One has only to look at the figures from the 1999 election to see the extent to which the upper house is truly unrepresentative. The house would be truly representative if every four years members took themselves to their constituents and asked whether they wanted to re-elect them. If one looks at the results one sees that the Liberal Party received 39.7 per cent of the primary vote for the upper house yet it occupies 24 seats or 54.5 per cent of the seats. The National Party received 7.5 per cent of the vote but has 6 seats or 13 per cent of the seats. How unrepresentative can you get? Are honourable members opposite happy to argue that that is reasonable and representative? Those figures can be compared to the ALP, which won 42.2 per cent of the primary vote for the upper house yet has only 14 seats.

Hon. P. R. Hall interjected.

Hon. KAYE DARVENIZA — I take up the interjection from the honourable member. The Australian Democrats received 6.8 per cent of the primary vote for the upper house, which is only 0.5 per cent less than the National Party, yet the Democrats failed to get a seat. The current situation is clearly unrepresentative. Under the bill the house would not have the stale mandate that currently exists where some members in this house have not faced their constituents in an election since 1986.

Hon. Bill Forwood — Since 1996!

Hon. KAYE DARVENIZA — Thank you very much. You know as well as I do that if many of you who have not gone to the electorate since 1996 had gone to the electorate in 1999, you would not be sitting in the seats you occupy today.

The Constitution (Proportional Representation) Bill will reduce the number of members in the upper house. As honourable members know, the Legislative Council is made up of 44 members elected from 22 provinces. Each province has two members who sit for the equivalent of two terms of the Legislative Assembly, with one member being elected at each election. Each province is made up of four electoral districts. The bill will reduce the number of councillors from 44 to 40. It will reduce the number of provinces from 22 to 8, with each province consisting of 11 complete and bordering electoral districts. The nexus that currently exists between electoral districts and provinces will still be there; it is just a different configuration.

The bill will amend the Electoral Boundaries Commission Act to provide that of the eight provinces, three will be primarily outside the metropolitan area and five will be primarily inside the metropolitan area. Each province will elect 5 members, which will result in 40 members. One of the other important matters that the bill deals with — —

Hon. P. R. Hall — You skipped over that point pretty quickly. Is it not a significant issue in your mind?

Hon. KAYE DARVENIZA — It is a very significant issue. As I said before, it is significant to ensure that the house does not have a stale mandate and that it represents the wishes of the electorate.

Hon. P. A. Katsambanis — You have no mandate.

Hon. KAYE DARVENIZA — The government has a mandate. At elections in 1992, 1996 and 1999 it put to the people policies urging reform of the upper house. Unlike the Liberal and National parties, the Labor Party has put forward clear and concise policies about electoral reform. It has said it wants fixed terms of four years and proportional representation in this place.

I refer to the provisions in the Constitution (Amendment) Bill preventing the upper house from blocking supply. Proposed new section 62, inserted by clause 5, and proposed new section 65, inserted by clause 6, will bring the constitution into line with conventions and political reality. That power was last used in the mid-1950s, when I was still a small child.

The bill provides a range of checks and balances. Proposed new section 65 defines annual appropriation bills and proposed subsection (3) states:

> An Annual Appropriation Bill must deal only with appropriation.

The provision specifies that the bill can only be an appropriation bill.

Another part of the checks and balances is that the Auditor-General must certify that the bill is an annual appropriation bill. That provision has been adopted from legislation in both the United Kingdom and New South Wales. There is also a one-month provision for the automatic passing of an appropriation bill by this house and presentation to the Governor for royal assent. The provision will allow this house to act as a house of review and suggest amendments to the other place.

Another of the checks and balances is the requirement that the Speaker of the Legislative Assembly must sign off on the processes set down in the bill and certify that the provisions in the constitution have been followed.

Mr Birrell referred to the blocking of supply. In an article in March 1980 he referred to the upper house having the important power, in the final instance, to reject bills. However, he went on to say that the rejection of supply bills would be quite improper. He argued then that it would be improper to block supply bills, yet today he opposes the bill on the ground that the upper house will be unable to block supply!

Annual appropriation bills always include allocations for public works, so they do not necessarily meet the definition currently set out in the constitution. If an appropriation bill were to be rejected by the upper house it would not trigger an election, as the Governor would not have the power to dissolve Parliament. There has been much talk about rejecting supply and that rejection being the trigger for an election, but that is not necessarily correct.

The Liberal and National parties have said that they are against proportional representation. The Labor Party has been pursuing proportional representation for this place for a long time. It has been part of the agenda of the Labor Party for a long time. If it were adopted this place would be more diverse and would better reflect the wishes of Victorian voters.

In 1980 the present Leader of the Opposition had the courage to say that he was prepared to take up the challenge. He said that the Victorian Parliament could be improved ‘with changes in the way members are elected and the introduction of a Senate-style

committee system'. He went on to say that the upper house should be elected by proportional representation.

Hon. T. C. Theophanous — Who said that?

Hon. KAYE DARVENIZA — Mr Birrell said that. He also said that voting strengths in Parliament would then more accurately reflect the wishes of the community.

Hon. T. C. Theophanous — Was that Mark Birrell?

Hon. KAYE DARVENIZA — Yes, that was Mr Birrell, but he has changed his tune.

He had the courage to rise to the challenge that was put to him in 1980, but that courage has left him now. Mr Birrell agrees with the government that proportional representation is a better way of electing members to this place. Mr Birrell puts conflicting views when talking about proportional representation. On one hand he points out the examples in South Australia and New South Wales and says that proportional representation is unstable. He clearly means that the low quota leads to a situation where minor parties or fringe elements may destabilise the processes of government. On the other hand he says the model the Bracks government urges upon this place is nothing more than a grab for power.

Presumably that means the attempts by Labor to grab power and hold the majority in both houses thereby disqualifies the upper house as a house of scrutiny. What is it to be? Mr Birrell cannot have it both ways — proportional representation and total instability or proportional representation and a grab bag of power. His views were conflicting. Mr Birrell cannot choose between the entirely contradictory arguments because he believes neither. That is why he made a logically flawed and unconvincing attempt to be cheerleader for proportional representation. He is only pretending to oppose proportional representation as it is clear he does not really oppose it.

The opposition is not interested in having diverse representation in the upper house. It does not want proportional representation because it does not want to see minor parties represented here. One need only look at the women members opposite to understand that the opposition cannot get diversity in its gender balance in the house. Look at the number of Liberal Party and National Party women on the opposition benches: only 3 of the Liberal Party members of the 30 are women. That is an example of how committed the Liberal Party is to diversity. Members of the National Party should hold their heads in shame.

Hon. T. C. Theophanous — Mr Boardman said it is because they select on merit.

Hon. Bill Forwood — We know your system, Theo.

Hon. KAYE DARVENIZA — We know about Mr Boardman. The National Party has only one woman of its six members. The opposition has no interest in diversity in an upper house that would reflect Victoria's make-up according to the wishes of the constituents who wish to be represented in this place.

The reform of the upper house has been part of the government's agenda for a long time. There is nothing new in the reforms that constitute the bills. The government has had the reforms on its agenda and has taken them to a number of elections; government members have widely canvassed the reforms with constituents.

The house does not represent what Victorians want; it does not represent the wishes of Victorians. Half of the house represents what people wanted in 1996, the other half represents what people wanted in 1999. The reforms in the bills mean greater representation for the upper house and truly reflect the political diversity that exists in the state.

Hon. W. I. Smith — How?

Hon. KAYE DARVENIZA — Because proportional representation will provide an opportunity for representation by minor parties.

The bills are important and should be supported by honourable members. All honourable members should support the bills, because I know some non-government members support my sentiments.

Hon. Bill Forwood — Name them!

Hon. KAYE DARVENIZA — Mr Birrell, for a start. I commend the bills to the house.

Hon. C. A. FURLETTI (Templestowe) — The contributions to the debate by the leaders of the Liberal and National parties have been outstanding. They contrasted with and dramatically magnified the poor contributions by government members. This is one of the most important debates to which I will contribute in my political career. The so-called changes in the Constitution (Proportional Representation) Bill and the Constitution (Amendment) Bill, which are appropriately being debated conjointly, are not a reform, as suggested and advocated by the government, but an attempt to strip the Legislative Council of its power. It wants to remove the differences between this

place and the other house and make the Council an appendage to the lower house with the ultimate intention of abolishing it in a few years and converting it to a rubber stamp. The government wants to make the Legislative Council an ineffective part of the parliamentary system. That is a summary of the ultimate objective of the proposals put by the government in the bills.

The government is aware that the suggestion that it has a mandate to introduce the legislation is a nonsense. Without going into the details of the mandate, I propose an example of what could have happened had the Labor Party assumed control of this house.

Honourable members will recall that on 6 September the proposal was put that the bill be read a second time. Leave was refused and, therefore, the house is now debating the bills. Had the government a majority in this place the bills — certainly some of the most important pieces of legislation debated here in perhaps the past 60 years — would have been passed in one day without consultation, without referral to the electorate and without any basis for representation.

The significance of a constitution cannot be overstated. The constitution, in anybody's language, is the most important set of rules of any assembly of individuals, whether it be a small football club, an association, a substantial organisation, or, as the Parliament is, the instrument of government of a state or country.

Efforts should be made to improve the effectiveness of such a document, when necessary, but any change should be made only after lengthy, detailed and exhaustive consultation and with the full, unqualified and informed consent of the individuals affected by any change. That is the case with any constitution, but that has not occurred in this case. The bills have not been proposed with any sort of mandate and, for that reason alone, they should be opposed.

The government appears to forget that section 15 of the Constitution Act establishes two houses of Parliament, both as part of the one Parliament. Therefore, it is absolutely impossible to propose that a change to one or other of the chambers should be conducted without a detailed examination of the effect of any change on the other.

For that reason it is absolutely vital that before any changes are made to the constitution there must be due consultation with the electorate.

It is worth making a comparison with the Senate, where minor parties have held the balance of power for 33 of the 45 years since the Democratic Labor Party appeared as the first minority party in 1955. That leads many Australians to believe that the Senate has become a forum for minority interests. Given that it is controlled by minority groups — and recently by a couple of Independents — one must ask whether such a house can claim a mandate. That is the risk we would run in supporting bills such as these.

One of the other areas of grave concern is the manner in which these bills have been presented. The Constitution (Reform) Bill was introduced in the other place in November 1999 right out of the blue. It had no support from either the electorate or the Independents, and contrary to the assertion made by the Honourable Gavin Jennings, it was not introduced after consultation with the non-government parties.

It was left to lie over until the 2000 autumn session, during which time it created uproar. None of the media supported the bill in the form in which it had been introduced. A report in the *Age* of 26 February said:

> Emerging from talks between the Premier and the three Independent MPs, the Independent member for Mildura, Mr Russell Savage, said, 'The existing constitutional reform bill will be withdrawn'.

That was the extent of the consultation the government engaged in before introducing these bills. It involved consultation with the Independents, who gave the government the numbers by which to propose these amendments. That, I assume, is the basis of the claim by the Honourable Kaye Darveniza that the government has a mandate to change the constitution, the heart of the political administration of the state.

