

LEGISLATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

Wednesday 18 September 2002

JOINT SITTING: PARLIAMENTARY SEMINAR ON REFORM OF THE LAW OF NEGLIGENCE

The two Houses met in the Legislative Assembly Chamber at 10.05 a.m. for a parliamentary seminar on reform of the law of negligence.

Mr SPEAKER: Order! I remind honourable members that according to resolutions of both Houses there will be four speakers this morning. The first speaker will be Professor Peter Cane from the Australian National University Research School of Social Science. He will discuss the development of the law of negligence. The second speaker will be Mr Michael Gill, a partner with Phillips Fox, who is involved in the insurance industry. The third speaker will be Mr Bret Walker, President of the New South Wales Bar Council, who, hopefully, will become a father some time today. The fourth speaker will be Mr Geoff Atkins, who works in general insurance, specialising in long-tail liabilities. Members will have an opportunity to ask questions at approximately 10.55 a.m. after the first two speakers, at 11.45 a.m. after the third speaker, and at 12.25 p.m. after the fourth speaker.

The joint sitting will be conducted under the standing orders of the Legislative Assembly and I would appreciate it if there were no points of order, frivolous interjections or untoward behaviour during the special sitting. The Attorney General will now introduce the speakers.

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts): Mr Speaker, honourable members and distinguished guests: I have pleasure in welcoming you here today to this historic joint sitting of the Parliament. The sitting is significant for a number of reasons. Very soon the Government will introduce into the Parliament the Civil Liability Amendment (Personal Responsibility) Bill 2002. As you know, the Government released the bill in the form of a consultation draft, together with a position paper, just over two weeks ago. The bill is stage two of the Government's tort law reform process. Stage one was the Civil Liability Act 2002, which honourable members will recall was enacted in the budget session. The bill is of great significance both as a law reform initiative and as a response to the public liability crisis.

The bill comprises the most significant reforms in the law of torts in the past 70 years. However, the purpose of this seminar is not to debate the bill or to expound its merits. The purpose of this seminar is to set the context for the bill, by examining the development of the law of negligence, current legal developments, and the financial and actuarial issues underpinning the need for reform. There has, of course, been extensive community debate about premium increases, and their effect, especially on the non-profit sector. Concerns have been expressed about judicial decisions, and about whether the law of torts is in line with the expectations of the community. The causes of the premium increases appear to relate to a range of factors, including the rising number of and costs of claims, cyclical economic factors, and the collapse of the insurance company, HIH. Premiums declined in real terms during the 1990s because there were more insurers, offering greater capacity, and a better insurance market.

Some commentators say, for example, that HIH priced public liability insurance below the market, and this created competition that has diminished following that company's collapse. Premiums have increased because there are fewer insurers. A further factor in insurance pricing increases is likely to be the introduction of new prudential standards by the Australian Prudential Regulation Authority [APRA]. These standards require insurers to have greater capital reserves and to get in premiums to cover a higher level of risk than before. It is commendable to see APRA doing its job and applying robust standards to the insurance sector. However, these new standards are making public liability insurance less attractive for insurers and more expensive for consumers. Apart from those factors, it seems incontrovertible that the number and costs of claims have increased. The JP Morgan 2002 interim insurance survey, also known as the Deloitte-Trowbridge survey, of 25 February 2002, said that the main reason for insurers' withdrawal from the market is that the business has been unprofitable.

The report notes that the business has been historically underpriced and that there has been an increase in both the size and frequency of claims. Other sources indicate that HIH had a market share of about 40 per

cent of public liability policies and that other insurers do not want all of that business. According to the Australian Prudential Regulation Authority, the number of liability claims has increased by around 50 per cent in the past three years. The Government has no intention of preventing people who have genuine claims from obtaining just compensation. However, tort law reform can play a role in reducing the number of trivial or unmeritorious claims, and encouraging the community to take responsibility for its own actions.

The Government has no intention of preventing people who have genuine claims from obtaining just compensation. However, tort law reform can play a role in reducing the number of trivial or unmeritorious claims, and encouraging the community to take responsibility for its own actions. Tort law reform can also restore the balance between personal responsibility and the responsibility of society as a whole to compensate people for misadventure.

The factors which I have described and which are driving public liability insurance increases are national issues. The Government has made that point repeatedly. National leadership is essential on this issue. The Government recognised back in 2001 that the Commonwealth Government had to act to address the causes of the public liability insurance crisis and develop solutions, and took the matter up with the Commonwealth. I am pleased to report that the prescience shown by the State Government in agitating for action on this issue has informed the development of national solutions. I will mention the decisions that have been taken at a national level, because they form an integral part of the context of the Government's reform package.

At the request of the State and Commonwealth Treasurers, Trowbridge Consulting prepared a detailed report on reform options. The report concluded that tort law reform was a necessary response to the insurance crisis. Many of the proposals recommended by Trowbridge were included in the Civil Liability Bill 2002 and others will be included in the Civil Liability Amendment (Personal Responsibility) Bill 2002. Treasurers also agreed on a number of measures at a Commonwealth level to address the crisis. These measures include the monitoring of market developments by the Australian Competition and Consumer Commission, and requiring insurers to submit claims data to the Australian Prudential Regulation Authority [APRA] for analysis and publication.

The Commonwealth has also introduced legislation to provide tax relief to people who agree to structured settlements, and amendments to the Trade Practices Act to allow people who participate in recreational activities to waive their right to sue in some circumstances. However, the action of the Commonwealth Government is not enough. The State Government has recognised that law reform is integral to addressing the tort law reform problem. The Government was the first to act in Australia and its lead has been followed by a number of other jurisdictions. The Civil Liability Act introduced measures to place damages awards in public liability claims on a similar footing to awards made for workers compensation and motor accidents claims, and to contain legal costs. The Civil Liability Amendment (Personal Responsibility) Bill will adopt a broader, principled approach to tort law reform.

Honourable members and distinguished guests are no doubt aware that the Expert Panel on Negligence has just released the first of its reports on the law of negligence. I am pleased to say that the draft bill reflects in part the recommendations of the panel, as well as including other, fundamental reforms. As I have already indicated, there will be an opportunity to fully debate the bill in the near future. I will now briefly outline its provisions. The draft bill circumscribes the ambit of the concept of reasonable foreseeability. The bill also provides that a court cannot rely solely on hindsight, evidence of subsequent remedial action, or the mere fact that a risk was easily avoidable in determining liability. The bill excludes liability in relation to risks that a reasonable person would consider to be an inherent or obvious risk. The bill provides that there is no liability for injury, death or property damage resulting from a risk of a recreational activity in respect of which a risk warning has been given. The bill also allows a participant in a recreational activity to be able to waive the requirement for services to be provided with due care and skill. I have already referred to the proposed amendment of the Commonwealth Trade Practices Act 1974 in that respect.

Honourable members are aware that for some time concerns have been expressed about the standard of care required of professionals by the courts. The draft bill provides for an additional defence to alleged professional negligence if the professional acted in a manner that was widely accepted in Australia by peer professional opinion as competent professional practice. However, the bill preserves the general law duty of a professional to advise, inform or warn about any risks in the provision of services such as health care. The bill provides for proportionate liability to be introduced for claims for economic loss or property damage, but not in personal injury claims. This reform will be of great significance to professional service providers because it will ensure that they will be liable only to the extent of their contribution to the loss.

The bill includes a number of measures to protect public authorities. The bill protects good Samaritans who come to the assistance of a person in danger and provides that there is no liability for good faith actions of volunteers. It seeks to limit recovery for nervous shock, by providing that the only people who can recover for nervous shock are victims of or others present at an accident, or a family member of a victim. The bill will protect a defendant who apologises for an injury. It also supports structured settlements. The reforms in the bill apply in general to claims in tort and contract and both personal injury and economic loss claims. However, the proposed amendments do not generally apply to civil liability in respect of intentional criminal acts, dust diseases claims, motor accidents and workers compensation.

As I have already mentioned, we are here today not to debate the bill, but to hear from experts about the broader legal and economic context that has informed the bill. Our first speaker will be Professor Peter Cane, who has been Professor of Law in the Research School of Social Sciences at the Australian National University since 1997. For 20 years before that he taught at Corpus Christi College, Oxford, being successively a lecturer, reader and professor. His main interests lie in the law of obligations, especially tort law, and in public law, especially administrative law. He is the author of a number of texts, numerous articles, case notes and book reviews. He will discuss the foundations and the development of the law of negligence. The next speaker will be Mr Michael Gill. There will be time for questions for Professor Cane and Mr Gill at the conclusion of Mr Gill's presentation. I now welcome Professor Cane to the podium.

Professor CANE: It is a great honour to be here to address such an important group of people on such an important topic. I should say before I start that, as some of you may know, I am a member of the Commonwealth Treasury Expert Panel reviewing the law of negligence, but I am here in my personal capacity, not as a member of the panel. The opinions I express are mine, not those of the panel or members of the panel. The topic today is the law of negligence. What is the law of negligence about? Briefly, it is about compensating people for harm caused by failure to take precautions against risks, and a failure that is in breach of a duty to take care. Where do duties of care come from? Some duties of care come from situations where people are in a relationship with one another—and here we are thinking particularly of the law of contracts. The law of contracts creates duties of care. There can also be duties of care between strangers who have had no pre-existing relationship with one another. The most obvious example is in a road accident where two strangers collide on the road, and there is a duty of care in those situations as well.

Who has this duty of care? Everyone, or almost everyone except, you guessed it, judges and barristers, who do not have a duty of care, but other people do. Everyone has a duty of care. They have a duty of care not only to look to the safety of others but also to take care of their own safety. There is a duty to others and a duty to oneself to take care. Which risks are we under a duty of care to take precautions against? First, people are only under a duty to take care against risks that they knew about or ought to have known about. In the law these are called foreseeable risks. Foreseeable risks are risks that you ought to have known about. Which risks ought a person to have known about? The law says that it is those risks that the reasonable person knows about. Who is the reasonable person? The English writer of legal comedy, A.P. Herbert, once described the reasonable person as that repulsive paragon of virtue. He described the reasonable person as the person who never does anything wrong. In fact, in law the idea of the reasonable person provides a sort of moral and social standard of decent, careful behaviour.

There is no such person as the reasonable person. The reasonable person reflects, if you like, what are seen by the law to be the community standards of decent, careful behaviour. You have to take precautions against foreseeable risks, but not all the foreseeable risks. It was decided 40 years ago, and reaffirmed by the High Court of Australia about 20 years ago, that you do not have to take precautions against risks that are far-fetched or fanciful. You have to take precautions against foreseeable risks, but not those that can be described as far-fetched or fanciful. Which precautions do you have to take against reasonable risks? Once again, we get the reasonable person, the precautions that the reasonable person would take. What are the precautions that the reasonable person would take? Here the law uses something that can loosely be called the negligence calculus. It takes account of four factors in determining which risks a person ought to take precautions against: the probability of the risk, the seriousness of the risk, the cost or burden of taking precautions against the risk, and the social utility of the risk-creating activity. All of those factors are put into a pot and turned around, and the answer comes out as to whether the risk is one that the reasonable person would have taken precautions against.

However, you are only liable in the law of negligence if, by your negligence, you cause someone harm. The law recognises that both words and actions can cause harm. A person can be liable in the law of negligence for harm caused by statements or for harm caused by the person's actions or omissions. That is important—actions or omissions—although the law draws a distinction between causing harm on the one hand and failing to

prevent harm occurring on the other hand. A good illustration of that is a recent High Court case about a woman who was mugged in the car park of a shopping mall. The question in that case was whether the proprietor or the owner of the shopping mall ought to have installed better lighting and better security in the car park. The allegation was not that the owner of the shopping mall had caused injury to the plaintiff, but simply that the owner of the shopping mall had failed to prevent injury being caused to the plaintiff. By and large the law is less willing to impose liability for failure to prevent harm occurring. In that case the High Court refused to impose liability for the harm suffered.

What harm? The law recognises all sorts of harm: bodily injury, mental harm, property damage and financial harm. Sometimes financial harm is suffered as a result of personal injury or property damage, for example, when you suffer loss of income as a result of being injured in a road accident. Sometimes financial loss stands by itself, what the law calls a pure financial loss. Another very important distinction in the law between types of harm is that between what we might call accidents on the one hand and illnesses on the other. If you suffer harm as a result of someone else's negligence, in theory it does not matter whether you suffer that harm in an accident or whether it is the result of an illness, for example a dust disease that you suffer as a result of your work. But in practice the law of torts provides much more compensation to people who suffer injury in accidents than it does to people who suffer illness as a result of negligence, and this has been called the accident bias in tort law and personal injury law. It is much easier to recover compensation for a traumatic accident than for an illness, even if the illness were caused by negligence.

Compensating injured people is the main aim of negligence law. What negligence law says about compensation is that the compensation must be full. Here negligence law needs to be contrasted with other compensation systems, such as social security and insurance. Neither social security nor insurance adopts the full compensation principle that tort law adopts. Tort law says you have to be compensated for all your losses in full, whereas under social security systems and insurance systems there are often thresholds on reliability and caps on reliability. There are two main types of harm that the law of negligence recognises. Firstly, economic loss and the main types of economic loss, in personal injury cases anyway, are loss of income and the cost of care. Secondly, it recognises non-economic loss. Pain and suffering and loss of enjoyment of life are the two main types of non-economic loss. Besides compensating people, negligence law is also intended to give people incentives to be careful, incentives for safety. Compensation on the one hand and deterrents on the other are said to be the two main justifications for imposing legal liability to take care.

That is basically what the law of negligence is about. I shall now provide a thumbnail history of the law of negligence. Here I am going to survey over 70 years of legal developments. It will be a whirlwind tour indeed. The modern law of negligence can be traced back to the famous decision of *Donohue v Stevenson*, a decision of the English House of Lords in 1932. That decision, as some of you may know, involved, as it was alleged, a bottle of ginger beer that had the remains of a snail in it. There are two important things to note about *Donohue v Stevenson*, which really kicked off the law of negligence. The first is that *Donohue v Stevenson* was concerned with personal injury, with bodily harm. It was not concerned with mental harm and it was not concerned with economic loss. The second is that it was concerned with causing harm, not with failing to prevent it occurring. The allegation was that the manufacturer of the ginger beer had negligently allowed the remains of a snail to be in the ginger beer bottle. So, it was a case of causing harm, not failing to prevent harm, and it was a case of causing bodily harm.

We now pass forward 30 years. The next most important decision in the modern law of negligence, also a decision of the English House of Lords, was a case called *Hedley Byrne and Co. Ltd v Heller and Partners Ltd*. This case is important for two reasons. First, it established the proposition that I mentioned earlier that you can recover for negligently caused harm as a result of statements as opposed to actions and, secondly, it established the proposition that you could recover for negligently caused pure economic loss, that is financial loss, that was not a consequence of or associated with personal injury or damage to your property.

The third case I want to mention is also an English House of Lords case. The reason I mention it is that it has been pivotal in the development of the modern law of negligence. This is the case of *Anns v Merton London Borough Council*. There are three reasons that this case is important in the history of the law of negligence. First, it was one of the first cases in which a public authority was sued for negligence. More importantly, it is a case in which a public authority, a regulator in effect, was sued for failing to prevent harm occurring. *Anns v Merton* was a case in which the local authority that was being sued had not caused the financial harm to the plaintiff but it was alleged it had simply failed to prevent harm occurring. In other words, it failed to control a third party who caused the harm to the plaintiff.

The third important thing about *Anns v Merton Borough Council* is that it established that there could be liability for the exercise or failure to exercise a statutory power as opposed to liability for breach of a

statutory duty. Those are the three things that make this case important: it established the possibility of suing public regulators for negligence, suing a public regulator for failure to prevent harm occurring and suing the public regulator for the way it exercised a statutory power rather than breach of a statutory duty.

I will now take up the history with some Australian High Court cases. The first case I want to mention goes back to the early 1980s. *Sutherland Shire Council v Hayman* is important because it established a fundamental principle in the law of negligence, that is, that you must take reasonable care for your own safety as well as expecting other people to take care for your safety. In *Sutherland Shire Council v Hayman* it was said that you must in particular take care for your safety when it comes to protecting your economic interests as opposed to your bodily interests. If you want protection for your economic interests, you should make sure that you take reasonable steps to protect your own interests.

The 1980s and 1990s in Australia—which we might very loosely, although it is a bit unfair, call the period of the Mason court—was a period of expansion in the law of negligence. The expansion covered two areas: the area of the assessment of damages and the area of liability. In relation to damages, new heads of damages, new grounds for recovering damages, were recognised in the 1980s. One was liability for gratuitous care that was provided to injured persons and the second was liability for depriving someone of the ability to provide gratuitous services—domestic care services, for example. These heads of damages recognised the fact that many people do unpaid work and recognised the importance of unpaid work in the economy, particularly unpaid work done by women. Those two heads of damages came to fruition in the 1980s.

Secondly, the court began to recognise that a plaintiff could recover damages for the cost of managing the damages he received—the cost of management expenses, of paying a financial adviser, for example. Another very important area that was developed in the 1980s was that the courts recognised that plaintiffs were entitled to receive interest on the damages, to take account of the fact that the accident may have occurred many years before they received the damages. So they were entitled to interest on those damages. The other important point to note is that in the 1980s the court also reduced what is called the discount rate.

The discount rate is the rate used to determine how much you should get as a lump sum now to take account of the fact that you will be using the damages for a long period into the future. By reducing the discount rate you increase the amount of damages plaintiffs get. In the mid-1980s the High Court said that the discount rate to be used should be 3 per cent, whereas prior to that many courts had used a discount rate of 5 per cent. By reducing the discount rate you increase the total amount of damages. In the area of liability I will give three examples of the way the High Court, in the 1980s and 1990s, is perceived to have expanded liability for negligence.

One is the famous, or perhaps infamous, case of *Nagle v Rottnest Island Authority*, in which it was held that a local authority was liable for a swimmer who had dived into shallow water that was not marked as being shallow. The local authority was held liable for failure to warn that the water was shallow. The plaintiff suffered paraplegia as a result of diving into the water. A second important illustration of what many see as the expansion of tort liability in the 1980s is a case called *Bryan v Maloney*, in which it was held that if a builder builds a house negligently, the house is defective, and the owner sells it to you, the second purchaser, you can recover against the builder even though you did not have a contract with the builder.

The owner of the house had a contract with the builder, you did not, but if the builder performs that contract negligently, you, as the subsequent purchaser of the house, can recover damages because the house is defective. A third case that illustrates the trend is *Hill v Van Earp*, in which it was held that a solicitor who negligently drafts a will can be liable to a beneficiary under that will if the beneficiary, because of negligence of the solicitor, is deprived of his or her legacy under the will. That period of the 1980s and 1990s in Australia, the Mason court period, was seen by many as a period of expansion.

The second period, which started a few years ago, we might describe as the Gleeson court. In the past three or four years the trend of expansion of law of negligence in the High Court has certainly been reversed. A number of examples could be cited here. In the case of *Agar v Hyde* the High Court held that there could be no liability in negligence for the way that the rules of dangerous sports were drafted. In *Woods v Multisport Holdings Pty Ltd* it was held that there was no liability for failure to provide goggles for people playing indoor cricket.

In the *Modbury* case, which is the shopping centre case I mentioned, the High Court held that the shopping centre owner was not liable for failure to provide greater security precautions in the car park. Most

recently in the case of *Tame v New South Wales*, a decision handed down only a couple of weeks ago, the High Court held that you cannot recover for mental harm, there can be no liability for mental harm, unless the reasonable person would have foreseen that a person of normal fortitude would suffer mental harm. The notion of a person of normal fortitude has been reinforced in the Australian law concerning liability for mental harm.

The story of the 1980s and 1990s in Australia in relation to personal injury law shows the importance of legal culture as a determinant of liability. Legal rules are always going to give courts a lot of discretion, a lot of leeway, in making their decisions—a leeway to be generous to plaintiffs if they wish, on the one hand, or a leeway to be considerate to defendants, if they want to, on the other hand. There is no way that rules of law can remove from courts those leeways of choice. How those leeways of choice are exercised depends crucially on the current legal and social culture, and the current legal and social culture in Australia has changed very considerably in the past 20 years, as can be seen in the dramatic change that has come about in the High Court in the chances of plaintiffs in personal injury cases winning before the High Court.

What is wrong with the law of negligence? In the 1960s and 1970s people developed a very strong critique of the law of negligence. I only have time to mention some of the most important criticisms of the law of negligence. The first criticism of the law of negligence is that very few disabled people are entitled to legal compensation. Most disabled people are dependent on the social security system. Very few disabled people get compensation from the personal injury system.

Secondly, very few people who are entitled in theory to legal compensation for personal injury or death get it. Thirdly, the pattern of coverage of personal injury law is very uneven. For example, the vast majority of successful court claims arise out of either road accidents or industrial accidents. In fact, the largest single group of accidents are accidents in the home, but very few accidents in the home give rise to any legal liability at all. As I have already said, very few cases of negligently caused illness ever in practice give rise to legal liability.

Another criticism that was made rests on the fact that most legal claims for personal injury are settled out of court. Only the tiniest proportion ever get into a court. What is said about that is that the settlement process is a process of bargaining about the law rather than a process of applying the law. So it is dependent, for example, on inequality of bargaining power between the parties. The next criticism that is made is that the tort system is very expensive to administer. In fact, the administrative costs of the tort system are, on various calculations, between two and three times as great as the administrative costs of the social security system.

For a variety of reasons, the tort system is an extremely expensive system to administer. People also said that it was very slow. Delays are notorious in the tort system. Another problem with the tort system is that it treats the less seriously injured relatively much better than it treats the more seriously injured. For a variety of reasons I do not have time to go into, the less seriously injured do relatively much better out of the tort system than the more seriously injured. The next point is that the damages compensation in the tort system is assessed in a lump sum rather than as a series of periodical payments. For a variety of reasons, the lump sum damages system is very unsatisfactory.

Next, it is often said that the question of negligence in law is not whether the defendant was negligent but whether the plaintiff can prove that the defendant was negligent. This has given rise to the idea that negligence law is a lottery. Whether you recover tort damages does not depend on whether you are entitled to them or whether the defendant was negligent, but rather on whether you can prove the defendant was negligent, and there are many barriers to that. Then it was said that there is no necessary relationship between degree of carelessness and how much the plaintiff recovers. The plaintiff recovers full compensation no matter how careless or however minor the carelessness of the defendant was.

Finally it was said that negligence law is also ineffective as a deterrent. The fact that there is widespread liability insurance reduces the incentive effects provided by tort law. We know from a mass of empirical evidence gathered over the past 30 years that tort law is extremely ineffective in providing people with incentives for care. In the 1970s the preferred policy solution to these various problems that were identified with the tort of negligence was to replace negligence law with no-fault social security compensation systems. The only system in which this has been done is in New Zealand, where the Accident Compensation Scheme has been operating for over 25 years. Australia flirted with such a system.

Sir Owen Woodhouse, who was the initiator and architect of the New Zealand system, prepared a report in Australia. But political vicissitudes meant that the report was never put into effect. There are some limited no-fault road accident schemes in Australia, but by and large the tort system continues to exist in

Australia. One reason for that is that the idea that social security was a good way to go went out of fashion when social security became associated with dependency—what Margaret Thatcher famously called the nanny State. The pro-plaintiff culture of the 1980s and the 1990s might be seen as a reaction to the failure of attempts to replace negligence law with a no-fault tax-based system of compensation for personal injury. Ironically, however, the negligence system is now itself seen as having created a culture of dependency—the blame culture, it is often called—in which people are unwilling to take responsibility for the misfortunes in their lives and instead try to find someone else to hold responsible.

The corrective process is now under way. As I said, the Gleeson court is a very different court from the Mason court. This corrective process is taking the form of attempts to limit liability and damages for negligence. Unfortunately, in Australia this corrective process has coincided with major upheavals in the liability insurance industry. Many people believe that these upheavals have little or nothing to do with negligence law. But they have certainly provided much fuel for the fires of discontent about negligence law. Negligence law is a sort of barometer of community attitudes about personal responsibility and about who should bear the costs of injury, illness and financial misfortune.

My personal view is that the fundamental problem with negligence law is to be found not so much in the detailed legal rules about who is liable but in the phenomenon of the legalisation or juridification of social life. That is the belief that law can effectively and efficiently solve social problems. For me, the core insight of Marxist legal theories is as valid today as it ever was: The law is as much a reflection of our social life and values as it is formative of them. As with politicians, society gets the law it deserves. For me, it is a mistake to pin our hopes for a better world firmly on law and lawyers.

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts): Our next speaker is Mr Michael Gill. Mr Gill, the senior insurance partner at the firm of Phillips Fox in Sydney, will give a presentation on the present practice of law and negligence. Mr Gill has been a lawyer for over 30 years and has been involved in all aspects of insurance and reinsurance work. He is a former President of the Law Society of New South Wales and the Law Council of Australia. In his Law Society role he established the compulsory Solicitors Professional Indemnity Scheme and was chairman of the Solicitors Mutual Indemnity Fund from 1987 to 1994. He was also the inaugural chairman of the Motor Accidents Authority of New South Wales, a founding President of the Australian Law Association and Senior Vice-President of the International Insurance Law Association, and he has many other accomplishments. As I said earlier, there will be a time for questions of both Professor Cane and Mr Gill at the conclusion of Mr Gill's presentation.

Mr GILL: Mr Speaker, honourable members, I join Professor Cane in thanking you for this opportunity. I also thank the New South Wales Parliament for the activity it is now undertaking in this very important area. My presentation to you this morning will cover two parts. In the first instance I will briefly take you through a few examples of liability claims in recent years which are typical and demonstrate some of the challenges facing law reformers in this area. Most of the claims have just come out of the firm, one or two do not. During the second part of the presentation I will give you my own views about the issues that have given rise or contributed to this present crisis. I say my own views because they are based on the experiences that I have had as a defence lawyer, as well as on my broader experiences that come from the other roles that I have undertaken.

Some of these cases are interesting inasmuch as they have been settled on terms not to be disclosed. So I will give initials in these cases. R was aged 58 when she sued B, the occupier of a clothing warehouse, following an incident when a child, under the supervision of another of the store's customers, pulled out a chair from underneath her. She tried to sit down to try on some shoes. She had been sitting on the chair previously and had got up to look for shoes. When she came back to the chair, the parent of the child had placed an object on it, which was removed so she could sit down. R said B was negligent because it had provided a seat within its warehouse that could be moved. That was the sum total of the allegation. R abandoned the claim in return for B paying its own costs of \$2,500 about six weeks after the proceedings had commenced. These are not headline grabbing cases but they are what the current challenge is all about.

The second example is *Parsons v Randwick Municipal Council*. At about 12.45 a.m. on 25 October a couple of years ago 62-year-old Parsons tripped on part of a footpath which had subsided because of construction work. At the time Parsons had a blood alcohol reading of 0.268. He broke five ribs and fractured his skull. He sued the council, saying the council negligently failed to either warn of the subsidence or fix it. Parsons was a self-employed pharmacist and claimed loss of income at the rate of \$1,809 per week, including

superannuation, medication at \$4,668 per year and costs of a carer at \$2,466 per year. He made an offer to settle for \$480,000 in May and another one in a Calderbank letter. Both offers were inclusive of costs. The council accepted neither offer. The court found that the council did owe a duty of care but did not breach it because if Parsons had not been intoxicated he would have been able to see and avoid the subsidence. The costs payable by Parsons are yet to be assessed.

In the third example V, a 57-year-old, crossed George Street at 8.30 in the morning near the traffic lights at King Street while on her way to work. She had followed the same routine for many years of disembarking from a bus near the intersection of King Street and walking to a nearby fruit vendor away from the intersection. She then crossed the road illegally, winding her way through stationary traffic. She was struck on the right hip by the front left corner of a car driven by M, who had the traffic lights in his favour. To the police officers at the scene, she conceded that it was her fault. The arbitrator found no negligence on her part. The District Court judge found that M was negligent and discounted the damages by 20 per cent. The Court of Appeal agreed with the trial judge. The damages were \$343,000 and her agreed costs were \$175,000.

In the fourth example, in May 1999 at about midday R, a 62-year-old male, injured his knee and his back when he stepped from a bitumen road onto the paved footpath. He tripped over a 20-millimetre rise between the kerb and the footpath. He argued that the council, a public authority, was negligent in constructing the footpath paving with the 20-millimetre rise. He offered to accept \$50,000, inclusive of costs, for his claim. The case was fought; it was settled on the second day of the hearing. R abandoned his claim and he paid \$9,000 towards the council's total costs of \$14,400.

The next case involved a 14-month-old child accompanied by her aunt who entered a fast-food store at Manly at about four o'clock. The aunt asked one of the staff for a high chair and was told that none was available. She placed the child on a stool. The aunt was distracted by something and the child fell over. The staff administered first aid, and the aunt expressed gratitude. Litigation was then threatened by the child's parents on behalf of the child. That case is continuing. The next case involves a 40-year-old man walking with two friends on a grass verge beside a footpath. He tripped over a pit belonging to Telstra and suffered a knee injury.

He sued both the council and Telstra, saying they were both negligent in failing to construct the area so that there was no discrepancy in height between the grass and the pit lid. He was employed as the manager of a pawnbroking shop and claimed that he could not work for four weeks following the accident. At arbitration the arbitrator found in his favour and awarded damages of \$64,000, including \$35,000 for generals and others. The total amount was reduced by 15 per cent for contributory negligence. At the rehearing before the District Court the judge found that both defendants owed him a duty of care but they did not breach it.

The seventh example is *Lam v Soutter*. Lam was injured on the morning of 19 September when his car was involved in a head-on collision with Soutter's vehicle. He sought \$1 million in damages because of his failure to be able to complete a medical degree, allegedly as a result of the accident and the alleged onset of schizophrenia. He was convicted of dangerous driving in the Local Court. Liability was disputed. The judge found for Soutter after a nine-day hearing, two days of which addressed liability. The finding was based on evidence of witnesses that Lam's vehicle had strayed onto the wrong side of the road initially and that Soutter was trying to avoid the accident. Lam has appealed unsuccessfully. Lam cannot pay any amount towards Soutter's legal costs of \$125,000.

The last example is *Derrick v Cheung*. At nine o'clock on a Saturday morning 21-month-old Cheung went with his mother to visit a friend, strayed from the house and wandered onto Victoria Avenue, Chatswood. Derrick was driving at about 45 kilometres an hour—the speed limit was 60. He saw the child, braked and swerved but could not avoid hitting Cheung with the front left-hand corner of the car. The District Court found that Derrick was travelling too fast, given the possibility of a child coming onto the road, especially on a Saturday morning just before Christmas and close to a popular shopping area.

The Court of Appeal agreed with the District Court and observed that pedestrians sometimes act carelessly and drivers should be alert to this. The judges of the appeal court said that Derrick did not bear any moral responsibility, as distinct from legal responsibility, for what had occurred. The High Court found for Derrick, saying there was no negligence because he had acted with all reasonable care. The majority of the judges disapproved of the Court of Appeal's comment in seeking to distinguish between moral responsibility and legal responsibility.

By way of comment on that case, one thing we often overlook in compensation cases is that when there is a finding for a plaintiff, apart from the payment that goes to the plaintiff, whether it be from the defendant or

the defendant's insurer, the judgment necessarily involves a strong statement about the behaviour of another individual, and sometimes that is a great challenge for that individual to carry. In the second part of the presentation I shall deal with five topics which in my opinion are the principle causes and sources of the point we have now reached. The first is changes in society's attitudes.

The 1970s was a decade of significant legal change and law reform. It often focused on consumer and individual rights. The arrival of significant legal aid provided the vehicle for advice about and enforcement of those rights. Throughout this period there was little, if any, concern about individual responsibilities, and there was certainly no significant debate about the need to balance responsibilities with rights. The cost of compensation for the enforcement of rights was rarely ever the subject of significant social commentary or examination. Deep pockets were equated with bottomless pits.

The major legislative changes at the time rarely involved any analysis of the cost to the community and the more significant court decisions, particularly those based on amendments to the common law, were at the same time retrospective in their operation and given without any evidence of the cost to the community of the precedent. That is still the case. The Chief Justice of the High Court of Australia made reference to the fact that our society has become one of blaming and claiming. If the origins of that attitude were not in the 1970s it was certainly a decade which provided a great deal of wind for that particular sail. The advocates of legal-based rights and court enforcement of them rarely considered the ability of major targets to cope with the costs that were being imposed on them. Government, the public sector and insured defendants in particular were seen as fair targets.

Let me look at the expansion of legal opportunities. Professor Cane has covered this from the legal side in more detail. For example, although the course of action for negligent misstatement had its genesis in the court decisions of the 1960s—*Hedley Byrne* in the United Kingdom and *Evelt and MLC* out here—it was only in the 1970s that its full impact was experienced. There was a significant growth in negligence claims against professionals during this period and as the decade unfolded those claims were often brought in tort and contract with the consequent blow-out in limitation periods. They were also increasingly likely to involve third parties other than the clients who paid for the professionals' services. Towards the end of this decade the High Court opened what had been referred to as Pandora's box by allowing parties to sue for economic loss even though they had not suffered any underlying property damage. Other specific torts such as that for nervous shock also grew during this period.