One has to ask how such arrangements were arrived at. How did the meeting between the Premier and those who gave him the right to govern the state of Victoria come about? As a result, the Premier introduced amendments that were significant in the context of things. As Mr Hallam outlined in considerable detail, the changes were familiar to the Independents, who had given their imprimatur to similar proposals early in the piece. However, when the Independents saw the detail they realised they could have been affected. The penny dropped when they saw the proposal to change the numbers in the lower house and the numbers in this place, which would have prejudiced their grab for power.

That point is significant, because if we proceed along the proportional representation road these bills would take us, we would end up with minority representatives who would be concerned not so much with the purpose for which they were elected — namely, the public interest — but rather with their first interest, which is

self. That can be seen in the actions of the Independents in the other place.

The following question then arises: what gives the government the mandate that it so loudly proclaims? Over the past 12 months the government has established more than 140 different committees and consultancies on everything from wood chipping and energy to the progress of one of the main hospitals in Victoria, the Austin and Repatriation Medical Centre.

What is the major piece of legislation that controls the administration of this state of ours? If it is not the constitution I would like to know what it is. Yet when the government proposed core changes to the constitution, where was the consultation? Was a commission set up to examine the changes? The government suggested the establishment of a constitutional commission only when the opposition said it would not support the legislation. Then, with unprecedented arrogance, the Premier said, 'If you do not support it I will appoint a commission and arrange for it to conduct a plebiscite'. Not only did he threaten to establish a commission, he also threatened to tell the commission what to do. It is arrogance in the extreme, and the Victorian public will not accept it.

One has to question the sincerity and seriousness with which the bills have been introduced. The government must have been informed that the opposition would not support the legislation. Therefore, we must ask why the bills have been brought forward for the purposes of rejection. The only answer I can come up with is that the government is not serious. I have a couple of small but nonetheless significant examples of the seriousness with which the government takes the legislation which purports to challenge the existence of this house and which is the first step along the road to abolishing the greatest safeguard of democracy in the state.

I refer in the first instance to the second-reading speech on the Constitution (Amendment) Bill, which says in part:

> … members may recall the Constitution (Reform) Bill was introduced into the Legislative Assembly last sittings.

It goes on to say:

> … the government has decided to alter some of the proposals in the reform bill and to replace that bill with two bills.

In respect of the substantial amendments the bill contains, the second-reading speech reads:

> The provisions in this bill concerning the term of Parliament are substantially the same as those in the reform bill.

A reading of it makes perfect sense: the amendment bill, like the reform bill, ensures the maintenance of four-year terms, and so on. The point I make is that the second-reading speech refers to a bill that was never introduced into this place. We are told the provisions of the bill are the same and, like the reform bill, the reasons for the proposed changes are the same. The reasons may have been explained in the reform bill, but as I said, it was never introduced into this place. That is absolute abuse of this house and is almost contemptuous of it.

Another point, although minor, demonstrates the government's sloppiness and level of seriousness about this issue. I refer to the Constitution (Proportional Representation) Bill, particularly the provision which deals with casual vacancies, proposed section 27A. Proposed section 27A has three paragraphs, (a), (b) and (d).

Hon. I. J. Cover — What happened to (c)?

Hon. C. A. FURLETTI — I do not know; it went into cyberspace or down the computer. That shows the level of seriousness and the sloppiness of the government in its dealing with — —

Hon. T. C. Theophanous — Is this the best argument you can put up?

Hon. C. A. FURLETTI — I am coming to my better arguments. That indicates the quality of the office of the government in this place. If there is a reason to look to the reform of this place, it is not in the system but in the composition of government members in this place. There is a reason to look at their reform.

Hon. T. C. Theophanous — Why don't you move an amendment, Furletti?

An Honourable Member — 'Mr Furletti' to you.

Hon. T. C. Theophanous interjected.

Hon. C. A. FURLETTI — 'Future minister' to you.

Hon. W. R. Baxter — That article picks up your point.

Hon. C. A. FURLETTI — I will take good advice and support my earlier comment to demonstrate that it is not an original comment but has been in the open arena for some time. An article by Meaghan Shaw in the *Age* of 1 June states:

> The Bracks government this week resumed its push to reform the upper house. But whatever shape the Legislative Council

> takes in future, Labor ministers in that chamber need to lift their game immediately to stop proceedings becoming a joke.

They are not my words, Mr Theophanous.

Hon. T. C. Theophanous — I think they were talking about the opposition.

An Honourable Member — No, they weren't.

Hon. C. A. FURLETTI — No, they weren't. I will quote the closing paragraph for good measure. It states:

> Before Labor reforms the Legislative Council, it needs to get its own house in order.

Thank you very much for your assistance, gentlemen! The question that arises is: why would this government so early in its term seek to make such dramatic and fundamental changes to the constitution, knowing full well that the likelihood of those changes being accepted by the opposition in this place were minimal?

Appearing in the *Age* of 6 November 1999 — just after the introduction of the Constitution (Reform) Bill — is an article by Tony Parkinson, a very respected journalist, who states:

> Labor's predicament in the Legislative Council is not just that it is heavily outnumbered, but also that it is hopelessly outclassed.

The same newspaper but a different journalist bringing home the point. He goes on to say:

> The best form of defence for the new Premier will be to go on the attack.
>
> This is standard practice for new Labor governments. One of John Cain's first acts as Premier was to launch a crusade for the abolition of the upper house.
>
> …
>
> Creating the bogey of upper house obstructionism is one way of deflecting responsibility for inertia. Rather than face being portrayed as stolid, unadventurous — and ill prepared for office — the government can always look to the excuse that a stubborn Liberal majority in the Legislative Council is frustrating Labor's desire to get on with the job.

That is the only possible reason that can be put forward for the government making the proposal it has made. What Tony Parkinson says is that throwing the spotlight on the upper house as part of the Bracks reform agenda could backfire badly. I suggest that is already starting to happen.

However, this is not an isolated act. In August the Premier sacked the incumbent Governor without any excuse other than to say when asked why he did it, 'Because I could do it'. The Premier recognised that it was in his gift to do so. One must ask: why?

Hon. T. C. Theophanous — He did not sack him at all; he is going to his full term.

Hon. C. A. FURLETTI — It was a decision that appalled most Victorians and had a particular affront to the multicultural communities with whom the Governor and Lady Gobbo had established particular bonds and understandable affinity. That office has unfortunately now been politicised, not only because of the Premier's appalling and callous conduct with respect to His Excellency and Lady Gobbo but also because he has now aligned the term of appointment of the Governor with the term of the government. I suggest that decision should keep the Governor-designate on his toes. Labor governments want to emasculate the Legislative Council.

Hon. T. C. Theophanous — Turn it up.

Hon. C. A. FURLETTI — You would not know what the word means; you don't qualify.

Hon. T. C. Theophanous — We would not mind it being a bit more democratic, if that is what you mean.

Hon. C. A. FURLETTI — The Labor government is anxious to convert this place into the rubber stamp that it so decries and to turn it into a lap-dog of the government of the day.

Hon. T. C. Theophanous — You want to talk about rubber stamps? How many pieces of legislation did you amend during the Kennett government's period in office? Not one.

Hon. C. A. FURLETTI — In answer to your interjection, Mr Theophanous, I happen to have here a paper written by the President which indicates that in the seven years of the Kennett government this house amended 481 pieces of legislation, between — —

Hon. Bill Forwood — No, it made 470 amendments to 54 pieces of legislation.

Hon. T. C. Theophanous — How many amendments from anyone not in your own party did you accept?

Hon. C. A. FURLETTI — We accepted only appropriate amendments, Mr Theophanous.

Honourable members interjecting.

The ACTING PRESIDENT (Hon. G. B. Ashman) — Order! There has been far too much interjection in the past few minutes. I ask Mr Furletti to continue with his contribution through the Chair.

Hon. C. A. FURLETTI — Thank you, Mr Acting President. I appreciate your assistance in relation to the rudeness that is shown from the other side of the chamber.

As I said, the issue is that the government is out to emasculate this place to ensure that the government has absolute power and that this chamber cannot exercise the scrutiny it has exercised for almost 150 years; instead, the house would be a lap-dog of the government of the day.

Given that we are aware that power corrupts but absolute power corrupts absolutely, I do not believe that the house will ever concede to the government's proposals. As I said, in what has become a somewhat typical characteristic of this government, the legislation is sloppy and flawed. I do not propose going into it in detail because it does not warrant it.

Previous speakers have outlined the purposes of the bill. Briefly, they are fixed four-year terms for the lower house unless there is a vote of no confidence, and I will briefly address that later in my contribution; simultaneous terms for the Legislative Council and the Legislative Assembly, which has the curious result of reducing the Legislative Council term but increasing the Legislative Assembly term; and the removal of the power of the Legislative Council to reject supply bills. That is the Constitution (Amendment) Bill, which causes most concern. It would emasculate this place — neuter it. It is the bill that would duplicate in this place the functions of the other place and would therefore allow the casual observer to ask: 'Why we have two houses of Parliament? Why do we have two identical places, two lots of politicians doing the same thing?'.

Staggered terms of Parliament between upper and lower houses is common throughout the Western world, and no other democratic system in the world embodies the proposals put up by this government today.

Hon. T. C. Theophanous — That is based on your extensive research, is it?

Hon. C. A. FURLETTI — Absolutely, and I assure Mr Theophanous that I have done extensive research on this. I have done far more research than the Premier, who really put his foot in it on radio 3AW. He conducted extensive research — surveys in 100 countries on terms of public office — and said in nowhere except Turkey and some other place, which I will not repeat, were there eight-year terms.

Hon. M. A. Birrell interjected.

Hon. C. A. FURLETTI — I cannot express it any better than the Honourable Mark Birrell did, so I will not pretend to. However, had those surveys extended just marginally beyond terms of public office and perhaps looked at the systems used in those places, the Premier would have found that the system proposed by the government is fundamentally unworkable. It adds fuel to the argument that the legislation has nothing to do with upper house reform but is a grab for power. It is the first step towards the abolition of this place, which is on record as Labor policy, going back to the days when the Honourable Bill Baxter came into this place.

Hon. Bill Forwood — Even before then.

Hon. C. A. FURLETTI — And even before then, so that is a long time ago. It was of course rejected then and I trust will be rejected now.

The result of the proposals — rural disenfranchisement arising from the mega-provinces — has been discussed. The Honourable Roger Hallam has indicated the extent to which that disenfranchisement would take place. It would create a gerrymander under which more populated areas would return more representatives than country areas. Minority groups may be elected under a proportional representation system, but cynics could be excused for thinking that the result would be the election of extremists and regionally based one-issue groups.

Synchronised elections for both houses would return party majorities in both houses of Parliament and therefore create the rubber stamp house that critics so vehemently oppose. It would take away the power of the Legislative Council to force a government to seek the people's re-endorsement in times of crisis or constitutional difficulty, and that is a concern for all Victorians.

I ask honourable members to consider the situation of a corrupt government that had lost the support of the people and was stymied because the upper house refused to pass its legislation. The only possible way the crisis resulting from that impasse could be resolved would be for that same government to acknowledge the corruption, the criticism, the crisis and pass a vote of no confidence in itself. That is fantasy, absolute nonsense! For the government to expect Victorians to accept that sort of proposition shows the contempt in which it holds the people of Victoria. I need say no more.