Apart from liabilities, looking at damages is also interesting and again Professor Cane said something about this. The growth in levels of damage over the last 30 years has been quite extraordinary. To some extent this is due to future care costs for seriously injured people, the increasing ability of the medical profession to keep people alive longer, as well as technical advances improving quality of life. Future economic loss claims have also increased proportionately with increases in income.

On damages generally, some of you might recall the old case of *Jamieson v Warringah Shire Council*, which was one of the earlier cases involving somebody who jumped into shallow water. The events took place in 1972. I think the judgment was about 1979 or 1980. In 1972, when the occurrence occurred and when Warringah council would have had its insurance, our biggest personal injury verdict was about \$100,000. In 1980 it was the first case that went over \$1 million, and because the council had to claim under its 1972 policy, it levied ratepayers and the great brouhaha occurred. Since that \$1 million benchmark in 1980, by 1987 the appeal in the *Blake* case got to \$8 million and, of course, this year we are seeing verdicts of \$14 million, \$15 million and \$16 million.

New heads of damage for both the receipt of gratuitous services and the provision of gratuitous services have had significant impacts. Professor Cane has spoken of the development in *Griffith v Kerkemeyer*, which is now a significant feature of claims, and has been for most of the last 20 years. *Sullivan v Gordon* has arisen more recently and we are yet to see its full impact. Exemplary damages, which were once rarely awarded and only in very limited circumstances, are now awarded more frequently and for behaviour which 20 years ago would have been thought entirely inappropriate for the award.

It is interesting to note that many commentators consider that the most radical and generous jurisdiction in the world for awarding exemplary damages is New Zealand. This may have something to do with the fact that general damages were abolished there in the early 1970s and within 10 years the courts had found ways to give injured plaintiffs back something of what they had lost by that statute. Statutory interest for prejudgment damages was introduced in the 1970s. Thereafter the court interest rates were invariably several percentage

points above prevailing interest rates in the market. At times in the last 20 years it has been said that the best investment in town was an unresolved insurance claim solely because of the prospect that when the interest was applied, the plaintiff would have been better off than had he or she received damages promptly and invested the proceeds. I think the interest rate is still something like 9 per cent.

Looking at the other side, I thought it might assist the House if I said something of what has been happening in the relationship between insurance and tort law. The learned author of *Fleming: The Law of Torts*, one of the leading texts on the subject, speaks of the symbiotic relationship between casualty insurance on the one hand and tort law on the other. The one needs the other to exist. For much of my practising life leaders of the insurance industry somewhere in the world have expressed concern that developments in tort litigation would spell the end of casualty insurance. Frequently the true underwriting cost of risk was disguised by investment returns, particularly at times of high inflation or buoyant equity markets. In fact, the casualty insurance crisis has generated the present urgent rounds of tort law reform.

The relationship between the availability of casualty insurance and developments in tort law were for many years never referred to by judges, who are supposed to disregard the existence or possible existence of insurance in making their decisions. Towards the end of the 1980s, though, a couple of judges in New South Wales started to speak openly in their judgments of that relationship. In *Western Suburbs Hospital v Curry* in 1987 the then President of the New South Wales Court of Appeal, Mr Justice Kirby, said:

It is difficult to deny that statutory schemes of compulsory insurance and the widespread availability of the facility of private insurance have affected the attitude of the courts towards the development of this branch of the law. Although by conventional theory insurance must be ignored as irrelevant, its impact has inevitably been felt in the definition of the circumstances in which the consequences of an injury will be left with the injured party or shifted by means of negligence law in whole or in part to some other person or body upon whom it is considered more fair in the circumstances to cast the burden or some of it.

A couple of years later in *Lynch v Lynch* Mr Justice Clarke, formerly of the New South Wales Court of Appeal, said:

In the particular context of a compulsory insurance scheme and when claims against an uninsured defendant who renders gratuitous services could be regarded as quite exceptional for consideration of policy in favour of allowing the claim far outweigh those that tell in favour of rejecting it.

Mr Justice Kirby returned to the theme in *Johnson v Johnson* where he said:

Although it is not a field of compulsory insurance there seems little doubt that the widespread and prudent acquisition of insurance against occupiers liability has also affected the development of the common law in that context. Without such widespread insurance it is unlikely that the law would have developed to impose duties upon occupiers such as now exist.

Again, I take up Professor Cane's theme. By 1997, when Mr Justice Kirby was in the High Court his view was starting to sound a little bit different. In *Northern Sandblasting Pty Ltd v Harris* he said:

This court has no way of estimating the economic consequences of inventing a new category of special duty. Nevertheless, such consequences will clearly include the potential cost of imposing new duties inspection, of withdrawing some low cost accommodation from the market and of obtaining liability insurance to meet the relatively rare case that the insurance of a qualified contractor engaged by the landlord proved insufficient for the peculiar risk in a particular case.

However, we now know that by 1997 it was too late. The insurance industry has, at least since 1994, been underpricing these products and under pressure from the HIH group continued to do so for several years thereafter. All of the claims that are presently in the system have the benefit of the causes of action and damages regimes that I have previously referred to. The one good piece of news is that in a number of recent judgments it seems that some of the courts, in particular the High Court, are listening to what has been created and may be having second thoughts about some of these principles.

Rolling out new causes of action, new heads of damage, and applying the relationship between liability and the availability of insurance, the insurance industry was developing new types of policy wordings for new exposures, such as directors' and officers' liability, liability of school authorities, liability of voluntary associations, co-operatives and the like. Wordings were being expanded to pick up Trade Practices Act exposures, pollution and environment damage risk, and ultimately civil liability wordings were introduced because negligence wordings were seen to be too narrow for the new types of liability that people were facing.

To facilitate disputes and defences, legal expenses insurance was introduced and pushed, and of course legal aid and procedural amendments, such as class actions, were also playing their role. The growth of compulsory insurance schemes has almost certainly caused an increase in the number of claims. Although this is

yet another area where the data is much less than it should be, I have had some involvement in schemes for both lawyers and doctors. When we started the Law Society scheme in 1980 the total claims costs for that year were a little more than \$2 million and the notification rate was about eight per 100 principals in practice. Within seven years the total costs were \$11 million per year and the incident rate had reached 11.5 notifications per 100 principals. By 1993 the incident rate had reached 18.5 notifications per 100 principals.

For one of the major doctor schemes, the claims files opened in 1990 numbered 572. By 1995 they had reached 1,330. In 1990 one in 10 orthopaedic surgeons were sued. Four years later it had reached one in five. I do not suggest that anyone extrapolate from that limited data to draw general conclusions, but they are interesting figures and I think they underscore the need for more data across these broad range of activities. I think that data needs to be made available to all interested stakeholders. It is good to see that the Federal Government, as part of what is going on at the moment, is introducing some changes to ensure that the industry produces more data. Again within the expansion of legal opportunities, at both the Commonwealth and State level from the 1970s a number of major pieces of legislation have created significant individual rights, which have changed the landscape of negligence and civil liability claims.

The Trade Practices Act and the State Fair Trading Acts have given rise to numerous actions of the section 52 type for misleading and deceptive conduct. The legislation went well beyond what had previously been the law in respect of sale of goods remedies based on warranties. Statutory warranties have been created for the provision of services and we have had a brand new regime since the late seventies for products liability. At the same time the Trade Practices Act has made it much more difficult for liabilities to be limited, even though courts had beforehand demonstrated the challenges that defendants had in that regard.

Lawyers have also been playing their role; I would not come here and suggest otherwise. Changes in the legal profession are most relevant to an analysis of these developments. Legal practices are much more like businesses today and that in itself is not a bad thing. However, the balance must always be between professional duties and sensible business planning. The historical division in our profession between the barristers and solicitors has been supplemented by a division that did not exist 20 years ago. Even though there were lawyers who were more focused on plaintiff work and those who were more focused on defendant work, there was not the division around that difference that exists today. There always has been that division in the United States and there is no doubt that the more active plaintiff lawyers in Australia have benefited from their networking with their overseas colleagues and their use of the experiences of their overseas colleagues, particularly those in the United States.

Through the seventies and the eighties, the legal profession was encouraged to introduce specialisation, engage in advertising, and be more flexible in its charging, especially for plaintiffs. At the same time legal aid regimes had the benefit of legislation which provided significant restrictions on the liability of unsuccessful legally aided people in respect of adverse costs orders. On those occasions when the defendant won, it could have been at an enormous cost and next to nothing was recovered. Faced with either the knowledge that a plaintiff was likely to be without means or alternatively the benefit of legal aid protection, many defendants have simply rolled over rather than fight cases to the end. It was often a financially better off outcome for the defendant clients, including insurers, to agree to pay their own costs, or even to pay something to the plaintiff rather than incur all the costs of a successful but costly defence. I think that attitude is now changing.

Finally, the resolution of disputes is another area where we suffer for the lack of data. At the same time as developments in law and the practice of the courts was making life more and more attractive for those seeking to enforce their rights, the reform of court procedures and the introduction of alternative dispute resolution provided opportunities that did not exist before. Thirty years ago the most prominent plaintiffs law firms were gatekeepers on the system. They sifted out the unmeritorious claims because professional standards told them that they should not run those cases and in any event they did not have the time to do so. I am not aware of any useful data on the subject of the impact that faster court processing and alternative dispute resolution processing has had on the capacity of the system to handle more cases. If it has increased the capacity of the system to handle more cases, it may well be the case that the system is being asked to consider and adjudicate on claims which historically may never have been brought into the system in the first place.

I conclude by saying that the need for balance between a torts system that delivers fair compensation in circumstances of injury which society believes deserves compensation and a viable casualty insurance industry which can protect those liabilities at affordable premiums is a great challenge that sits before us all at the moment. I do not think it is a challenge that is going to be met quickly, but we have to make a start somewhere.

Mr SPEAKER: Are there any questions from members?

The Hon. Dr BRIAN PEZZUTTI: A reading of reports of the courts of appeal, appeals to the High Court, or appeals against the decisions of medical tribunals and others, shows that in many instances the judge got it dead wrong, or more than dead wrong. That costs a lot of money because the defendant or the applicant has to pay the costs of both parties, in both the original case in which the judge got it wrong and in the appeal. I have written to the Chief Justice on a number of occasions and asked him what he does to judges who get it wrong to make sure that their errors do not cost people a lot of money. I have been unsatisfied with the answer that the Chief Justice gave me. If you were the Chief Justice, what would you answer?

Mr GILL: It is an issue. I think that New South Wales, more than most jurisdictions that I am aware of, particularly with the Judicial Commission of New South Wales in place whose role in large part is educational, has faced up to this pretty well. The Australian Institute of Judicial Administration has also had a big brief on the education of judges. I suspect that, despite what you may have been given as a response from the Chief Justice, behind the scenes judges are very conscious of these sorts of outcomes. Let me share one little anecdote with you on that score. The Cambridge Credit case, which was an audit case involving the then firm of Fell and Starkey, at first instance, you might recall, saw Justice Rogers give a verdict of \$130 million or \$140 million, and that was about 17 years ago.

The Hon. Dr Brian Pezzutti: Almost \$190 million.

Mr GILL: It was a lot of money. It went to the Court of Appeal and was remitted to Justice Rogers. Alternately it was resolved for approximately \$20 million, which at the time, coincidentally, was the face value of its professional indemnity [PI] policy. I subsequently chaired the seminar where Justice Rogers spoke on that very topic. The then senior partner of one of the major accounting firms put this question to Justice Rogers: "Why should you not be liable in these circumstances for the increased PI premiums that I have had to pay as a result of what you have put me through over the past few years?" I think that reflects a lot of the frustrations that people have when they get caught up in these sorts of scenarios. I do not think that judges and others always understand the full ramifications of what these things do to people in terms of their ability to attract bright new staff to their practices, their ability to buy insurance, and all those sorts of things. The issues are very significant though they may be collateral to what is going on in the court system. Nevertheless, they are equally valid.

The Hon. PETER BREEN: I cannot help noting that I also once asked Justice Rogers whether he should be liable to HomeFund borrowers for his adverse decision in respect of them, and he was not too happy about that, either. My question is to Professor Cane. In the consultation draft of the bill as proposed by the Government, professionals will not be liable in negligence if they acted in a manner that is widely accepted in Australia by peer professional opinion. Do you agree that this provision will allow professionals to escape liability for negligence, even though they have acted unreasonably, simply because they can find a handful of professionals—other professionals—who support what they have done? Could you also comment on the recommendations of the Ipp report on this aspect of the legislation?

Professor CANE: I am not sure that is a question that I should answer in the terms in which it was put. All I can comment on is that there are certain differences between the proposal in the New South Wales draft bill and the recommendation that the Ipp review made, but the general thrust of the recommendations is the same. The intention, certainly of the recommendation in the Ipp review, was that the court should have the final capacity to decide whether a doctor has been negligent or not, but in the process of doing that the court should pay due attention to what doctors say about reasonable practices. The purpose of our recommendation—and I cannot speak for the New South Wales draft bill because I had nothing to do with it—was to strike a balance between making sure that proper views about matters of medical expertise were fed into the legal system while at the same time giving judges the capacity to feed into the legal system the views of society and community about the way that doctors should behave. So an attempt was made to strike a balance between expertise and social views. I do not think I can say more than that.

Mr MOSS (Canterbury—Parliamentary Secretary): My question is also directed to Professor Cane. Can you explain in more detail how the law deals with harm arising from inherent risks?

Professor CANE: The key to this issue is how you define an inherent risk. The way that I understand the term "inherent risk" and the way that the term was used in the report of the review panel is that it is a risk that cannot be removed by the exercise of reasonable care. If you define inherent risks in that way there can be no liability for inherent risks because they cannot be removed by the exercise of reasonable care. Therefore, it makes no sense to pass a provision saying that you cannot be liable for an inherent risk because part of the definition of an inherent risk is that it is a risk that cannot be removed by the exercise of reasonable care so there is no liability for it anyway. Not everyone would necessarily adopt that definition of inherent risk, but that is my understanding of what it is.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My background is in preventative health and risk assessment and management. The criticisms of tort are that there is no data, there is poor prevention and it is very expensive in terms of costs relative to benefits paid. Given that the four speakers before us today are either tort lawyers or insurance people, can they tell us whether there is any alternative way of maximising prevention and data collection and deriving more benefit per dollar of premium paid rather than continuing the tort law system, which it seems we are being asked to tinker with?

Mr GILL: The answer is yes. If we did a comparative exercise worldwide of what applies in a broad range of countries we could look at countries such as New Zealand, which has more of a no-fault system in the personal injuries area but tort still applies broadly for property damage, economic loss and those sorts of things. As I indicated, even in the personal injuries area notions of fault are creeping back around claims that pick up exemplary damages. Without taking up a lot of time today, there are several jurisdictions in Europe and other places that approach this somewhat differently. Unfortunately, our starting point is what we have. I would not adopt the word "tinkering", which you used. However, for as long as I have been practising we have seen changes and developments both within parliaments and within the court system. Historically, they have headed in the same direction for a long time.

As Professor Cane said, in recent times in the High Court they seem to have tracked back the other way. I think the parliaments of Australia have now embarked on a process of looking very carefully at areas that should be rolled back by statute. The answer to your question is yes. Are they better? Far be it from me to say. I do not know how many seminars I have attended about the system in New Zealand. At every seminar there are probably four experts, two of whom say it has worked brilliantly and two of whom say it has been a terrible sell-out by the Government of individual rights. I will not suggest to you what the correct answer is because I am not well placed to do so.

Professor CANE: If you were to ask me how we could get to point B, my response would be that I would not start from where we are at. My view is that if you were trying to construct a fair and efficient compensation system for dealing with disability you would not start with the tort system. If you were trying to develop a fair, efficient and effective system of risk management you would not start with the tort system. So you must ask yourself: What is good about the tort system? I suppose the traditional answer is that the tort system embodies social views about personal responsibility. If you think it is important to have a mechanism that affirms and reaffirms social views about personal responsibility, you might be prepared to have the tort system—with all its inefficiencies, costs and associated disadvantages—for the advantage of affirming and reaffirming principles of personal responsibility.

Mr ANDERSON (Londonderry): Has the law of negligence in Australia gone further than the law of negligence in the United Kingdom, for instance?

Professor CANE: I am not sure what you mean when you say "gone further". Do you mean in the direction of compensating plaintiffs?

Mr ANDERSON: Yes.

Professor CANE: I think probably there is very little to choose from in general terms. You could find some areas where English law and Australian law would differ and in some respects would be more advantageous to plaintiffs and in other respects more advantageous to defendants. However, on the whole, I do not think there are any significant differences. The law of tort developed very similarly in the common law world in the 1980s and 1990s. I think the social trends reflected in personal injury law are common throughout much of the western world. As I said in my presentation, I think law is as much a reflection of society as it is a formative force in society, and I think negligence law throughout the common law world waxes and wanes with social attitudes towards personal responsibility.

Mr COLLIER (Miranda): When courts are adjudicating matters of damages some commentators see them as dispensing social justice rather than deciding legal questions. What is your attitude about that issue?

Professor CANE: My view is that the dichotomy between social justice and legal questions is false and that deciding issues of law is about justice, both social and personal. Therefore, I do not think you can decide disputed legal issues without resolving issues of social justice.

Mr GILL: I would like to address the previous question from a slightly different perspective. It comes back to one of the gaps in our data. About 17 years ago one of the international actuarial firms embarked on a

very interesting examination, country by country, of the cost of compensation systems as a percentage of a country's gross domestic product in order to bring it back to some sort of benchmark. They looked at countries ranging from the United States of America to South American countries, Australia, New Zealand and so on. My best recollection is that Australia ranked twelfth in that analysis and the United Kingdom ranked fifth. I think that study was conducted in 1987 and I am not aware of any that have been done since then. It was a Tillinghast study. This is one of the areas where I think we lack information.

As to the last question, I think the answer lies to some degree in the quotes that I read by Justices Clarke and Kirby from the late 1980s and 1990s. The judges have said that, if it were not for the existence of insurance, this regime of law would never have been expanded to the point that it has been expanded. In other words, if individuals like you and I had to draw a cheque at the end of the exercise, they would not have gone as far as they have.

Reverend the Hon. FRED NILE: The use of waivers for recreational activities was mentioned earlier. Would that survive a legal challenge by aggressive plaintiff lawyers and could it be expanded to areas other than recreation? I wonder whether Anzac Day marches are considered to be recreational pursuits.

Mr GILL: That is a fair question. All legislation will ultimately have to survive the test of the courts. It will be attacked and examined closely by those who have to advocate strongly on behalf of their clients—plaintiffs. I cannot say at the moment what the outcome of the legislation is likely to be but you can rest assured that it will be examined very carefully. It can be expanded more broadly. Those sorts of disclaimer clauses were more effective 30 years ago. Part of the rollback, through the Trade Practices Act and general court attitudes, has made them less effective.

Ms SALIBA (Illawarra): Do you think that the law of negligence should be left to common law, or should it be codified by the Parliament?

Professor CANE: I think the devil there is in the word "codified". If you take codification to mean a comprehensive statement of the law of negligence, I think the answer is, no, one should not codify the law of negligence. But the law of negligence, as it exists at the moment, is a complex patchwork of common law and statutory provisions. This has been the case for very many years, since the nineteenth century. The law probably will go on being a patchwork of statutory provisions and common law. Even if we have statutory provisions, they fall to interpretation and application by the courts. So a penumbra of common law rules develops around the statute. I think in this area of the law, as in all others, law-making is not necessarily a co-operative enterprise but a co-ordinated enterprise between courts and legislatures.

Mr GILL: I would make just two quick comments, without becoming contentious, I hope. Codified by whom? This country has a large number of parliaments which at the moment are all doing things that look remarkably similar but are not the same. I think society, the system, the courts and the legal profession will be far better served, as will the clients, if we can come up with one system. Whether it is a codified system is another issue, and I come to that now. In 1984, after about five years of careful examination by the Australian Law Reform Commission, we partially codified the law as it applies to the interpretation of insurance contracts. Prior to that time it was largely the common law that applied to the interpretation of insurance contracts. The work of the Australian Law Reform Commission was a very good exercise. But I would have to say that since that Act became law on 1 January 1988 we have seen a dramatic increase in the number of disputes around the interpretation of insurance policies based on the sections of that Act.

Mr BARR (Manly): My question is on the issue of foreseeability. Damages have to be foreseeable. It seems to me that over the years the courts have taken an expansive view of what is foreseeable. That may be the nub of the problem. I wonder if our guests could comment on that.

Mr GILL: I will answer the question from the perspective of a practitioner. I have spoken to a few others about this, including a couple of senior members of the Bar who are on their feet in court most days in these cases. Rarely does it come up as an issue, because it is just such an easy test to pass. I think that is now clearly acknowledged by the High Court. There have been two recent decisions. Justice McHugh, I think, has said as much as that the High Court itself will have to re-examine where it has taken the common law in this area. The suggestion clearly is that there has to be a common law rollback, whatever the position is with legislation. None of the legislation that I have seen so far actually produces a new test.

Professor CANE: I think the problem, to some extent, is with the notion of foreseeability and the way it is used in the law. Foreseeability is a negative condition of liability. You cannot be liable if you ought not to

have foreseen the risk. But, by itself, it does not tell you which risks you ought to be liable for. That is, to some extent, a question of probability. The High Court has said that you cannot be liable for far-fetched or fanciful risks. Some people would say that we should put that precondition higher, and use some formula that indicates to courts that the probability of the risk has to be rather higher than that before one can be held liable. So it is very important to distinguish between foreseeability and probability, but also to understand that foreseeability is a negative precondition of liability. It does not tell you whether you are going to be liable or not; it just tells you that you cannot be liable if it is unforeseeable. That is very important.

Mr SPEAKER: I call on the Attorney General to outline the qualifications of our next presenter.

Mr DEBUS: We certainly thank the two speakers from whom we have heard presentations. We thank them for the comprehensive responses to the questions that have been asked.

Our next speaker, Bret Walker SC, has been a barrister practising in Sydney since 1979 and a silk since 1993. He is to speak on the liability of public authorities. His practice is mainly in equity, commercial and public law, but also in constitutional and appellate advocacy. He was elected to the executive of the Law Council in 1995 and became its President, for a year, in 1997-98. He has been, for a long time, a member of the New South Wales Bar Association executive, and he is at present the President of the Bar Association. He is, without any question at all, one of the leading counsel of this nation. Bret Walker argued the case for New South Wales in the High Court in the Wallis Lakes oyster case, which is awaiting judgment from the High Court at the moment. I believe he has also appeared in several of the cases that Professor Cane mentioned during his account of the history of the emergence of the law of negligence. Mr Walker will answer questions after his presentation.

Mr WALKER: Mr Speaker, honourable members: The draft bill, which has been circulated and has excited a lot of attention in the legal profession and in the legal academy, addresses a number of areas involving the liability of public authorities. The liability of public authorities is a subject which, as legal members of the two Houses will appreciate, occupies large, complex books by legal professors that may well be the life works of those professors. In the available time, which is only a fraction of the time allotted to the first lecture in an undergraduate tort course, I can do only a small skate over the surface of that big area. In so doing, I want to use some of the words of Australian judges who provide the common law in this country.

In answer to an earlier question about codification or common law, might I say that one thing about this country that distinguishes it and renders it, in my view, superior to other common law countries is that we are a federation which has one common law, as opposed to the United States of America with its multifarious common laws, or countries with only one Parliament and only one common law. It is for those reasons that moving to a completely codified system presents a danger across the broad sweep of negligence law.

However, in the case of public authorities, the point I would like to make today is simply this. There has been a move, since about the middle of the nineteenth century—based upon solid notions of social justice and equality and the subjection of the King to the law, in common with his subjects—that public authorities should be as liable as a private citizen would be in the same situation. That is a very attractive proposition which has commanded assent in the highest benches of the common law courts for about two centuries and has, of course, persuaded most of the Parliaments or legislatures in the same territories. It is for that reason that in this State, just two years after responsible government, one of the earliest statutes ever to start winding back the rule that the King can do no wrong and cannot be sued in his own court—for example, for trespass or negligence—was unwound in 1857 in a fashion which, about 15 or 20 years later, was described by the Privy Council in particularly important terms.

That was a case where the New South Wales Government had, by some of its officers, carelessly—so it was alleged—allowed fire to spread from land on which they were doing some work to the land of a neighbour, destroying stock and fences. Question: Using that early statute of 1857, enacted almost a century before something equivalent in the United Kingdom, was the Privy Council prepared to accept that the King, that is the Government of New South Wales, could be sued for that negligence?

What they held was that, of course, the words of the New South Wales statute, which said, in effect, that the rights should be as nearly as possible the same between the Crown and subject as between subject and subject, were apt to allow a negligence action. The public authority could be sued, could be liable. But in doing so they uttered words which both praised, perhaps in a backhanded way, the conditions in New South Wales at the time, and looked forward to what we now have. Speaking comfortably, no doubt, in foggy London about a bushfire that occurred many months before in New South Wales, their Lordships said in a judicial committee:

It must be borne in mind that local governments in the colonies—

we being one then—

as pioneers of improvements are frequently obliged to embark in undertakings which in other countries—

meaning in England—

are left to private enterprise, such as, for instance, the construction of railways, canals and other works, for the construction of which it is necessary to employ many inferior officers and workmen.

"Inferior", I think, means "under the direction of government", but perhaps also indicates their capacity to put a spanner in the works. That approach was really part of a second half of the nineteenth century move, as Professor Cane has reminded you, towards assimilating, as closely as possible to some general principle, the liability of those who did wrong by causing harm where there was an appreciable risk to people who, it should have been contemplated, might be harmed. These are general, grand sentiments. My suggestion is that the law about the liability of public authorities shows how strained and fragile grand, simple sentiments are when it comes to modern government.

In 1872 the Privy Council was interested in ensuring that modern government would subject itself to a liability when it caused harm, because it was so much busier in New South Wales than it was in England. The law, however, took some steps in a rather curious way to the position we have now reached, in a decision which affects the Parliament of this State, namely *Brodie's Case*. *Brodie's Case*, you will recall, was decided last year by a split, four-three, decision of the High Court of Australia. That is as close a split as you can get, and when one reads the reasons without peeping to see who won, it is very interesting to ask yourself which arguments are the more cogent. I suggest it is not easy to simply go with the numbers.

In *Brodie's Case* it was decided that it should not be left to Parliament to decide whether a well-established rule, accepted by the judges as a rule, should continue to spare our local authorities, highway authorities—in effect, the government and, therefore, in effect, taxpayers—from the burden of having to compensate people when, for example, they had been injured on a highway by reason of a pothole in a dirt road in a rural shire which the council either had not found out about or, if it had, had not yet arranged for a gang of workmen to fix it. It is known in quaint language used, I am afraid, too much by us lawyers, as *nonfeasance*, meaning not having done something, as opposed to *misfeasance*, meaning having done something wrongly. This represents, I would suggest, an easy moral standard which the courts have moved away from in relation to the liability of statutory authorities: the difference morally between not being able to get around to something because of priorities and allocations on the one hand, and entering upon a project and doing it carelessly on the other hand.

In the nineteenth century that principle was well understood. For example, in a famous case about the building of a dam under statutory authority to enable water in what must have been the most unusual natural phenomenon on earth, namely, a shortage of water in Ireland, to be available for linen manufacturers, the Antrim Assizes held the proprietors of the dam careless for causing a flood on neighbouring land. Question: Could the proprietors of the dam, authorised by statute, rely upon the statute to say "No, we are a public authority, in effect. We have public authority. We should not be liable for what Parliament has allowed us to do"?

The courts applied a principle which, I suggest, is evergreen, and which this Parliament unquestionably, no doubt, bears in mind whenever it legislates: that every statute that emanates from any parliament should be construed by the courts so as to interfere with private rights as little as possible. In that famous case it was held that although they were authorised to build their dam, nothing in the statute required them to do it in such a way as to cause the flood, and certainly nothing immunised them against a claim when they had done it carelessly by failing to take reasonable care for the neighbours who would be harmed by the way in which they did it. The proprietors, therefore, of the Bann reservoir could be made liable. Lord Blackburn's famous words have been echoed ever after:

... if by a reasonable exercise of the powers given by the statute damage could be prevented, that is within the relevant rule of law, negligence for which the authority could be liable.

But the question arose: What if what you did was, in the nature of things, likely to cause harm? We had, again in the nineteenth century, a famous case which underlies a lot of the learning in this area and which I would respectfully suggest should form this Parliament's approach to this whole area of reform. That was a case of a

smallpox hospital which Parliament authorised to be built in the vicinity of Hampstead. For some reason, which is quite easy to understand, the local residents were not wildly enthusiastic about what they regarded as likely to be a nuisance.

The question again came down to what Parliament had commanded or permitted and how the courts should interpret the way in which the statutory authority, the local asylum district, as it was known, was permitted to go about its business. That 1881 case is famous for establishing that where there is permission given to do something, it is not to be construed as permitting it to be done without compensating for harm; but where it is directed to be done in a way which will inevitably cause harm, then it is the will of Parliament that is in the broader public interest that the individual will suffer.

That has led, as a principle of common law, to a response by parliaments, including this one. That response, with which members will be familiar, is to ensure, for example, in public works statutes or public utility statutes that if land has to be entered onto for a public purpose—to dig a trench for a cable, to erect a pole for wiring, to lay a pipe—then of course there ought to be, carried by the common purse, compensation for the individual landowners who have been disrupted by the particular exercise. It is nothing other than the same as the resumption of private land for which, even without a constitutional guarantee, a public authority will, under enlightened legislation, always pay compensation.

There is also the principle, which is reflected in a lot of statutes in this State and in other similar jurisdictions, sparing individual public servants the financial burden of paying for the negligence they may have committed whilst setting about their duties. This reflects the tension which is part of the common law of the statutory liability of public authorities and the common law liability of public authorities between observing what Parliament has commanded by way of permit or order on the one hand and, on the other hand, what common law would require by way of care for my neighbour so as to prevent foreseeable harm. It is not an easy topic and the recent history in the High Court suggests that it will not become easier.

Members have already heard that there is reserved in the High Court a case which I had the honour to argue for this State. It concerned facts which highlight matters which have been the subject of comments, but not definitive ruling, by the High Court in a sequence of cases which time does not permit me to catalogue. But the facts of that case—which will probably be known by the surname of one of the unfortunate hepatitis sufferers, namely Ryan's Case—provide a neat encapsulation of the policy problems that face parliaments such as this in considering what to do about the liability at common law—in negligence in particular—of statutory authorities, including the State itself.

A number of people and bodies were sued in those proceedings. Most unfortunately, there was an outbreak of serious hepatitis, found to be a result of the consumption of contaminated oysters. The contamination came from human sewage which had found its way into the certainly adequate, if not pristine, estuarine waters because of rain—what is called a freshet. For generations, oyster farmers did not harvest after freshets. For generations, by observing that precaution so far as records could be known, hepatitis contamination has been avoided. But, for the first time, there was an outbreak. Oyster farmers were sued, the local council was sued—it having sewerage responsibilities—and the State was sued in a number of different guises, including the power of one of your Ministers to close fisheries in the case of public danger. There were a number of other ways in which the State was said to be liable. But I have chosen the one that highlights the point best for the present controversy.

What has happened, and what is reserved in the High Court is this question: Is the State to be liable for all those damages? Having a power to close a fishery, dependent on having formed an opinion that that was required in the public safety, and never having formed such an opinion because there are, I understand, more than the Wallis Lakes to look after in the administration of New South Wales—and more than the Wallis Lakes oyster fishery to look after in the fisheries management of this State—was it negligence actionable so as to compensate these most unfortunate and definitely injured people for the State therefore to have failed to exercise a power?

Traditionally—and I would have to say stretching back only the last 25 years or so—and representing a divergence between Australia, the United Kingdom, Canada and the United States of America, all of which have different approaches to this problem, in Australia it has been said that even a statutory power, though that be different from a statutory duty, may be the subject of a negligence action if the court decides that insufficient attention has been given to the question of whether to exercise the power.

It is said by the courts, in passages that I do not have time to quote, that they will draw short of so-called policy areas that involve the allocation of resources. Where should the road gang go on Monday? If a lady

trips on the footpath on Tuesday was it negligent to have sent the gang to a different part of the municipality? Was it right to go for self-regulation in the oyster fisheries industry in the broader public interest, or should there have been the tutelage of inspectors every day closing the fishery, putting people out of work as soon as there was a risk from a freshet—a risk of a kind that had never formerly given rise to recorded hepatitis?