The current electoral system Victoria enjoys was enacted in 1984 in a manner which in my view should have been employed in bringing the current proposals to the house. Two members per province and two terms

for the upper house were introduced by the Cain government, but only after it negotiated with the opposition of the day. It was done in a bipartisan manner. Negotiations started shortly after the Cain election in 1982 and went on for well over two years until a conclusion with which both the opposition and the electorate were happy was reached.

Had the same approach been taken with this legislation I feel confident that something could have transpired. Instead the government, in its anxiety to implement the vague undertakings given in the past and its efforts to satisfy its commitment to the Independents who handed it power, has introduced half-baked legislation that has not been accepted by the constituency — irrespective of what the government puts out — and so needs to suffer ultimate rejection.

The proposals in the bill are not dissimilar to those put forward by the Cain government in 1987, 1988 and 1990 when it was in some degree of difficulty and saw an opportunity to take steps to abolish the upper house. In those days the Cain government sought to do deals with the Australian Democrats and create a niche for them in exchange for preferences.

That is one of the difficulties that proportional representation creates: it allows parties and groups to enter into underhanded backroom deals to garner each other's support. In the 1999 election the Labor Party saw fit not to stand candidates in my electorate of Templestowe Province and in Higinbotham Province because it did a deal with the Australian Democrats and the Greens. We have history repeating itself. Within six month of winning an election the Labor government introduced legislation with the ultimate objective of abolishing the upper house and the immediate objective of satisfying deals it has done with either Independents or other minority groups.

When that sort of arrangement starts coming into government we have the same difficulty as the Labor Party has with its factions, an area in which Mr Theophanous is an expert. He changes from left to right as we read, and his increased voice on the other side of this chamber indicates that — —

Hon. T. C. Theophanous — What does this have to do with the bill?

Hon. C. A. FURLETTI — It has to do with doing deals, Mr Theophanous, and you are the deal maker of the century.

The ACTING PRESIDENT (Hon. G. B. Ashman) — Order! Mr Furletti, would you address your comments through the Chair?

Hon. C. A. FURLETTI — I apologise, Mr Acting President, and I will certainly do so. I realise that the night is flying and I need very much to raise another aspect of this proposal. The bills as introduced to this house relate to the reform of the term of the upper house, synchronising the re-election of the lower and upper houses, the diminution of numbers in this place, a huge expansion of the area of electorates, and proportional representation. The bills do nothing to the lower house: there is absolutely no change. The change which was presented in the Constitution (Reform) Bill in respect of the lower house was withdrawn after discussion with the Independents. I will pick on one issue: if proportional representation is so good, if it is such a successful form of democracy, if it gives minority groups representation in government, why is it only so in the upper house and not in the Legislative Assembly?

Honourable members interjecting.

Hon. C. A. FURLETTI — I simply ask the question.

Hon. T. C. Theophanous — It is a house of commons, a people's house.

Hon. C. A. FURLETTI — I will come to that. We have heard from the government side that this house is obstructionist and prevents governments from governing as they have been elected to do. Interestingly, between 1955 and 1970, with the exception of a short period, Sir Henry Bolte's government did not have control of the upper house yet was able to govern without difficulty. More importantly, in their 10 years the Cain and Kirner governments did not have control of the upper house except for a very short time, but 97 per cent of the bills were passed, supply was never blocked and the government was able to govern.

Hon. T. C. Theophanous — The bills were passed after you emasculated them.

Hon. C. A. FURLETTI — I take issue with that statement.

I will now address some of the specific changes and reforms to the act. As I said, nowhere else in the world that I could find is there a system where there are not staggered terms in a bicameral system. That is because the advantage of staggered terms is recognised. It has been developed over centuries. We have staggered terms in the Australian Senate, in New South Wales, Victoria, South Australia, Western Australia and Tasmania. We do not have staggered terms in

Queensland, and I will refer to that briefly for the purposes of completeness.

There are staggered terms in the United States of America, in Japan and in most European democracies. John Cain, Jr, must have seen the benefits of staggered terms because he set up this system. He perhaps improved it to some extent because he had the benefit of the staggered system with the certainty that comes with having the minimum six-year term and the maximum eight-year term. That is significant. My point is that in Victoria we have one of the most stable, soundest and best systems of government in the world — so much so that I would like to quote from some of the recommendations of the royal commission on reform of the House of Lords.

Before doing so, I will complete my analysis of jurisdictions with bicameral systems. There is only one jurisdiction in Australia which is unicameral, and that is Queensland. I need to put the following on the record with due thanks to the Honourable Bernie Dunn, a former Leader of the National Party; as part of my research I enjoyed reading his contribution to the debate in this place in 1987. It was from his speech that I was able to determine that the Queensland Legislative Council was a nominated Legislative Council in the early 1900s. It was made up of nominees appointed by the Governor on the recommendation of government. Attempts were made by the Queensland Labor Party to abolish the Legislative Council in Queensland in 1915, 1916, 1918, 1919 and 1921 — five times in almost as many years. All of them failed; they were always rejected by the Legislative Council.

In 1917 a referendum in Queensland showed that 60 per cent of Queenslanders wanted to retain the bicameral system. Did that make any difference to the ALP? No way. In 1921 a former Labor Speaker was appointed Governor of Queensland.

Hon. T. C. Theophanous interjected.

Hon. C. A. FURLETTI — Shut up or we will be here all night, Theo.

The ACTING PRESIDENT (Hon. G. B. Ashman) — Order! Mr Theophanous, you will have an opportunity to contribute in a few moments.

Honourable members interjecting.

Hon. C. A. FURLETTI — I am really trying hard not to pay any attention to the interjections. In 1921 a former Labor Speaker was appointed by the Labor government as Governor of Queensland. He accepted the nomination of 14 new Labor councillors to give Labor the majority in the upper house and they promptly voted themselves out of office, presumably with some sort of payout.

The Bracks government cites that sort of event as an example of democracy, and that is what the Labor government here would like to see done to this house. When members hear that Queenslanders voted themselves out of an upper house they can refer to this record to acknowledge that it was a Labor Party stunt to get rid of the upper house in Queensland in 1922.

Hon. T. C. Theophanous interjected.

Hon. C. A. FURLETTI — It introduced Sir Joh Bjelke-Petersen and everything else. During my research I wandered into the reforms of the House of Lords in the United Kingdom. In doing so I also noted an article by John Cain, Jr, in which he showed some of the effects of his time in this Parliament. It was a wandering argument. He referred to the radical reform of the House of Lords and quoted a recommendation of the royal commission into that reform:

> The new second chamber should have a larger role to play in scrutinising the executive, protecting the constitution, safeguarding human rights, deliberating on issues which arise from devolution and examining secondary legislation.

They are all things this house currently does.

With regard to staggered terms, the royal commission recommended not only the retention of life peers, of church representatives and of the Law Lords but also of the regionally selected members. The analysis states:

> The commission clearly sets considerable store on continuity with the existing house. Thus all life peers would remain — for life, unless they took voluntary retirement.

On the subject of regionally selected members it goes on to say:

> Here the report puts forward three options, all of which envisage such members serving for three electoral cycles, or up to 15-year terms.

This is the analysis of the royal commission inquiring into reform of the House of Lords. The analysis states:

> With diminished powers and no democratic legitimacy, the risk is that the reformed house would rapidly become supinely ineffective in the very tasks that the commission claims it wants a second chamber to fulfil.

So it is that with diminished powers in this place we would fit into that category of findings of the royal commission into the reform of the House of Lords.

As I said earlier, there are some interesting elements in the rejection of supply bills in this place. The way the government has been marketing these changes one could be excused for thinking that supply was blocked regularly. In real terms supply has been blocked on 10 occasions. I acknowledge with gratitude a report prepared by Richard Willis of the Legislative Assembly staff in 1997. He shows that from its inception the Council has blocked supply on 10 occasions, but it was blocked several times on the one issue. In real terms supply was blocked on six different issues, and on three occasions the blocking of supply led to dissolutions — only three occasions in 150 years.

At the end of the day the power to block supply is the ultimate means of compelling a lame government, a government that has lost the confidence of the people, a corrupt government or a government that is ineffective and is not doing what it was elected to do to go to the polls. It is not to be thrown out in the wilderness and discarded. It is not at the end of the day this house that is dissolving the government. What this house is saying is: 'If you believe you have a continued mandate, let the people of the state re-endorse you'.

In the 1947 dissolution of the Victorian government of John Cain, Sr, and the famous 1975 federal double dissolution, the opposition parties of the day were returned with the greatest majorities of all time. In other words, the people of Victoria and of Australia endorsed the action that had been taken by the upper houses. That in itself is a form of reinforcing the democratic system in which we work.

In case anyone were to think for one moment that the Labor government would not take advantage of the powers contained in the constitution I put on record a number of statements extracted from reflections by Sir David Smith at a conference in the Faculty of Law at the Australian National University, which I obtained with the assistance of a colleague in the other place, the honourable member for Sandringham. One statement is:

> Any government which is defeated by the Parliament on a major taxation bill should resign. This bill will be defeated in another place. The government should then resign.

They were the words of Gough Whitlam in 1970. Sir David said:

> Senator Murphy tabled a list of 169 occasions when Labor oppositions had attempted to …

block supply. For this government to pontificate on the right to reject supply is a typical hypocrisy on its part.

I shall briefly address the issue of proportional representation, something about which we could argue for a long time. It is a system of voting that has been changed in every direction over a lengthy period. In my experience determining to change a system that works for an unknown quantity is not the way to go.

If the government were serious about making real changes and introducing proportional representation it should ensure that a commission is established to examine the value of doing so. From my research I believe the system is not working in countries with which Australia would like to associate. Italy, with which I have some affinity, has in its lower house a system based on proportional representation. Some 10 years ago Italy overwhelmingly voted for approximately three quarters of its number to go to a first-past-the-post system in its Senate elections.

Cynicism arises about minority groups and the wheeling and dealing and underhandedness that goes on with the type of culture associated with proportional representation. That type of conduct by members of Parliament demeans the system, not only the government. The cynicism seen in countries like Italy develops when elections are treated as a joke. Members are elected on a proportional representation basis and that permits porno stars, for example, to become members of Parliament. It demeans the value of places like the Legislative Council in the eyes of the community.

The other adverse effect is that large numbers of groups in representative bodies is not necessarily the way to go. For example, Poland has 29 parties in its Assembly. It took on democracy in 1991. Some two or three years ago it moved directly away from proportional representation and is now seeking to reintroduce a first-past-the-post system. From my research, although Australia's preferential voting system is not given the same name in all countries, a system very closely aligned to that system is gaining enormous popularity in countries such as New Zealand, Italy, Norway, Poland and the United Kingdom which are looking at reforming their systems. The Australian system is attracting an enormous amount of attention and engendering great support.

It is for those reasons that I say this half-baked proposal, which is nothing more than a political stunt on the part of the Labor government and a dramatic grab for power in the first step towards abolishing this place, does not and will never receive my support and on this occasion that of the opposition.

Hon. T. C. THEOPHANOUS (Jika Jika) — I support the bills, which are landmark legislation because they seek to change the house in which the debate is occurring. They would make this place a more democratic and fairer house about which the people of Victoria could be proud. I agree with the Honourable Carlo Furletti that the debate is very much about power and its distribution. Mr Furletti characterised it as a grab for power.

Two numbers need to be continuously reinforced during the debate: 30 versus 14. When one is comfortable being 1 of the 30 who sit in this place making up a number that in no way reflects the level of support enjoyed in the community, there is only one thing driving every comment — that is, self-interest. Self-interest is the basis of the comments of opposition members and the only thing driving this debate.

It could be said that it is human nature, but one hopes members in this place will sometimes think a little beyond self-interest. However, the truth is that they have 30 members. Why should they give up any of their 30 to the 14? Most importantly, why should they give up their numbers and face the people of Victoria when they have the power at the moment?

There is no moral basis for an argument from those 30 members about why that number should be retained. One could come into this place and offer some positive suggestions by saying, 'We want to reform the upper house to make it fairer'. If one did so, one would have some moral fibre behind the argument. However, when the only objective is to protect your own self-interest and it has nothing to do with the interests of the people of Victoria, it is very hard for one's arguments to be taken seriously.

I turn to some of the issues raised by opposition members. In doing so it is important to put the history of this place into context. I researched the issues surrounding the survival of the house and how it should be reformed. I went back to the beginning — on 21 November 1856, when on a hot and windy afternoon — —

Honourable members interjecting.

Hon. T. C. THEOPHANOUS — That is what my research shows. Victorians gathered at the front of the new Parliament House to witness its opening. In 1856 the new Parliament included the Legislative Assembly and the Legislative Council. Many people may not appreciate that during the proclamation of Parliament with all its pomp and ceremony and the 19-gun salute — —

An honourable member interjected.

Hon. T. C. THEOPHANOUS — I am not saying there is anything wrong with that. I am sure the acting Governor at the time, Edward McArthur, did an outstanding job in proclaiming the Parliament.

By 1856 the Legislative Council had existed for five years, so it preceded the people's house. It was not until 1856 that democracy in the form of the people's house came to Victoria, albeit in a context where women had no voting rights and could not stand for Parliament and where candidates for both houses of Parliament had to be property owners.

The requirements for election to the upper house were onerous. Members had to be male, over 30 years of age, hold freehold property worth at least £5000 or be members of suitably qualified professions such as barristers or solicitors or medical practitioners. I do not know how much £5000 is equivalent to today, but I imagine only millionaires who were male and over 30 years of age could have been members of the Legislative Council at that time. With such beginnings is it any wonder the upper house has become a bastion of conservatism!

Despite reforms of the eligibility criteria and the extension of voting rights, during the almost 150 years since Victoria has had a bicameral system the Labor Party has held control of both houses of Parliament for just six days!

Honourable members interjecting.

The ACTING PRESIDENT (Hon. G. B. Ashman) — Order! The level of interjections is becoming intolerable. I ask honourable members to cease interjecting, but if they insist on interjecting they should at least do so from their places.

Hon. T. C. THEOPHANOUS — Any fair-minded person would admit that it has not been bad for conservatives in this state. They managed to lose control of this place for only six days in 150 years. Why would they want to change?

During the period of the previous Labor government all legislation had to be agreed to by the Liberal and National parties. The history of the upper house is one of acting as a rubber stamp for conservative governments and, on occasion, as a vehicle for obstructing Labor governments. It is nothing more than a conservative rubber stamp.

It does not allow for the expression of minority views. The last Independent to sit in the upper house was the

Honourable Rod McKenzie in 1985. He was elected on a Labor Party ticket. That demonstrates that it is almost impossible for an Independent or a member of a minor party to be elected to this house. It is virtually impossible. That is the reality we face.

This house will be reformed sooner or later for the simple reason that it does not operate properly. It does not express the full ambit of views in the community.

Honourable members interjecting.

Hon. T. C. THEOPHANOUS — It is easy to use irrelevant arguments to counter what is a fundamental fact. The federal Parliament has a lower house, the House of Representatives, which is a house of the people, elected on the basis of electoral divisions. It also has an upper house, the Senate, which is elected by proportional representation. If the opposition wants to be taken seriously it should argue that the Australian Senate ought to be changed to bring it into line with the Victorian upper house.

Hon. R. M. Hallam — That is a good start.

Hon. T. C. THEOPHANOUS — God help us if Mr Hallam were in a position to influence the power brokers in the federal Parliament.

Hon. W. I. Smith — Why not introduce proportional representation in the lower house?

Hon. T. C. THEOPHANOUS — The lower house is a people's house and the members elected to that chamber should be close to their electorates. It is based on the Westminster system we inherited, with single-member electorates forming a government. That is not the debate in this case. That is a red herring. The issue is how we should reform the upper house.

The upper house has to do a number of things before it can be taken seriously by the Victorian people. Prior to the last election the Labor Party had 10 members in this place — 10 against 34. Honourable members opposite would argue that that reflects the level of support the Labor Party had at the time. They well know it was nothing like the level of support the Labor Party had. After winning the last election the number had changed from 10 to 14 members. We now have 14 against 30. In that context, even if the Labor Party had exceptional election results it would not control the upper house for at least eight years.

Honourable members interjecting.

The ACTING PRESIDENT (Hon. G. B. Ashman) — Order! The level of interjections has reached an intolerable level. I ask Mr Theophanous to continue, without assistance.

Hon. T. C. THEOPHANOUS — If one works out the formula, in real terms it takes three elections or 12 years for Victorians to change the composition of an upper house if an opposition party or parties control that house. I understand why the opposition defends the present position: it thinks that if it hangs on to the little power it has with its 30 members and does little to help Victoria, somehow it is contributing to good government.

Hon. R. M. Hallam interjected.

Hon. T. C. THEOPHANOUS — I will not go through it again for your simple mind, Mr Hallam.

I shall address the point made by the opposition's lead speaker about amendments moved in this house by the former government. It is important to have on the record that amendments were moved in the upper house by that government.

Hon. W. R. Baxter — That is not what you said. You were caught out; you said no amendments were made.

Hon. T. C. THEOPHANOUS — It was to fix up its legislation; it moved amendments to legislation that had been hastily introduced in the lower house or to legislation after its introduction in either house. The former government treated this place with contempt because under the previous arrangements it often introduced legislation that was sloppily worded, imprecise and in need of modification. Therefore, government amendments were moved to correct the problems.

Nobody could argue that a government amending its own legislation portrays the proper role and function of the upper house. This house should scrutinise legislation and have input from honourable members who may not be in government.

Hon. W. R. Baxter — The government did.

Hon. T. C. THEOPHANOUS — I am glad you mentioned that, Mr Baxter. I looked at the amendments moved in this place. Hundreds of government amendments were moved in this house during the seven years the coalition was in government. All those amendments took the time and energy of the house and honourable members had to consider how legislation could be improved. How many of the hundreds of amendments moved by the then government during its seven years were taken up?

Hon. R. M. Hallam — Not one.

Hon. W. R. Baxter — Produce the list of hundreds of amendments because there were not hundreds.

Hon. T. C. THEOPHANOUS — I suggest honourable members contrast that with what happens in the Australian Senate, Western Australia or other Australian parliaments where the government does not have absolute control of the upper house. Their houses can make reasoned and reasonable amendments that can be considered appropriately.

Victoria will never have an upper house that can make such amendments until this house represents a broad range of community interests. The government thinks it is time for that to happen. The opposition says it is a grab for power by the Labor Party. However, the reverse applies. If passed, the legislation will probably result in parties such as the Democrats or the Greens having some say over both major parties. Far from being a grab for power by the Labor Party, the bills are a dissemination of power to the broader community. That is what the legislation aims to achieve.

I refer to the *Age* of 15 October 1999 when the former Deputy Leader of the federal Liberal Party, Fred Chaney, is reported as having said:

> In my home state of Western Australia, we have an upper house that is not in the hands of the conservatives for the first time in 100 years. The electoral system in Western Australia is delivering the sort of mix of parties that has transformed the Senate into an effective legislative and scrutinising chamber.
>
> Those who love the notion that governments should have absolute power along the lines enjoyed by Margaret Thatcher with a rubber-stamp House of Commons and a near powerless House of Lords, or a Premier with control of both houses, find the change objectionable. Having been a political insider at the federal level for just under two decades, I have the opposite view.
>
> After 17 years in the Senate and about 7 years of leadership of my party in the Senate, I am of the firm view that government is improved when it does not control the upper house, provided the upper house is not controlled by a single party of opposition.

That is a sensible and reasoned argument from a prominent member of the Liberal Party. Similar views were put in 1980 by the Leader of the Opposition in this place. He had a separate set of views when it came to such matters. He is quoted as having said that the upper house should be elected by proportional representation.

Hon. R. M. Hallam — Who said that?

Hon. T. C. THEOPHANOUS — Mark Birrell said it in the *Age* of 25 March 1980. He was young then and had hair. Now he has lost his hair and his idealism. In 1980, when he had hair and idealism, he is reported as having said:

> The upper house should be elected by proportional representation …

I wholeheartedly agree with the 1980 Mark Birrell.

I also refer to an opinion in the *Age* of December 1999 by Allan Patience, professor of political science at the Victoria University of Technology. He is reported as saying of the upper house:

> In fact, it has never been an effective review house. As Professor Brian Costar has observed, if the Legislative Council had demanded real accountability from Jeff Kennett, he might still be Premier. It should have put the brakes on Kennett's muzzling of the Auditor-General … It should have inquired into schools and hospital closures in regional Victoria. It should have monitored commercial agreements such as prison privatisation, the sale of public assets, and outsourcing. It should have insisted on transparency over issues such as the Crown Casino licence. It did none of these things; it obediently complied with the Premier's demands.

That is why you lost power.

In a funny way, by introducing the bill the Labor Party is giving the Conservatives an edge. Should they ever again get into power with a leader of the Jeff Kennett type, the legislation may act as a brake on him and they may stay in power a bit longer than they did this time around.

Many government members are sick and tired of being the brunt of jokes made by members of the public who say, 'You don't do anything in the upper house'. People are not confident that this house does anything other than rubber-stamp a conservative government's views. Why should they have any confidence in this house when it is constantly abused by conservative members?

There have been two opposition parties in this house for the past six months. Government members look forward to the first time they vote differently, because we have not noticed any difference so far!

The National Party might have had more credibility if it had said it was interested in doing something different from its Liberal Party counterparts, such as looking again at country representation. The legislation will increase representation for country Victorians, but it will not necessarily result in the National Party having more representatives. That is the bit that they cannot swallow. It is not about more representation for country Victorians — which there is, and anybody with a basic knowledge of maths can work that out — —

Hon. R. M. Hallam — Okay, walk me through it. Explain it to me.

Hon. T. C. THEOPHANOUS — I will, because you obviously do not want to understand it. There will be 40 members of this house, 4 fewer than the current number. There will be three designated rural provinces, from which 15 members will be elected — but they will not necessarily be members of the National Party. How many members does the National Party have in this house, anyway? Does it have 15? The answer is no.