We will know soon, because of Justice Gaudron's impending retirement, what will be the latest contribution by the High Court in this area of liability for statutory authorities. One thing is clear: if the common law is left to develop incrementally, case by case, by decisions of the court where the issues are framed by the parties and not by an agenda set by the court in an overall reformist approach, we will be continuing a system whereby none of the data of the kind that Professor Cane and Mr Gill have remarked on as to its absence in this debate will ever become available.

What has the High Court said very plainly in a series of cases, including the all important case of *Pyrenees v Day*, which was about a fish and chip shop with a defective fireplace in the little town of Beaufort in Victoria? The agony and the division in the court were about whether it was negligence, given that council had actually become aware of that bad fireplace because of a fire two days before, but it had a mere power to stop fires from being lit in it. Was council negligent when it was lit and caught on fire, and the neighbour's house burned down?

Cases like that illustrate that it is presently the view of the High Court that it will be committed to first instance judges, in the case of the liability of statutory authorities, to determine whether it was an allocation of resources; an appropriately political decision as to whether there would be seven inspectors or 13 inspectors; whether there would be weekly visits, fortnightly visits or only six-monthly visits; or whether visits would be only on request. They are decisions which are apt to be put before electors in the sense that one party may say, "We will have a bigger inspectorate", and another party may say, "Down with the featherbedding, we will put it out to contract." That is a decision for electors.

At the moment in relation to the liability of statutory authorities, the court seems to be saying, "No, that will be decided, regardless of how the electors apparently exercise their choice, regardless of the bureaucratic resource allocation and regardless of ministerial direction." That might ultimately be determined by a Local Court magistrate, a District Court judge or, more rarely, by a Supreme Court judge, taking into account matters which, as members of both Houses know, could well involve the taking of evidence about a multifarious array of competing demands on the time of public servants and the resources of public funds. My suggestion is that, when one looks at the case law in the High Court, it is not possible to be satisfied that in the next judicial generation there will be anything like a resolution of the ongoing problem.

When a parliament sets up a public authority to do public good or to prevent harm to the public, at what point do you draw the line between the liability of the public purse for every detriment which is suffered by an individual as a result of the activities of that body? In particular, at what point do you say, "Now that this statutory authority exists, individuals can complain that it has not exercised the power which, before it existed, was not available to be exercised by anybody."? In short, will the statutory liability of public authorities be set by a parliament complete with parliamentary limitations on the calls on the public purse by reason of its activities, or will it be allowed to be worked out case by case by common law courts? As always, being a lawyer, I would suggest that there is much to be said on both sides.

But, as the creatures of Parliament, public authorities ultimately should have the resource of public money which is expended as a result of activities controlled by Parliament. The one area where Parliament should cheerfully and willingly leave to the courts that allocation of resources is in the area long ago established in the case of the linen manufacturers' dam in Northern Ireland—or Ireland as it was then—namely, that if you are permitted to set about doing something, Parliament has not permitted you to do it negligently. That should be the only test.

Mrs PERRY (Auburn): Is there a case for the reinstatement of the nonfeasance rule by statute?

Mr WALKER: Yes. If one reads the dissenting judgments in the High Court in *Brodie*, one is struck by the impossibility of picking between them and the majority judgments, except by the numbers who expressed that view—four to three. There was a most eloquent and persuasive intervention on behalf of this State by Mr James Allsop of Senior Counsel, now Justice Allsop of the Federal Court of Australia, in what I think was perhaps his last hurrah. It was a written submission that—I would respectfully suggest, having been privileged to discuss it as it was being prepared with Jim Allsop—contains all the policy reasons why it should be left to

Parliament to determine the question as to whether the courts will ultimately decide, in effect, who was to allocate the resources and how they were to allocate them when a public authority simply had not done something, as opposed to having done something but having done it badly.

There is, in my view, a powerful case illustrated by the financial and governmental implications that transfer ultimate responsibility for allocation of resources to the courts in an indirect fashion resulting from the majority decision in Brodie. When one looks at those implications of the majority and at the careful, clear and persuasive arguments of the minority in Brodie, one sees that the case for legislative reinstatement is high.

Mr W. D. SMITH (South Coast): Why should public authorities have greater protection than individual citizens or private corporations?

Mr WALKER: There are two answers to that: I think they are consistent. It seems to me that the principle of equality before the law—indeed, a principle of the rule of law—in this country at least positively requires an answer to that question: The king must not be on a different position. The maxim that the king can do no wrong—widely misunderstood as a matter of legal history and legal practice—was, on any understanding of it, relatively obnoxious, at least to modern notions of equality. On that level there is no reason why a public authority doing something negligently should be treated any differently from me or you doing something negligently in private capacity. But it seems to me that a public authority, being a vehicle for the combining of our moneys for our common weal, is essentially different from an individual person or a trading corporation, which, after all, is a private combination for private good, for private profit. The essential difference is that it is part of government and, being part of government, it seems to me, the allocation of resources and the balancing of rights is appropriately to be done by the Parliament that sets it up and monitors its performance.

There was a constitutional case which resulted from the Commonwealth Government deciding that it would no longer be sued in the ordinary courts in negligence by its workers for workplace injuries. The law set up the Comcare scheme. Commonwealth public servants cannot sue in negligence; they have a compulsory scheme. There were people with outstanding claims when that legislation came in. They sued, claiming that under the Commonwealth Constitution they were guaranteed just terms for the acquisition of their property—namely, their already-vested claim against the Commonwealth. The Commonwealth, of course, had abolished claims against itself. The majority of the High Court held that that was an acquisition of property. Because there was property of the individual person and the Commonwealth had abolished that claim against itself, it had been in fact acquired and those people in the transitional phase could not thus be cut out. The case is *Georgiadis*.

In a very interesting dissent Justice McHugh pointed out that being able to sue the Commonwealth at all was a creature of statute. The king, remember, at common law could do no wrong. The Commonwealth inherited that immunity at common law. Australia, commendably—in 1857 in this State and almost immediately upon Federation for the Commonwealth—abolished that immunity so that you could sue the Commonwealth as if it were a private person. But the Commonwealth, pointed out Justice McHugh, must be able to change its status; otherwise the most important aspect of Parliament, which is considering and reconsidering changing the laws, would be entrenched upon.

That minority that points out that there is no acquisition of property simply to readjust a statutory scheme was in fact echoed in principle in the majority, which made the same point: If something depends completely on a statute then, of course, Parliament can change the statute. There is not a legislative ratchet whereby if you have given something to people you can never take any of it back; it can go up and down as well as sideways and roundabout. That principle, it seems to me, indicates that there is a difference between public authorities and all the rest of us. That is that they are a vehicle for doing the public good at public expense and that it is entirely proper for there to be from time to time in every individual parliament a relooking, as a matter of supervision, at a reform, as a matter of legislation, at whether or not the balance has been struck between private and public interests.

Mr ROZZOLI (Hawkesbury): It seems to me that there are many instances in those areas covered by the rule of nonfeasance where the argument is raised that it is simply too broad an area for any public authority to be able to give the necessary minute attention to every aspect to make sure that everything under its control is in the highest level of working order and safety possible. Nonetheless, there are those cases where negligence perhaps can be established on the part of a public authority. Against that background, what in your opinion is the balance of the negligence of the public authority which is being sued and the contributing negligence of the person who is suing? For instance, under the Motor Traffic Act the rule is that you should drive your car according to the conditions. If it is raining or the road is in bad condition you must adjust your speed. So,

clearly, there is an obligation on the person using that facility to undertake some level of care. Do you feel that the accent on the role of contributory negligence in cases has in fact been given the attention it really deserves, given that there is clearly a counterbalancing factor?

Mr WALKER: One of the most galling or entertaining features of the debate about tort law reform, however long one goes back, but particularly in legal professional circles, is the ease with which people talk about the rights held by individuals since time immemorial or about the sacrosanct common law as if that were a body of doctrine with which no-one should interfere. It is a matter of fairy tales, of course. As Sir Anthony Mason has famously said, the common law is not a body of doctrine with which nobody interferes; it is the extrapolation by commentators and later judges of what previous judges have said in cases that the later judges know about or care about. That is the first thing. The second thing is that at common law contributory negligence, of course, was a complete defence. And it was Parliament that provided the capacity for a plaintiff to succeed, if only in part, notwithstanding contributory negligence.

There is an irony about it being suggested that there is some opposition between common law rights as they are called and statutory reform of tort liability. As Professor Cane has pointed out, tort liability is unrecognisable today from what it would be if it were simply a natural incremental outgrowth of how it first appeared who knows when—retrospectively, perhaps the second quarter of the nineteenth century, but even that is a matter of scholarly dispute. It has to be said therefore that contributory negligence is itself a creature of statute as a matter which will not defeat a plaintiff. It seems clear that the statute concerning contributory negligence is therefore ripe for revisiting by any Parliament that believes it has not been given sufficient weight in the decisions of either first instance or appellate courts about how that ought to be detected as to its occurrence and how it ought to be reflected in relation to the diminution of damages which would otherwise be payable.

When it comes to nonfeasance and contributory negligence, the nonfeasance will simply be not having done something which, had it been done, would probably have prevented the injury. The contributory negligence may well be not having repaired your broken headlight, not having made sure you drank a shandy rather than full-strength beer, or failing to appreciate that when it rains your tyres may grip less effectively. It seems to me that morally and personally—that is, socially—a different scale of measure is clearly being applied.

Governmental allocation of resources, particularly in rural areas with roads where nonfeasance used to matter, seems to me to be almost an area free of morals; it has to do with politics, rates and the capacity to inspect what are quite impossibly long distances of unpaved road. On the other hand, the personal social choice to drink too much, not to replace your headlight or not to slow down in the rain seems to be a far more immediate and easily grasped topic. As Mr Gill has pointed out, if there were not insurance or if the government were not treated as what is laughingly called a self-insurer—that is, treated as being as rich as the most secure insurance company—it is questionable whether the results of many of those cases would have been as favourable to plaintiffs as they surely have been.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council): Mr Walker, if the nonfeasance rule were to be established, should there be some distinction between statutory authorities and State-owned corporations? If so, should that relate to the different legal structure of those entities or should it relate to the function of those entities?

Mr WALKER: One of the most difficult problems in tort law, the law of negligence in particular—constitutional law and administrative law, the law about how public bodies have to act within their powers—is what is still sometimes called Crown immunity: Which of the bodies has the same immunity that the State of New South Wales, or the Crown in the right of the State of New South Wales, has along the lines of the old axiom "The King can do no wrong" or "The King cannot be sued in his own court"? Crown immunity is a huge topic. It seems to me, with respect, that the mention of functions is the key to the question. It must follow that when Parliament authorises State-owned corporations to engage in certain endeavours—quasi-commercial but for the public good in terms of a dividend to be paid to the State, for example—there is exactly the same balancing of future prospects of costs and benefits, both private and public, which ought to be undertaken in the case of the most traditional form of statutory authority.

That is, the legislative exercise is not different in kind, although the balance will probably be struck so as to expose the genuinely trading commercial corporation to a lot more possible liability than would be true of a public authority which is not trading but which is, for example, to use a silly example, handling getting orphans to school. But if, instead, you were handling the commercialisation, for example, of timber resources

for profit to go to the State coffers then it surely must be a different issue. There is a very important case in the High Court—important to this State and to Parliamentary Counsel in this State—of *Puntoriero*. The case involved the provision of water by a State authority to a farmer, the water being allegedly contaminated so as to ruin the crop. It was provided, in effect, under a contract, but it was provided by a body set up by a statute, for the public good at public expense, which had within it an exemption clause, in effect saying you cannot be sued for the bona fide exercise of any of your functions.

It was understandably argued by the commission: One of my functions is supplying water under contract to people who want to take it, and therefore I am protected by this clause. That gave rise to a deal of judicial dissension, but it was settled in the High Court by majority in this fashion. One of the functions is entering into contracts. It cannot be supposed that Parliament set up a body to enter into contracts and then said, "But the contracts you enter into are ones that you, in effect, do not have to perform, because if you do not perform them you cannot be sued because there is an exemption clause." That would make a mockery of the whole idea of setting up a corporation which can trade, become commercial and make contracts.

That is a good example of the functions exercise which will no doubt inform the Houses whenever they look at setting up or adjusting an existing statutory authority or State-owned corporations regime. If the functions include going out in the marketplace and dealing with private people in a way where, either in contract or by rubbing shoulders along with them in a way that might cause harm, you are really taking on the role of a private person, and where you need to be presented with all the responsibilities of a private person so that other people will deal with you, why would I contract with a State-owned corporation if it is exempt from liability under contracts? It would be the end of the contracts with that State-owned corporation. It seems to me that those functions ought to carry in their train virtually full exposure. Subject only to adjustments for the differences between the insurance position of private individuals and State-owned corporations, it seems to me that they are an excellent case for the so-called public authority or the Crown being on a par with the citizen or the private corporation. Other public authorities, by reason of their quite different function, may be in a wholly different position.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: With regard to alternatives to tort, you said that the acceptance of nonfeasance as a ground for negligence opens Pandora's box. If there is a lack of data in terms of resource allocation, which you also alluded to, do you think this Parliament ought to go for a more administrative solution, or that it should put more resources into collecting data as a preventative measure, rather than simply limiting the payouts within a tort framework?

Mr WALKER: There is no doubt that unless information is gathered one will be proceeding by intuition or guesswork alone in order to improve practices that might prevent injury. But again, that is one of these generalisations that may be too general to be particularly useful. There is injury and there is injury. In my opinion, death and physical injury are much more important than financial loss. But financial loss may put people out of livelihood and may ruin their lives. So nothing is unimportant, but there are different intensities of importance. It seems, therefore, that on the one hand every State, including New South Wales, and every civilised nation has, as a mark of civilisation, fairly elaborate occupational health and safety regimes of one kind or another. Whether they are appropriately funded, whether they have sufficient personnel, and whether they are sufficiently imaginative or active is ultimately a matter for the parliaments of those places to monitor and chivvy. There can be no doubt that resources have to be poured into that.

I think another false dichotomy, to pick up an expression of Professor Cane, is between putting money into prevention or allowing money to be expended in the tort system. At the end of the day, my personal defence of still having a tort system is a question of social justice. I do not understand how one could, by the sweep of a pen, abolish the lay notion of someone having been careless, particularly the government, bearing in mind the government's powers. I do not understand how, by the stroke of a pen, you can allay people's disquiet about the fact that they have got away with it because of a law that says they do not have to pay any damages, for example. For those reasons, it seems to me that statute law, like judge-made law, must never get too far away from a feeling of social justice which ultimately depends upon a remedy for a wrong. The size of the remedy should be adjusted when, for example, Parliament has compelled people to have insurance policies.

I cannot resist correcting one small slip by Professor Cane. Barristers are not immune from liability at all. I have a compulsory insurance policy for which I pay not an inconsiderable amount. Compulsory insurance, it seems to me, becomes an element which makes it then legitimate to talk about limiting payouts. Otherwise, of course, why would not one go simply uninsured, have no assets and never be sued, because no-one would waste their money on it? But if Parliament has forced you to insure, then surely Parliament also has a social right or

power, a fair authority, to consider limiting payouts. Against all that background, it seems to me fairly clear that whatever being sloppy, being careless and riding roughshod over other people's interests about which care should have been taken as a matter of commonsense is a feeling in society, somehow we should provide a remedy. Whether those remedies should be before common law courts or before administrative tribunals is a much larger question. It ought to be obvious that a combination of the two, which is adopted in every civilised country whose systems I am familiar with, is the only way to go. Have we got that combination correct in this State? Has anybody got it correct anywhere?

The Hon. RON DYER: I would like your comment on the matter of structured settlements. I note that the Attorney's paper mentions that negotiation and ordering of structured settlements should be facilitated and that parties should be given a reasonable opportunity to negotiate a structured settlement. You would be aware that under the Commonwealth taxation law the Commonwealth is intending to remove current disincentives to accepting structured settlements. However, the Attorney's paper also mentions that the tax exemptions under the Commonwealth's bill are not available if the court imposes a structured award, other than by consent or by the court approving a settlement put forward by the parties. In your view, should structured settlements be further encouraged by the Commonwealth taking a more beneficent attitude towards structured settlements than it does at the moment?

Mr WALKER: If I were a mouthpiece for insurers I would have fainted with shock at your use of the word "beneficent". There is no doubt that the mechanism of requiring consent or agreement in order for a structured settlement to attract a favourable treatment under the tax laws from the Commonwealth is one that leaves the whip hand with insurers on structured settlements. There is no doubt, also, that without being an actuary employed by an insurance company all of us could understand that structured settlements may be only a euphemism for very, very long tail payments. For those reasons, it is not to be assumed that structured settlements will be fallen upon as an expedient with small yelps of delight by all insurers in all cases. For those reasons, it seems to me that there ought to be the widest range of possibilities. With due deference to the fears of insurers—which I happen to think are well founded, not ill founded—about the financial consequences of structured settlements in an area with a lack of data, certainly over the longer term, why should we not experiment?

Structured settlements should be made widely available, including by compulsion. One way to make the experiment less dangerous—apart from the obvious method of quickly abolishing it if it proves to be a disaster—is for the courts' capacity to impose a structured settlement to be taken only after certain threshold requirements have been undertaken, obviously including consideration of the actuarial reasonableness of imposing that on a particular insurer or pool of insurers. Presumably it will be the purchase of annuities that will quit a current insurer from a lot of these matters. The purchase of annuities, of course, is a question for the market. Notwithstanding the insult to my own profession, I really do not think that barristers and judges are the best predictors of markets and the economic influences upon markets.

Mr SPEAKER: Thank you, Mr Walker. The Attorney General will now introduce Mr Atkins.

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts): I thank Mr Walker for that eloquent exposition. The last speaker will be Mr Geoff Atkins, an actuary and a director of the firm Trowbridge-Deloitte. Geoff Atkins has been a consulting actuary in the field of general insurance since 1984. His experience includes work for the Motor Accidents Scheme and the WorkCover Scheme in New South Wales, and for similar schemes in other States. From November 2001 to February 2002 Geoff Atkins worked in his firm's London office, assisting clients with the insurance fallout from September 11. In the three months from March to May 2002 he has been mainly occupied with public liability for the Federal Treasury and the Heads of Treasury Working Group. Geoff Atkins presented at two ministerial meetings, on 27 March and 30 May, and he is an author of the two Trowbridge reports that have been at the centre of the debate on public liability insurance reform. At the end of his presentation Mr Atkins will answer questions.

Mr ATKINS: Mr Speaker, honourable members, I have been asked to give some background on the insurance half of this symbiotic relationship with the law of negligence outlined by Professor Cane. It will not take me very long to remind any of you who have constituencies that we really do have an insurance crisis. Many people seeking insurance can get it only at extremely high prices or, in some cases, cannot get it at all. Fewer insurers are accepting this business and they are being much more selective in the risks they will accept. The worst affected groups have been community and sporting, tourism and leisure, health related and child care, organisations that deal with public traffic and, particularly, organisations that have what insurers regard as an unknown risk exposure. From the insurance company's point of view the risk does not have to be seen as a high-risk exposure but just an unknown one, given the remarks about the shortage of useful data in this field.

Of course, there are related public liability issues. In 2002 a similar problem arose with price and availability of insurance coverage for professional indemnity. Cover for directors and officers is a bit of a sleeper. For people with directorial responsibilities in corporations it will be much more difficult in the next 12 months. I do not need to tell you about medical indemnity. I understand that the Minister for Health spoke to the press about that this morning. There is also the doctors crisis with respect to United Medical Protection. Private hospitals are facing similar difficulties, as is the public health system, which is part of the Health budget of each jurisdiction. Builders' warranty, under home warranty insurance, has similar problems.

I will spend a couple of minutes on material that we used at the ministerial meetings in Canberra and Melbourne. In this current insurance crisis there are two quite distinct groups of causes. On the one hand we have the increasing cost of insurance claims, and on the other hand we have what is clearly an insurance market crisis. The increasing cost in claims is mainly about bodily injury claims, not so much with property damage. It is a long-term issue; it is not recent or sudden—it has been going on for probably a decade, or maybe 20 or 30 years. The problem appears to be much more about the size of claims than the number. It is across the whole range of claim sizes; it is not a problem with only smaller claims or with very large claims. Subsequent research has shown that it is definitely not the same in each jurisdiction, and it is probably not the same in each industry segment. You can look forward to some rather startling revelations about New South Wales.

A one-size-fits-all approach is not an appropriate way to deal with the problem. The insurance market crisis, a much more commercial issue, has been brewing for nearly 36 months. In the scheme of things that is a short-term issue. It is definitely a result of severe underpricing across the market during the second half of the 1990s. A very severe reaction by insurers was seen but we have seen insurance cycles in crisis previously. The last significant crisis in this country was in 1992, and the crisis before that was in 1985. This current cycle is worse than that in 1992, and is at least as bad as that in 1985. The HIH growth and then collapse has clearly made it worse. HIH grew from being a very minor player to being the second-largest insurer in Australia before it collapsed with an enormous explosion. The actions of HIH and FAI, which HIH acquired in the marketplace during the second half of the 1990s, both deepened and lengthened that period of underpricing.

Other local factors have reduced the capacity of the insurance industry worldwide, including September 11. The tougher Australian Prudential Regulation Authority [APRA] standards are a relatively minor factor, but are making all insurance companies focus more carefully on the risks that they run and on allocating more of their capital to higher risk areas. Empirically we have a situation in which insurer appetite for this business is very low. That is a statement of the current marketplace. It is very difficult to get insurers interested in taking on anything other than what they are familiar with and their main priorities. It is perhaps trite to say that without both of those factors the current problem would not be as serious. It has been our contention that dealing with just one of those factors alone would not deal adequately with the problem. It is the province of the States, almost exclusively, to deal with problems arising from the cost of claims, because most of the relative laws are under State control. Tort reform is very much a State issue, and it is mainly for the Federal Government to deal with the commercial insurance market. Under the Constitution, insurance powers are clearly ceded to the Federal Government; therefore, it is mainly, but not exclusively, an issue for the Federal Government.

I will provide a couple of highlights of the insurance situation, including an index of premium rate movements in public liability compiled from JP Morgan-Deloitte surveys over nearly a decade. The perceptions were collected from experts in the marketplace about the relative movement in premium rates from year to year for insurance renewals. Between 1995 and 1998 public liability premium rates fell by more than 30 per cent across the market. That was an average across the market; in some areas the reduction was much more than 30 per cent. The market first started to turn in 1999. As I said, the genesis of this insurance situation occurred 36 months ago.

It was clear to many companies in 1997 and 1998 that they were not making money from public liability insurance. Companies we were working for asked us what they should do, and we advised them to increase their rates by at least 30 per cent or 40 per cent to break even. They said there was no point in increasing premiums by 40 per cent because they would be laughed out of the marketplace; there was no point in tackling HIH Insurance head on while it was continuing to cut rates. The insurance companies that acted early pulled in their horns, withdrew from the market and settled back into renewing business with which they were comfortable; they were not competing. It took until 2000 before HIH realised that it was losing money in the liability sector and that it needed to increase its rates before we saw a big movement in the marketplace.

The information indicates steep rate increases in 2001. It was forecast last February that there would be an across-the-board average increase of 30 per cent in premiums in 2002. When the figures are presented, that

figure will be exceeded. Many people have experienced only a 30 per cent rate increase, and they are feeling fairly pleased with themselves. Many more people have experienced substantially greater increases, and in some segments increases of several hundred per cent have been common. Information has been provided detailing insurers' profits from public liability insurance compiled from the relevant returns for that class of insurance lodged with APRA by insurers.

That information shows the insurance trading results for 1993 to 2001. That is, the sum of the revenue from the class, premium income less expenses and claims, the investment revenue that insurers make from the investment of premiums as long as they hold them and claims. It does not include the investment income from the shareholders' funds. It is very much a measure of the business profitability from that class of business and it is measured as a percentage of the premium income, which is a convenient base. Companies can measure their profit as a percentage of revenue. In 1994-95, insurers showed profits of 20 per cent of revenue in the public liability insurance sector. That is beyond what they need in order to make an adequate return on capital; it is superior profitability. An insurance trading result of between five per cent and 10 per cent of revenue will provide an acceptable return on capital for insurance companies.

In some years, they would expect more than five per cent or 10 per cent and in others they would expect less. However, that is the required trading result to meet shareholder requirements. Therefore, 20 per cent was a good result. Given those figures, it is no wonder that the market was very competitive and more people were after this business. By 1997, on average insurers were showing breakeven returns. That situation was a mixture of some insurers recognising losses and others still claiming they were making profits. By 1998-99, the writing was on the wall for insurance companies. The year 2000 looked better, but HIH Insurance went into provisional liquidation and did not submit returns for that year. If the HIH figure were added, it would show that by 2001 insurers were experiencing losses.

I will not go into the detail, but it is important to note that the financial results reported by insurers lag about two years behind the real results. It takes that time for insurers to gather the figures and to understand what their results will be. Insurers were showing profits in 1996, but the reality was that they were starting to make losses. It takes a couple of years for companies to recognise that situation. The big losses experienced in 1999 were primarily the result of business written from 1996 to 1998, but it took that long to recognise the situation. That provides an idea of the financial dynamics from an insurance perspective. Given that the industry was showing a loss of more than 60 per cent of revenue, it was not a great surprise that the industry reaction was tough. I am not an apologist for the industry; I am simply trying to provide background.

It is worth providing some information about global factors, because insurance is a global business. The Australian marketplace has six big insurance companies—we are down to the big six and the rest. Of those companies, three are overseas owned and three are Australian owned. A majority of the companies have overseas parents and they all rely on global reinsurance. The major European insurance companies are experiencing big problems of their own. Zurich, Allianz—the biggest insurance company in the world—Swiss Re, Munich Re and Royal and SunAlliance have all suffered plummeting share prices; they are under a great deal of stress.

Australia has a very poor reputation in the global insurance market. That might seem a little odd, but it is a market full of gossip and self-professed experts who talk to each other a great deal. Much depends on the reputation of individual companies and marketplaces. The failure of Australian international reinsurers left a very sour taste in global insurance markets. GIO Re, ReAc and other famous companies, all of which have been out of business for more than two years, pushed into international reinsurance markets, did it very badly and lost a great deal of money. That created a bad impression of Australian companies. Honourable members might be wondering what that has to do with liability insurance. The answer might be that it has no relevance, but it is all part of perception in the global reinsurance market.

The HIH Insurance collapse was a world-famous event and projected a very poor impression of the quality of the Australian insurance market. We have also experienced some problematic legal decisions. The *FLA v Australian Hospital Care* case is a good example, but there are many others. Insurance companies do not analyse the legal merits of decisions in the way that legal experts do; they simply decide that the Australian insurance marketplace is very unpredictable and problematic because apparently bizarre legal decisions can come out of nowhere and change the scene. The widespread perception is that litigiousness in the Australian legal environment is second only to that in the United States, and that the situation in New South Wales is worse than that in most US States. The perception is that California, Florida and Texas are at one level and that New South Wales is at a higher level. I do not know whether that is true and I have not seen figures to substantiate it, but, whether it is myth or reality, the perception is important in the insurance marketplace reaction.

Insurers throughout the world are facing many problems. Of course, that situation provides many opportunities because prices are rising in some markets. However, companies are making decisions about priorities when they have limited capital and are facing close scrutiny. Unfortunately, Australia is low on the list of attractive marketplaces for worldwide insurers. Companies are much more likely to make a big investment in Japan or China than they are in Australia because of that perception.

Liability insurance business in Australia is very low because of the HIH Insurance collapse and the apparently problematic legal situation. If we were to take this as a commercial issue and look at Australia as a nation, we would need a fairly good package of changes to address the marketplace and then implement a bloody good marketing pitch to the rest of world. The package of changes is coming together piece by piece from different States and the Commonwealth Government. I am not looking at this in a commercial sense, and I am not asking honourable members to make that a top priority. We can rely on our insurance brokers to do the marketing pitch to the global insurance markets when they have something to sell. However, it is too soon to start that process.

I turn now to the claims sector. When we began work for the Treasurer's working group there was very little publicly available data. We approached five major insurance companies and they agreed to help us by providing all of their relevant data. They covered about 30 per cent of the marketplace, but did not include HIH Insurance, which was in provisional liquidation. It is now an information black hole. We analysed claims finalised between 1993 and 2001. We were not using insurer estimates; we were using only finalised claims—that is, facts from a financial perspective. The information shows the average cost of claims finalised for New South Wales business, including liability claims for property damage, of which there are many, but typically small and generally under \$10,000. The data provided indicates the average cost of finalised claims for public liability bodily injury or personal injury claims in New South Wales. It also shows that, on average, the cost of New South Wales personal injury claims has increased by 13 per cent per annum over that decade. Inflation over that period is probably 3 per cent or 4 per cent, so we are talking about an average growth in the cost of claims of close to 10 per cent per annum over inflation.

That is an unsustainable level from an economic perspective. It means that every seven years the cost will double. When there are symptoms like that, sooner or later the ability or willingness to pay disappears. That is when governments are forced to make changes. It has been done in this State with green slips and workers compensation more than once. In a sense, this is no different from those situations. The problem has been masked by insurers underpricing for too long, and taking too long to recognise the problem. But you can see that the problem has not arisen only in the last couple of years. I will show you what New South Wales looks like compared to the other States in Australia. The data shows a red line, which is the same as the blue line for New South Wales, and the other coloured lines show similar situations for each of the other jurisdictions: Queensland, Victoria, South Australia, Western Australia and Tasmania.

Clearly, a lot of noise has been generated by those numbers. However, New South Wales stands out because the average number of bodily injury claims is substantially higher than in other jurisdictions. It also stands out because the trend over that period was more severe than in other jurisdictions. The other jurisdictions in Australia are more or less similar, with a little bit of variation, but there is no clear distinction between them. New South Wales is different. By way of an aside, the Australian Capital Territory is the same as New South Wales. I have not put the ACT on the chart because the figures are small and they bounce around. But for better or for worse, New South Wales has a worse problem than anywhere else in the country. It is not necessarily a different problem because it is present in other jurisdictions to a lesser extent. It would be no great surprise if the pressure were greater in New South Wales that the marketplace reaction from the insurance industry was more severe in New South Wales,

Obviously, it is not for me to make political comments, but what I have said to other stakeholder groups I have spoken to is that, if the New South Wales Government appears to be at the head of the pack in Australia on this matter, perhaps there is a valid reason for that and perhaps it is needed. That will help you with a perspective on the national situation, and on how New South Wales sits on the claims side. The table gives some of the numbers on the graph. The right-hand column is the approximate average claim size for bodily injury claims finalised in 2001, and the first graph is the approximate annual percentage of growth. These numbers are not exact. The science is not there to measure them exactly. The lines bounce around a little because it relates only to the five insurers but the broader scale of policy makes this is very compelling information. It is reliable information on which to make that broad sweep of policy assessment.

You can see how New South Wales stands out. I do not know if you know any of your parliamentary colleagues in the ACT, but spare a thought for them because they have the New South Wales disease. However,

they do not have either the political tradition or the parliamentary competency to make insurance reforms. They have the insurance law that New South Wales had in the 1970s. They have made no changes to it, and they still do not have the capability to do so. Whatever you are going through, you should spare a thought for the poor old members of the ACT Government. Very little information is available from the courts, but there is some. I know that the courts in this State have tried hard to assist with providing information for this process. The data provides the number of new public liability writs lodged in the District Court in Sydney between 1996 and 2001. The Sydney District Court has a fairly good case management system; it has a reasonable computer system. I cannot provide country figures; this is Sydney only.

You can see that the figure has almost doubled over a five-year period—about 1,000 new writs compared to more than 2,000 new writs. The data indicates the New South Wales Supreme Court, which used to get a very low number of cases. The jurisdiction in the District Court was increased in 1997. Most cases were brought to the District Court. That might explain the sharp increase in 1997. The Supreme Court started to pick up slightly, but the numbers are very small in the Supreme Court compared to the District Court. From my point of view that chart of figures for the District Court corresponds closely with the insurance information that we saw, given the severe limitations on the data. It shows that there is that steady upward trend in public liability matters lodged in the court—10 per cent plus per annum. Over a period of five to ten years that makes an unsustainable quantum in the economic burden.

Moving on to what makes up the cost of claims, I have shown bodily injury claims in size bands of the claim and property damage claims. The first column shows the percentage of all claims of each type. Some 70 per cent of the number of claims is for property damage. If the newspaper is chucked over the fence—it used to be delivered by a kid on a bike, now it is delivered by a man in a mini moke—how many windows are broken? Every one of those is the subject of a public liability claim. Most of the claims are for property damage and most are fairly small. About 30 per cent of the claims are for bodily injury, and they are the ones that count economically. Property damage claims add up to only one-quarter, or 26 per cent, of the total cost. The rest of the cost comes from personal injury claims. Small claims, costing in total less than \$20,000, include the amount the insurance company pays to the claimant for claimants' costs and for its own investigators and lawyers, but it does not include the cost of its own staff. It is the cost external to the insurance company, but includes the defence costs.