Hon. K. M. Smith — You haven't got 15!

Honourable members interjecting.

Hon. T. C. THEOPHANOUS — I acknowledge the interjection for the purposes of getting it onto the record. There will be more representation for country Victoria but not necessarily more National Party representatives. What is wrong with that? Why should the National Party be the only party to represent country Victoria? Of course, increasingly it is not.

Labor members will not mind competing in the three rural provinces. We think we will do all right; and even if we do not, other groups are likely to get the seats — the Independents, the Greens, the Democrats — —

Hon. R. M. Hallam — The Greens!

Hon. T. C. THEOPHANOUS — National Party members are still behind the times. They think regional Victoria is not interested in conservation.

This is all about changing a house that has no standing in the community. I will quote from an *Age* article by David Wilson and Gary Hughes under the heading 'Upper house not working'. It is accompanied by a cartoon that does not exactly show the upper house in a great light. The article describes the sorts of things people can expect from members in the upper house:

> Amid growing concerns over the role, function and performance of the council, the *Age* investigation found:
>
> Four Liberal backbenchers have not spoken during the adjournment debate, in which members can raise issues of concern within their electorates, since the election of the Kennett government in 1992.
>
> Only five bills were amended in the upper house in 1995–96 compared with 56 in 1991–92. Sitting hours in the corresponding years dropped from 389 hours to 279 —

and on it goes.

> The four National Party backbenchers spoke just once between them in 1996 in the adjournment. The two National Party members for North Western Province, Mr Ron Best and Mr Barry Bishop, did not speak once in the adjournment in 1995 and 1996. Mr Bishop has spoken in the adjournment only once since the Kennett government was elected, and Mr Best three times.

That is what the *Age* reported. No wonder nobody wants to take members opposite seriously. Although it is a pity the house does not consider legislation properly, it is a greater pity for you than it is for us.

I have no doubt that if anyone goes back and examines the 107 amendments that were moved in the first round of the accident compensation legislation and the 70-odd amendments that were moved in the second round, he or she will find that if in addition to the Labor opposition there had been a minor party in this place at the time, there is no way the coalition would have been allowed to get rid of common-law rights, just as it would not have been allowed to nobble the Auditor-General. A minority party would probably have done the members of the coalition government a favour, because they were the issues on which the coalition was voted out of office!

When Labor moved amendments to try to change the legislation relating to the Auditor-General and Workcover, they were not considered good enough to support.

But suddenly all 30 opposition members, including Mr Hallam who led the contributions, were prepared to support the exact amendments Labor had moved in opposition at that time. What does that say about principles and people's views and what they stand for? Opposition members voted one year for an important set of principles and the next year changed their minds, saying, 'Maybe we should change it to something else', because they had suddenly been kicked in the teeth by the people of Victoria and lost power. That is a pathetic effort.

I had genuinely hoped at least the National Party would have put up a more reasoned set of arguments about the issue and said, 'We also believe as a minority party that there ought to be some reform in this house'. Instead it says, 'No, no, no', to any reform whatsoever. It has no policy of its own to put up about upper house reform. It simply wants the status quo. Sooner or later things change. They might not change in our generation, but I have faith in the people of Victoria and the people of Australia. I use as an analogy the republican debate. That debate was not won in the first round because a majority was not achieved, but that does not mean the people who support that position will give up or that it will not happen. It will happen; it might not happen now or in 5 or 10 years' time, but believe me, it will happen. This country will become a republic.

Just as surely the upper house will be reformed — not by the 30 opposition members who are clinging desperately to their seats, to their power, and to what

they have over there, but by the people of Victoria. That will make this house a much better place for them to be served by and for the people who have the privilege to serve in it.

Debate adjourned on motion of Hon. W. I. SMITH (Silvan).

Debate adjourned until next day.

COURTS AND TRIBUNALS LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL

Second reading

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

That this bill be now read a second time.

The main purposes of this bill are to:

amend the Administration and Probate Act 1958 to allow the Registrar of Probates to make probate orders in accordance with Rules of the Supreme Court;

recognise current arrangements between the Supreme Court and civil transcript providers;

provide for rehearings and re-assessments of guardianship orders; and

establish provisions for class actions.

Probate orders

The bill will facilitate the electronic authentication of probate orders by the Supreme Court Registrar of Probates.

The current provisions of the Administration and Probate Act dealing with the authentication of probate orders date back to the early part of last century — long before it was contemplated that court orders could be validly authenticated on anything other than paper.

However, times have moved on and rapidly changing technology has revolutionised the way a modern society does business.

The courts have not been immune to these changes. In fact, Victorian courts and tribunals have embraced technology in a number of areas as a means of providing better services to court users.

The amendment to the Administration and Probate Act comes out of the Supreme Court's administrative review. The review has a number of components addressing technology, business excellence and redesigning the business of the court.

The probate design project is part of this review. It is looking at ways of improving the business design of the probate office which would see most of the work of the office move from a paper-based system to an electronic system. This would not only improve the efficiency of the office but would make it much easier for people to apply for probate orders.

The court's initiative cannot be fully put into effect because the Administration and Probate Act requires probate orders to be made on paper.

The bill amends the act to allow the court to make rules as to the manner in which probate orders can be authenticated.

This is consistent with last November's ministerial statement Connecting Victoria by the then Finance Minister, the Honourable John Brumby. This sets out this government's vision of all Victorians sharing the benefits of technology.

While only a small part of the government's vision, this amendment has been developed in an environment which recognises how technology is changing the way we live and accommodates further change through technology.

Civil transcripts

The bill also amends the Evidence Act 1958 to give effect to arrangements currently in place between the Department of Justice and transcript providers in civil cases.

Where a court orders that its civil proceedings be transcribed, it is essential for the administration of justice that those transcriptions are accurate and timely.

At present a preferred transcriber is selected on a tender basis against range of professional and technical criteria to deliver transcription services to a minimum quality.

The system of appointing civil transcribers was developed by the Department of Justice and the Supreme Court as the most effective and efficient way of ensuring the delivery of high-quality civil transcripts for both the court and litigants.

The amendment, which will facilitate the appointment of transcript suppliers, will ensure that both the court and litigants receive the best possible service with regard to civil transcriptions.

Guardianship orders

Prior to the creation of the Victorian Civil and Administrative Tribunal, guardianship and administration orders were made by the Guardianship and Administration Board and were subject to merits review. This review mechanism recognised that guardianship and administration orders affect the basic rights of people to make decisions about their financial arrangements and about the way in which they conduct their lives. The transfer of authority from one person to another over such fundamental issues is a serious matter. Merits review provided a level of protection for the rights of people with disabilities and impairments that was widely recognised as essential by those working in this area.

However, upon the creation of VCAT in 1998, the previous government was more concerned to subject all jurisdictions within its auspices to a common procedure. It decided that retention of two-tiered review for the guardianship and administration jurisdiction was not warranted and this mechanism was consequently removed. Whilst in opposition, this government strenuously opposed this removal and is accordingly delighted to have the opportunity to reinstate a fundamental protection of the rights of Victorians with disabilities. This amendment is also supported by the president of VCAT. The president is of the view that the issues raised in the guardianship list are qualitatively different from those in any other jurisdiction, a view which is shared by those organisations working for and with people with disabilities across the state.

In addition to reinstating a right of rehearing for guardianship and administration orders, the amendments propose a right of rehearing for applications for special procedures made under part 4A of the act. Part 4A was introduced to achieve two fundamental objectives: the provision of a mechanism for careful assessment of applications for special procedures such as sterilisation; and the facilitation of access by people with disabilities to routine medical and dental treatment.

Prior to the introduction of part 4A, it was necessary for a guardian to be appointed each time consent was required for a routine physical examination or dental treatment of a person with a severe disability, in the event that next of kin were not available to give consent. This process was roundly criticised, as it significantly delayed the provision of basic medical and dental treatment to people with severe disabilities, many of whom were forced to wait unreasonable periods of time simply to have an ingrown toenail removed or a standard dental procedure performed. Part 4A was introduced to alleviate this delay.

For this reason the proposed amendments do not seek to introduce a new right of rehearing for applications concerning routine medical and dental treatment, given that such a step would diminish the purpose of these particular provisions and act as an additional hurdle in the delivery of prompt medical and dental treatment to people frequently faced with a series of impediments.

However, the government considers it crucial to recognise the fundamental nature of those applications for 'special procedures' brought under part 4A. The government views applications for sterilisation, termination of pregnancy, or the removal of any tissue or organ from a person as fundamental questions of human rights, and therefore as requiring special protection and additional safeguards. Consequently the proposed amendments introduce a new right of rehearing for special procedure applications, other than medical research.

The government does not propose to introduce a new right of rehearing for applications for medical research. These applications are made by hospitals and related institutions and mainly involve clinical trials. Under procedures developed by the Deputy President in charge of the Guardianship List at VCAT, the Office of the Public Advocate, ethics committees and the research community, no application is pursued unless consent has been actively sought and gained from the proposed participant's next of kin. These procedures are therefore already subject to their own form of safeguards.

The right of rehearing of a guardianship, administration or special procedure order applies to the parties to the original application. In addition, a person entitled to notice of the original application, but who was not a party, may bring an application for rehearing with leave of the tribunal. The Public Advocate may also bring an application for rehearing. The amendments provide for a hierarchical mechanism for the conduct of the rehearing, ensuring that it is conducted by a member senior to the member who made the original decision. In the event that an original decision was made by a multimember panel, the amendments ensure that the decision is reheard by a vice-president or the President of the Tribunal.

As well as reinstating a right of rehearing for some matters in the guardianship list, the amendments resolve existing confusion concerning the systematic review of every guardianship and administration order to assess the need for the order's continuation, as

provided for under section 61 of the Victorian Civil and Administrative Tribunal Act 1998. Section 61 uses the term 'review' and the amendments will replace the term 'review' with the term 'reassessment'.

These amendments are a further demonstration of the government's commitment to the rights of people with disabilities, and to access to justice for all Victorians.

Class actions

The bill introduces a new part 4A into the Supreme Court Act dealing with group proceedings, or class actions as they are commonly known.

The Supreme Court introduced rules for class actions on 1 January 2000. The rules were designed to allow one person to represent other persons having claims arising out of the same, similar or related circumstances.

The previous court rules and sections 34 and 35 of the Supreme Court Act 1986 contained provisions for a representative action procedure but these provisions had been interpreted narrowly and fallen into disuse.

The Supreme Court's initiative was based on the provisions of part IVA of the Federal Court Act 1976 and was designed to provide Supreme Court litigants with a procedure which closely followed the federal court procedure.

The rules provided the means by which ordinary litigants could access the court system.

We live in an age of mass production and distribution of goods and services. The potential for loss or damage which can be caused by a single supplier of goods or services on a mass scale is enormous. However, while the overall damage may be great, the amount of damage incurred by an individual may be relatively small in proportion to the legal fees and court costs.

In the worst cases, litigants can face ruin yet lack the means to bring proceedings to redress the wrong they have suffered. The class actions procedure addresses some of the imbalance between ordinary litigants and large and powerful corporate litigants.

The first case initiated in the Supreme Court under the court's new class actions procedure was *Schutt Flying Academy (Australia) Pty Ltd v. Mobil Oil Australia* (the Mobil Oil case).

All of us will recall the unhappy circumstances leading up to that case. In November and December 1999, many hundreds of light aircraft throughout Australia were grounded as a result of what was thought to be contaminated fuel supplied by Mobil. The owners, operators and pilots of light aircraft claimed loss or damage as a result of the contamination. The media reported that many were facing financial disaster.

One operator brought an action on behalf of all potential litigants affected by contaminated fuel under the new Supreme Court rules. Mobil challenged the power of the Supreme Court to make these rules.

In June 2000, the Court of Appeal upheld the court's power to make the rules by a bare majority. Mobil has now sought leave to appeal to the High Court.

Although the procedure therefore remains currently available to litigants through the rules of court, it is essential that the rules be strengthened to dispel any lingering concerns and to place the validity of the procedure beyond doubt.

Legislation for class actions is long overdue. The court's attempts to get a sensible legislative response to this issue is summed up by Mr Justice Brooking in his judgment in the Mobil Oil case:

> In 1997 the judges of the Supreme Court suggested to the then Attorney-General that Parliament should legislate along the lines of part IVA of the Federal Court Act. The suggestion seemed to be well received. But by 1999 no legislation had been introduced or even foreshadowed and so the judges turned their minds to the introduction of the federal court system by means of rules of court.

I am pleased to be able to introduce the legislation sought for so long by the court.

Section 85 statement

I would now like to make the following statement of reasons for altering or varying section 85 of the Constitution Act 1975.

Clause 15 of the bill inserts a new section 128A into the Supreme Court Act. This states that it is the intention of the new section 33ZD(b) of the Supreme Court Act and of section 14 of the bill, to alter or vary section 85 of the Constitution Act 1975.

The new section 33ZD allows the court to order the actual parties to the proceedings to pay costs but reduces the court's general discretion in section 24 of the Supreme Court Act to order costs against members of the group or class.

Existing costs rules usually require the unsuccessful party to pay the successful party's costs. Changes in the costs rules are necessary because class actions are complex and expensive. Ordinary litigants could not

afford to maintain proceedings against large and powerful corporations or governments in these circumstances.

The new section 33ZD(b) is designed to protect members of the class from personal liability for costs by limiting the court's power to order costs against individuals, except in the circumstances set out in the new sections 33Q and 33R, that is where the court establishes a sub-group and where a question arising for the litigation relates to only one member.

Clause 14 repeals sections 34 and 35 of the Supreme Court Act which provided for representative proceedings. Group proceedings replace this form of class action.

I commend the bill to the house.

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

Debate adjourned to next day.

INTERPRETATION OF LEGISLATION (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

ANGLICAN TRUSTS CORPORATION (AMENDMENT) BILL

Introduction and first reading

Received from Assembly.

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

ADJOURNMENT

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

That the house do now adjourn.

Workcover: premiums

Hon. W. I. SMITH (Silvan) — I raise with the Minister assisting the Minister for Workcover the matter of a rise in the Workcover premiums of a business called the Ballarat French Kitchen, which I visited last Tuesday.

On 9 August 1999 for the year to 2000 the Workcover premium for that business was $2425. On 18 August 2000 it had gone up to $3435 — an increase of 42 per cent. The proprietors have never claimed on Workcover, they have not changed any classification and they do not understand why their premium has gone up by 42 per cent. They have managed to reduce their premium by 25 per cent with a buy-out option.

It is of concern that some businesses are taking the option to reduce their Workcover premium by 25 per cent. It means that businesses such as the small business in this case, which has considerable trouble making ends meet at the moment, will accept liability to meet the first 10 days of weekly benefits and the first $430 of reasonable insurance for any workers who are injured.

I ask whether the Minister for Workcover will investigate why this particular business has had an increase of 42 per cent and have the increase justified.

Petrol: prices

Hon. R. M. HALLAM (Western) — I refer the Minister for Consumer Affairs to the answer she gave my colleague the Honourable Graeme Stoney to the question he asked yesterday regarding petrol prices. The minister referred — I am unable to quote — to the additional 2.5 cents per litre that will flow to the federal government's coffers as a result of increased fuel costs.

That is the terminology the minister used. It is not a direct quote, as I am unable to give the house a direct quote. I ask the minister where she got the figure of 2.5 cents a litre. Was this figure derived from some personal research and computation? If so, can the minister advise the house of the basis of that computation? Or was the figure simply parroted from some other source? If it was, will the minister advise the house of the identity of that source and why she considers that source to be of such veracity that she is prepared to rely on it in quoting to the chamber?

Gas: Barwon Heads supply

Hon. E. C. CARBINES (Geelong) — I wish to raise with the Minister for Energy and Resources a matter concerning the township of Barwon Heads in my electorate of Geelong Province. For a long time the community of Barwon Heads has been actively seeking support for the provision of natural gas to the township. The Barwon Heads Association approached me earlier this year for assistance in this matter, as has the developer of the proposed Tomara Resort, a project

which would benefit enormously from the provision of natural gas.

TXU Ltd, the gas company, has indicated a willingness to proceed with the project and has approached the Regulator-General with a view to varying its access arrangements to facilitate the project. In August I was pleased to arrange a meeting of the minister with representatives of the Barwon Heads Association, Tomara Resort and the City of Greater Geelong to seek the minister's assistance. I would be pleased if the minister could advise of any progress that has been made since our meeting on this matter.

Baxter–Tooradin Road: intersection

Hon. R. H. BOWDEN (South Eastern) — I ask the Minister for Energy and Resources to seek the assistance of her ministerial colleague, the Minister assisting the Minister for Transport regarding Roads. The matter concerns a dangerous intersection near the Baxter railway station within my electorate of South Eastern Province. The intersection is an offset cross-arrangement of Hawkins and Fultons roads with Baxter–Tooradin Road. Expansion of the residential areas of Baxter and Somerville has resulted in a rapid increase in the number of vehicles using that intersection. Approximately 20 metres to the west of the intersection is the railway line which runs from Baxter to Somerville, and the rise at the railway line makes visibility extremely difficult. On the corner there is a popular hotel which generates a considerable amount of traffic on an almost 24-hour basis.

I am advised that accidents have occurred there in the past. The arrangement of the crossroads causes great difficulty. It is also difficult to seek assistance because it involves the councils of Frankston and Mornington Peninsula. Both councils are aware of the difficulty, and to their credit they have tried to do something to resolve the situation, but to date no action has been taken.

I ask the minister to see whether the department could urgently undertake a technical and engineering evaluation of the intersection to prevent potential tragedies. My electorate office receives a considerable number of inquiries about this very dangerous intersection, and I seek the minister's help.

Sport: women

Hon. R. A. BEST (North Western) — I raise an issue with the Minister for Sport and Recreation. The state government today hosted a reception to congratulate our Olympic athletes, many of whom were successful in winning medals, and like the Premier I would like to congratulate them also. However, it is one thing to offer platitudes but another to offer funding so that people can gain access to and participate in their particular sporting pursuits.

Something that has stood out over the past few years has been the performance of women athletes, particularly the women's teams. When I assumed National Party responsibility for sport and recreation — and I thank the minister for congratulating me on that at the time — I decided to write to sporting organisations, one of which was Womensport and Recreation Victoria (WSRV). The organisation wrote back to me on 6 September saying, among other things:

> There are a number of issues that WSRV deals with on a regular basis and these include:
>
> 1. Increasing the participation of women and girls in sport and recreation in both regional and metropolitan Victoria.
>
> 2. The cost of participation for women and girls, especially for those who are from a low socioeconomic background.
>
> 3. Equal access to sport and recreation facilities for women and girls from all regions of Victoria.
>
> At present WSRV receives its funding through SRV and also Vichealth. All funding is allocated to specific projects that address the above issues. WSRV is concerned however, that funding for our activities in particular and for sport generally will become much less certain with the introduction of the football tipping competition. This is not guaranteed to be a reliable or constant source of funding and we fear that the projections of a failure of the competition will leave sport in jeopardy.

Given that the government is prepared to be seen with those successful female athletes and to offer platitudes, what guarantee will the minister give that a reliable and constant source of funding will be provided to ensure that participation rates for rural, regional and metropolitan women can be improved, particularly given that government promised in its pre-election policy funding of $1.662 million over three years?

Braybrook: crime rate

Hon. S. M. NGUYEN (Melbourne West) — My question is to the Minister for Sport and Recreation representing the Minister for Police and Emergency Services in another place. In March this year residents of Braybrook approached me with concerns about rising crime in their area. As a consequence the Braybrook issues working group was set up to address some of those concerns. The local police are represented on the committee. Since the establishment of this group residents have reported a drop in the number of crime-related incidents. Could the minister

advise the house of the crime statistics for Braybrook since March of this year?

Waverley Emergency Adolescent Care

Hon. ANDREW BRIDESON (Waverley) — I wish to raise with the Minister for Youth Affairs the issue of Tandana Place Rehabilitation House at 6 Nicholson Court, Clayton, which was established under the auspices of Waverley Emergency Adolescent Care. WEAC has been conducting a program in the house in Clayton for 12 months, with a total of 20 young people using the facility to address their substance abuse. The youngest person they have treated is aged about 12½ years, and the average age is 16. It is a three-month, live-in program which offers a comprehensive, holistic course, and I believe its results are very good.

WEAC raised $400 000 in the past 12 months to establish this place but is having substantial problems with ongoing funding. I invite the Minister for Youth Affairs to attend Tandana Place with me, not only to see the good work that is being done there but to discuss funding issues.

The director of WEAC is Ms Maureen Buck, who has done a fantastic job for youth in the City of Monash. She may be known to the minister, as she is the sister of a former playing colleague of his, Peter 'Crackers' Keenan.

Bridges: Cobram–Barooga

Hon. E. J. POWELL (North Eastern) — I raise an issue with the Minister for Energy and Resources representing the Minister for Transport in another place. It concerns the Cobram–Barooga bridge investigation. In May this year the Victorian and New South Wales ministers for transport announced a joint investigation into the options for a crossing of the Murray River at Cobram–Barooga. Minister Batchelor said the investigation would thoroughly research all the opinions, including examining the future maintenance needs of the current bridge and the cost of a new bridge.

This is an emotive issue in the area because there is a strong belief that the new bridge is necessary to meet the needs of the area for the next decade. It is a growth area that has heavy transport use. Local members have been actively promoting the issue for some months. We have attended public meetings in the Cobram–Barooga area. The Honourable Bill Baxter and I, together with the local members of Parliament, attended a deputation to the minister. I have received 67 letters about the importance of a new bridge.

The Moira Shire Council was told it would be part of the investigation, but it has had only one meeting with the New South Wales Road Traffic Authority and Vicroads and is concerned that a decision will be made soon without input from the Moira or Berrigan shire councils.

I ask the minister to take into account the community of Cobram–Barooga and the Moira and Berrigan shire councils' extreme interest in this investigation and to speak with them before he makes a final decision on the report.