Claims costing up to \$20,000 make up 20 per cent of all claims, but 88 per cent of the cost. The \$20,000 to \$100,000 claims that I refer to as smaller claims—they are not small literally, but they are smaller in this context—make up a little over one-quarter of the total burden of claims. The \$100,000 to \$500,000 claims, which I regard as fairly significant matters, make up another one-quarter, or 26 per cent, of the cost. Claims over \$500,000, which are much less than 1 per cent by number, make up 13 per cent of the overall cost. They are not the drivers. I showed you before that there was no growth in property damage claims. There is no clamour about property damage laws being wrong in any way, so there are no real proposals on foot to change the public liability property damage regime. We are talking about bodily injuries. If we were to take an economic perspective and look at the economic impacts on this business, we would have to look at the \$20,000 to \$100,000 claims and the \$100,000 to \$500,000 claims. Taking out the really small claims might be adequate from a policy perspective, but that does not have an economic impact.

In relation to the larger claims, there are valid social reasons for wanting to do the best we can for the most seriously injured. However, the economic impact is not really there either; it is not really those big claims that dominate public liability. If I indicate what makes up these smaller bodily injury claims—\$20,000 to \$100,000—the data shows general damages; that is, non-economic loss or the pain and suffering. The data also indicates the legal costs or the transaction costs of handling the claims. Those legal costs comprise what the insurance companies pay to their own lawyers. It is what the insurance companies pay in party-party costs to the plaintiff lawyers and it is what the insurance companies pay for experts, investigators, forensic accountants and barristers. It is all the costs put together.

The data shows the part economic loss, such as wages lost before the case is heard in court; future economic loss, such as loss of earnings after settlement; and future care. It also details past medical costs—the biggest of those single items. Then there is a little slice for other various miscellaneous costs. Compensation to accident victims for their direct dollar cost is a fairly small slice of those claims—medical costs and past loss of earnings. Most of it is for pain and suffering or general damages. Then there is a great big chunk in the legal costs. Taking an economic perspective, which is my role in providing the background, if you want to do something about the costs, there is no point in fiddling around with the rules governing medical costs or loss of earnings: the cost is in these payments that are made for general damages and in legal costs.

The other thing I can say is that legal costs and general damages go together. We can deal with a claim for loss of earnings and medical costs without a lawyer. Most individuals and insurance companies can. There is not very much to argue about. However, general damages by their very nature are subjective, complicated and very technical. We cannot ask an individual in the street to say what a broken arm is worth in pain and suffering. They do not have a clue whether it is worth nothing or \$5,000 or \$20,000. It is very much a field for expert lawyers. We cannot expect someone to negotiate with an insurance company about it either. They cannot trust the insurance company to deal fairly with them over something like that. They do not have a clue. So the legal mechanism is necessary. Economically, if we deal with general damages, the legal costs more or less look after themselves. We cannot deal with legal costs without dealing with the general damages, because we will leave the whole system hopelessly ineffective unless we replace that mechanism with something else that is effective for the claimants.

I will move on to claims from \$100,000 to \$500,000—the larger claims. We are talking about a bit of money. Again, general damages are more than a quarter and past earnings lost and future earnings lost come into play. These larger cases are typically people who had jobs or would have had jobs and where loss of earnings is a significant factor. Future care is still a very small component. Clearly, these are not people who need lots of medical treatment in future. Past medical costs are significant and legal costs are also very significant. Again you will see this economic inequality. General damages and legal costs seem to be broadly similar in quantum. Loss of earnings becomes very important in this area.

The make-up of the very largest claims, those over \$500,000, is changing quite a lot. Future economic loss and future care together make up half the costs. These are people who seriously cannot work and who seriously need medical and other treatment. Half of the cost of their claims is going in those areas. The general damages piece is much smaller. The average per claim is still larger, but its economic driver is much smaller. The legal costs are around 20 per cent. Past loss of earnings are important and past medicals are also important. One can see the mix changing. What I hope to do is to give you that background by which you can make some judgments, not about the social policy merits of the decisions facing us, because that is for other people to talk about, but the economic impact and where the drivers are.

I would like to leave my presentation with this thought. When we were asked to assist the Treasury people to recommend practical solutions, what guided us? What were we looking for? First, we were looking for elements that would produce cost reduction because that was one thing the community was looking for. We were also looking for cost containment in future, flattening out those lines. Let us not have the unsustainable upwards drift that we seem to have been stuck with in these areas. This might be a more subtle point, but we were also looking for improved certainty and predictability in the insurance system—not because we wanted to help out the insurance companies but because that was a key factor in the insurance companies wanting to get into business. Insurance companies hate uncertain futures and unpredictability. They get a handle on risk and ask: Why would I take a risk in that area? They are not social institutions. They are out to make money, not to look after the community. They will commit their funds where they see reasonable predictability and certainty and, therefore, an ability to assess how much they need to charge and their chances of making a buck.

We were also looking for change in legal and social attitudes to the assumption of risk and the liability for risk. This is not a debate only in the economic or insurance context; it is very much in a social context. We were looking for practical proposals that would hook in that piece as well. Lastly, we were looking for national consistency. I will not dwell on that today, but you hear plenty about that and it is important for all of you to consider how, as a jurisdictional Parliament, you can and should play your role in dealing with the other jurisdictions in Australia and with the Federal Government. As I said earlier, if this package is to be effective, it needs the support of all the jurisdictions and the Commonwealth. Politics and interstate rivalry aside, we have a task here for the future good of the community and the public, and we have to take account of that. I thank you for your attention. I hope to take a couple of questions if there is time for me to do so.

Mr SPEAKER: There will be time for questions. However, I will ask the Premier to make his closing remarks. We can then go back to questions.

Mr CARR (Maroubra—Premier, Minister for the Arts, and Minister for Citizenship): My apologies for not being here early this morning, but I had an important engagement in Newcastle—the opening of the International Trade Union Conference. I needed to honour the organisers of the conference and the important visitors to Australia by being there to open it. On behalf of all members of Parliament I thank the participants in today's forum for their contributions and for giving so freely of their time. To Professor Peter Cane, Michael Gill, Bret Walker, SC, and Geoff Atkins go the thanks of the whole Parliament. You have done us a great

honour. We are conscious that this is the boldest attempt to rewrite the laws of negligence in 70 years. It is a major cultural change, a shift in community expectations. It is being reflected in the stage 2 legislation that will shortly be before the House for debate.

I believe the community is gratified that Parliament has tackled this huge problem, this crisis, that threatened to close down aspects of the Australian way of life. Parliament needs to be informed, and today's contribution has helped that. It is appropriate members of both Houses have been briefed. I have had the opportunity all this year to contemplate these questions, but many members of Parliament have not had that opportunity. Your presence today and these wonderful contributions have breached that gap. It will be an informed debate. It ought to be, because we are undertaking a huge task. Again I apologise for not being here throughout the seminar this morning, but on behalf of all members of Parliament I thank the participants for giving so freely and generously of their time.

Mr ASHTON (East Hills): Mr Atkins, you indicated in your address that overseas insurers are wary of insuring in the Australian market, because of some strange and curious decisions that our courts have given and the high awards they have made. Do you expect more insurers to enter the Australian market in the future, given some of the changes that this State will certainly be making, and perhaps the other States?

Mr ATKINS: I do not expect more insurers to enter. I do expect many who are currently represented in this country but who are keeping a low profile to be willing to write more business. The insurance market has been consolidating and shrinking. We are down to the big six. In banking we have the big four. Fifteen years ago there were 15 or 20 household-name insurers who would do all lines of business. Now there are only the big six, and the dynamics are changing. We see the senior executives of these companies, and we talk to them about the decision-making processes. A number will reopen their capacity when they consider the time is right.

Mr ROZZOLI (Hawkesbury): Mr Atkins, you mentioned the poor reputation of the insurance industry of Australia in the international market. Do you think the insurance industry in Australia is capable of mending its ways by self-regulation or is there a need for government to place more stringent fiduciary demands on the conduct of executives in the insurance industry?

Mr ATKINS: The HIH royal commission is a watershed in this industry. I am not going to pre-empt the outcome of the royal commission. I think everybody accepts that it is right to wait for that and to see what outcomes there are. I would say that the Australian Prudential and Regulation Authority [APRA] reforms of the prudential regulation of general insurers have made a big impact already and will continue to do so. As regards the capacity of the remaining insurers, it is quite wrong to put them in the same group as HIH or FAI. Having worked in the marketplace for 20 years, I have always seen a clear distinction. It is oversimplistic to tar them with the same brush. Indeed, many of those insurers who pulled out of the market were doing exactly what those other less capable or less responsible insurers were not doing. I will leave it at that and say that time will tell.

We do have significant APRA changes. We have the royal commission. One thing I would say, is that your Premier has made the point on more than one occasion that the insurance market is pretty much a commercial, free market. We do not control it. How do we ensure that if we make changes, the insurance companies are going to deliver the benefits to the community? I find that a very valid question. At the moment the only answer to that question is to put the Australian Competition and Consumer Commission [ACCC] on to them. I personally have a few concerns about that approach, because I do not believe the ACCC necessarily has the right skill base, the right culture or the right mentality to produce a co-operative outcome as opposed to a major bunfight. I believe it is a challenge still left unanswered about how to deal with it. I do not think there is an easy answer in terms of the State Government's introducing its own regulation. That will not work at all. It is an interesting question.

Mr BARTLETT (Port Stephens): A constituent of mine who could not get public liability insurance in Australia went overseas to Singapore and paid about \$17,500. He has now told me that he needs public liability insurance because his boat bumps against a wharf, but the courts are no longer recognising the Singapore company from which he gets the insurance. He has been advised to start a company in the Cayman Islands and have a shelf company in Australia so that when he gets sued the shelf company will have no assets. Is there much of that practice going on? Why do the courts not recognise an overseas insurer?

Mr ATKINS: There is only a little bit of that going on. There have been some scams by people selling apparent insurance policies in this country that are not worth the paper they are written on. There is a degree of nervousness about those scams. It is a commercial decision whereby somebody makes insurance cover a condition of some activity, such as a council requiring renters to have insurance. It is a matter for them the sort of insurance they will accept. It is a simple thing to say that you will accept an insurance policy from an

Australian-regulated insurer and not an overseas insurer. It is a little bit fallacious because some overseas insurers are fine and some are not. The problem is how can you tell the difference. Michael may want to say something about that.

Mr GILL: I say for the benefit of members that I spoke on a very similar topic yesterday morning at a session conducted by the National Insurance Brokers Association. A number of major brokers there pointed to the number of new schemes that are becoming available in Australia, for liability insurance in particular, allegedly underwritten by unauthorised foreign insurers in strange jurisdictions. I believe we are seeing as a result of this crisis that one of the real risky outcomes is that people who are having a lot of trouble getting public liability insurance are being introduced to opportunities that at the end of the day may not be worth anything.

Mr MARTIN (Bathurst): Mr Atkins, you said a couple of times in your address that insurers were looking for predictability in the market. Is that not an impossible dream? Would you define "predictability"?

Mr ATKINS: It seems quite paradoxical when the business of insurance is accepting risks from other people. What the insurance companies want to take on is the risk that is essentially random where they can predict statistically that a certain number of cars will crash and a certain number of houses will burn down but no-one knows which ones they will be. They are in the business of pooling those essentially random risks, but ones where across the whole of their portfolio they can understand what dynamics are at work and, subject to the vagaries of the weather and droughts, they can decide what overall level of rates they need to charge to make the insurance pool adequate. What really annoys them is when the rules get changed after the event. When they went into this business they understood that they were covering professionals for certain types of activities but that other types of activities would not be the subject of valid claims against those policies.

They can have five years of business on the books and then a court decision is handed down stating that from now on the professional will be liable for the type of activity that was not covered before. But the insurance company has five years of business on the book for which it has already set the premiums. That is the kind of thing they hate and find objectionable. They want the rules of the road by which their system works to be reasonably stable and not subject to what they regard as a kind of arbitrary change. The other problem for them is the upward trends. When the cost of claims goes up at 10 per cent per annum it makes it very hard to predict how much they need to charge today to write insurance policies that will cover accidents happening next year and the claims will be settled three, four or five years later. They hate the upward trends and they need a flat trend to make it more economically sustainable.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Will you provide the figures behind those pie charts that show the percentages?

Mr ATKINS: Yes, all of this material today is in the public domain already. It is in the reports, which are published, that we have prepared for the Heads of Treasuries group. They were done for the very purpose of informing the debate. If there is any particular item that is not adequately covered in those reports—because we have done a bit of work subsequent to the finalisation—they can be supplemented.

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts): It is my pleasant duty to thank the speakers who have addressed us this morning and to acknowledge the extraordinarily high quality of the information, debate and analysis they have provided to us. Honourable members will agree that they have provided us with a great deal of information that will assist us in our deliberations over the mysteries of the law of negligence and possible solutions to the present crisis of insurance that we are debating. Also, we have demonstrated through the seminar—I acknowledge the role of the Cabinet Office in organising the seminar—that this type of proceeding in the House can be very useful. It can assist to highlight the significance of a particular matter that may be before the House and do so in an especially informative and responsible fashion.

The way in which Professor Cane gave us a masterly description of the historical context of the law of negligence, the way in which Mr Gill gave us an especially hard-edged and amusing practical perspective from the point of view of a practitioner, the way in which Mr Walker demonstrated why the State of New South Wales so frequently briefs him to conduct its affairs in the superior courts and the way in which Mr Atkins demonstrated a degree of detailed analysis of the real circumstances of the insurance industry, to which most of us have never been exposed, was sufficient to justify the conduct of today's proceedings. I believe that we have most significantly benefited by them. Again I thank our speakers.

The joint sitting closed at 1.07 p.m.

LEGISLATIVE ASSEMBLY

Wednesday 18 September 2002

Mr Speaker (The Hon. John Henry Murray) took the chair at 10.00 a.m.

Mr Speaker offered the Prayer.

[*Mr Speaker left the chair at 10.05 a.m. The House resumed at 2.15 p.m.*]

FILM INDUSTRY

Ministerial Statement

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [2.15 p.m.]: I make this ministerial statement as Minister Assisting the Premier on the Arts. New South Wales is the film capital of the Pacific. The film and television industry in New South Wales has grown by 73 per cent since 1995. It now pumps \$3.5 billion into the State economy each year. International and local successes such as *The Matrix* and the recently released film *Dirty Deeds*, shot at the Silverton Hotel, indicate the high calibre of our film industry.

It is another feather in our cap that Mr Thomas Schumacher, President of Walt Disney Feature Animation, will meet with the Premier on 21 October. Mr Schumacher will be in Sydney to prepare for Disney's award-winning theatrical musical, *The Lion King*, due to start at the Capitol Theatre late next year. A visit to Sydney by someone of Mr Schumacher's standing in the international film community confirms our State's position as a top entertainment centre. No doubt Mr Schumacher will use his visit to congratulate our local Disney animation studio on its next blockbuster, the long-awaited sequel to the world famous film *The Jungle Book*. Disney Australia is hoping that its latest animated feature will follow the success of the original, which was one of the top 10 grossing films of all time. This is the latest triumph for the Disney Australia studio. It also worked on the sequel to *Peter Pan: Return to Never Land*, which grossed almost \$100 million in the United States of America alone.

Since its humble beginnings in 1988 the studio has grown to employ 250 people and now occupies state-of-the-art premises in Castlereagh Street. On behalf of the Government I would like to congratulate Disney Australia and thank those people for the contribution they are making to the growth of the film industry in New South Wales. We eagerly await the release of *The Jungle Book 2*, made in Sydney, Australia.

Mr Tink: Point of order: The Minister for the Arts is not only in the Chamber but he is on his feet. The interesting thing is that he does not happen to be speaking.

Mr SPEAKER: Order! No point of order is involved.

Mr DEBUS: That is an especially ridiculous point of order since I am sworn to the position of Minister Assisting the Premier on the Arts. The film *The Jungle Book 2* is slated for release in February 2003.

Mr SPEAKER: Order! I call the honourable member for Cabramatta to order. I call the Deputy Leader of the Opposition to order.

Mr COLLINS (Willoughby) [2.22 p.m.]: On behalf of the Opposition I want to say that—

Mr Whelan: What shadow portfolio do you have?

Mr COLLINS: For some reason I have been asked to respond on behalf of the Opposition to what the Minister has said. As Minister for the Arts for seven years in this State, I took a personal interest and was involved in the development of what is now Fox Studios—but for the signing of the studio agreement. Like all honourable members, I welcome the news that the Attorney General, and Minister Assisting the Premier on the Arts announced today on behalf of Disney Australia. I have absolute confidence in the future of the film industry in this State. Despite initiatives presently under discussion in Victoria, there is no doubt whatever that New South Wales is the film, television and entertainment centre of Australia, and will always remain so.

In the twenty-first century Parliament will have to address the growth industries of film, television and entertainment, which I believe will continue to expand in an unprecedented manner. The initiative announced today by Disney Australia merely reflects the ground that has been gained in the past 10 years or so, with the opening of Fox Studios and the proper allocation of State-owned land at what was formerly the Sydney showground for film studio purposes. I signal that there may be further scope to expand the film, television and entertainment industries. New South Wales could assist that growth by embarking upon an initiative similar to that undertaken at Fox Studios but perhaps involving a better organised and more long-range release of State-owned land for that purpose.

Today's initiative signifies a branching out from traditional feature film-making and will obviously provide much work for the behind-the-scenes technicians, an area in which this country and, indeed, this State are pre-eminent. We welcome the extra work that Disney Australia will generate for animators through this project. But this is only the beginning: There will be many more opportunities for this great industry in the century ahead.

QUESTIONS WITHOUT NOTICE

Supplementary Answer

OASIS LIVERPOOL DEVELOPMENT

Mr IEMMA, by leave: During question time yesterday I was asked to table details of meetings with representatives of the Canterbury Bulldogs. I can now comply with that request. I seek leave to table that information.

Leave granted.

Document tabled.

MINISTRY

Mr CARR: In the absence of the Minister for Transport, and Minister for Roads, who is at a meeting of transport Ministers with the Deputy Prime Minister in Canberra, the Minister for Public Works and Services will take questions on his behalf.

BUSINESS OF THE HOUSE

Routine of Business

[During notices of motions]

Mr SPEAKER: Order! The notices of motions being given by members are far too lengthy. Although members may feel satisfied about giving lengthy notices in the House, I remind them that those notices do not necessarily appear in the business paper in the form in which they are given in the House. Under my authority most of the verbiage is excised by the Clerks.

PETITIONS

Allambie Heights Telecommunication Antennas

Petition opposing construction of telecommunication antennas at Allambie Heights Oval, received from **Mr Hazzard**

Planning Control Reform

Petition requesting reform of planning controls by gazettal as a legal document, oversight by the Department of Planning, public benefit assessment of variations, and a ban on development-related donations to political parties and elected officials, received from **Ms Moore**.

Mental Health Services

Petition requesting urgent maintenance and increase of funding for mental health services, received from **Ms Moore**.

Freedom of Religion

Petition praying that the House reject legislative proposals that would detract from the exercise of freedom of religion, and retain the existing exemptions applying to religious bodies in the Anti-Discrimination Act, received from **Mr Crittenden**.

Illegal Street Sex Work

Petition seeking the establishment of a high-level, co-ordinated strategy to address illegal street sex work in residential areas, received from **Ms Moore**.

Public Liability Insurance Reform

Petition praying that the House address the crisis in public liability insurance by legislative reform, received from **Mr E. T. Page**.

National Parks and Wildlife Service Prosecutions

Petition asking that the National Parks and Wildlife Service be directed to redress the injustice suffered by the Bacic family and to ensure that future prosecutions under the National Parks and Wildlife Act are properly and responsibly based, received from **Mr Rozzoli**.

Lane Cove Tunnel Works

Petition praying that the House initiate a review of Lane Cove tunnel works, received from **Mr Collins**.

Cammeray Traffic Arrangements

Petition praying that pedestrian traffic signals be installed at Raleigh Plaza on Miller Street, Cammeray, and that the 1997 traffic study be implemented, received from **Mr Collins**.

Blacktown to Castle Hill Bus Transitway

Petition requesting that construction of the Blacktown to Castle Hill Bus Transitway, proposed for the eastern side of Sunnyholt Road, be moved to the western side of Sunnyholt Road, received from **Mr Gibson**.

Cross-city Tunnel Traffic Management

Petition praying that the Roads and Traffic Authority work with Woollahra Municipal Council and local communities to identify and implement traffic management strategies in advance before any toll is collected on the cross-city tunnel, received from **Ms Moore**.

Redfern Bus Services

Petition praying for an urgent increase in the reliability and adequacy of Redfern bus services, received from **Ms Moore**.

Bus Service 311

Petition requesting reinstatement of bus route 311, bus shelters and seats, and the Market Street bus stop, and provision of mini-buses and better information and timetables, received from **Ms Moore**.

Underground Cables

Petition requesting that the House ensure that an achievable plan to put aerial cables underground is urgently implemented, received from **Ms Moore**.

Old-growth Forests Protection

Petition praying that consideration be given to the permanent protection of old-growth forests and all other areas of high conservation value, and to the implementation of tree planting strategies, received from **Ms Moore**.

Northbridge Primary School

Petition seeking permanent classrooms to replace temporary demountable classrooms at Northbridge Primary School, received from **Mr Collins**.

Richmond Regional Vegetation Management Plan

Petitions seeking extension of the exhibition period of the draft Richmond Regional Vegetation Management Plan, received from **Mr Fraser**, **Mr George**, and **Mr D. L. Page**.

Circus Animals

Petition praying for opposition to the suffering of wild animals and their use in circuses, received from **Ms Moore**.

White City Site Rezoning Proposal

Petition praying that any rezoning of the White City site be opposed, received from **Ms Moore**.

Companion Animals Legislation Obligations

Petition asking that the House ensure that State Government authorities and local councils meet their obligations under the Companion Animals Act, received from **Ms Moore**.

Graffiti Controls

Petition requesting further legislative changes to reduce graffiti on private and public property, received from **Ms Moore**.

Homeless Services Funding

Petition asking that homeless services funding be increased urgently and maintained until no longer needed, received from **Ms Moore**.

Beat Policing

Petition calling on the Government to focus policing strategies and resources on beat policing, received from **Mr Debnam**.

Cronulla Police Station Upgrading

Petition praying that the House restore to Cronulla a fully functioning police patrol and upgrade the police station, received from **Mr Kerr**.

Surry Hills Policing

Petition praying for increased police presence in the Surry Hills area, received from **Ms Moore**.

Kings Cross Area Policing

Petition praying for increased police strength for Kings Cross local area command and for uniformed police foot patrols, received from **Ms Moore**.

Eastern Suburbs Policing

Petition praying for increased police resources for the Rose Bay Local Area Command, received from **Ms Moore**.

Redfern, Darlington and Chippendale Policing

Petition praying for increased police presence in the Redfern, Darlington and Chippendale areas, received from **Ms Moore**.

BUSINESS OF THE HOUSE**Withdrawal of Business**

General Business Notice of Motion (for Bills) No. 3 [Liquor Amendment (Late Night Drinking) Bill] withdrawn on motion by Mr Barr.

BUSINESS OF THE HOUSE**Reordering of General Business**

Ms MOORE (Bligh) [2.40 p.m.]: I move:

That General Business Order of the Day No. 14 [Government (Open Market Competition) Bill] have precedence on Thursday 19 September 2002.

The Government (Open Market Competition) Bill has been passed by the Legislative Council. It is a bill about accountability. It is important to all citizens of New South Wales. I hope that it will receive bipartisan support from this Chamber, as did the freedom of information [FOI] reforms in the Fiftieth Parliament. The bill would ensure that major government contracts and associated tendering documents are made publicly available to all public authorities. It would also enable the Auditor-General to examine accounts of persons and bodies that receive government grants. It would address problems of lack of independent oversight of FOI, the culture of secrecy, prohibitive charges and an excess of exemptions, especially in relation to information that is commercial in-confidence and Cabinet in-confidence. Indeed, it would bring us into line with New Zealand, where legislation presumes information is available unless there is a legal reason to withhold it. The bill is very important for everyone in this Chamber and I hope that it will receive support.

Motion agreed to.

QUESTIONS WITHOUT NOTICE

CHILD SEXUAL ASSAULT SENTENCES

Mr BROGDEN: My question is to the Premier. The latest statistics from the Judicial Commission show that of the 112 paedophiles sent to gaol in New South Wales since 1995 for sexual intercourse with a child under 10, more than half served 30 months or less. Will the Premier support the Coalition's policy announced today for a compulsory 15-year minimum sentence for this horrendous crime?

Mr CARR: Today we see what happens if inexperienced people try to toy with the Crimes Act. The Leader of the Opposition today announced that he would create a new offence, serial indecent assault of a child under 10. He said he would set a maximum penalty of 20 years—worthy idea. The problem is that the offence already exists—section 66EA of the Crimes Act—and the maximum penalty is 25 years.

Mr Brogden: Point of order. The matter of—

[Interruption]

Mr Brogden: Point of order, Mr Speaker.

Mr SPEAKER: Yes, I have given you permission to speak.

[Interruption]

Mr SPEAKER: The Leader of the Opposition will resume his seat.

Mr Brogden: I have a point of order, Mr Speaker.

Mr SPEAKER: The Premier has the call.

Mr Brogden: I have a point of order, Mr Speaker.

Mr SPEAKER: The Leader of the Opposition will sit down.

Mr Brogden: I have a point of order, Mr Speaker.

Mr CARR: The Parliamentary Counsel and the Criminal Law Review Division both confirmed—

Mr SPEAKER: Order! I place the honourable member for Monaro on three calls to order.

Mr Brogden: Mr Speaker—

Mr SPEAKER: I will give the call to the Leader of the Opposition again but I will not sit and wait for 10 seconds—

Mr Brogden: For them to shut up.

Mr SPEAKER: Order! As the Leader of the Opposition knows, a member taking a point of order should address the Chair; he should not address members on the other side of the House. If he does not respond when he is given the call, he loses the opportunity to speak.

Mr Brogden: Point of order: The matter of sexual intercourse with children under 10 is a serious matter and I would hope the Premier treats it seriously. It does not deserve the Premier to treat it in such an arrogant manner. I ask you to direct him to answer this question—

Mr SPEAKER: Order! There is no point of order.

Mr Brogden: —which asks him if he will support our policy.

Mr SPEAKER: Order! There is no point of order. The Leader of the Opposition will resume his seat.

Mr CARR: The Opposition today announced that it would set a maximum penalty of 20 years.

Mr SPEAKER: Order! I place the honourable member for Bega on three calls to order. The honourable member for Wakehurst will resume his seat.

Mr CARR: As I said, the maximum penalty in the legislation as it exists is 25 years. Further, both the Parliamentary Counsel and the Criminal Law Review Division confirmed this morning that the Opposition's new offence covered by section 66EA of the Crimes Act would result in a five-year reduction for this serious offence. We cannot let inexperienced people play with the Crimes Act. I put it this way: You better get a lawyer, John, better get a real good one.

Mr SPEAKER: Order! I call the honourable member for Oxley to order. I call the honourable member for Vacluse to order.

EXCEPTIONAL CIRCUMSTANCES DROUGHT ASSISTANCE

Mr MARTIN: My question is to the Premier. What is the Government's response to community concerns about the Federal Government exceptional circumstances application process?

Mr CARR: There would hardly be a more important matter worthy of raising in question time than assistance for drought affected communities in New South Wales.

Mr SPEAKER: Order! There is far too much noise from both sides of the House. I ask members to refrain from talking.

Mr CARR: I am proud that New South Wales has acted quickly and compassionately. In the past two months we have delivered 28 assistance measures for country families and communities. The New South Wales Farmers Association and Country Labor helped develop our drought assistance package. This raises the question of why the Federal Government cannot join us in providing assistance to farmers. The Commonwealth has not spent a cent. Much of New South Wales has now been in drought for more than 12 months.

Mr SPEAKER: Order! I call the honourable member for Oxley to order for the second time.

Mr CARR: The Commonwealth can step in at any time to offer assistance. There is no law or provision in the Constitution that I know of that says the Commonwealth cannot join New South Wales in offering assistance to farmers. The Commonwealth hides behind exceptional circumstance applications. The Howard Government's track record on this issue is abysmal. Take the Central Coast and the plight of chicken farmers facing Newcastle disease in 1999-2000. It was the largest exotic animal disease outbreak in Australia's history. Farmers applied for exceptional circumstance assistance.

Warren Truss left the farmers waiting for 12 months and then knocked them back. It took him 12 months to say no. In 1998 drought-stricken farmers in Cooma and Bombala were left waiting seven months for approval. In 1999 Riverina woolgrowers faced with ovine Johne's disease put in an exceptional circumstance application that has never been responded to. They were not given the courtesy of a response. Let us hope that the Commonwealth can be a bit more receptive on this. Last Saturday at the Country Labor conference at Cooma an exceptional circumstance—

[Interruption]

The Leader of the National Party interjected. I say to him, "Look up there at the Dubbo, Armidale, and Port Macquarie members. I do not think they are giving up their seats to the National Party." Enough of these distractions!

Mr SPEAKER: Order! I call the Leader of the National Party to order. I call the honourable member for Baulkham Hills to order.

Mr CARR: The Government has put in a substantial application for exceptional circumstances. Experts have told us that it is the best application that has ever been submitted. New South Wales Agriculture worked closely with farmers and local communities to frame the application. More than that, officers of the department actually drove to Canberra with this application and waited in the car park until the Federal Minister's office doors opened, so determined were they to have the submission taken seriously by Canberra. This 180-page book covers only 7 per cent of the State. Our drought assistance application covers 60 per cent of the State. However, there is no guarantee that this application will be taken seriously by the Federal Government. It has changed the criteria and made it even tougher to qualify by demanding information that would intimidate even the most resilient farmer.

I will outline what happens with that substantial application. The Minister receives it, he gives copies to three bureaucrats to make an initial assessment, and the bureaucrats recommend to the Minister whether he should forward the submission to an advisory group. That advisory group decides if the case is strong enough. If they think it is they arrange to visit the affected area and discuss the case with farmers and the community. That is something our people have already done. Then the advisory group meets, makes a decision, and puts a recommendation to the Minister. Bear in mind that in some cases the process has taken seven or 12 months. Then the Minister takes a recommendation to Cabinet for further discussion. That bureaucratic nightmare must be lived out before a decision can be made, and that can take seven months or 12 months.

Meanwhile the farmers, the families and communities we have spoken to and are trying to help are crying out for extra assistance. They are crying out for the first flow of money from the Commonwealth during this drought. However, they could still be knocked back after all that assessment process. At the Country Labor conference last Saturday in Cooma while we were working this up, talking about it and responding to the local community where was the Leader of the National Party? He was in Sydney at the Opera House sitting back enjoying Shakespeare's *The Comedy of Errors*. We all like and enjoy Shakespeare, and this was Shakespeare's first comedy. How inventive of the bard of Stratford to conjure up a title for his comedy that perfectly fits the state of the New South Wales National Party in this day and age.

REGIONAL VEGETATION MANAGEMENT PLANS

Mr SOURIS: My question without notice is directed to the Minister for Land and Water Conservation. Will the Minister act on the advice of his director-general, who publicly stated his concern about the hidden costs to rural people of the Department of Land and Water Conservation regional vegetation management plans, and immediately withdraw the plans and begin genuine consultation with farmers and regional communities?

Mr AQUILINA: Currently the regional vegetation management plans are out for public consultation. I envisage that by the end of this year a number of the plans will be up and running. Further plans will be up and

running early in the new year. In the spirit of consultation a number of issues have been raised and already I have extended the consultation period on a number of plans. Consultation of the plans will continue and the plans will continue to be enacted. The matter raised by the Leader of the National Party possibly relates to the Tenterfield regional vegetation management plan, which commenced on 29 July and was to conclude on 6 September. In response to local farmers I approved a two-week extension to the public exhibition period, which was to conclude about the end of this week.

I assure the Leader of the National Party and other members of this House that the Government is treating this matter seriously. I am very keen to ensure that time is made available for extensive consultation with all parties. Last week in Tenterfield the director-general of the Department of Land and Water Conservation met with community members, representatives of the Tenterfield Shire Council and local landholders to listen to their concerns about the draft plan. That meeting has provided the department with additional guidance to the changes that need to be considered by the Tenterfield Regional Vegetation Committee.

A revised draft plan is now being developed and will be closely monitored by the director-general, who will act as the departmental executive facilitator to the committee for the next two months. I also thank the honourable member for Northern Tablelands for his input into this process. He is a real country representative and has made representations that bring about some response from government. I thank him for his actions, unlike those of the Leader of the National Party, who prefers to watch Shakespeare on the weekend in Sydney rather than be out among his constituents.

Mr Carr: Affected by the drought, as they are.