Housing: South Melbourne estate

Hon. ANDREA COOTE (Monash) — I raise with the Minister for Small Business a matter for the attention of the Minister for Housing in another place. It concerns a public housing estate at 200 Dorcas Street, South Melbourne. I recently attended a tenants meeting and learnt to my distress that a tenant who was coming home from a meeting at 6.50 p.m. was attacked by a gang of youths in the foyer of the Dorcas Street apartments. I was saddened to learn it was not an isolated case.

Although there are surveillance cameras around the building, the Department of Human Services has advised that it is unable to examine the film footage because it is blurred and the camera does not work properly. The tenants are concerned about not having surveillance cameras working correctly, and the issue is causing great distress because elderly people live in those flats.

I ask the minister to investigate the matter and inform me of the status of the cameras, because word is spreading that a person who commits a crime in or around 200 Dorcas Street could easily get away with it. I would like to have some surety that the cameras will be in operation in a short period.

Beechworth Hospital

Hon. W. R. BAXTER (North Eastern) — I raise a matter with the Minister for Industrial Relations, who represents the Minister for Health in another place. I have been pleased to have the Minister for Health visit my province on several occasions in recent months to open hospital extensions and refurbishments funded by the former government, notably at Tatura and Tallangatta. No doubt the minister will be opening the new hospital at Mount Beauty when it is completed in a few months.

One of the commitments of the former government — —

Hon. Kaye Darveniza interjected.

Hon. W. R. BAXTER — It is interesting you should say that because I would like the honourable member to specify any hospitals in the North Eastern Province that were closed. Name one.

One of the commitments of the former government which I would like the Minister for Health to honour quickly is the decision of the former Minister for Health, Mr Knowles, in association with the Beechworth Hospital board, to build a new greenfield-site hospital in Beechworth costing in excess of $6 million.

As some honourable members will know, Beechworth had ageing buildings on three separate campuses run by two boards. A decision was taken by the local community to amalgamate them under one management, and it convinced the former government to build a new greenfield-site hospital. It was expected that the building would have been funded in this year's budget. I am certain it would have been had the coalition government remained in office.

It is distressing to the local community. I attended the annual meeting of the hospital in Beechworth last Wednesday at which some 100 people were present. It appears that the government, if not backing away from the commitment of the former government, is giving no encouragement for believing that it is likely to be honoured in the relatively near future. I urge the Minister for Health to give the people of Beechworth some reassurance that their new hospital is not that far away.

Pest control devices: emissions

Hon. N. B. LUCAS (Eumemmerring) — I direct my question to the Minister for Consumer Affairs. Yesterday during question time the minister in answering a dorothy dixer discussed electromagnetic radiation. She said agreement had been reached between the Australian Communications Authority and industry representatives about mobile telephones. That was on 3 October. I note that the announcement of that agreement appeared in the *Herald Sun* on 3 August. The minister made an announcement about that matter during question time yesterday. In a magnanimous gesture and in appreciation of the minister following up the matter I raise, I shall not criticise her for being two months late.

I raise with her under the same general heading the matter of pest control devices that are plugged into the electric circuit of a household. The brochure I have says that it changes the existing electromagnetic field creating an intolerable environment for unwanted intruders — all sorts of pests, mice and so on. I am concerned that people who are buying these devices, which emit electromagnetic radiation, are in a similar situation to users of mobile telephones.

I ask the minister, in the interests of the safety of consumers in this state, to also investigate the emission of electromagnetic radiation by pest control devices so that we may advise the community whether it is safe to use them, given that they change the electromagnetic field within a household.

GST: PAYG system

Hon. G. K. RICH-PHILLIPS (Eumemmerring) — The matter I raise with the Minister for Consumer Affairs relates to a misleading and possibly dishonest practice of an accounting firm operating in my province. As honourable members may be aware, the Australian Taxation Office (ATO) recently sent a number of letters to taxpayers regarding the introduction of the PAYG (pay-as-you-go) system. The taxpayer is requested to send back a pro forma indicating whether he or she prefers to pay quarterly or annually.

For clients whose taxation affairs are dealt with by the accounting firm, it attached to the ATO letter a pro forma response to the ATO. The accounting firm is attaching a form letter to the Australian Taxation Office letter and asking the clients not to send the form letter back to the taxation office but to send it back to the accounting practice — and it is charging the clients $88 for the privilege.

It issues an invoice for unsolicited services from the accounting practice and describes it as for professional services rendered regarding the implementation of the PAYG system. The only services rendered are forwarding the Australian Taxation Office letter to the client and asking the client to send back the response.

I ask the minister or her department to investigate the matter and to take action to ensure that my constituents are not unfairly misled into paying $88 when they can simply pay for a postage stamp.

Electricity: tariffs

Hon. C. A. STRONG (Higinbotham) — My question to the Minister for Energy and Resources deals with full retail contestability in the electricity industry, which is scheduled for 1 January 2001. The matter concerns load profiling.

I seek advice from the minister on two issues: the impact of possible patents on this process and the implications of the National Measurement Act. I ask what action the minister is taking to ensure that these two issues do not endanger or delay the implementation of full retail contestability.

Snowy River

Hon. E. G. STONEY (Central Highlands) — Today the Minister for Energy and Resources told the house that savings have been identified with irrigation water. It was a bit noisy in the house but I think the minister implied that the savings will be used to create environmental flows down the Snowy River. I ask the minister if any of the new savings will be used to take the pressure off other rivers and lakes, such as the Goulburn River and Lake Eildon in my electorate, or will future savings identified all go down the Snowy River?

Petrol: prices

Hon. K. M. SMITH (South Eastern) — I am interested in an answer the Minister for Consumer Affairs gave my colleague the Honourable Graeme Stoney yesterday afternoon with regard to the 2.5 cents per litre GST the minister believed was flowing into the federal government's coffers. I will also be interested to hear the minister's response to the question from my colleague the Honourable Roger Hallam earlier in the evening. I ask the minister if the 2.5 cents per litre flow-on that she suggested would go into the federal government's coffers is not going into the state government coffers as part of the GST levy? I ask on behalf of the small business community if the minister has lobbied her cabinet colleagues to reject that 2.5 cents per litre?

Minister for Youth Affairs: responsibilities

Hon. B. C. BOARDMAN (Chelsea) — I am compelled once again to raise an issue with the Minister for Youth Affairs to seek clarification on his interpretation of his ministerial responsibilities. In his first response the minister said that one cannot classify youth as youth. Last night the minister's response was along the lines of, 'University and school youth have different liberties and rights depending on where they should be at the time'. The minister says you cannot say youth are called youth; it all depends on whether they go to school or university and where they are at the time.

During question time today the minister made a song and dance about the government and his department being proactive in the allocation of youth priorities. I have checked the government handbook for 2000–01. If one looks at the part referring to the Minister for Youth Affairs, one notes that the minister does not have any responsibilities. The Children and Young Persons Act, which is the most appropriate to the minister's portfolio, comes under the responsibility of the Minister for Community Services, which is still within the Department of Human Services. Even if one goes to the minister's own web site, which is still under construction, and looks at the minister's responsibilities, it comes up blank.

When I contacted the Office for Youth and the Department of Education, Employment and Training today to ask what the minister does, a very polite woman said that the office and the minister have responsibility for formulating youth policy in Victoria. However, I am still very confused. Without any legislative or policy responsibility and because he cannot even get his definitions correct, I ask the minister once again to save further embarrassment to himself and the government by outlining to the house what his responsibilities are in relation to youth, not in a generic way but in a very specific way.

Public transport: seniors concessions

Hon. I. J. COVER (Geelong) — I raise a matter with the Minister for Energy and Resources in her capacity as the representative of the Minister for Transport in the other place. The issue relates to travel concessions for Seniors Card holders. Honourable members would be aware that the matter was first raised as far back as last November by our colleague the Honourable Jeanette Powell. The matter has been raised on more than one occasion since that time. It has been pointed out that anomalies exist for residents of non-metropolitan Victoria who are Seniors Card holders and who do not enjoy the same concession or benefits on rail travel as people who live in metropolitan Melbourne.

A number of Geelong constituents, the most recent being Mr Thomas Gartlan of North Shore, have pointed out that Seniors Card holders who live in Geelong receive the concession on rail travel during off-peak hours Monday to Friday, but not on Saturdays, Sundays or public holidays. Seniors Card holders in the metropolitan area can get the 60-plus concession 24 hours a day, 7 days a week.

Mr Gartlan also pointed out that he has written to a number of parliamentary representatives on the matter but to date has received no meaningful or realistic response. Among those who have attempted to give

him a meaningful and realistic response have been the Minister for Aged Care and the Minister for Transport. Someone in the department said the Minister for Community Services would be in touch. Mr Gartlan is still waiting for a response. Given that the matter is a transport issue perhaps Mr Batchelor can provide a realistic or meaningful response.

Hon. W. R. Baxter — Don't bank on it.

Hon. I. J. COVER — I know the problems you have had, Mr Baxter. Eventually the government must address the issue and ensure that those benefits extend to Seniors Card holders throughout Victoria, not just in Melbourne. That is especially so given the government's pledge to govern for all Victorians and to ensure that regional and rural Victorians enjoy the same benefits as people in metropolitan Melbourne.

Liquor: licences

Hon. BILL FORWOOD (Templestowe) — I direct a matter concerning packaged liquor to the attention of the Minister for Small Business. A media release of 4 September from the Minister for Small Business entitled 'Views sought on packaged liquor laws: Thomson' states:

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

In other words, the minister will take it away but not until some other action has happened.

Hon. M. M. Gould — In your words.

Hon. BILL FORWOOD — No, in the words of the minister. I will read it again:

> An inquiry … has recommended the present 8 per cent limit should not be removed until …

That seems pretty obvious to me. However, a similar media release from the Minister for Small Business entitled 'Views sought on packaged liquor laws: Thomson', which I point out is the same heading as the other one but this one was released on 8 September, states:

> The Minister for Small Business, Minister Marsha Thomson, has welcomed an inquiry into packaged liquor licences in Victoria that has recommended the present 8 per cent limit should be retained.

Will the minister explain to the house how two press releases have the same heading but different dates and why she changed the content?

Gippsland: aquifers

Hon. PHILIP DAVIS (Gippsland) — I raise a matter concerning the Gippsland Basin aquifers for the attention of the Minister for Energy and Resources. The minister is aware that considerable concerns exist about falling levels in the Latrobe aquifer and the impact that is having on ground water extraction for irrigation in the Yarram area. Concerns also exist about the prospect of coastal subsidence.

On 26 July Mr Bill Bodman, on behalf of the Alberton project and the Gippsland Coastal Board, wrote to the minister seeking a deputation to progress discussions on those issues. Will the minister advise when she will meet with the deputation and when she will respond to it?

Electoral fraud

Hon. D. McL. DAVIS (East Yarra) — I direct to the attention of the Minister for Industrial Relations representing the Premier concerns about a serious matter that has occurred in another state. I want to ensure there are no implications for Victoria. I refer to electoral fraud matters in Queensland and the possibility that some members of the Labor Party in that state may have been in contact with Labor Party people in Victoria.

Honourable members interjecting.

The ACTING PRESIDENT — Order! At the moment I cannot distinguish any similarity between the question and state government responsibility. Unless the honourable member can make that clear I will disallow the question.

Hon. D. McL. DAVIS — I will come straight to the point. In another state a matter has occurred involving electoral fraud and I want to ensure that no similar matter will occur in this state.

Honourable members interjecting.

The ACTING PRESIDENT — Order! That is not an adjournment issue. It does not fall within the guidelines for adjournment debates. I suggest the honourable member rephrase the matter and refer it to the minister's attention at another time.

Hon. M. A. Birrell — On a point of order, Mr Acting President, would it not be appropriate for Mr Davis to recast the question so that it does fall within the adjournment debate guidelines? That is often done during questions without notice where questions are found not to meet the requirements of the standing

orders. If that were the case the honourable member would recast the question to make it clear that he is concerned about the Premier providing advice to the house about any potential breach of Victorian law.

The ACTING PRESIDENT — Order! I accept the point of order.

Hon. D. McL. DAVIS — I accept your guidance on this matter, Mr Acting President. Within the scope of Victorian law and the activities of the government, I want to ensure there is no matter infringing any Victorian law regarding similar electoral problems in other states.

Responses

Hon. M. M. GOULD (Minister for Industrial Relations) — The Honourable Wendy Smith raised with me concerns a small business in Ballarat has about Workcover. I will take that up with the Minister for Workcover and, if necessary, get more information from the honourable member that I can pass on to the minister to ensure the minister can act quickly.

The Honourable Bill Baxter raised for the attention of the Minister for Health in another place an issue in Beechworth that I will refer to the minister.

The Honourable David Davis raised an issue about electoral fraud that I will refer to the Premier.

Hon. C. C. BROAD (Minister for Energy and Resources) — The Honourable Elaine Carbines requested me to report progress since a meeting with community representatives regarding the extension of gas supply to residents of Barwon Heads.

The City of Greater Geelong and a group of active community residents have reached an advanced stage of negotiations with the local gas distribution business, Texas Utilities (TXU). Negotiations to date had assumed that customers would pay a standard tariff for the supply of natural gas. However, following a period of protracted discussions between TXU and the Office of the Regulator-General, which must ensure that customers ultimately enjoy a secure and sustainable supply and that prices are fair and reasonable, the Office of the Regulator-General is considering a submission from TXU that proposes a small surcharge above standard customer tariffs.

I understand Barwon Heads representatives have indicated a willingness to pay the small surcharge to progress the work. In short, the government anticipates and is looking forward to TXU preparing the appropriate submission to the Office of the Regulator-General so that residents can look forward to the early commencement of construction work at Barwon heads.

The Honourable Ron Bowden requested the Minister assisting the Minister for Transport regarding Roads to ensure that because of increased traffic in the area the department conduct engineering studies into the intersection where Hawkins and Fultons roads cross Baxter–Tooradin Road. I will refer the matter to the minister.

The Honourable Jeanette Powell asked that the Minister for Transport consult with communities with an interest in bridge crossings of the River Murray prior to making any decisions regarding that matter. I will refer the matter to the minister in the other place.

The Honourable Chris Strong referred to full retail contestability for electricity. He particularly referred to load profiling and expressed concern about any potential delays on patenting and national measurements legislation. On advice provided to me to date, I do not anticipate that those issues — that is, the patent issue and the national measurement legislation — will delay the introduction of full retail contestability from 1 January next. If there are any indications from subsequent advice that delays may arise, that would be a matter the government would draw to public attention because it would have serious implications. I reiterate: the advice to the government is that no delays are anticipated from 1 January next.

The Honourable Graeme Stoney asked me about water savings following an answer I gave to the house during question time today. He asked whether water savings could be identified for purposes other than the Snowy River. The particular responsibility with which I am charged is for environmental flows in the Snowy River, not for other purposes. Clearly they are the responsibility of the Minister for Environment and Conservation in the other place. Those are not matters on which I can respond to the honourable member, but I will refer his query to the responsible minister for her reply.

The Honourable Ian Cover requested the Minister for Transport to ensure that concessional benefits for rail travel are the same for the residents of Geelong as for residents of Melbourne. I will refer that matter to the minister.

The Honourable Philip Davis raised the matter of the Gippsland Basin aquifers and representations from Mr Bodman. Those matters have been the subject of consultation and discussions with my department and

advice to me of which I have informed the house on previous occasions. However, if there is an outstanding request for a deputation, I will follow the matter up.

Hon. M. R. THOMSON (Minister for Small Business) — The Honourable Roger Hallam raised the matter of the calculation of the 2.5 cents arising from petrol pricing that goes back into the federal government's pool of taxation. That percentage is a derivative of the excise increase and it is also indexed and inclusive of the GST. I am happy to provide the honourable member with the methodology of the calculation of that amount.

Hon. R. M. Hallam — Is it excise or GST?

Hon. M. R. THOMSON — There are component parts for all the rises that occur now. It is a bit of both. And I think it might be a conservative estimate.

Hon. R. M. Hallam — You mean you got it wrong at 2.5 cents?

Hon. M. R. THOMSON — No, I just believe it may be a conservative estimate, Mr Hallam.

The Honourable Andrea Coote referred to the attention of the Minister for Housing the case of a resident of the housing estate at 200 Dorcas Street who was attacked there by a gang of youths at 6.50 in the evening. She said that may not have been the first such attack and that the surveillance cameras were not working well. She sought some indication from the minister of when they may be made operable. I will pass that information on.

The Honourable Neil Lucas referred a matter to me as Minister for Consumer Affairs regarding pest control devices that change electromagnetic fields to dissuade pests from entering premises. We could all do with a few of those. I am not quite sure what information is available, but I will certainly inquire whether the department has any information on them and follow up on the matter.

The Honourable Gordon Rich-Phillips raised with me as Minister for Consumer Affairs the issue of an accountancy firm in his electorate sending out covering letters with taxation letters for pay-as-you-go clients — I assume it was for clients, although I am not sure. The company is attaching a pro forma letter to an Australian Taxation Office letter and charging $88 for the privilege of then sending that form back to the taxation office. We will certainly have a look at that and respond accordingly once the department has had a chance to investigate the matter. I thank Mr Rich-Phillips for providing the paperwork to enable us to follow it up immediately.

The Honourable Ken Smith raised with me as Minister for Consumer Affairs the question of the GST in relation to petrol excise and a flow-on to the state rather than the federal coffers. In my answer last night I referred to excise and the fact that we have sought a freeze on the indexation of the excise on fuel in the next round in order to provide at least some relief to motorists.

Hon. K. M. Smith — You are misleading the house.

Hon. M. R. THOMSON — I am certainly not misleading the house. What I said last night was that we have called for the federal government not to increase the excise under the index system, and we stand by that request. We have called for that and we are suggesting that it is in the best interests of motorists for that to occur.

The Honourable Bill Forwood asked about the 8 per cent limit on packaged liquor licences and referred to two press releases that were issued within days of each other. He sought to play semantics with the word 'until' in the first press release, pointing out that the second press release recommended that the 8 per cent limit be retained. I know that the Honourable Bill Forwood would like to get some joy from the 8 per cent decision, but the recommendation in the report is clearly stated, as is our intention as a government.

The honourable member is fully aware that the government undertook the review because of the requirements of national competition policy. The government welcomes the recommendations from the review and the consultation process, and it looks forward to the opposition supporting legislation to close the loophole.

Hon. J. M. MADDEN (Minister for Sport and Recreation) — Before responding to the matter raised by Mr Best about women and sport, I should firstly say that the performance of the Australian women at the Olympics was magnificent. I thank Mr Best for highlighting that fact.

I suppose some of the most prominent images from the two weeks of Olympic Games telecasts were provided by Roy Slaven and H. G. Nelson. Sometimes when I look at the Honourable Ron Best and the Honourable Ian Cover I cannot help but think that they are the opposition's answer to Roy and H. G., if only a poor man's version!

I also look across at the other side and wonder who may qualify as their mascot. There are a number of likely candidates.

Hon. R. A. Best — I am glad that on a very serious issue you can be so flippant!

Hon. J. M. MADDEN — I will return to the question because the topic has a number of substantial aspects that I want to talk about. Sometimes when you are about to give a long speech it is good to open with some lighthearted remarks!

There are a number of aspects of women's participation in sport about which the government is concerned. The funds from the football tipping competition relate to the topping up of the programs we have already set in place. But the areas of concern include sponsorship for women's sport, which is not easy to obtain at the elite level. I hope the Olympic Games result will assist women's sport in obtaining sponsorship. Shortly I will be releasing an information bulletin on sponsorship in sport, which will be forwarded to the relevant sporting organisations so that they may address their sponsorship needs.

However, there are other issues relating to women's struggle to get consistent, long-term and supportive media coverage of their sports. The government will therefore be running a media skills workshop in November, which will examine the representation of women in sport and will seek to highlight when, how and why the media can be used to promote women's sport. It will also concentrate on developing the media skills necessary to project a positive and professional image for women's sport.

There are also issues relating to the management of and leadership in women's sport. A number of opportunities are available to increase the number of women involved in decision-making and leadership roles in the industry, and to that end Sport and Recreation Victoria will be implementing the Mentor as Anything and women's coaching programs this year.

Physical education is often the first contact young girls have with sport. To encourage their participation in sport and their pursuit of active lifestyles this year the government ran a series of Active Girls breakfasts, which I have mentioned in the house. Over 700 young ladies attended the Melbourne breakfast, and 500 schoolgirls from the regional areas of Morwell, Geelong, Shepparton, Ballarat and Bendigo were also in attendance.

I recently worked cooperatively with my ministerial colleague in the other place the Minister for Women's Affairs to conduct community consultation on women in sport. The government also committed substantial funds to netball, which has one of the highest female sporting participation rates. This year funding will go to sports development programs for netballers — the young netballer rural grants program — and coaching and umpiring development programs. I therefore highlight to Mr Best the government's involvement with and funding for women's sport. The funds from football tipping will be a top-up to the substantial funds the government has already committed to women's sport.

The Honourable Sang Nguyen asked a question about the incidence of crime in the Braybrook area. I will be happy to raise that issue with the Minister for Police and Emergency Services in the other place.

The Honourable Andrew Brideson referred to the Waverley Emergency Adolescent Care program, which addresses substance abuse. I will be happy to have the Office for Youth contact Mrs Maureen Buck and her association — even though she is a relation of Crackers, which of course should not be a handicap to her — to arrange for either me or, depending on schedules, an officer from my department, to meet with them.

The Honourable Cameron Boardman asked me, as Minister for Youth Affairs, a question relating to youth. I appreciate his continued interest in the portfolio and the definition of youth. However, I point out that all the youth programs are directed to the specific needs of youth, not all youth in particular. If Mr Boardman would like more information on those questions, I refer him to the ministerial statement I made in this house.

Honourable members interjecting.

Hon. J. M. MADDEN — I am not sure whether he was in attendance on that occasion. However, because he obviously takes so much interest, I will point out a few issues. My role is to advocate on behalf of 80 youth programs across government. It also involves the provision of a specific small number of programs I have mentioned in the house previously during a number of debates. I also assist with the communication mechanisms of government both for and to young people.

Motion agreed to.

House adjourned 11.34 p.m.