Mr AQUILINA: Affected by the drought, as they are. The Leader of the National Party comes here with a vague, unspecific question. He wants the Government to turn back the clock, presumably to the dim, dark ages when the Coalition was in charge of the State and created the natural resource management mess that rural parts of the State are now in. The Government is now putting in a planned process.

Mr SPEAKER: Order! There is far too much interjection.

Mr AQUILINA: The Government has plans and uses the experience of farmers, local communities and knowledgeable local members such as the honourable member for Northern Tablelands to ensure that we come up with the right answers and solutions.

Mr SPEAKER: Order! I call the honourable member for Lismore to order.

Mr AQUILINA: This process is about community involvement.

Mr SPEAKER: Order! I call the honourable member for Murrumbidgee to order. I call the Leader of the National Party to order for the second time.

Mr AQUILINA: I thank the honourable member for Northern Tablelands for facilitating the revision of the Tenterfield plan. The way in which this Government does things is by consulting and listening and acting on the consultation process. We take local people into consideration and come up with solutions that are worthwhile and will advance their cause.

SCHOOL STUDENTS LITERACY LEVELS

Miss BURTON: My question without notice is to the Minister for Education and Training. What is the latest information on literacy in New South Wales?

Mr WATKINS: Seven years ago the Government embarked on a bold plan to focus on the basics of teaching and learning in New South Wales schools. We implemented, then expanded, an ambitious literacy and numeracy plan backed by significant resources—by 2004, \$1 billion will be spent. Today I can inform the House that this focus on standards, the basics, is paying off. The most recent results from the latest primary school data, the 2002 basic skills test and the primary writing assessment, are in and they are outstanding. These results are, clearly, the best ever. They are a ringing endorsement of the sustained focus on teaching the fundamentals to New South Wales children and the great work of our teachers in New South Wales schools. These results come on top of the OECD results last November that showed 15-year-olds in New South Wales lead the world in literacy.

During July and August more than 119,000 New South Wales year 3 and year 5 government school students sat the basic skills test and the primary writing assessment. The tests are designed not only to give a snapshot of achievement, but also to ensure that we identify all students who need extra help. This week the results are being sent to schools. Early next term they will be sent to parents. The results for government schools in the basic skills test build on impressive results from last year. For literacy, they show that the greatest improvement for individual students between years 3 and 5 has been recorded this year. The average literacy score is up by 7.8 points. In year 5 the largest number of students ever are in the highest achievement bands. They are achieving better results. It is now 25 per cent, up 2 per cent on last year. The smallest number of students was in the lowest achievement bands, with 11 per cent in year 3 and 6 per cent in year 5.

It is pleasing to note that the gap between girls and boys is smaller than it was seven years ago. The boys' results in year 5 are up almost one point from last year. It is also pleasing to note that the results of Aboriginal and Torres Strait Islander students are generally improving. The year 5 average literacy score is up by 0.4 of a point from last year. For the first time students from non-English-speaking backgrounds are performing at the same level as students from English-speaking backgrounds, with the highest scores yet recorded. These are good, strong results in literacy for year 3 and year 5 students.

In relation to numeracy the results are also impressive. They show a great improvement between years 3 and 5, with the average score increasing by 8.5 points, the highest increase recorded yet. Scores were consistent or had improved from previous years. In year 3, for example, the average score is up 0.6 of a point since last year. The number of students in the lower skill bands has decreased, and the number of students in the higher skill bands has increased. The story in numeracy is similar to what it is in literacy. More students are in the higher band and there are fewer students in the lower band. Students generally are doing better in numeracy. These results are strong and significant. More importantly, clear trend data is now available.

Since 1996 there have been statistically significant improvements in the basic skills test year 3 literacy scores. They are on their way up. In 2002 for the second year running we have the highest average score in 12 years of testing. After 12 years of testing the results are still going up. Although year 5 testing has been in place for a shorter period, last year's strong increases have been improved on again this year. I should briefly mention the primary writing assessment results. The results of two years of testing the writing skills of students are now available. This year's primary writing assessment results show strong improvements in writing scores, with fewer students in low skill bands and more students in higher skill bands.

For example, in 2002, 17 per cent of year 3 students achieved the highest skill band, an increase from 9 per cent last year. Writing skills are also improving. Skills are improving in literacy, numeracy and writing. The results are in. The average scores for students in both year 3 and year 5 are also up. These results validate and vindicate the measures taken by the Government over the past seven years: supply of useful data to schools, use of intervention programs such as Reading Recovery, and the broad policy framework provided by the State Literacy Strategy. These are now reaping the benefits for our schools, teachers and, most importantly, our students. The Reading Recovery Program is a stand-out success story. So far it has provided training and support to 925 teachers across 825 schools. In 2001 the program assisted more than 7,000 year 1 students with reading difficulties. Trained Reading Recovery teachers are helping year 1 students to ensure that they have the reading skills to achieve.

The long-term benefits of the Reading Recovery Program are borne out by this year's results. The students helped in year 1 are still reaping the benefits in year 5. This data shows that these students improve at a faster rate than the State average, even four years later. This is an important investment in year 1 that reaps benefits in the years following. These are fine results. I am sure that every member of this Parliament will be pleased to know that the literacy and numeracy results of our kids are improving. Our public schools have much to be proud of. Our public school teachers, in particular, deserve the highest praise for this remarkable and sustained achievement. Classroom teachers, support teachers for children with learning difficulties, Reading Recovery teachers, teacher-librarians, school learning support teams, and the thousands of volunteers who come into our schools to assist with reading deserve our congratulations. On behalf of the people of New South Wales I say, "Thank you, well done!"

DEPARTMENT OF COMMUNITY SERVICES STATE WARD PLACEMENT

Mr HAZZARD: My question without notice is directed to the Premier. My question relates to the 13-year-old State ward left by the Department of Community Services at Dee Why police station overnight. Will the Premier explain why the Minister for Community Services asserted today that cost was not a factor in the

removal of the boy from a successful placement in Newcastle, when this statutory declaration from the boy's grandmother, sworn today, confirms that DOCS told her at the time that cost and a lack of resources in DOCS was the only reason the boy was turned out?

Mr CARR: I am very pleased to be asked this question because I want to take the House through all of this case. It is a very sensitive matter. I would ask the House to listen sensitively. I would like every member of this House to make up his or her mind on whether hard-working people in DOCS are to blame, and deserved the vilification heaped on them yesterday and today by the Opposition. I ask the House to listen to the details. This is a highly complex case.

Mr SPEAKER: Order! I call the honourable member for Vacluse to order for the second time.

Mr CARR: It involves a 13-year-old boy who is almost uncontrollable. His family cannot control him. He is probably, I am advised, one of the most difficult 20 young people in New South Wales. DOCS has expended a great deal of resources—more than \$131,000 to date—in staff time, on case plans and programs, and in finding places for the boy to live. DOCS has never given up on the boy, as we should never give up on any child. But I want the House to know all the details before members join in a vilification of hard-working DOCS employees on this issue. DOCS will continue to do the best it can for this boy. Here are the details. He has had multiple placements going back to 1991. There have been 29 reports and notifications on this boy since 1991. He was made a ward of the State in February this year. At that time he was in placement with Great Mates in Newcastle, and remained there until April. DOCS felt that he was not responding to the program. He was placed with the Burdekin Association on 26 April with a professional carer.

This placement enabled the boy to return to the Northern Beaches area, where he had long-term family and school connections. However, that placement was not successful. Over the next four months DOCS received at least seven notifications that the boy had run away or had not returned to the carer. I repeat: DOCS see him as one of the 20 most difficult youngsters in the State. In July 2002 the boy's placement with the Burdekin Association broke down due to his behaviour. Crisis accommodation was then secured for him at the Y-Young Youth Service in Wyong. However, the boy refused to attend this placement because he wished to stay in the Northern Beaches area. A crisis placement was then secured at Teldemunde Youth Refuge.

I have mentioned a number of the placements by DOCS staff in their efforts to find a place that would take and compassionately care for this disturbed youngster—as I have said, one of the 20 most behaviourally troubled in the State. He has been placed with Teldemunde Youth Refuge and again refuses to attend the placement. Even as late as yesterday afternoon, when the Opposition was cavorting in this House about this issue, trying to use this boy to score political points—

Mr SPEAKER: Order! I call the honourable member for Ku-ring-gai to order.

Mr Hazzard: Point of order: On the basis of relevance. At no time thus far has the Premier explained why DOCS took the boy out of a successful placement in April this year. I ask the Premier to tell us how many times the boy has had counselling. Instead of vilifying the child, the Premier should tell us exactly what has gone wrong. Why has DOCS not done counselling with the boy? Why did DOCS take him out of a placement on 28 April? Because the Premier has not given the resources to DOCS to do the job. Instead of skating on thin ice, it is about time the Premier told us why he will not give DOCS the resources to do the job. We are not vilifying the staff. He is vilifying the child today the way he is going on.

Mr SPEAKER: Order! There is no point of order involved.

Mr CARR: DOCS has so far spent \$131,000 on this child. The child is clearly troubled. Even as late as yesterday afternoon he was refusing to attend his placement, jumping out of the case worker's car on the way there. DOCS has now developed a case plan for a long-term placement with the Marist Youth Service at a cost of more than \$10,300 a fortnight.

Mr Hazzard: Why did they take him out of a \$7,000 placement four months ago?

Mr CARR: I have answered precisely that question. The placement at the Marist Youth Service is in specially rented premises. The service will provide 24-hour care, therapy, support and supervision, and one worker will look after him at all times.

Mr SPEAKER: Order! The honourable member for Wakehurst has said enough.

Mr Hazzard: I have not, Mr Speaker. I take a point of order.

Mr SPEAKER: Order! I place the honourable member for Wakehurst on three calls to order. He will resume his seat.

Mr Hazzard: I take a point of order.

Mr SPEAKER: Order! I will not hear the point of order. The honourable member for Wakehurst will resume his seat.

Mr CARR: I hope I have gone through the entire history of the placements.

Mr SPEAKER: Order! I remind the honourable member for Wakehurst that he has been placed on three calls to order.

Mr CARR: The boy has been placed repeatedly and he has left each placement, confronting DOCS with a problem. I repeat that the total expenditure to date by DOCS has been \$131,000 on this one troubled child. As I said, he is now in specially rented premises with the provision of 24-hour per day care, therapy, support and supervision, and one worker to look after him at all times. I am advised that on the evening of 15 August through to the early morning of 16 August the DOCS Helpline—the front-line employees of DOCS whom the Opposition so easily attacks—rang every refuge in the Sydney area to obtain a placement for a boy who had repeatedly left refuges and placements that DOCS had found for him. Those inquiries were made late at night, of necessity, and the refuges either did not respond or declined to take him.

Mr SPEAKER: Order! I call the honourable member for Ku-ring-gai to order for the second time.

Mr CARR: Under these circumstances Dee Why police station was clearly the safest place for the boy to be. No, it was not ideal but it was safe and secure and he was off the streets and out of harm's way while DOCS staff worked hard through the night to find him a placement. While it is true that the next morning a DOCS case worker asked the police to send the boy to the Manly DOCS office by bus, that request was overruled by the case work manager. The boy was driven to Manly by the DOCS case worker to work on his case plan and to find him a placement.

I repeat to the House: it is clear from the facts that this is a most difficult case of a troubled youngster. I have outlined the case history. DOCS has spent a large sum of money on him and has tried many approaches. He presents with very challenging behaviour. More work will be invested in this case and a great deal of resources will be spent on it. Time and effort will be spent to try to rehabilitate this boy. The DOCS staff are doing this because they believe that every child counts. We ought to congratulate them on working very hard and consistently, and on spending a great deal of money on this boy, rather than leaping in, as the Leader of the Opposition did in an attempt to use this boy politically.

BROADBAND INTERNET CONNECTION

Mr HICKEY: My question without notice is to the Minister for Information Technology. What is the latest information on the Government's strategy to improve broadband Internet connection across the State?

Mr YEADON: The honourable member for Cessnock takes a keen interest in technology and understands the benefits it brings to his constituents. This is a timely question given the exciting initiatives and projects occurring in broadband and other telecommunications technology throughout the State. Earlier this year the Premier made an important announcement on the Government's solution to delivering faster and more reliable Internet connections across New South Wales. The Premier committed the Government to rolling out broadband connections to schools, hospitals and other important community service providers throughout New South Wales. This \$283 million strategy is already delivering new technology to our schools and hospitals. It is already enabling leading-edge advancements in remote telehealth that allow doctors to transfer medical data and images over a reliable connection from one corner of the State to another. This will enable the immediate transfer of x-rays so that a specialist in Sydney can become a virtual part of the operating theatre team in, for example, the New England area.

Mr Knowles: A terrific innovation.

Mr YEADON: It is exciting technology. Speed and reliability of data transport is very important in areas such as health and schools.

Broadband technology is providing these solutions and teachers and students are not wasting time by having to wait for a computer to download information. Earlier this year the New South Wales Government was able to provide a broadband connection to Muswellbrook High School by connecting into the fibre optic cable running alongside our rail lines. We ran similar pilots in nine schools throughout the State and the result was that Internet download times were up to 20 times faster. For example, at one school, data that previously took 20 minutes to download now takes only about one minute—an extraordinary increase in capacity. Now that Muswellbrook High School is connected to broadband through our State-owned cable, it is investigating Internet video streaming in the classroom, which will be a great facility.

Today I can inform the House that this Government is taking another huge step in rolling out broadband technology to the community. We are asking the private sector to work with us to provide broadband connections to as many as 5,000 sites throughout New South Wales. Never before in Australia has a government embarked on such an ambitious project of this size and scale.

Mr O'Farrell: Victoria had it several years ago.

Mr YEADON: You simply do not understand what I am talking about, which does not surprise me at all. The Victorian Government has not rolled out any broadband infrastructure, you imbecile. The Government is calling for expressions of interest from the private sector to provide innovative broadband solutions, including last-mile links into our State-owned cable that runs alongside rail and electricity networks, as well as on towers, ducts and rights of way. The fibre optic cable running along our electricity networks stretches 1,500 kilometres from Texas on the Queensland border through Armidale, Tamworth, Lithgow, Yass, down to Jindera on the Victorian border. Our cable on the rail network has the potential to deliver broadband solutions as far as Newcastle, Goulburn, Kiama and, of course, throughout metropolitan Sydney.

Under this program the private sector can work with the Government so that the sorts of advantages from broadband that are being experienced in places like Muswellbrook High School can be delivered, for example, to the Muswellbrook police station, the local court, the hospital, the ambulance station, the library, the Community Services Centre run by the Department of Community Services, and even the offices of the Roads and Traffic Authority. We are providing a springboard for competition in rural and regional areas in the telecommunications industry. In addition to delivering these so-call last-mile connections to our schools, hospitals, police stations and other community service providers, there is potential for the private sector to commercialise surplus capacity to deliver broadband to households and businesses. That will mean better and cheaper services.

The benefits of this project are only limited by the imagination of the users. This project is part of the New South Wales Government Telecommunications Strategy, which is a clear and well-planned blueprint for better and more reliable telecommunication services in New South Wales. The New South Wales Government is already delivering the goods for better telecommunication solutions under this strategy in towns like Armidale. Indeed, a month ago I was in Armidale with the honourable member for Northern Tablelands to launch that latest initiative.

[Interruption]

The honourable member for Ballina can run it down, but as the honourable member for Northern Tablelands and I experienced in Armidale, the excitement is infectious. This is fantastic stuff. People really do recognise what it delivers. We are working with business and community leaders on broadband delivery at the University of New England and other centres throughout the New England region. We are working within government to make sure we make the most of our combined muscle as a major telecommunications customer. The New South Wales Government spends more than \$250 million on telecommunication services each year, and this figure is predicted to grow as high as \$500 million in four years time. By calling for this expression of interest we are taking steps to save taxpayers dollars by reducing costs, as well as planning to bring better services to communities throughout our State. This expression of interest document will bring together the private sector and government to put this plan into action.

DEPARTMENT OF HOUSING NORTHCOTT ESTATE

Ms MOORE: My question is to the Minister for Housing. When will the Minister fund a community worker for the troubled Northcott Department of Housing estate in Surry Hills, where there have been three murders and two suicides in the past year, a stabbing and an attempted suicide on 5 September, and shootings in adjacent Ward Park on 7 September?

Dr REFSHAUGE: I thank the honourable member for Bligh for her commitment to working with the department and the councils in trying to resolve the difficult problem concerning the number of homeless people in that area. The Government has developed a number of strategies that have been in place for over a year now to try to resolve the issues. Most of the work has been done with the Department of Housing in conjunction with the outreach programs from the city of Sydney homelessness action teams. I was delighted that we were able to convince the former South Sydney council to financially support some of our programs.

This is an ongoing program; it will not stop, and it requires considerable efforts by a number of agencies. It does not relate merely to accommodation. In fact, accommodation tends to be one of the least difficult issues to resolve. Other problems are alcoholism or gambling and resolving them will not be done by providing a house that people might easily walk out of again, because many of them have been in public housing to date. I am keen to continue to work on any suggestions the honourable member might have. We have already worked together on trying to resolve this and I am certainly keen to continue that co-operative approach.

GEORGES RIVER FORESHORE IMPROVEMENT PROGRAM

Ms MEGARRITY: My question without notice is to the Minister for Planning. What is the latest information on plans to revitalise the Georges River?

Mr Hartcher: And related matters.

Dr REFSHAUGE: And related matters? They relate to the fact that you are so inexperienced that you do not even know the Crimes Act. I suggest you look at page 51 of the Crimes Act and you might be able to write a question for your leader that is reasonable. Your inexperience and your laziness are showing. I am not surprised your leader has left, gone to ground, not quite in tears because he was too embarrassed to cry. He has left; he has scurried away. You were the one who set him up. Kerry, you were so much better. Bring back Kerry! The question of the honourable member for Menai underscores her strong commitment to the Georges River and its improvement.

Mr SPEAKER: Order! The Premier will remain silent. The Deputy Leader of the Opposition will cease interjecting.

Dr REFSHAUGE: Since 1999 the Government has been committed to improving what is Sydney's oldest and most-used catchment. Decades of industrial use and land clearing have led to the degradation of this 96,000-hectare region and, as a result, we have seen a loss of natural vegetation along the banks, a reduction in the native flora and fish life, a reduction in the water quality, and the creation of one of Sydney's most stressed waterways.

The Georges River Foreshore Improvement Program is our plan to reverse these impacts and create a vital, positive environmental legacy for the 1.5 million people who live along the Georges River catchment. A four-year \$6-million program—the improvement plan—is ensuring substantially improved and rehabilitated foreshores, cleaner water, and better access to the foreshores by local people. It is a clear commitment by the Government to the river and to the communities surrounding it. With support and matching funding from councils and State agencies, we have been able to generate up to \$12 million in work in and around the catchment. As a result, some 41 projects are funded, under way, or completed, and another eight will be completed by the end of 2002.

The Georges River Foreshore Improvement Program is part of a broader plan for the region. The Sharing the Catchments of Southern Sydney Program will ensure that we manage the precious resources of the catchment in a better, more sustainable way. We are dealing with a massive area of 31 square kilometres, extending from Blacktown down to Wollondilly and from Sutherland to Botany Bay and taking in 14 local government areas. We must make sure that we get it right for future generations.

I am pleased that the Georges River Foreshore Improvement Program has been able to support a range of Aboriginal projects. To date, more than \$405,000 has been granted to projects that relate directly to Aboriginal issues and heritage, the most recent being the Prospect Aboriginal Trail. The heritage trail is an important cultural, recreational and ecological resource that runs through the heart of the Smithfield-Wetherill Park industrial area. It includes significant remnant areas of endangered native vegetation, sporting fields, and a cycleway. It also provides an insight into, and an understanding of, the Gamadagal ngurang—or "Spirit of Place"—of the area that we know today as Prospect Creek. I am delighted that the program incorporates the conservation of Aboriginal heritage and values as a prime objective and, where appropriate, includes training and employment opportunities for Aboriginal people.

Today I can announce that the Government will spend another \$800,000 improving the environment and creating recreational parks and foreshore access for families in the Georges River catchment. This money will go to 11 projects, including walking trails, cycleways and bush rejuvenation. It will also improve water quality, provide better recreational facilities, enhance natural heritage conservation, and create a new life for degraded bushland and parks. Projects such as Liverpool City Council's Lighthorse Park will make an enormous difference to the lives of local communities. This funding will create a new gateway to the Georges River for Liverpool, with a riverside promenade, rail station terrace, informal amphitheatre, picnicking facilities and a walkway.

The honourable member for Menai will also see some major improvements in her community as a result of this program. Some \$85,000 will be spent to help create a 120-kilometre Georges River Walking Trail, linking Botany Bay with Campbelltown, and \$60,000 will be provided for a feasibility study on a 20-kilometre regional walkway along the Woronora River, potentially linking with the existing coastal and proposed Botany Bay and Georges River walking trails. There are another eight programs that I will not list now but which I am sure local members will be delighted to hear details of. As the program continues to advance, the Georges River is being transformed into a splendid community asset for future generations. I thank the honourable members with electorates along the Georges River—I think they are all Labor members—who have worked tirelessly with their local councils to reclaim this historic catchment.

WESTERN RIVERINA REGIONAL VEGETATION MANAGEMENT PLAN

Mr PICCOLI: My question is directed to the Minister for Land and Water Conservation. What will the Minister say to farmers who are subject to the proposed Western Riverina regional vegetation management plan that threatens to blight entire rural properties that are within a 10-kilometre radius of a superb parrot or plains wanderer nesting site, which demands that the highest level of development consent be obtained before farmers can lop a tree to use as a fence post?

Mr AQUILINA: As I have said previously, the plans are out for public consultation, and that consultation will take place. The plans will be adopted to ensure great sensitivity to natural vegetation as well as to the natural flora and fauna of this State.

Mr PICCOLI: I ask a supplementary question. When the plans are finalised will the Minister review them personally and commit to removing any unrealistic or unsustainable aspects?

Mr AQUILINA: The review of plans is a long and deliberate process, precisely to ensure that every opportunity is given to interested parties so that when the plans are finally gazetted they are sensitive and respond to the needs of farmers, native vegetation and local fauna. When the final plans are submitted they will be reviewed before being gazetted. This process applies not only to the plan that the honourable member for Murrumbidgee refers to but to all plans that are currently being exhibited for public consultation.

CHILD SEXUAL ASSAULT SENTENCES

Mr CARR: I have a supplementary answer to the question the Leader of the Opposition asked me at the start of question time. As honourable members will recall, I was asked about the offence of serial indecent assault of a child aged under 10 years under the Crimes Act. I pointed out that, far from our having to accede to the policy proposal released today by the Leader of the Opposition—who, incidentally, seemed to flee before the end of question time almost in tears; he just took off—the offence already existed in section 66EA of the Crimes Act. The maximum penalty is 25 years, which is five years more than the Leader of the Opposition proposes. I further pointed out that Parliamentary Counsel and the criminal law review division support this.

Mr O'Farrell: Point of order: The Premier claims to be providing additional information in answer to a question from the Leader of the Opposition. However, the Leader of the Opposition's question was about compulsory minimum sentences, not maximum sentences. The Premier is deliberately trying to fool people that his sentences are maximum sentences. Judges are simply not imposing them. We want to introduce minimum sentences and that is what the Leader of the Opposition asked about.

Mr CARR: To the point of order: The honourable member for Ku-ring-gai does not know what the Leader of the Opposition proposed. The Leader of the Opposition proposed a minimum sentence of seven years but a maximum of 20 years.

Mr SPEAKER: Order! There is no point of order.

Mr CARR: I can provide the House with further information. Not only does the offence already exist in section 66EA of the Crimes Act but the maximum sentence is five years more than the Leader of the Opposition has proposed. I can further advise the House that this fact should have been known if not by the Leader of the Opposition then by the person who wrote his question, namely, the Deputy Leader of the Opposition. This penalty was an official recommendation of the report of the royal commission into the New South Wales police service dated August 1997. The House put this section into the Crimes Act in 1998 and the Leader of the Opposition voted on it. Further, it was amended last year and the Leader of the Opposition voted for it again.

Mr Hazzard: Point of order: The Premier purports to be providing a supplementary answer, yet he did not provide an initial answer to the question about minimum sentencing. The Leader of the Opposition made it very clear that the issue is that judges are not imposing sufficient minimum sentences. The Opposition is focusing on toughening the system and introducing substantial minimum sentences. The Premier is simply playing around at the edges and ignoring the question.

Mr SPEAKER: Order! There is no point of order. The honourable member for Wakehurst will resume his seat.

Mr CARR: The honourable member for Wakehurst does not know what his own leader said. The Leader of the Opposition—who fled the Chamber for the remainder of question time, close to tears after being embarrassed—proposed earlier today a minimum sentence of seven years and a maximum of 20 years. The existing penalty is stronger, but the Leader of the Opposition did not know that, even though it was in the royal commission report, inserted into the Act, and amended again last year.

INTEGRAL ENERGY LITIGATION COSTS

Mr YEADON: Yesterday I was asked a question by the Leader of the National Party about legal proceedings between Integral Energy and Enron Australia. While that is a matter for the shareholding Minister, yesterday I undertook to obtain the relevant information and convey it to the Leader of the National Party. I am advised that Enron's collapse in the United States meant that its Australian arm, Enron Australia, entered liquidation. Integral, like 37 other counterparties, held typical energy trading contracts with Enron. Because Enron defaulted on those contracts, it became necessary to value those contracts to determine the amount payable to Integral as a creditor. In essence, this dispute is about what Enron's liquidators owe Integral Energy. As indicated by the Treasurer yesterday, the amount could be as low as \$396,000 or as high as \$1.8 million.

The method for valuing energy trading contracts in the event of default is to appoint four independent parties to provide replacement market quotations. As Integral's contracts were the first of 37 other Enron counterparties' contracts to be valued in that way, Enron's liquidators disputed the methodology applied by the independent parties in the New South Wales Supreme Court. On 3 September 2002, the court declared that three of the four independent parties should have used a different valuation technique. I am advised that Integral believes the valuation techniques used were correct, and intends to appeal against the decision. It is anticipated that other Enron counterparties will support Integral in its appeal.

Questions without notice concluded.

CONSIDERATION OF URGENT MOTIONS

Wine Industry

Mr MARTIN (Bathurst) [3.42 p.m.]: This motion is urgent because the New South Wales wine industry employs 20,000 people in regional and rural New South Wales. This matter should have priority because the European Commission [EC] is about to make a decision which will dramatically affect our State's capacity to export wine to Europe. We should treat the motion as urgent because the Federal Government and Minister for Trade should urgently reopen discussions with the EC to protect workers in the wine industry. My motion should be given priority because our wine industry relies on exports, and the Federal Government should be doing everything in its power to make sure that it is treated fairly.

Rail Safety

Mr DEBNAM (Vaucluse) [3.43 p.m.]: The urgent motion of which I gave notice today expressed extreme concern that the rate of injuries of Rail Infrastructure Corporation workers has doubled this year. That

relates to the week-to-week injury figures put out by Rail Infrastructure Corporation compared to the figures in last year's annual report. I believe every member of the House would agree that it is urgent to have a look at rail safety in New South Wales. It should not be forgotten that in the last week of Parliament in June the Opposition moved a motion of no confidence in the Minister for Transport, Carl Scully, specifically related to the issue.

Mr Martin: How did it go?

Mr DEBNAM: The member for Bathurst may well laugh about the issue of rail safety—

Mr Martin: I am not laughing. We are asking a question, "What is the urgency?"

Mr DEBNAM: I point out continually to his constituents that the Government has taken no notice whatsoever of rail safety in New South Wales. That is why seven people died at Glenbrook. That is why Justice McInerney investigated not only the Glenbrook tragedy but eight accidents before it under the Government. That is why the Minister for Transport, Carl Scully, refuses to debate the issue. That is why the Minister for Transport, Carl Scully, simply brought out a consultation draft of the rail safety legislation. That is why the constituents of the member for Bathurst—

Mr Martin: Point of order: The honourable member for Vacluse is not addressing the question why his motion should be debated today. He is doing what he regularly does here: he is using his five minutes to trot out a list of what he considers to be relevant points. He has not got to urgency at all. This has got another mischief-making, fishing expedition stamped on it, and he tries to use five minutes of the time of the House to do it. I ask that he be brought back to the standard question: why is it urgent to debate the motion today?

Mr SPEAKER: Order! I uphold the point of order.

Mr DEBNAM: The member for Bathurst has demonstrated again why his constituents come to me instead of talking to him. Whether it is to do with rail safety or tow trucks, he has a widespread problem in his electorate. A great deal of the problem relates to rail safety and a lot of it has resulted from the Minister for Transport leading him up the wrong track. Injuries to New South Wales rail staff, and specifically workers in the Rail Infrastructure Corporation, have doubled this year compared to the last published information. That is why the motion is urgent.

Members of the Carr Government may not believe that rail safety is an important issue. That makes it even more urgent for this House to look at the whole question and at the detail that is available to everyone. I remind the member for Bathurst—and perhaps he might then finally agree that the motion is urgent—that at the current rate more than 1,400 rail workers within the Rail Infrastructure Corporation will be reported as injured under the system set up by the Carr Government. In 2000-01 there were 701 injuries in the full year covered by the annual report. At the current rate the figure will be more than 1,400. In the first 10 weeks of this financial year 250 injuries were reported in the Rail Infrastructure Corporation system. There have been over 500 injuries since early May.

It is no wonder that that number of rail injuries is increasing and that there is this major problem with rail safety when members like the member for Bathurst take no notice of the issue whatsoever. He claims that the rail workers are all going to be sacked. He has obviously heard that the Labor Party is about to put 350 people out on the streets. The Rail Infrastructure Corporation board meeting last month discussed increasing to 1,500 the people that the member for Bathurst is going to sack. It is because of his incompetence and complacency that the number of rail safety incidents has increased and people are being sacked. The member for Bathurst might well flee the Chamber, but his constituents will not follow him.

The rate of injuries within the Rail Infrastructure Corporation is distressing. Rail safety and a lack of training have been critical issues for years but the Carr Government is still in denial, as is the member for Bathurst, about the dangerous state of the rail system in New South Wales. Rail safety has to become the number one issue for rail workers and passengers, and for the member for Bathurst. He has to acknowledge he has a problem. The injury figures are clear evidence that training and management have failed. They have failed because the Carr Government and the member for Bathurst only pay lip service to rail safety. This motion is urgent because, as I have said, rail safety training and management were key issues at the Glenbrook inquiry, and we now know that the Government has failed to implement key recommendations, especially relating to safety. [*Time expired.*]

Question—That the motion for urgent consideration of the honourable member for Bathurst be proceeded with—agreed to.

DEATH OF THE HONOURABLE LAURIE JOHN (JACK) FERGUSON, AO, A FORMER DEPUTY PREMIER OF NEW SOUTH WALES

Mr SPEAKER: As members would be aware from today's media, the death occurred yesterday of Jack Ferguson, a former Deputy Premier of this State. I advise members that after consultation with the family it has been agreed that members of the House will have an opportunity, at an appropriate time, to express their sympathy, as is the custom of the House. That will probably be after the funeral service.

WINE INDUSTRY

Urgent Motion

Mr MARTIN (Bathurst) [3.49 p.m.]: I move:

That this House:

- (1) notes the significant growth in the New South Wales wine industry, which now employs some 20,000 people;
- (2) expresses concern in relation to measures by the European Commission to unfairly increase protection of the European wine industry; and
- (3) calls on the Federal Government to immediately initiate talks with the European Commission to ensure that Australian wineries are fairly treated.

The New South Wales wine industry is going from strength to strength. One would be hard pressed to find a region in New South Wales that does not have a growing wine industry. Wineries can now be found in Wallangarra, Tenterfield and Deepwater in the far north; Glen Innes, Inverell, Armidale, Tamworth, Narrabri and Coonabarabran in the New England north-west; Scone in the Upper Hunter; Cooma in the Snowy Mountains; Deniliquin in the Murray region; the Shoalhaven and South Coast; and the Canberra area. I will not leave out Port Macquarie and Cassegrain wines. Wine is also produced at Tumbarumba, the Hawkesbury-Nepean district, the Hastings River region and the North Coast, which covers the Port Macquarie area, and, of course, Orange. That is in addition to the traditional homes of New South Wales wineries such as the Hunter, Mudgee, Cowra, the Riverina and the Sunraysia area.

This State is now the second-largest wine grape producer in Australia, with some 324,000 tonnes of grapes a year. Australia's specialist wine grape production now stands at 342,000 tonnes. That is expected to grow to 372,000 by next year. We produced almost 313,000 million litres of wine in 2000-01, an increase of 9 per cent on the previous year. The industry now employs, as I said earlier, some 20,000 people, mostly in country and regional New South Wales. That is 20,000 pay packets being spent in local shops and restaurants. New export markets are opening up every day. We are selling wine to the Europeans, reputedly the most discerning wine drinkers in the world. Our biggest export destination is the United Kingdom [UK]. The UK bought more than 183 million litres in 2001, worth more than \$762 million. Around 900,000 bottles of wine leave Australia every day, with around half going to the United Kingdom. In a major coup, we have now overtaken the French as major exporters of wine to the UK—much to their chagrin. Australian wine now makes up some 22 per cent of total UK consumption. Leading UK wine commentator Andrew Jefford wrote in last December's issue of *Decanter*, which is the British bible of wine:

To British wine drinkers under the age of 40, wine now means Australia—not France.

Our wine is becoming so popular in Britain that next year an exhibition showcasing Australian food and wine will be held in London. The Taste of Australia Exhibition will be held from 23 to 26 January next year. It will give Australian wine and food exporters the opportunity to showcase their products to between 20,000 and 30,000 people. Germany, the Netherlands, Switzerland, Denmark, France, Sweden and Norway are also among our top 10 export destinations. The New South Wales industry is leading the way in taking our wine to the world. In fact, 10 out of Australia's top 20 biggest wine exporters are based in New South Wales. Exports are the driving force behind the growth of the Australian wine industry. Last year more than \$2 billion worth of Australian wine was sold overseas. Current trends indicate that exports will reach \$3 billion in the next three years. By any standards, a 50 per cent growth in that period is exceptional.

The New South Wales industry accounted for 25 per cent of total exports, injecting about \$437 million into the New South Wales economy. That is significant by any standards. But all this could be at risk. The European Commission recently announced that it would introduce non-tariff protection for the European wine industry. That decision could spell disaster for the 20,000 people employed in this State's wine industry. Essentially, it means that New South Wales wineries will be severely impeded in exporting to Europe. Our

exporters have been dealt with in this way by the United States. As well as cutting quotas it increased tariffs. The EC is not taking tariff action but will introduce quotas.

Today Country Labor calls on the Federal Government to immediately initiate talks with the EC. The Minister for Trade, Mark Vaile, should make clear to the EC that these measures are not acceptable. Australian primary producers are prepared to participate in the world market on a level playing field. We have done that with the wine industry. To some extent we have decimated the French. I remember a leading French winemaker saying, "There must be something wrong with the palates of English people. They must be raised on fast foods and Coca-Cola. How else could they prefer Australian wines to French wines?" The reason they are drinking more and more of our wines in the UK in preference to French wines is simply that they are better wines; the quality is there. Australian wine growers have invested and increased volume but have not compromised on quality. The EC now realises that European wines cannot compete on a level playing field so it will now play dirty pool.

Wineries all over the State, including those in my electorate, joined us in voicing our concern about the EC decision. I am sure that members opposite will support this motion. As I have indicated, European nations are the biggest importers of our wines. Any protectionist move from the EC will be devastating to our local industry. Winegrowers deserve a big pat on the back for their contribution to this relatively new industry, particularly in relation to exports. Make no mistake: 20,000 jobs are on the line. Let us hope that the Federal Government gives the people in the industry the support they deserve on this issue.

Wine is becoming increasingly important to the economy of the Central West. At least 72 wineries are located there—mostly in the Bathurst-Orange, Cowra and Mudgee areas. They are producing particularly chardonnay, cabernet sauvignon, sauvignon blanc and pinot noir. Country Labor has made the New South Wales Government aware of the increasing importance of the wine industry to country areas and we are working in partnership with the industry to promote New South Wales wine worldwide.

The Government sponsors a number of major wine showcases—I mentioned one earlier that will be on next year—and many exhibitions for country wineries. We have provided significant sponsorship to Wine Australia 2000, the country's most prestigious national wine festival. A hundred exhibitors from 10 different regions in New South Wales exhibited to 24,000 people at Fox Studios in August. The Country Embassy has played host to a number of mini expos for wine buyers from Belgium and the Netherlands as well as a group from North America. The Government has also run a number of cellar door workshops, most recently in Glen Innes. We are also working in partnership with the New South Wales Wine Industry Association to publish an updated pocket guide to the wine and food trails of New South Wales. That is becoming an increasingly important tourist network, particularly for what we call the empty nesters. Following the trails is a pleasant way to get around New South Wales and see the State, as I am sure the honourable member for Murrumbidgee would agree.

Wine and food tourism is also becoming increasingly important in many country communities. Orange and Cabonne—the food basket of Australia, as the councils have labelled the area—are positioning themselves to take advantage of the great wineries and food. Tourism New South Wales found that 4.1 million people visited New South Wales wineries in 2001, injecting \$353 million into the State's economy—almost entirely into our rural economy. Seventy per cent of visitors come from New South Wales, 22 per cent from interstate and the remaining 8 per cent from overseas. Those figures underscore the importance of wine growing to local tourism. The New South Wales wine industry is too important to be lost because of the backward policies of the European Commission. The Federal Government needs to move immediately to make sure that the wine industry is looked after. I commend the motion to the House.

Mr PICCOLI (Murrumbidgee) [3.58 p.m.]: I also congratulate the New South Wales wine industry, and indeed the Australian wine industry. All members of this House appreciate the great strides that the industry has taken in the last couple of decades to become one of our most important agricultural industries. Quite a few members of Parliament do their bit in terms of consumption of the product to make sure that we get terrific turnover. I know that Mr Speaker is no exception. Last Thursday night I participated in a function as part of the Griffith wine show at which industry leaders talked about the great success of the wine industry. About 15 years ago, when exports were at about \$20 million a year, half a dozen of those industry leaders hatched a plan. The goal was to reach \$1 billion by 2001.

In 2002 that level reached \$2 billion, well exceeding the expectations of the industry leaders. It was a fantastic success. The honourable member for Bathurst referred to literature from Europe. Australia usually beats France at most things, but it was particularly pleasing to beat them in the sale of wine to the United Kingdom. One French journal referred to Australians as barbarians at the gate. That is a terrific indictment of

the success of the Australian wine industry and an indication of the concern of the French. While I understand the desire of the French to protect their wine industry, the Federal Government and those in the industry are doing everything they can to make sure that non-tariff barriers are resisted at every turn. I congratulate the Federal Government on its support of our export industries, particularly the wine industry.

A few years ago the Federal Government took the brave step of initiating the most significant tax reform ever undertaken in Australia. It was a huge boost for our export industries, and the wine industry took full advantage of that reform. The way in which the Federal Government has managed the Australian dollar has been extremely beneficial to the wine industry. Tax reform and the management of the Australian dollar have been controversial at times, but when we acknowledge the success of the wine industry we should acknowledge the benefits of those types of reforms. Steps taken by the Prime Minister and the Minister for Trade, Mark Vaile, to secure and maintain Australian access to overseas markets have been successful so far. From my conversations with Mark Vaile I know that he is committed to ensuring that we not only maintain our present access but gain additional access to those markets.

The wine industry also deserves congratulation on the promotion of its product overseas. Wine production is one of our fastest growing export industries. The electorate of Murrumbidgee includes the Murrumbidgee Irrigation Area [MIA], and it is not too well known that the MIA produces more than 60 per cent of New South Wales wine grapes. Last year the MIA produced 228,000 tonnes of wine grapes compared to the 25,000 tonnes produced in the Hunter Valley. In other words, the MIA produced nine times more wine grapes than the whole of the Hunter Valley. All wine-producing areas of New South Wales are important, particularly the Hunter Valley, which is close to the eastern seaboard. They are vital to the MIA wine industry in the way in which they promote wine to consumers. Obviously the increased consumption that results from that promotion is of benefit to all wine-producing areas.

In my electorate last year De Bortoli Wines crushed 61,000 tonnes of wine grapes compared to 25,000 tonnes crushed in the whole of the Hunter Valley. De Bortoli is one of the wine companies on the cutting edge of overseas expansion. That is where the future of the wine industry lies. All members of Parliament, particularly those who represent country electorates, know that one cannot drive more than 10 kilometres in rural Australia without seeing a vineyard. That results in a lot of wine grapes coming online. At the Griffith wine show it was mentioned that Australia's domestic consumption may have reached its peak at about 22 litres per person per year. That does not refer to the amount consumed by members of Parliament per week, but the average amount consumed per person per year. Australians may have reached their wine consumption peak but other markets are well and truly ready for the taking, provided that our product is of premium quality, which it is, and is competitively priced. Pricing has been the basis of our success in the United Kingdom and of our growing success in the United States of America.

Casella Wines, which is located in the MIA, has grown phenomenally. It is another example of a winery that took the initiative, without any significant assistance from government, of sending representatives to the United States of America. It spent 18 months to two years researching the market and one of its labels, Yellow Tail, is the biggest wine export to the United States. Last year 1.5 million cases were exported to the United States from a winery that has been producing for only about five years. Last year Casella crushed 22,000 tonnes of wine grapes and this year it crushed 36,000 tonnes. That is an increase of more than 50 per cent. Earlier I referred to the need for increased plantings. Casella and other proactive wineries throughout New South Wales are entering the world's marketplace despite whatever restrictions or difficulties they might face. They deserve the congratulations and support of the State and Federal governments. The wine industry is a fantastic example of what we can do and are doing in Australia to value-add to our agricultural products and thus create maximum employment and income for Australia and Australians.

It is also important to note that all those value-adding industries, not only the wine industry, need the support of the State Government. It is prudent for me to mention the sorts of things that the State Government can do to support the industry, support that will be ongoing despite any changes to government that may occur. Workers compensation premiums are becoming a significant burden for all wineries, and for other industries as well. The New South Wales Government must address that problem and problems associated with WorkCover. The Government should ensure that people have a safe environment in which to work. Payroll tax is an increasingly significant impost on all businesses. All those costs affect the ability of Australian winemakers to not only provide a premium, high-quality product but to provide it at a competitive price. The State Government must keep an eye on those costs and make sure that the wine industry is supported by providing as low a cost regime as possible. It has been a pleasure to congratulate the New South Wales wine industry on its \$2 billion in export sales in 2002. I look forward to that figure increasing in the years ahead.

[Debate interrupted.]

BUSINESS OF THE HOUSE**Urgent Motion: Suspension of Standing and Sessional Orders****Motion by Mr Iemma agreed to:**

That standing and sessional orders be suspended to allow two further speakers in the debate on the motion for urgent consideration.

WINE INDUSTRY**Urgent Motion**

[Debate resumed.]

Mr W. D. SMITH (South Coast) [4.08 p.m.]: The phenomenal growth of New South Wales wine exports is seriously under threat. About 900,000 bottles of wine now leave New South Wales and Australia daily, half of which go to the United Kingdom. As pointed out by two earlier speakers, Australia has now displaced France as the leading supplier to the United Kingdom market. With 10 of Australia's top 20 wine exporters based in New South Wales, jobs are certainly in jeopardy. The Australian Bureau of Agriculture and Resource Economics has warned that the European Commission plans to retain existing tariff barriers and, more dangerous to our exports, increase non-tariff barriers. New South Wales and Australian wine industries continue to expand exports.

Based on current trends, annual Australian wine exports will pass the \$3 billion mark within three years. The key markets remain the United Kingdom, the United States of America and Canada, with Germany expected to provide substantial growth in the short to medium term. Recent figures reveal much about our wine industry. In 2000-01 the New South Wales wine industry generated exports of \$437 million, which represents about 25 per cent of Australian wine exports. In 2001 the bearing area under vine represented nearly 24 per cent of the national total. New South Wales produced nearly 313,000 litres in 2000-01, which makes it the second-largest wine producing State, accounting for more than 30 per cent of national wine production. In 1999-00 the State's wine industry generated direct employment for 2,002 people.

In 2001 a further 1,209 hectares of vineyard plantings took place in New South Wales. In 2001 the State produced 334,00 tonnes of wine grapes, an increase of 7 per cent over the previous year. This rates New South Wales with Victoria as the second-largest wine grape producer, with around 23 per cent of the national total. New South Wales is clearly the second-largest producer of specialist or premium wine grapes, with about 25 per cent of the national total. This figure is expected to increase by nearly 9 per cent to 372,000 tonnes by 2003-04. Much of this growth is expected to come from the relatively new viticulture regions where production is expected to increase by nearly 11 per cent over the same period.

A range of new wine-growing areas is emerging in places such as Wallangarra, Tenterfield and Deepwater in the far north of the State; Inverell, Glen Innes, Armidale, Tamworth, Narrabri and Coonabarabran in the New England north-west area; Scone in the Upper Hunter; Dubbo in the Macquarie Valley; Bathurst and Forbes in the Central West; Cooma in the Snowy Mountains; and Deniliquin in the Murray region. These areas are considered to have enormous potential for development, complementing the expansion of traditional regions such as the Hunter, the Riverina, Mudgee and the Sunraysia, along with others that have established themselves over recent years, such as the Nepean-Hawkesbury, Hastings River-North Coast, Orange, Cowra, Hilltops, Canberra, Tumbarumba, the Southern Highlands, the Shoalhaven and the South Coast.

The South Coast area has at least nine registered commercial wineries, including Jasper Valley Wines, Coolangatta Estate, Fern Gully Winery, Silos Estate, Kambewarra Estate, Eling Forest Vineyard, Bundewallah Estate Winery and Grevillea Estate. Two of those wineries from the South Coast, Coolangatta Estate and Kambewarra Estate, have won accolades around the country for their prize-winning wines. Jasper Valley Winery and Silos Estate basically initiated the current industry on the South Coast with their boutique wine varieties.

Recently the Willow Vale Estate received State Government assistance to construct a new facility near Gerringong, which is expected to create 11 new jobs. The new facility will allow the Willow Vale Estate to produce around 200,000 bottles of premium quality wine a year. The development includes a wine-tasting complex, a craft shop and a cafe. It will be the largest commercial winery on the South Coast. Some 29,000

grapevines consisting of nine different varieties will be planted. The Federal Government needs to do much more for our wine industry. It should be a strong voice and a strong advocate instead of putting its head in the sand. [*Time expired.*]

Ms HODGKINSON (Burrinjuck) [4.13 p.m.]: I speak to the motion for urgent consideration noting the significant growth in the New South Wales wine industry, which now employs 20,000 people and has exports at about \$2 billion, which well exceeds export expectations of 10 years ago; expressing concern in relation to measures by the European Commission [EC] to unfairly increase protection of the European wine industry; and calling on the Federal Government to immediately initiate talks with the EC to ensure that Australian wineries are treated fairly. Nobody has a greater respect for the wine industry than me. It is true that the electorate of Burrinjuck is experiencing an exponential increase in the number of vineyards that are springing up.

The honourable member for Murrumbidgee said that you cannot drive for 10 kilometres in country areas without coming across vineyards. Closer to home, where I live you cannot drive for more than a couple of kilometres without seeing more vineyards, which is indicative of the success and rapid expansion of the wine industry in Australia. The Murrumbateman Wine Show is being held this week. Wine is a very strong commodity in Murrumbateman, which is probably the longest-serving wine district in my electorate. My electorate's wine industry encompasses Murrumbateman, Yass, the entire Canberra district, Southcorp at Gundagai, Tumut more recently and now Tumblong, which, for people who do not know it, is near Gundagai. Tumblong has had only 10 years experience in growing grapes.

Rhondda and Robert Paterson's Tumblong Vineyard is about to produce its very first official bottle of wine, the inaugural 2001 Paterson's Tumblong Vineyard cabernet sauvignon. Unfortunately, their first vintage was destroyed by birds last year, but this year they are making a cabernet sauvignon and a shiraz. Those wines will be produced in Young. There is no doubt that we have some of the best wines in the world. In the Canberra wine region there are more than 20 wineries, which collectively produce about two million bottles of wine annually. The three wine regions of Hall, Lake George-Bungendore and Murrumbateman are all within a 30-minute drive from central Canberra.

As the honourable member for Bathurst said, tourism is an extremely important factor in the wine industry. Nowhere is that felt more than in the Canberra wine region. The Kamberra Wine Tourism Complex is Australia's newest urban winery, featuring cellar-door sales with wine tastings and the Meeting Place restaurant. It is a demonstration winery with seven hectares of landscaped gardens. It is a wonderful place to visit. Lark Hill Winery and Clonakilla Wines are also situated in the Canberra region. The list goes on. There are fantastic wines in our local region, all within several minutes drive of each other. It is a fantastic day out and promotes our region in the best possible way.

The region around Bowral has grown at nine times the national average since 1996, as stated in an article in the *Sydney Morning Herald* on Monday 16 September. It has expanded from 10 hectares of vines to 180 hectares spread over 46 vineyards, with 10 wineries that sell from the cellar door either open or imminent. The number of hectares under grape cultivation nationally doubled over that period to 130,500 hectares. We can certainly see that the wine industry is spreading rapidly. The honourable member for Murrumbidgee mentioned that 22 litres of wine per person per year are consumed in Australia. That seems like a large amount. He is probably right when he says that we are just about capping our limit on how much wine is consumed per capita.

The industry certainly needs the full support of both State and Federal governments, particularly as it is such an important export industry. I congratulate all the vignerons in my local area on putting our local area on the tourism map. The Murrumbateman Field Day will be held on 19 and 20 October, and wine will be a prominent feature. I encourage all honourable members to attend, if possible. The State Government can certainly help the wine industry by easing the burden of workers compensation premiums and WorkCover and payroll tax, which is a huge impost on all businesses. We need greater access to water. I note the recent comments of Ken Helm from Murrumbateman about water needs. [*Time expired.*]

Mr PRICE (Maitland) [4.18 p.m.]: I support this urgent motion. I am concerned about any intervention by the European Commission that may create a reduction in the market price of Australian wines. As a member who represents an electorate in the Hunter Valley, I am concerned about any decline in export opportunities, which may impede the progress of the industry, particularly in my electorate of Maitland. Currently in the Dungog shire there are three vineyards and one processing plant in operation. That is a significant improvement in the local industry, as last season an excess in production resulted in a number of vineyards south of Newcastle turning their product into the ground and letting the grapes fall off the vine.

The vineyards in my shire are contributing in some small way to ensure that the local market is satisfied. It is hoped that their contribution will benefit the larger wine processors, who are making significant export dollars for the country, providing a high level of employment and increasing employment opportunities. For the year ending March 2000, 32,800 tonnes of Hunter grapes were processed and another 24,900 tonnes of grapes were imported from other areas for blends, making a total of 57,700 tonnes of grapes being processed in the Hunter region alone. The figures would be significantly higher now.

The Hunter Institute of Technology, which provides facilities for the wine industry and viticulture generally, produces its own brand of wine, which I have to say is not too bad. A little further down the road, the Cessnock Corrective Service has its own vineyard and produces a wonderful wine, processed at one of the local wineries, known as the Governor's Pleasure. Members can rest assured that it is a pleasurable drop. The vineyards are important to our local economy and generate a significant export market. Australian wines are class wines. On a recent visit to Britain, on the advice of a member of the House of Commons I called into small and large supermarkets where I was amazed at the size of the Australian wine section. Our wines are up there with the best of them.

A good middle grade, mid-priced wine, in a significant number of varieties, is readily available from all the States of Australia that produce wines. We must not allow our wine market to be interfered with. Australian wines also have a good record. The London International Wine Challenge voted the Hunter Brokenwood 1999 Rayners Shiraz the best red wine in the world. The Hunter blitzed more than 10,000 wines from around the world. That tremendous result will advance the reputation of Hunter wines worldwide. In France the Chardonnay Du Monde competition awarded to a Hunter Valley chardonnay produced by the Wyndham Estate a gold medal—one of only 33 gold medals awarded from the 1,127 wines judged. That worldwide classification is another tremendous result and, again, is extremely important to our international advertising program.

The wine industry—which includes production, processing, bottling and sales—provides opportunities for tourism and greatly assists the local economy. Based on national figures, from the Hunter area alone domestic wine sales are 31.1 million litres with a cash return in excess of \$230 million, and export wine sales are 8.2 million litres with an import value of \$43.1 million. That is a total of \$273 million from the sale of Hunter wines. Further, the industry employs in excess of 2,000 people. [*Time expired.*]

Mr TORBAY (Northern Tablelands) [4.23 p.m.]: I am pleased to have the opportunity to speak in support of the New South Wales wine industry. I congratulate the honourable member for Bathurst on bringing forward this motion. As previous speakers have said, the New South Wales wine industry is a growth industry, and that is particularly the case in and around my electorate of Northern Tablelands. I was delighted to hear previous speakers, including the honourable member for Bathurst and the honourable member for South Coast, speak about the wineries in the Northern Tablelands. Wineries have been established all around New South Wales and Australia.

Wineries established at Wallangra, Tenterfield and Deepwater in the northern part of my electorate, Glen Innes, Inverell and Armidale and just outside my electorate in Tamworth, Narrabri and Coonabarabran in the New England and north-west of the State are all participating in this growth industry and the employment opportunities it generates. As the honourable member for Bathurst states in his motion, 20,000 people are currently employed in the wine industry. That is a significant number in terms of employment and has flow-on effects for our communities. Some speakers have spoken about the quality of the wines in their electorates. I can say that whilst I have not visited every winery I have tasted most of the wines.

Mr Martin: All at once?

Mr TORBAY: Not all at once, but it is wonderful to see this industry growing. As the honourable member for Berrinjuck said, it is difficult to drive around my electorate without passing a vineyard, particularly a new vineyard. I support the remarks of previous speakers about our export markets. Our wine industry flies the Australian flag high. On my visits to other countries I have heard our wine industry widely discussed. The industry has done Australia proud in its continued export of quality wines. Statistics on the quantity and quality of our export wines show that the industry is well worth supporting. I also support the views put forward by previous speakers about the beneficial effect on tourism. As the honourable member for Bathurst said, wine and food tourism is becoming increasingly important to country centres.

I am overwhelmed by the number of people in my electorate who are seeing opportunities not only in the wineries but also from the flow-on effect in their local communities. According to Tourism New South

Wales figures, 4.1 million people visited New South Wales wineries in 2001, injecting \$33 million into the State's economy. As the industry continues to expand, and as the wineries in my area put their foot on the growth pedal, more visitors will go further north. The figures show that 70 per cent of visitors were from New South Wales, 20 per cent were from interstate and 8 per cent were from overseas. I hope to see a much larger percentage visiting many of the new wineries in my area.

I congratulate the wineries in and around the electorate of Northern Tablelands on their initiatives. Governments at both State and Federal level must support the wineries in the future to ensure their continued growth, given that the industry is earmarked to produce \$3 billion of exports within the next five years. Governments can provide assistance in various ways, such as a sustainable water supply, payroll tax exemptions, particularly in the early days of establishment, and other incentives and protections at the Federal level, as the honourable member for Bathurst has sought in his motion. I join with all honourable members from both sides who enthusiastically support this industry which provides major benefits for our country and our State.

Mr OAKESHOTT (Port Macquarie) [4.28 p.m.]: I, too, support the wine industry and the growth of the wine industry in regional New South Wales, particularly on the North Coast. The recent formation of the North Coast Wine Growers Association is the start of a united and strong wine industry on the mid North Coast and North Coast. That area is perhaps not as well recognised in Australia as the Hunter Valley or Margaret River regions, but the area has significant wine production and, indeed, is producing some international quality wine. Excellent marketing campaigns will result in significant growth for individual vineyards and the North Coast wine growing industry in general.

Cassegrain Wines is well known throughout the wine industry and amongst wine lovers. That vineyard has been an exporter of note for some time and has supplied wines for the Japanese bullet train and Qantas and is regarded highly within the industry. This year Ça Marche Restaurant at Cassegrain was voted best restaurant at any vineyard in New South Wales at the Restaurant and Catering Awards. That is a good example of what is happening in the wine industry on the mid North Coast.

I refer also to Charley Brothers Wines, a local winery of note. Many honourable members would know Bob and Nina Charley of Australian Jockey Club fame. Other vineyards include Bago Vineyards, Sherwood Estate with John and Helen Ross, Innes Lake Vineyards and Long Point Vineyard on the Ghost Road. Together these vineyards will help to promote the mid North Coast as one of the great wine producers. The wine industry is a significant employer on the mid North Coast and that is why I support the motion. I acknowledge that 20,000 people are employed in the wine industry in New South Wales.

However, it is of concern that the European Commission seeks to impose non-tariff protection on the European wine industry and this may impact on the growth of the New South Wales wine industry. I hope that the Federal member for the mid North Coast, the Minister for Trade, Mark Vaile, will strongly represent the wants and needs of the mid North Coast and the North Coast Wine Growers Association, as well as those of Australia, in discussions with the European Commission. The wine industry promotes jobs and tourism. The North Coast Wine Growers Association's wine trail is well publicised in the local area. It promotes various events and bus tours to local vineyards.

One event is the Discovery Concert held at Cassegrain on the third weekend of October each year, and attracts an audience of 5,000 to 6,000 for the day's festivities. A couple of years ago David Helfgott was the main performer at the Discovery Concert. I note that the Minister for Tourism has acknowledged the significance of the Discovery Concert by this year allocating \$2,500 for its promotion, and we are grateful for that support. The wine industry should be supported by all members of this House because it promotes tourism and future exports. I hope that both the State and Federal governments support the industry in its next phase of growth as it heads towards the expected \$3 billion in exports in the near future.

Mr MARTIN (Bathurst) [4.33 p.m.], in reply: I thank honourable members representing the electorates of South Coast, Maitland, Murrumbidgee, Burriñjuck, Port Macquarie and Northern Tablelands for their contributions to the debate. Their common theme was the importance of the wine industry to New South Wales and to their electorates. Indeed, 70 per cent of the tourist trade and the wine industry comes from New South Wales, and those industries will regenerate. One tends to revisit the pastime of drinking wine, and I am sure honourable members would agree it is well worthwhile provided it is done in moderation.

It is with non-partisan agreement that we should send a strong and urgent message to Mark Vaile in Canberra to activate communication with the European Commission, which is on the offensive because of the

great success of our wines. France is slightly arrogant about its wine because of its great historical reputation, but that reputation has been usurped in recent years by the Australian, and particularly the New South Wales, wine industry. We have become increasingly involved in the export market and have been able to massively increase the quantity of wine that we have been able to produce in recent years without compromising on quality.

The honourable member for Wollongong would extol the virtues of South African wines, which are excellent wines but are still not up to our standard. I thank honourable members for supporting the motion. I am sure that the Federal Minister for Trade will put pressure on the European Commission to not react against the success of the Australian wine industry. Obviously, the most effective non-tariff measure is quotas. In recent years our great friends in the United States of America, who were supposed to have a level playing field, introduced tariffs and quotas when our lamb exports became popular. We do not want to experience the same battle with the wine industry and put at risk the hard work involved in building up this massive industry, worth \$2 billion a year in exports—one-quarter of that from New South Wales.

The honourable member for Murrumbidgee and the honourable member for Burrinjuck, as if on cue, referred to the cost to the industry, which is a concern for us all. They referred to workers compensation and payroll tax. I remind the House that this Government has undertaken major reforms to workers compensation legislation—and we got into strife with our constituency on it—but we were prepared to bite the bullet. Opposition members opposed the Government's reforms until pressure was brought to bear and they eventually fell into line. The Government has acted responsibly and the reforms to the workers compensation industry will reduce costs.

The Government inherited from the former Coalition Government a payroll tax rate of 8 per cent, but has reduced that to 6 per cent. Indeed, the Treasurer, in his budget papers, foreshadowed a continuing fall. Payroll tax poses a problem for the wine industry as with other industries, but the Government is acting prudently to reduce those costs. We acknowledge that if the Australian industry is to remain competitive, domestic costs must be reined in. However, the biggest threat is the action by the European Commission to play dirty against our efficient wine industry, which has a high reputation and is valuable to rural New South Wales.

Motion agreed to.

DROUGHT ASSISTANCE

Matter of Public Importance

Mr ARMSTRONG (Lachlan) [4.39 p.m.]: I ask the House to note as a matter of public importance the economic and social impacts of the drought on the regional economy of New South Wales. In question time today the Premier said the drought was probably the most important issue to be debated in this place. I do not often agree with the Premier, but I do so on this occasion. This debate is important for a number of reasons. We live in the driest continent in the world, and droughts are endemic. Droughts are not unusual but every one is different—they never mirror each other. It is recognised that droughts have a catastrophic effect on the viability of farmers, the crops they produce, and the livestock they husband. However, it is often forgotten that they have a dramatic flow-on effect on the economy and on those who depend upon primary products, such as purchasers, processors of meat, fibre and vegetable products, retailers—both domestic and international—and on export markets.

There is a chain reaction when this country, as a whole or in part—droughts usually affect particular areas—cannot supply its markets. That fact is often forgotten in these types of debates, and the Opposition has raised this issue today in order to highlight the domino effect of the current drought. It is a matter not just of handing money to farmers but of identifying that chain reaction. Governments have a responsibility to endeavour to assist those who depend upon agricultural products. The drought will break eventually, but in the meantime we must retain our markets and marketplace confidence in the capacity of our agriculturalists and primary producers to deliver.

For instance, growers of canola are experiencing difficulties because they have contracted to forward-sell canola for delivery in the next three or four months—in October, November and December, depending on their location. Many of those growers now cannot meet their contractual obligations—some will not be able to deliver at all and some will be able to deliver only a small portion. As a consequence, their customers are demanding that they pay a cash equivalent. That is what their contracts quite clearly state; there is no dispute

about it. The contracts were signed in good faith by both sides, but many farmers are now in a difficult situation or, at best, are somewhat embarrassed that they must write a cheque for a product they cannot produce because of climatic conditions.

The drought is having a devastating effect on rural communities, as I have said several times in this place in the past few weeks. To give an example, Condobolin, which is in my electorate, has a Target store. About three or four months ago the store was threatened with closure because management considered its sales figures to be unsatisfactory. However, the community rallied and railed against the decision and it was agreed that the store would remain open for a further six months, until the end of January. The owners agreed that, if at the end of that period the figures had improved and the enterprise was considered viable, the store could remain open.

This would retain the benefits provided by the Target store, five direct jobs, and several associated support positions. However, there is a major drought and Condobolin is in the middle of it. Retail cash flow has dried up in all towns in the area, including Condobolin, so how will the store demonstrate its viability at the end of January when it is as drought affected as the farmers? I hope that makes my point about the domino effect of drought.

I reinforce also the necessity of retaining essential, qualified people in country towns so that they can continue in service industries when the drought breaks. Many specialist mechanics and support staff who service agricultural machinery, those with specialist skills in chemical spraying, as well as agronomists, economists and entomologists among others now have nothing to do. I recently received telephone calls from two large national machinery distributors asking what they can do with their specialist staff. They cannot afford to keep them on the payroll but if they let them go, the experts will leave town and the likelihood of securing their services again is remote. For those reasons it is important to recognise the drought's wide web effect.

There has been much debate about the exceptional circumstances [EC] legislation, so it is important to outline the Commonwealth's exceptional circumstances conditions. I have received advice from Warren Truss, the Federal Minister for Agriculture, Fisheries and Forestry, which states:

The EC program recognises that there are "exceptional circumstances", that is, rare and severe events, such as severe drought, which are outside the bounds of primary producers' normal risk management strategies. The program therefore provides short-term support to long-term viable producers undergoing these events.

Applying for EC assistance

Once a State/Territory Government is reasonably confident that a case for a region can be established that fully meets the EC guidelines, it may forward an application to the Commonwealth Minister for Agriculture, Fisheries and Forestry. The State/Territory Government is also responsible for defining the area to be covered by the application for assistance. Quick and effective assessment of applications is dependent on the quality and relevance of the information provided, which should address the EC criteria. These conditions were agreed to by all Federal and State Agriculture Ministers in 1999, so this is an agreed process. The advice continues:

EC Criteria

Under the guidelines agreed by all State/Territory and Commonwealth Agriculture and Resource Ministers in March 1999 there are three EC criteria, which require applicants to demonstrate that the event:

- was *rare* (a one in 20 to 20 year event) and *severe*;
- resulted or will result in a severe downturn in farm income over a *prolonged* period (eg more than 12 months); and
- was not predictable or part of a process of structural adjustment.

Assessment process

Once an application is received and accepted, the Commonwealth Minister for Agriculture, Fisheries and Forestry will usually refer it to an independent panel of farmers and industry experts—the National Rural Advisory Council (NRAC). NRAC will provide the Minister with advice on whether a case has been made for the provision of EC assistance.

In assessing each application, NRAC may visit the region to assess the situation and also consider expert advice from a number of sources. This expert advice can include State departments; industry bodies; ABARE; BRS; the Bureau of Meteorology; individual landholders; and agricultural and business consultants.

On completion of its examination, NRAC presents its recommendations to the Commonwealth Minister for Agriculture, Fisheries and Forestry, who has responsibility for declaring whether or not a particular area is experiencing exceptional circumstances. However, before declaration, the Minister must also obtain approval from Cabinet, as funding is agreed on a case-by-case basis.

Assistance provided

EC assistance is available to eligible producers during the 12 months an area is EC declared, and for a further 12-month recovery period. Both business assistance, through **Interest Rate Subsidies**, and welfare assistance, through the **Exceptional Circumstances Relief Payment**, are currently available to assist eligible farmers in EC declared areas.

Boundaries and Predictive Modelling

In August 2001, Ministers agreed that—

this includes the New South Wales Minister for Agriculture—

- farmers who are in reasonable proximity of the declared area and can also demonstrate that they are affected by the same exceptional event may also be eligible for EC assistance; and
- States and Territories were encouraged to use predictive modelling to demonstrate likely (crop) losses in an EC application.

My point is that no Agriculture or Primary Industries Minister in Australia, State or Federal, is out of step: they play by the same rules and regulations they signed up to. So the blame game must stop and we must think seriously about the short-, medium- and long-term ramifications of this drought. We have had some rain in the past few hours but it is only a start. The economic impact will not be fully felt until probably Christmas time, when we can fully assess the loss of a spring cropping season from the winter and its impact on job maintenance and business viability in our rural communities.

Mr AMERY (Mount Druitt—Minister for Agriculture, and Minister for Corrective Services) [4.49 p.m.]: I am pleased to respond to the matter of public importance moved by the member for Lachlan, the Shadow Minister for Agriculture. Quite frankly, I cannot find myself disagreeing with virtually anything he has said. I certainly accept some of the impacts of the drought, but I do have some comments on his interpretation of the exceptional circumstances [EC] component. I am not saying that what he said is wrong. The Premier has put a very high profile on the drought. He has brought together many government departments to provide various assistance packages which have been outlined in this House, so I will not waste the little time I have by restating that very long and quite impressive list of assistance packages.

The member for Lachlan raised a very important aspect of this drought. Obviously there is always a focus on primary industry but he said, "We should also recognise the wider web of the drought." It is important to note, as members on this side of the House will recall, that at the Country Labor conference held in Cooma at the weekend a number of delegates from regional communities, from different backgrounds, the trade union movement, business, and also from the farming sector, spoke on different aspects of how the drought is affecting their organisation or group, whether it be a farmer, a town business, or a worker employed in many of the establishments affected by the drought.

I said at the conference that I accepted all the points made but that I also recognised that most of the assistance packages announced by the State Government are focused on the farmers, the primary producers. A number of assistance measures have been announced by the Minister for Regional Development, Harry Woods, to assist non-farming country businesses. A \$1 million package was also announced by the Premier to assist farm workers, who, as Mick Madden from the Australian Workers Union argued, are generally the first people to be laid-off in a drought. So, although the great majority of assistance goes to the farmers, there are some packages to assist other than farmers.

I said at the conference that assistance is necessary because workers, businesses, shops, everybody in nearly every country town, if not every country town, is dependent on a prosperous and viable agricultural industry. Therefore, as people in the towns will say, whether they vote Labor, Liberal or National Party, they know that when the cockies stop spending—to use their term—the local economy starts drying up. It means that people selling tractor tyres, fuel, pesticides, herbicides, fodder and so on are all affected because the farmer stops buying.

We make no apology for the fact that although there is assistance to various people in rural communities—and I accept the argument of the member for Lachlan about, I think his term was, the wider web of the drought—there will be a strong emphasis on supporting the farmers. The quicker the drought breaks, the quicker the farmers will start spending again—to be quite crude about it. Then, of course, the workers—who are represented by the trade unions I mentioned at the country conference: the business people, the newsagents, the farmers and so on—will start to benefit. I have said there are a number of subsidies, but I will not go through them all because members know them. As the Premier has highlighted, across the portfolios—not just my own portfolio—the State Government has announced about 28 different drought assistance measures.

As the honourable member for Lachlan correctly said, the ministerial council meetings adopt a number of the principles of the EC package. The one thing we have to highlight is that the national drought strategy, of which EC is a part, is focused on drought preparation, drought education, risk management—and we are all aware of the triple-A farm businesses packages and so on. That whole strategy is to help farmers prepare their risk management. We have a number of other schemes, including low-interest loans to assist them to drought-proof their properties.

Under that national drought strategy the EC component is the only financial assistance the Government pays to farmers by way of income support, business support, family support and so on. However, the honourable member for Lachlan did not say that, as part of that national drought strategy—and both of us have had our fingerprints on it over the past 10 years—the State subsidy programs are to be phased out. We phased ours out in about 1997. I think Queensland kept them for another two years; they were supposed to be phased out this year but they have continued.

In this drought we clearly found out that despite all the good intentions, investment and risk management, the farming community cannot prepare for a drought for ever. That is why we reintroduced a large number of the older type subsidies; we added quite a number of new ones, but we followed the principle of the national drought strategy by introducing the six-months criteria. By doing that and by expanding the number of benefits, we believe that we have kept the national drought strategy in place. The honourable member for Lachlan should not forget that we cannot just say what the national drought strategy and all the people who signed up for it was about, because we have moved on from that. This is why I say there is nothing stopping the Federal Government. As the Premier said today, there is no Federal law or constitutional prohibition to stop a Federal government introducing its own targeted drought assistance package outside the EC component.

We seem to get bogged down considering whether an application has gone in or whether it is late, but there is nothing to stop the Federal Government introducing an assistance package right across the board for all drought-affected areas. Depending on past practice, most of the State will not be declared for EC. If the National Party and the honourable member for Lachlan believe that the only financial contribution outside the national drought strategy is the Federal Government's EC component, I think they have missed the boat; as far as rural communities are concerned, they are a long way behind the debate.

We are debating the impact of the drought. We have seen reports that we have already lost three-quarters of the wheat crop at a total cost of about one and a half to two billion dollars. That is going to be a major impact. One cannot emphasise an economic impact without looking at those figures. This season only about 200,000 tonnes of rice will be produced, rather than the usual 1.3 million to 1.7 million tonnes. Normally the rice crop is worth about \$500 million per year, so this is a serious loss of about \$400 million to the industry, on the worst-case scenario.

The honourable member for Murrumbidgee would know how important and fundamental the rice industry is to the economy of that part of New South Wales. Cotton is worth about \$1 billion per annum, and the crop loss is forecast to be about 60 per cent, leaving a crop worth about \$400 million. There will probably be a loss of about \$600 million. The wool clip could be down by as much as 40 per cent, and cattle sales could be 25 per cent to 30 per cent lower. It is obvious that all the assistance packages in the world will not compensate rural communities for even that one example of the potential massive impact of this drought. We do not know what the effects of this El Nino will be.

Jeff File, the State drought co-ordinator, has said that the major concern about this drought is that it might be like the 1994-95 drought. I think he said that the El Nino could flip over in about March and there could be a double effect with two or three seasons locked up in the one drought. That, of course, would be quite devastating. I thank the honourable member for Lachlan for raising this issue as a matter of public importance. Some aspects of earlier debates have been duplicated in this debate and no doubt the matter will continue to be debated as the drought continues. Both sides have had an opportunity to put on record some of the financial impacts of the drought, as referred to in the motion. I recognise the arguments put by the shadow Minister: we have to look at the wider implications of the drought and not focus on one particular part of the rural economy. *[Time expired.]*

[Debate interrupted.]

BUSINESS OF THE HOUSE**Routine of Business: Suspension of Standing and Sessional Orders****Motion by Mr Whelan agreed to:**

That standing and sessional orders be suspended to permit the members for Dubbo, Murray-Darling and Barwon to speak to the matter of public importance for five minutes each and for private members' statements to be proceeded with at the conclusion of the matter of public importance.

DROUGHT ASSISTANCE**Matter of Public Importance**

[*Debate resumed.*]

Mr PICCOLI (Murrumbidgee) [5.01 p.m.]: I am pleased to have the opportunity to speak about the drought, although I am sorry that the Parliament has to debate such a serious and devastating topic. The drought has already had significant social and economic consequences for country New South Wales. Both the Minister for Agriculture and the honourable member for Lachlan referred to particular industries and communities that will be affected. My electorate is located in south-western New South Wales, so I am aware first-hand of the impact of the drought. Farmers will not just have less money to spend in communities; the confidence of all the people in country communities will be affected. In the same way that consumer confidence is important for the overall Australian economy, drought conditions affect consumer confidence in individual towns and communities. The drought, by its very nature, causes economic problems throughout country New South Wales.

The Minister referred to the impact on the rice industry following very low water allocations in the Murrumbidgee and Murray valleys. With only an 8 per cent allocation announced for the Murray, it seems that no rice will be grown in the valley, but water is needed to save the wheat and canola crops already planted. They have every chance of coming to full maturity with an appropriate yield if farmers can get access to additional water. This could come from Dartmouth Dam. I am told that 160,000 megalitres of extra water could result in between \$100 million and \$150 million in extra production.

The Mitta Mitta River between Dartmouth and Hume Weir is running at capacity, 10,000 megalitres a day. If the river could run at a rate of 12,000 megalitres a day the extra 160,000 megalitres could be supplied, but some properties in the Mitta Mitta valley would be flooded. So desperate is Murray Irrigation to save its farmers and the economies of the local communities that it has offered the affected farmers up to \$1,000 per hectare to compensate for the land that is flooded. But the Murray-Darling Basin Commission has said no to that proposal for the additional flows.

A farmer in the Mitta Mitta Valley told me that none of the farmers there had even been consulted by the Murray-Darling Basin Commission. While the Minister is at the table I take the opportunity to point that out to him. I also point it out to the Minister for Land and Water Conservation, the other New South Wales Government representative on the Murray-Darling Basin Commission [MDBC]. I ask the Ministers to contact the secretariat of the commission to see whether urgent action can be taken to allow the additional water to be transferred from Dartmouth to Hume Weir. I know that New South Wales is not the only group represented on the commission but it is certainly a very influential group. I hope that the Government—the Minister for Agriculture and the Minister for Land and Water Conservation in particular—can have the extra 2,000 megalitres a day released as it would have a significant impact on the economy.

That is the very thing we are talking about. We cannot make it rain but there are some things we can do to help farmers. That is something that could be done starting from tomorrow. It would save the dairy farmers. Murray Irrigation has already cut off 800 of its 2,500 irrigators because it has run out of water. Putting the additional flow through the Mitta Mitta River would save the dairy farmers and sustain production, and it might lead to some extra rice being grown. As the Minister for Agriculture said, the rice industry is one of the industries most under threat, with 400 jobs in the rice processing industry, not to mention the farmers. There are things that can be done to assist the economy in those rural communities. I hope that the New South Wales Government encourages the MDBC to bend some of the rules so that the additional flows can be put into Hume Weir and supplied to Murray River irrigators. [*Time expired.*]

Mr BLACK (Murray-Darling) [5.06 p.m.]: At the outset I acknowledge the contribution of the honourable member for Lachlan and congratulate him on raising this issue. I also take great pleasure in

following city Labor, as represented by our really great Minister for Agriculture. The coalition of city Labor and Country Labor is the only coalition in this place that is working. I am very pleased that the honourable member for Lachlan raised the question of exceptional circumstances, and I want to dwell on that for several minutes if I may.

Last Wednesday and Thursday, John Anderson, the Federal National Party leader, and Warren Truss, the Federal National Party Minister for Agriculture, Fisheries and Forestry, visited my electorate of Murray-Darling. Last Monday week, a meeting of mayors was held at Ivanhoe at which Bogan shire undertook to collate what various meetings had decided should be put to the Federal Government in this terrible period of drought, which has been so well described by the honourable member for Lachlan and the Minister for Agriculture.

Six points were put to John Anderson and Warren Truss at the many meetings held last Wednesday and Thursday that they visited. The first was to alter the criteria for exceptional circumstances assistance—I will deal with the methodology for that, but particularly by reducing the 12-month requirement to six months. The second issue was interest rate subsidies—borrowings for agriculture-related purposes. The third was crop replanting grants for 2003. The fourth was small business and employment assistance. This was mentioned by the two previous speakers. I congratulate them both—apparently, there has been an outbreak of goodwill in this place. In many cases more pain is being felt in the towns through unemployment than in the bush. The fifth point was increased tax deductibility for measures to help to drought-proof properties—for example, with silos, fodder, conservation and poly pipe. The sixth was long-term, low-interest loans for restocking.

Earlier today a joint meeting was held between New South Wales Farmers—Mal Peters was in attendance—and the Rural Lands Protection Board executive at the office of New South Wales Farmers. The meeting decided to work as a united front. I am very pleased to say that Jenny McLellan, the President of the Western Division Group of the Shires Association of New South Wales, was there, as were the deputy presidents, the Mayor of Cobar, Lilliane Brady, and the Mayor of Bourke, Wayne O'Malley. These were the conditions agreed to at the meeting:

Alter the criteria for eligibility to receive Exceptional Circumstances relief as there is too much irrelevant paper work required at present. This can also pit neighbour against neighbour and even family members against one another as many cannot receive Exceptional Circumstances Funding even when an area has been successful with their application due to the guidelines. However, great caution will need to be exercised when contemplating changes to the Exceptional Circumstances formulas in the middle of a drought...

These drought stricken communities are in dire need of assistance as the Agriculture industry is on its knees... speaking to Governments and putting the real issues forward but instead the Federal Government is pedantically defending their Exceptional Circumstances formula. It is a sad state of affairs when politics appears to be more important than the survival of the Agriculture Industry and communities in severe drought.

I repeat that I am reading directly from the document from today's meeting. The document further stated:

Forced sales of stock in times of severe drought and the financial return from these sales should not be taken into account in the eligibility criteria to receive Exceptional Circumstances funding. This provides a false level of finances for those who sold surplus stock and retained only core production stock. That money will have gone in either paying agistment earlier when available or buying stock fodder and also would have had to pay taxation on the sales.

That relates to loans taken out to buy fodder, a matter related to the agricultural sector. The document continued:

Crop replanting grants for 2003.

Long term low interest loans for restocking and for those that have been providing fodder to keep core production stock alive as many have been doing that for the past twelve months. These land holders cannot keep that up with no finances coming in and this assistance must be made available now not waiting until it rains. There must be no more losses of stock (sheep and cattle) from the areas as there will be shortages. Even when it does rain it will take two to three years before the Agriculture industry will start to be financially productive again.

Small business/employment assistance as there is really no assistance for these people and it is most important our areas do not have any further demise of these essential services.

Increase tax deductibility for all measures to assist in drought proofing properties. Eg putting up silos, fodder conservation and poly piping, tanks and troughs in providing watering points on properties.

I again congratulate the honourable member for Lachlan on bringing this matter forward today. I thank the Minister for the leading he has provided in this matter.

Mr SLACK-SMITH (Barwon) [5.11 p.m.]: Droughts are part of the Australian farming way of life, unfortunately. In the electorate of Barwon there have been only four years in the past 121 years when we have

had less rainfall than we have had this year. The current drought is one of the worst the country has ever experienced, and I include the severe droughts in 1927, 1940, 1965 and 1994. The biggest problem arising from drought is the slow, creeping demise of agriculture. Farmers must decide whether to purchase stock feed at huge cost or whether to unload stock to save the fodder they already have. Even when they make that decision, it may rain the next day; no-one knows when it will rain. We do not know if the recent rain is sufficient to keep farmers going. If we do not get follow-up rain, many areas of New South Wales will be left with nothing.

The recent rain could damage the dry feed that is on the ground by bringing on the small green pick. The stock then chases the green pick and refuses the fodder, thus losing even more condition. Farmers in regional New South Wales are experiencing a slow, creeping phenomena from which they will take a long time to recover, as the honourable member for Murray-Darling said. After the 1965 drought it took me seven years to recover the costs of keeping stock alive. In hindsight I would have been far better off if I had offloaded the stock. The trouble is that no-one knows how long a drought will last. The impact of a drought on regional towns is equally as devastating as it is on the farms. Agriculture, especially west of the ranges, is the biggest employer in this State. Loss of wages and income has a tremendous impact on country towns.

Recently I have been critical of the Minister for Agriculture, especially when he drags his heels on exceptional circumstances applications to the Federal Government. The Federal Government wanted to change the exceptional circumstances criteria but the States did not agree to that. Now the States are grizzling about it; they are being hypocritical. In many that are not being considered for exceptional circumstances funding—for example in the Narrabri Rural Land Protection Board area, which is in my electorate—people have been hand feeding their stock since last October.

[Interruption]

The Minister interjects, but he has been grizzling about exceptional circumstances criteria for the past six months. When the Federal Minister for Agriculture, Fisheries and Forestry wanted to change the criteria, what did the State governments do? They refused to go along with him. The Federal Government had requested the States to put in a little more money, so that most money was not coming from the Federal Government.

Mr Amery: We put all the money in.

Mr SLACK-SMITH: Yes, because of your shonky exceptional circumstances applications. The Minister does not particularly care; he has not tried. Sometimes the honourable member for Murray-Darling tries, but this time he is taking his orders from Sussex Street. The Minister should get out and talk to his constituents. He may then get a better idea about what is happening. After a drought there is a long period of recovery. I sincerely hope that the 20 points of rain that we have had are the beginning of the end of the drought.

Mr McGRANE (Dubbo) [5.16 p.m.]: I support the raising of this matter of public importance. The gravity of the financial, social and environmental hardship caused by this drought should bring the members of this House together in an attempt to provide relief to those affected. I commend the shadow Minister for bringing this matter forward. My fellow independent colleague from the Northern Tablelands electorate and I are very concerned about the ongoing problems caused by this drought and the measures that will need to be put in place to remedy the hardships it has caused. Every drought is different, and this drought is no exception. The big crunch will come at Christmas when there will be little grain to be harvested in the north and north-west of the State. The grain harvest provides the cash flow to those, and to other areas as well, and when there is no harvest there is a massive contraction of cash flow.

If all goes well with the planting of next year's grain crop it will be 2003 before there is a cash flow from the grain industry. That will put a lot of pressure on the farming and grazing industries as well as on small businesses in country communities and cities. Apart from the mining industry, farming and grazing are the major catalysts for the cash flow in regional and rural New South Wales. The lack of a cash flow will gravitate to all sectors of the community. It will gather momentum like a snowball rolling down a mountain. These days financial management in the farming industry is totally different to what it was 10 or 15 years ago. Farmers borrow differently; they do not borrow from their prime source, the banks. In some cases they borrow against their next wheat crop through the Australian Wheat Board Company Ltd, and they borrow money for machinery through various companies that finance farm machinery.

As the honourable member for Lachlan stated, 10 or 15 years ago contractors, who play a significant role in the grain harvest in Queensland, New South Wales and Victoria, were not part of the farming industry.

They did not play the central role they now play in farm management. Contractors need to be able to defer repayments on their machinery. A grain harvester could cost between \$250,000 and \$300,000, and associated back-up plant would be another \$100,000. It would be easy to have \$500,000 in one entity. But some of these entities operate in twos, threes or more. A great deal of money is tied up in machinery. They operate efficiently and they are an essential part of modern farming techniques. Contractors must be taken into account when considering the next 12 months. They do not want hand-outs—they are efficient operators—but they need assistance and support from the Government to meet repayments on their equipment. The drought is ongoing; it is not over. The previous speaker said it took him six years to recover from a previous drought. That is fairly common.

Mr ARMSTRONG (Lachlan) [5.21 p.m.], in reply: I thank all honourable members who participated in the debate. I sincerely hope it is the last time we have to consider this matter. It would be nice to think that the drought will come to an early end. I know there has been much speculation about whether it will end in the spring or the autumn, but I suspect it is only the good Lord who knows that. We have established this afternoon that drought relief is undoubtedly the responsibility of the State and Federal governments. One aspect that has not been raised is what is now known as the Farm Management Deposit Scheme [FMD], an essential part of the Commonwealth drought management policy and exceptional circumstances management policy. It has had a number of names over the last 10 or so years. A primary producer may deposit funds which attract a commercial rate of interest with a bank or a similar investment organisation, but may not withdraw them for 12 calendar months.

Primary producers pay no tax when the money is deposited. They can then withdraw it in times of emergency—fire, flood, drought or some other unexpected event—when their income is low. As a result their tax saving is considerable. They have a choice between putting hay in a shed, grain in a silo or money in a bank. Currently some 6,400 farmers own approximately \$1.2 billion worth of FMDs in Australia. In New South Wales about \$284 million worth of FMDs are owned by just over 4,500 farmers. Primarily they are grain, wool and beef farmers, but the other industries are also represented. They have planned for these sorts of occasions. Until one month ago draw-downs on FMDs had not started. Indeed, FMDs were growing in New South Wales. That is good news for the overall economy, and it has worked.

I do not want the public to get the impression that farmers do not plan to look after themselves. They have planned well, but it is exceptional when such a large mass of the State is affected by drought at this time of the year. If we miss the normal spring season in the area that is currently drought declared, we will experience the dramatic effects we have been talking about. The honourable member for Murray-Darling referred to a meeting held today that addressed the forced sale of stock, which requires tax considerations. I support that; I have always thought it was an oversight. He also referred to crop refreshment, which I have called for several times in recent weeks. I have also called for restocking assistance. Those schemes have been undertaken previously, and we should reinvigorate them now.

The honourable member for Dubbo was spot-on when he referred to contractors. He has underestimated the average value of machinery. Only a small contractor would not have \$500,000 worth of machinery to harvest cereal crops. The cost of a header, trucks, chaser bins, tractors, et cetera, quickly adds up to about \$500,000. I call upon the Federal and State governments to negotiate a better process to deal with the next drought. The right time to do that is when the problem is being experienced, not afterwards when people have forgotten about it. The time is right for some serious talking to determine how to better manage the next drought, apart from this one. I urge the Government to initiate crop replenishing and restocking schemes. We must keep a balance in the rural areas. They are still great places to visit, great places for tourism and great places to establish businesses. So far as the bush is concerned the drought is a short-term event in a long-term life.

Discussion concluded.

Pursuant to resolution business interrupted.

PRIVATE MEMBERS' STATEMENTS

HORNSBY LIONS CLUB ART AND CRAFT EXHIBITION

Mrs HOPWOOD (Hornsby) [5.26 p.m.]: The evening of Friday 13 September was special for me. I opened the twenty-second Hornsby Lions Club Art and Craft Exhibition. This famous event is the immediate

precursor to the annual Hornsby Ku-ring-gai Hospital Spring Fair and is held in the Bernard Curran Unit in the grounds of the hospital. Some 378 artworks were hung and a myriad of craft ranging from pottery to wood-turning to hand-made clothing and jewellery sat on surrounding tables. In my speech officially opening the exhibition I noted three important components of the event. The first was the nature of the exhibition. Many people thoroughly enjoy attending such collections of artistic expression, and that was evidenced by the continuing success of the Hornsby Lions Club Art and Craft Exhibition, as well as the number of people who gathered last Friday evening.

The second component is Hornsby Ku-ring-gai Hospital, which is the focus of the fundraising and is embedded in the hearts and minds of all who work in the hospital and reside in the surrounding areas. The third component is the people who work hard to make sure the event takes place and is successful. That includes those who attended the exhibition immediately prior to the Hornsby Hospital Spring Fair and many who, no doubt, would contribute to the success of the fair, as I did, by assembling hamburgers with the Rotary Club of Waitara or assisting in a vast number of other ways to raise money. My association with the Lions Club of Hornsby commenced earlier in the year when I attended a sausage sizzle stall held in Asquith to raise money for research into children's cancer. The club is extremely proactive. I was happy to assist them with whatever community outreach they were involved with.

Lions are members of the world's largest and most active service club, which has more than 1.5 million members in 44,000 clubs in over 186 countries and geographical areas. In Australia, Lions have 30,000 members, men and women, in 1,400 clubs. Lions are actively involved in a wide range of committee activities to give help to the young and elderly, the disabled and disadvantaged, locally, nationally and internationally. Lions worldwide have raised more than \$200 million for SightFirst, an Australia-initiated campaign to eradicate preventable and reversible blindness. Lions have provided eyesight institutions in all Australian States where worldwide research is carried out. Lion-established eye banks serve most Australian States. Lions established and operate Australia's only training facility for hearing dogs for the deaf. Lions youth activities include an international youth exchange program, living skills and drug awareness programs, the National Youth of the Year quest and the Leo club movement. Lions meet twice a month for fellowship and business, often with interesting and informative speakers who talk on a wide range of topics. They engage in a range of fine and worthwhile activities while providing a valuable community service.

I stress that Hornsby hospital is the epicentre of the community and is well supported by all who live in the area. Each year the art and craft exhibition and the fair raise substantial money for the hospital. The Lions Club of Hornsby is to be commended for the huge effort that goes into the organisation of such a complex range of items, as well as the co-ordination, planning, setting up, running and disassembling of the exhibition. A tremendous amount of work goes into such an event; it does not just happen. I venture to say that the club is now busily involved in organising the twenty-third Hornsby Lions Club Arts and Craft Exhibition. I look forward to working in the future with this well co-ordinated and hardworking team of people with diverse talents.

BATHURST ELECTORATE MULTIPURPOSE HEALTH SERVICE CENTRES

Mr MARTIN (Bathurst) [5.30 p.m.]: I speak today about health facilities in the Bathurst electorate, particularly those in the smaller rural towns. The multipurpose service [MPS] program, which the Government has put in place as part of its rural health policy, was developed by the Minister for Health after the completion of the Sinclair report. The Hon. Ian Sinclair chaired a committee that travelled around New South Wales consulting with rural communities about the provision of new health facilities to replace ageing infrastructure. As a result, 36 MPSs are being constructed in rural New South Wales. They are probably the greatest fillip to capital works in rural health in the State's history.

A number of consultations took place in my electorate. I am pleased that two MPSs are currently under construction at Blayney and Rylestone in the Bathurst electorate and one MPS is soon to be built at Portland. Following protracted discussions over the fate of the district hospital at Portland, a workable compromise was arrived at. Today I pay tribute to those in my electorate who were involved in the planning stage and those who were on the steering committees. People in rural areas who were used to traditional country hospitals needed to fundamentally change their thinking. The Sinclair report recommended that there be integrated on the one campus acute care health facilities, aged care, and nursing home care with a range of community and health services that were not available when the traditional local hospital was developed. That type of facility will deliver a better standard of care to country areas.

In my electorate the steering committee has been involved in the layout, finish and appearance of the construction. Such facilities take pride of place in small rural communities and their appearance is important to

the community. At Rylestone Councillor Peter Hall chaired the committee and Marie Croon, Director of Nursing, and John Knox, a retired solicitor in the town, played major roles. We had some battles with the builders and the consultants, but at the end of the day the committee got its way. Occasionally the Minister was required to intervene, and I acknowledge his contribution in that regard. The project, which will cost well over \$2 million, is well on the way to completion. At Blayney Audrey Hardman, who is well known in rural New South Wales for her involvement in a range of activities, was the chair of the committee. John Millcox and Harry Craws have also played a vital role in the link between the community and the area health service, the Minister's office and the local member. The Blayney project, which will cost close to \$3 million, is also well on track.

In recent days the parties involved in the Portland project have come to an agreement. Portland resident Neville Castle, the mayor of Lithgow and a good friend of mine, along with Marie Beljon, Evonne Groves and the late Bill Williams made sure that the centre would be built. I pay tribute to the late Bill Williams, who was a great worker for the community of Portland. He put a lot of time and energy into this project, and it is sad that he will not be there to see the opening of the new facility, which will be amalgamated with the Tabulam Cottages, an aged care hostel facility in Portland. The hostel, which needed to expand, was issued with additional licences by the Federal Government but received no money, which is its practice in relation to health. The State Government achieved a good result by combining the hostel with the MPS. The Minister for Health took over the responsibility from the negligent Federal Government. The people of Portland will not forget that. I place on record my thanks to all those people in my electorate who worked tirelessly to represent their communities. They considered the projects in a logical and co-operative manner so that the Government can continue to deliver an excellent health product to the people of rural New South Wales.

LANE COVE RIVER NATIONAL PARK FIRE HAZARD REDUCTION

Mr TINK (Epping) [5.35 p.m.]: I raise a matter on behalf of Mr Adrian Mitchell, a constituent of mine who resides in Blackbutt Avenue, Pennant Hills, and also on behalf of other constituents. The matter relates to fire safety in Lane Cove River National Park. Although the area was extensively burnt out over the Christmas-New Year period in 2001-02 it is plain, in light of the weather conditions over the last couple of months, that the situation is again hazardous. Experienced bush regenerators tell me that with the sort of spring and summer we are having, notwithstanding the rain in the past 24 hours, we are looking at a nasty summer. Despite the fires almost one year ago, fires could get totally out of control because of material as yet unburnt or still combustible in the same area.

Mr Mitchell has been active in pursuing various authorities about hazard reduction in the Lane Cove River National Park area. It is clear from correspondence to him from the Rural Fire Service of 25 July 2001 and from Hornsby council of 5 September 2001 that responsibility rests with the National Parks and Wildlife Service. On 18 January, just after the fires earlier this year, on Mr Mitchell's behalf I wrote to the Minister for the Environment about fire hazard reduction activities in the Pennant Hills area. That is where the fires in the Lane Cove River National Park started at the beginning of the year. I am greatly disturbed about the Minister's reply to me of 14 March 2002, in which he said:

The future use and maintenance needs of the Whale Rock Circuit and similar trails—

which are Mr Mitchell's specific concern—

is being assessed in the preparation of the Lane Cove National Park fire management plan. The plan will focus heavily on private property protection and will assess the importance of fire trails for strategic fire management and access. A working draft of this plan is currently being finalised and it is expected to be placed on exhibition by the end of March 2002 to provide an opportunity for community comment. Formal adoption of the plan is expected by 31 July 2002 in preparation for the fire season.

I am concerned that as of today no plan has been finalised, no plan is yet to be placed on exhibition and no plan is available to be placed on exhibition, notwithstanding that one was promised by the end of March 2002. If one assumes that the plan relates principally to private property protection, as the Minister stated, and a time period is required for public consultation, we will be in the middle of the next fire season before this plan is in any way ready for implementation. It will take time for private property owners to implement the requirements of the plan. There is no plan available and there is now a six-month delay in the preparation of it. I believe the situation is an absolute and unmitigated disgrace.

At the beginning of this year, through freedom of information, the National Parks and Wildlife Service was found not to have done any burning in Lane Cove River National Park since 1994, the time of the last fire emergency. In response to an article in the *Northern District Times* on 20 February the Director-General, Mr

Gilligan, rejected claims that the service had failed residents near Lane Cove River National Park and said that the National Parks and Wildlife Service was committed to hazard reduction, both by prescribed burning and other methods. How can Mr Gilligan, the Minister for Emergency Services and the Government possibly be taken seriously on claims that they are committed to hazard reduction when they are six months behind in the preparation of a plan for hazard reduction in Lane Cove River National Park?

The inactivity of the Government and the National Parks and Wildlife Service in preparing a plan to reduce hazards in the park in the lead-up to the coming fire season is an unmitigated disgrace. We were promised the plan by March. It is now the middle of September and there is still no plan. There is no longer any time to adequately consult the community before the commencement of the next season. The level of fuel in the park could promote fires in the next season. The year gone is a year wasted in fire and hazard reduction. It falls on the Government and the National Parks and Wildlife Service to bear responsibility for any fires that may occur in Lane Cove River National Park. They should get their act together and undertake hazard reduction immediately.

Mr AND Mrs DON FUNDRAISING ACTIVITIES

Mr ASHTON (East Hills) [5.40 p.m.]: I inform the House of the wonderful work being done by Kathy and Frank Don of Mahnken Ave, Revesby, to raise funds for the heart and lung transplant unit at St Vincent's Hospital. They have raised over \$100,000 for the transplant unit since 1996. This is an outstanding achievement in itself, but what is so remarkable is the way this money has been raised. For many years Kathy and Frank Don's garden in Revesby won Bankstown council's garden competition. I think it was such a fantastic garden that the competition was discontinued. In 1997 Frank Don was a heart transplant recipient at St Vincent's Hospital and was so grateful for the care he received that he and his wife, Kathy, vowed to raise funds to support doctors and nurses in the heart and lung transplant unit, who are committed to providing this life-saving medical procedure.

Since 1996 Kathy and Frank have opened their garden to the public for a small donation—usually about \$4, including a cup of tea and a biscuit—which has gone to the hospital. Last Saturday my wife and daughters visited the garden and they told me to call in to see it. On Sunday morning I saw Daryl Melham, who said, "You have got to go and see the Dons' garden—it's unbelievable." I admit that I am not an expert on gardens, but I know what I like. On Sunday, on the way home from attending an air league function at Padstow, I dropped in, thinking I would probably remain there for 15 or 20 minutes, thank them for their fundraising efforts and then leave. However, I left two hours later—not because, as the honourable member for Coffs Harbour might suggest, I spent two hours talking to them; I actually listened.

Mr Fraser: They kept you there as a gnome.

Mr ASHTON: I might have looked like a gnome. Their huge garden is set on a large block and includes areas of rainforest, streams and bridges. There is a working water wheel and a huge variety of flora—and probably a collection of gnomes. The backyard also consists of quiet cabana type areas where visitors can relax and take in the sights and smells of the surrounding garden. The money that has been raised by Kathy and Frank Don has been used to buy much-needed equipment like automatic beds, tilt tables, scooters, examination tables, defibrillators and wheelchairs. None of the money raised is used to meet administration costs—and that is as it should be. It is remarkable that they have raised more than \$100,000 simply by allowing people into their backyard to look at their fantastic garden.

Governments have to pay administration costs and I am pleased that none of the money raised by the Don family is being used to do the bookwork. That is what real charity is about. The Dons have worked on their garden for 40 years, and it shows. Their love of life goes hand in hand with their love of plants, and their generosity is very much appreciated. Kathy and Frank Don have decided that they will now donate much of their time and effort in their open-garden project to Bankstown hospital. As the local member for East Hills, I congratulate them on what they have already done for St Vincent's Hospital heart and lung patients and thank them for their decision to raise money for Bankstown hospital.

Members of Parliament attend functions at which we wear coats and ties, present awards, make appropriate comments and generally are very impressed with what we see. However, when I was told to look at this garden because I would not believe how wonderful it was, I fully intended just to drop in, say hello, give some words of praise and leave. But I left two hours later. Indeed, I came away with a strong commitment to do anything I can to help Frank and Kathy Don raise more money not only for St Vincent's Hospital but for Bankstown hospital.

COFFS HARBOUR LEGACY

Mr FRASER (Coffs Harbour) [5.45 p.m.]: I congratulate Coffs Harbour Legacy and its President, Mr Barry Chandler, who has accepted chairmanship for the third year in a row. On Sunday I had the privilege of attending the changeover dinner, which was also attended by the President of Sydney Legacy, members of the Coffs Harbour community, the Coffs Harbour branch of Legacy, Legatees and those who have been assisted by Legacy. I put on record my appreciation for the wonderful work of Coffs Harbour Legacy. Indeed, the president said that it had achieved more than any other Legacy branch, with the provision of nursing home facilities and other community services, including units for war widows and other widows in the region.

Mr Hans Katala and Mr Jack Vercoe, who received special commendation for 25 years of service to Legacy, raised with me yet again the problem of an easement for the Legacy nursing home. I first raised this matter with the Minister and the department in 1998. When the hospital was to be relocated the Legacy nursing home, which is adjacent to the old hospital site, sought approval to acquire an easement involving the maternity unit as an extension to the nursing home with a view to converting it to a dementia unit. However, so far all they have received is a stone wall of silence from Mr Terry Clout, Chief Executive Officer of the Mid North Coast Area Health Service, and the Minister. In fact, the Parliamentary Secretary Assisting the Minister for Health said, in a letter dated August 2001:

The planning for the new Coffs Harbour Health Campus at South Coffs Harbour has proceeded on the basis that the overall funding of \$80 million would be partly financed by the sale of redundant property, principally the existing site of the Coffs Harbour Base Hospital.

I am advised by Mr Terry Clout, Chief Executive Officer of Mid North Coast Area Health Service that MNCASH has actively consulted with Coffs Harbour Legacy in relation to their requests to obtain part of the existing site. Coffs Harbour Legacy has been advised on a number of occasions of the role which the current site has in financing the new Health Campus.

I am pleased that the Parliamentary Secretary is in the Chamber. I put to him that \$2 million is the maximum amount that has been offered and the project has gone to re-tender because sufficient funding is not available. I ask that Coffs Harbour Legacy be granted this easement so that it can make optimum use of its site. However, we have only received a bureaucratic response that the granting of an easement would diminish the value of the site. There is already stormwater underneath the easement. Legacy is seeking permission to construct a driveway to allow access beneath the nursing home and to provide more facilities that are much needed on the North Coast. I am extremely disappointed by the bureaucratic approach of the Mid North Coast Area Health Service, the Minister and the department. It is making life very hard for Legacy, which does a great job—as the Parliamentary Secretary, the honourable member for Heathcote, who is a returned serviceman, knows.

I ask the Parliamentary Secretary to put pressure on the Minister, the department and anyone else who has anything to do with this issue—including the Department of Land and Water Conservation, which wants to flog off the existing site for medium-density housing. I ask them to look at the site and the easement. We want only a driveway down the side of the building: nothing more, nothing less. The Parliamentary Secretary cannot tell me that that will make a huge difference to the sale price of that block of land—which contains an old structure that has been vandalised by local louts. More than the cost of the easement has been spent on temporary fencing for the site, and I think the situation is absolutely appalling for these hardworking Legatees, who are trying to provide a service for the people of Coffs Harbour. I urge the Parliamentary Secretary, who is wearing a Legacy badge, to give these great people the assistance they need and deserve. The people of Coffs Harbour want this facility, so for God's sake give it to them. It was the only request from the Legacy annual general meeting on Sunday.

SANDON POINT RESIDENTIAL DEVELOPMENT

Mr CAMPBELL (Keira) [5.50 p.m.]: I raise tonight a planning issue in the Keira electorate involving the site known as Sandon Point. This has been an extremely controversial matter for at least a decade in the area that I represent, and it continues to be so. The site has been rezoned from part industrial use and part reservation for future determination to being substantially residential. About one-third of the site is now public open space or environmentally protected. Wollongong City Council is presently considering development applications, and stages two to six of the site have received consent from the Land and Environment Court and are under construction.

There is no doubt that the community is largely opposed to the development of the site, and the matter continues to be a running sore. The issue has become increasingly controversial, with claims and counterclaims. It is claimed that protesters have been assaulted or that protesters have thrown rocks and stones at workers on

the site. I do not condone any violent actions or privacy breaches. Nevertheless, the problem remains. I have long held the position that local planning matters of this nature should be determined by the relevant local government authority. As a former local government representative, I understand the importance of ensuring that there is local input in planning issues. However, I no longer believe—I have announced this publicly in my electorate—that Wollongong City Council can consider objectively further development applications for the site and I have called for the establishment of a commission of inquiry to examine the balance of applications.

There are significant and outstanding issues regarding flooding on the site as well as a range of environmental issues. There are also outstanding heritage aspects, both Aboriginal and European, and local traffic matters. I have written to the Deputy Premier, and Minister for Planning asking for the establishment of a commission of inquiry to consider those aspects that continue to be a running sore in the community that I represent. There have been many attempts at mediation as well as public exhibitions. The council recently engaged Rick Farley to manage a mediation process, which enjoyed limited success. The council has also organised a series of workshops and charettes in which representatives of community groups that oppose development of the site have declined to participate. Local residents tell me that ward councillors are unable or unprepared to ensure that conditions of consent on stages two to six are in place. They also complain that ward councillors cannot give them detailed information about other consent conditions, particularly regarding local traffic management measures in Point Street, in particular.

The community's lack of confidence in the council has led me to alter my long-held position that the matter should be determined by Wollongong City Council and to conclude that a commission of inquiry should be established. The council has the opportunity and the ability to establish a formal commission of inquiry. This has not been discussed much publicly, but I place it on the agenda and the record tonight. The controversy, division, threats and counterthreats and personal abuse are causing much distress in the community. No thinking person could condone such behaviour, and I certainly do not. It is important that significant planning measures of this nature are dealt with objectively. I do not believe Wollongong City Council can make objective decisions in this case so I believe a commission of inquiry should determine the fate of the Sandon Point site.

SWIMMING POOL CONSTRUCTION COMPANIES SALES PRACTICES

Ms HODGKINSON (Burrinjuck) [5.55 p.m.]: I raise in the House this evening an issue that has been brought to my attention by a resident of Yass. This gentleman is also the owner of a swimming pool construction company which has been successfully constructing swimming pools in the Australian Capital Territory and the Yass district for more than 30 years. In that time he has informed me, with obvious pride, that he has not received one customer complaint about his work. Many smaller companies like his pride themselves on offering a high-quality product at a fair price. My constituent has seen the results of many pool constructions that can be described only as very shonky. He came to me to discuss his concerns about builders warranty insurance, and I represented those concerns to the Minister for Fair Trading on 5 March this year. However, it is not builders warranty insurance that I bring to honourable members' attention today.

During my meeting with this constituent he informed me of a situation that he said is casting a pall over the whole swimming pool construction industry and is tarring good, efficient builders with the brush of shady deals. He did not inform me of the name of the companies engaged in these practices, but he did inform me that the practices are so widespread as to be a serious problem for the entire private swimming pool construction industry. I have been informed that large, high-profile pool construction companies in New South Wales are making full use of shady practices to circumvent fair trading legislation and deliberately place consumers at increased risk of losing their money.

After being attracted to the company by an advertising spiel, often involving high-profile Australian celebrities, the customer will make an appointment and receive a visit from a sales representative, who will give a quote. If the customer then signs a contract on the spot, the construction of the pool will proceed without any problems. My concern lies with those customers who are not willing to meet the pool company's original price and who seek a lower-cost option. The salesperson then offers a no-frills option, which the pool construction company knows to be unworkable. A deposit is required, which is usually 10 per cent for a job worth less than \$20,000 or around 5 per cent for a job worth more than \$20,000. This low-cost option often significantly undercuts other reputable pool companies.

The customer, thinking that he or she is getting a good deal, then signs the contract. However, before construction begins, the customer is told that the no-frills bargain price did not include many essential items, such as a pool filtration system, or make allowances for difficult circumstances in the construction of the pool.

The customer then has the choice of agreeing to the additional charges that bring the price back to the original unacceptable quote, or of breaking the contract and losing his or her deposit. Those customers who do not want to break their contract but who will not meet the additional costs are met with delaying tactics from the companies. They deliberately frustrate the customer by putting the job aside for six months, by not returning telephone calls and by generally ignoring the customer's existence. If the customer threatens to seek or seeks help from the Department of Fair Trading, the company institutes legal proceedings against the customer for breach of contract. I have been informed that when the matter is before the courts, or is likely to go before the courts, the Department of Fair Trading is not allowed to become involved.

I have also been informed that one particular company makes a point of employing former senior staff of the Department of Fair Trading because their knowledge of departmental procedures is such that they are able to manipulate situations to frustrate customers and prevent involvement by the Department of Fair Trading. If the customer then gives in and pays the additional charges, he or she may still face the problem of difficult circumstances in the construction of the pool. For example, if the entire excavation of the pool is not composed of soft soil or if any rock or gravel is struck, or the site is on a slope, significant additional excavation charges are then applied.

I have been informed that the contractors employed to excavate the site of the pool down tools at the slightest indication of rock, and they demand excessive additional fees to continue their work. They tell the customer that the additional work involved is not part of their contract with the pool construction company, but I have been informed that kickbacks of up to half the additional fees they recoup are regularly returned to pool construction companies. Some swimming pool construction companies actively seek to circumvent our laws relating to consumer protection and, in effect, rip off their customers. It casts a pall over the reputation of many smaller businesses which offer a good product at a fair price. I bring this matter to the attention of the House this evening as an example of what is really going wrong in this industry.

Mr MARKHAM (Wollongong—Parliamentary Secretary) [6.00 p.m.]: I do not know whether the honourable member has brought this matter to the attention of the Minister. It is distressing that something like this is happening in this part of the building industry. If companies are using loopholes within our laws, the honourable member should campaign strongly with the Minister to have the matter investigated. I know of people in the Wollongong area whose pool construction work has been delayed, but I have not been told stories such as that which the honourable member has related tonight. It must be very distressing for people who contract with these unscrupulous pool contractors to be exploited in this manner, and it is important that the Minister is made fully aware of the situation.

CASINO CANBERRA MARKETING CAMPAIGN

Ms MEAGHER (Cabramatta—Parliamentary Secretary) [6.01 p.m.]: I bring to the attention of honourable members, and in particular the Minister for Gaming and Racing, the very serious concerns expressed to me by the Vietnamese community in New South Wales regarding advertising by Casino Canberra which specifically targets Vietnamese people. The Canberra casino has been advertising in the Vietnamese language newspapers offering potential punters a \$60 return bus trip from Cabramatta to Canberra, including accommodation, food, an afternoon of sightseeing and free drinks, with the added condition that each person must purchase \$1,000 of chips to be used in the casino.

The President of the New South Wales Chapter of the Vietnamese Community in Australia, Dr Tien Nguyen, has brought to my attention the community's concern that this is a cynical attempt by Casino Canberra to exploit vulnerable Vietnamese Australians because of their reputation as keen gamblers. In fact, Dr Nguyen is so concerned about this matter that in a letter to the *Daily Telegraph* on 4 September he stated:

The recent campaign of the Canberra Casino to attract people from the Vietnamese Australian community in Cabramatta by offering a cheap weekend trip to Canberra once again proves the greed of the gambling industry sharks. They are callous about the tragic consequences of the ensuing troubles caused by the loss of those people's hard earned money.

Indeed, the vast majority of Vietnamese Australians are ordinary hardworking people. Their experience as refugees and immigrants trying to begin a new life in Australia often means that money is hard to come by. For those who are lured by the possibility of financing their dreams by an easy win at a casino, the results are often disastrous. For many who dream of providing better comforts for their families through a gambling windfall, the opposite is often true, and it is the families who suffer the consequences of heavy losses.

The New South Wales Government has in place numerous programs that offer advice and support for problem gamblers. In fact, through the Casino Community Benefit Fund local groups, including the New South Wales Indo-china Chinese Association, have been awarded \$447,000 to date to run programs, and the Lao

Advancement Community in New South Wales has been awarded \$127,439 in funding to date to run programs. There are also numerous responsible gaming programs within our hotels, clubs and casino. However, while I note that Casino Canberra has stopped advertising in the Vietnamese paper this week, stating that the marketing campaign has run its course, it has expressed a clear intention to target other Asian communities in a similar fashion.

I commend the actions of Councillor Thang Ngo in writing to the Australian Capital Territory Gaming and Racing Commission on this matter. It would be fair to say that Councillor Ngo and I do not always see eye to eye, but I do believe that we share a deep and genuine concern for the welfare of the Vietnamese who call Australia home. In my meetings with the president of the Vietnamese Community about this matter, he has proposed that the Federal and State governments should explore the possibility of introducing legislation to ban casino advertisements in the same manner as that which prohibits cigarette advertising. I refer this proposal to the Minister for Gaming and Racing and welcome his presence in the Chamber this evening. I thank him for his attention to these concerns. I also urge the Minister to commence a dialogue with his counterpart in the Australian Capital Territory to examine ways to prevent the Canberra casino exploiting vulnerable Asian Australians living in New South Wales.

Mr FACE (Charlestown—Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development) [6.06 p.m.]: The honourable member for Cabramatta has highlighted a matter of considerable concern. I inform her tonight that I will be asking the Australian Capital Territory Government to stop the Canberra casino from advertising in Western Sydney, or anywhere else for that matter. Advertising is something that needs to be considered in an overall context, not only in New South Wales but on an interstate basis. I will raise this matter immediately with the Australian Capital Territory Treasurer and Minister for Sport, Gaming and Racing, Ted Quinlan, for whom I have a great deal of respect.

The honourable member for Cabramatta is to be congratulated on her vigilance, and on raising the concerns of the Vietnamese community leaders about this advertising campaign. The Canberra casino has adopted a predatory policy of targeting a vulnerable section of the community: middle-aged ethnic housewives, most of whom cannot afford to lose the \$1,000 that they are required to gamble to qualify for this outrageous advertising promotion. However, the New South Wales Government cannot legislate to stop this pernicious practice. I intend to hold urgent talks with the Australian Capital Territory Minister, in person or by phone, as soon as I can arrange it.

I understand the Australian Capital Territory Government is not happy with the actions of Casino Canberra and I will be asking the Australian Capital Territory Minister to implement an enforceable code of practice to include an anti-predatory marketing measure. In the meantime I appeal to Casino Canberra to do the decent thing and withdraw these totally unacceptable campaigns. New South Wales has pioneered responsible gaming legislation, and this certainly falls a long way outside what we are doing. It serves as a lesson to show that some people in the gaming industry will stoop to anything. I congratulate the honourable member for Cabramatta on bringing this most important matter to the attention of the House.

BLIGH ELECTORATE PEDESTRIAN SAFETY

Ms MOORE (Bligh) [6.08 p.m.]: Tonight I wish to speak about the important issue of pedestrian safety in inner Sydney. The Bligh electorate is densely populated, with very high pedestrian use matched by shockingly high pedestrian accident rates. The Roads and Traffic Authority [RTA] and councils should act urgently to protect residents and remove conflicts between traffic and pedestrians. Only 4 per cent of people across Sydney walk to work, but the figures are very different in my electorate. In Darlinghurst 26 per cent walk to work; Kings Cross, 22 per cent; Chippendale, 17 per cent; Redfern, 13 per cent; Paddington, 12 per cent; and Woollahra, Edgecliff and Darling Point, 6 per cent. These high rates are good for health, environment and traffic management, and they promote strong communities. I prepared a pedestrian issues discussion paper in October 2001 which detailed a list of 18 major pedestrian-traffic conflicts, including:

- Taylor Square—a continuing national pedestrian accident blackspot
- No protection or warning for pedestrians at Barcom Ave and Oxford Sts—where I see pedestrians at risk every day
- Speeding traffic on Foveaux St, where there are no safe pedestrian crossings, and Albion St where traffic does not stop at the marked zebra crossing
- Poor visibility at Bourke and Fitzroy Sts, Surry Hills
- Traffic intimidating pedestrians at Oxford St intersections with Oatley Rd and Greens Rd, Paddington
- Danger at Baptist/Crown and Cleveland Sts, Redfern where large numbers of shoppers try to cross busy Cleveland St
- Poor visibility at Cathedral and Palmer Sts, Woolloomooloo
- Traffic not stopping at the marked zebra crossing on Liverpool St at Whitlam Square

- Speeding traffic on Oxford St, Paddington where there are narrow footpaths and large numbers of children at peak times and shoppers at other times
- Too small a safe haven for pedestrians at Driver's Triangle, Surry Hills
- Removal of the pedestrian crossing at Anzac Pde and Moore Park Rd where large numbers of people regularly want to reach Fox Studios and the sporting stadia
- The need for another crossing on the western side of Oxford St intersection with Riley St, Darlinghurst
- Fast-moving traffic failing to stop at Driver Ave, Moore Park
- Unsafe crossings on Lang Rd, Centennial Park.

Bus users have also identified the New South Head Road and New McLean Street intersection as another pedestrian danger zone. My paper identified these major pedestrian precincts that need protection and improvement:

- Central Station to Moore Park, with huge pedestrian numbers for major sporting events
- City/Hyde Park to Centennial Park, a most significant recreation and tourist route
- Northcott, Surry Hills, with frail aged, children and disabled tenants at risk from unregulated traffic
- Chippendale, fenced in by major roads where the RTA refuses to provide overhead crossings
- Paddington and East Sydney, clogged with through traffic which should be directed to arterial roads
- Redfern Railway Station precinct, unsafe with major roads and large number of commuters in conflict with traffic on arterial roads.

Two people killed within six months on the Moore Park busway are recent tragedies that should have been avoided. I have called for the removal of the busway and the installation of dedicated bus lanes on Anzac Parade to prevent further deaths. Locals are aware of the dangers of the busway running through parkland and the entertainment precinct, but visitors face a very real danger.

I regularly receive complaints and concerns from local residents about dangers and risks for pedestrians. The response from the RTA and Minister has not been encouraging. Indeed, one notable response was that pedestrians could not be provided with a safe crossing at Barcom Avenue because it would slow the traffic down. I thought the Minister was quite perceptive in that response. My October 2001 discussion paper identified what needs to be done:

- Developing more flexible RTA guidelines to suit the different needs of children, older people, sports stadia and "walk to workers"
- Getting vehicles off footpaths and stopping them blocking footpaths
- Increasing timing for pedestrians at traffic signals, and separating priority time for drivers from the time allowed for pedestrians
- Removing restricted sight lines for pedestrians and drivers
- Adequately maintaining footpaths
- Improving lighting for pedestrians and increasing street safety in key pedestrian zones

I put these matters to the RTA, South Sydney City Council, and Woollahra Municipal Council in November 2001 and they agreed to a combined pedestrian access and mobility plan. It is now September 2002 and I am concerned that the councils and the RTA are taking far too long to get their act together in developing and implementing this plan. I call on the Government tonight to actively support this plan. Pedestrians—locals and visitors alike—deserve strategic planning to identify solutions and adequate resources to save lives, improve pedestrian black spots, and make our city safe to walk in.

TUGGERAH LAKES SECONDARY COLLEGE

TUGGERAH LAKES STUDENT REPRESENTATIVE COUNCIL YOUTH FORUM

Mr McBRIDE (The Entrance) [6.13 p.m.]: Monday 16 September at The Entrance was a great day for three reasons. Firstly, Monday was the official opening of Tuggerah Lakes Secondary College. I congratulate all those many people who worked so hard and so long to make it the outstanding success it has become for public education on the coast. It is a fantastic example of what a committed school community can achieve. The school motto is "New horizons", a brilliant motto. Why? Because it encapsulates what the college is all about: providing new horizons in public education for young people on the Central Coast.

I will give a brief history of Tuggerah Lakes Secondary College. After wide-ranging community consultation was undertaken on the Central Coast, a decision was made to establish Tuggerah Lakes Secondary College as a multicampus college. The college was announced by the then Minister for Education and Training, Mr John Aquilina, in February 2001. I congratulate John on his commitment to the project, which was undertaken over a number of years. It has been a fantastic success. The college started operation in 2002.

Tuggerah Lakes Secondary College consists of Berkeley Vale and Tumby Umbi years 7 to 10 campuses and The Entrance campus, a years 11 and 12 senior campus. The college is in a transition period in 2002 but by 2005 college structures will be fully established. The proposed building program is in two stages and will support all three campuses. Stage one will cost in excess of \$5 million, and some \$20 million is to be spent over four years on Tuggerah Lakes Secondary College and Brisbane Water Secondary College.

In the old comprehensive high school about 26 subjects were available; in the new college 53 subject choices are available in years 11 and 12 within the school system, plus 22 TAFE course options, including an aviation course that currently has three students. The official guests at the opening included Councillor Neil Rose, Mayor of Wyong; Councillor Daniel Cook of Gosford City Council; Bill Low, district superintendent; Wayne Ible, relieving district superintendent; Sharryn Brownlee, the new president of the New South Wales Parents and Citizens Association, who has been one of the driving forces in initiatives on the Central Coast; Mr Andrew Newman, college principal; Doug Blake, principal of The Entrance campus; Harry Jones, principal of Berkeley Vale campus; John Sharples, relieving principal of Tumby Umbi campus; Sue Petinger, president of the Berkeley Vale Parents and Citizens Association; Janeen Sloey, president of The Entrance Parent and Citizens Association; and David Baxter, president of the Tumby Umbi Parents and Citizens Association.

The second part of the day was the youth forum, an initiative by the Tuggerah Lakes Student Representative Council [SRC] and a leadership group. The forum was led by The Entrance campus SRC President, Michael Taylor; school captain Steve Forster; and school captain Sally Mahrous. Students from 19 high schools on the Central Coast participated. There were at least four representatives from each school and something like 84 or 85 students turned up for the forum. There were guest facilitators at the workshops. Before the question and answer session, the facilitators were asked to give a brief talk on leadership. The theme of the forum was "Youth Have a Voice. Get Involved". I can assure everyone that they certainly did. One of the groups decided they were going to talk about the issues concerning Iraq. They went straight off the set topic and to the big issue for young people—a very interesting debate.

That debate was led by David Fairleigh, a former North Sydney, State of Origin and Australian footballer who finished his career in England. He now works on the Central Coast and makes an enormous contribution to young people. Some of the other presenters on the day were Councillor Daniel Cook of Gosford City Council; Kate McNamara, a former Entrance High School student currently studying at university, a Kellogg's iron woman and a Mingara Club ambassador; Stacy Jacobs, a former Entrance High School student currently studying at university, former Young Person of the Year and member of the Premier's New South Wales Youth Advisory Council; Constable Rachel Garland, a police youth liaison officer who has been very involved in youth affairs; Dr Dianne Bull, director, external relations, lecturer in psychology at the Ourimbah campus of Newcastle University, who has been of great assistance in the establishment of the campus; Gus Plater, retired foundation principal of Kincumber High School and public education activist and, I understand, a Jimmy Buffett fan as well; and David Fairleigh, whom I mentioned before. I thank all those people for their contribution. [*Time expired.*]

KU-RING-GAI ELECTORATE POLICING

Mr O'FARRELL (Ku-ring-gai) [6.18 p.m.]: I again refer to policing within my community of Ku-ring-gai. I do so in advance of next Monday's first meeting of the Police and Community Training [PACT] committee, the new State Government initiative to bring the community and police together in electorates. I look forward to next Monday's meeting providing the start of a regular forum for the community to have an input into the policing effort in Ku-ring-gai, helping the commander to set priorities, and bringing to the attention of the police the issues that seriously affect my electorate.

I raise this issue this evening because of a recent attack upon a student at Gordon Station by three other young people. I do so against the background of two mornings' research, phone calls and feedback into a Steve Price 2UE radio program that highlighted gang-related activities on the North Shore line, particularly at Gordon and Pymble railway stations. I have referred to these issues in this place before. I have talked about the intimidation and robbery of young people. I have talked about parties being invaded, violent acts being perpetrated upon young people at parties, and possessions being stolen from the homes of the people hosting the parties. I have talked about young gang members organising drug dealings at railway stations and engaging in housebreaking. This is happening, contrary to the view put forward by others in recent times.

I make the point that my Federal member, who is equally concerned about this problem, made on radio this morning. Dr Nelson said that gang-related activity on the North Shore of Sydney is certainly not as serious

as in other parts of Sydney, but Dr Nelson, the community and I are determined to ensure that we do not wake up in five or 10 years and discover that the North Shore line and surrounding suburbs have become like other parts of Sydney. The community wants a line drawn in the sand; it wants a response from NSW Police in a co-ordinated way to stamp out this gang-related activity.

Recently a professional psychologist visited me. She deals with young people on a daily basis in her professional capacity. In first assessing young people she routinely asks them whether they have had any relationship with gangs. Five or six years ago that was not a question that psychologists and counsellors asked young people, but it has now become commonplace. She told me she is treating young people who are suffering from post-traumatic stress disorders who are either former members of gangs, members who were coerced into gangs, or the victims of gangs operating in what most people in Sydney would regard as a fairly placid and safe community.

As the father of two young boys who are not yet of teenage years I am concerned—like, I suspect, every other parent across Sydney—that young men between the ages of 15 and 19 are the most likely in our community to be assaulted. This is an increasingly unsafe world. I am concerned about the activities of other young people, some of whom are local, others of whom are alleged to come into our area from outside because of the honeypot syndrome: young people on the North Shore may have mobile phones or a few extra dollars in their pockets and are therefore easy to rob or to peddle drugs to.

I am concerned that the young people who live in my community are being preyed upon by this scum. I am particularly concerned that to date we have not seen the sort of co-ordinated police response that I expect. Despite the fact that I have run-ins with both police commanders when I highlight these issues, I will continue to do that until I am satisfied, and the community is satisfied, that we are getting an effective response. I accept that every time these matters hit the media, every time the media focuses on these issues, there is a response. There was a response after a student was bashed by three others; and there were arrests and raids at the Turramurra bus interchange following a high-profile exercise down the line.

But what I do not, and cannot, accept from the Government, the Parliamentary Secretary, or the Minister for Police, is that Gordon railway station, where these activities are occurring, is within 100 metres of Gordon police station. Six years ago the Government downgraded Gordon police station, and now only one general duties officer mans Gordon police station on each shift. Clearly that is inappropriate, given what is happening 100 metres away in Wade Lane, near Gordon railway station. I compliment CityRail staff and I welcome the fact that cameras have pushed these activities off railway platforms. However, they have been pushed onto the streets of Ku-ring-gai and the police have yet to respond to them in an effective manner.

Private members' statements noted.

[Madam Acting-Speaker (Ms Beamer) left the chair at 6.23 p.m. The House resumed at 7.30 p.m.]

BUSINESS OF THE HOUSE

Sitting Days

Mr WHELAN: I inform honourable members and those working in the Parliament that the Government has decided that we will not sit this Friday. If we did, we would have to consider the seven to nine bills the Government introduced this week. However, that would be unreasonable as it would not give the Opposition or the Independent members the opportunity or necessary time to research them. We could deal with other business, but that can be dealt with in the next week or so.

Mr TINK: At the risk of tedious repetition, because this is not the first time I have said it, the Government does not seem to have a lot of business. As the Leader of the House said, bills are not ready to be debated. This morning a seminar was held during parliamentary sitting time. Again, this is evidence that the Government has nothing left in its program.

BILLS RETURNED

The following bill was returned from the Legislative Council without amendment:

Road Transport Legislation Amendment (Interlock Devices) Bill

The following bill was returned from the Legislative Council with amendments:

Threatened Species Conservation Amendment Bill

Consideration of amendments deferred.

BUSINESS OF THE HOUSE

Bill: Suspension of Standing and Sessional Orders

Motion by Mr Face agreed to:

That standing and sessional orders be suspended to permit the introduction forthwith and progress up to and including the Minister's second reading speech of the Totalizator Agency Board Privatisation Amendment Bill, notice of which was given this day for tomorrow.

TOTALIZATOR AGENCY BOARD PRIVATISATION AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

Mr FACE (Charlestown—Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development) [7.33 p.m.]: I move:

That this bill be now read a second time.

The object of this legislation is to amend the Totalizator Agency Board Privatisation Act 1997, the Totalizator Act 1997, and related legislation to increase from 5 per cent to 10 per cent the maximum number of voting shares that a person can hold in TAB Limited. The 5 per cent shareholding limitation was adopted at the time of the privatisation of the TAB as part of the Government's policy to ensure that TAB shares were widely held, and to prevent any individual shareholder or group of shareholders from obtaining control or a significant influence over TAB Limited.

Since then the market has changed. It is considered that the proposed amendment to the shareholding limit will most likely see institutional investors—both domestic and offshore—increase their holdings of TAB Limited shares. Increased interest from investors will add to the liquidity of TAB Limited shares in the market and their attractiveness to investors, particularly larger institutional investors. This has the potential to increase the value of TAB Limited shares for all shareholders. The legislation has adequate safeguards to ensure that individual investors are not adversely affected.

There are sufficient controls within the existing legislation and the TAB constitution to prevent persons from exerting undue influence on the TAB. The increase in the limitation to 10 per cent does not allow an outside party to acquire a controlling interest in the TAB. The proposed amendments are in line with recent and expected changes to shareholding limitations in other States. In July the Victorian Government passed legislation to increase the individual shareholding limit in TABCORP from 5 per cent to 10 per cent and eliminated foreign shareholding restrictions. The Queensland Government has legislated a similar change to the Jupiters Casino shareholder limitations, while the Western Australian Government is believed to be considering an increase in the shareholding limitations of the Burswood Casino to 10 per cent. The proposed amendments are aimed at enhancing TAB Limited's attractiveness in the share market and, in turn, at providing the potential for both small and large shareholders to benefit. I commend the bill to the House.

Debate adjourned on motion by Mr R. H. L. Smith.

CRIMES (ADMINISTRATION OF SENTENCES) FURTHER AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

Mr AMERY (Mount Druitt—Minister for Agriculture, and Minister for Corrective Services) [7.36 p.m.]: I move:

That this bill be now read a second time.

The Crimes (Administration of Sentences) Act 1999 is the principal Act that governs the administration of sentences by the Department of Corrective Services, and a number of minor deficiencies in the Act have come

to light. The Crimes (Administration of Sentences) Further Amendment Bill will rectify those deficiencies and make other changes to facilitate the administration of justice, and the effective and secure operation of the correctional system. I shall now outline the more important changes being made. Section 7 of the Crimes (Administration of Sentences) Act 1999 governs payments to inmates. Inmates perform work of various kinds. Some inmates work on grounds maintenance, a small number of minimum security inmates work on community projects, and some inmates work for Corrective Services Industries in correctional centre workshops. All of these inmates are paid small amounts of money—not in cash, but by way of credits—which they save, use to pay their victims compensation levies, or spend on authorised items, such as personal toiletries.

The proposed amendment makes it clear that inmates who engage in work for which they are paid by the Commissioner of Corrective Services are not workers or employees for the purposes of various Acts of Parliament, and thus are not entitled to annual leave, extended leave, sick leave, superannuation and other incidents of employment. Division 2 of Part 2 of the Crimes (Administration of Sentences) Act 1999 governs segregated and protective custody of inmates. This division has been rewritten to streamline procedures dealing with segregated and protective custody inmates, and to provide for the transfer from one correctional centre to another of inmates held in segregated or protective custody.

The proposed division replaces complex procedures in the current Act with straightforward procedures which ensure that, at all times, directions relating to such inmates are clear, valid, and subject to regular review. The proposed division also ensures that an inmate who is the subject of a segregated or protective custody direction is informed of his or her right to seek an independent review of the direction. An inmate may be placed in segregated custody if the inmate is likely to constitute a threat to the personal safety of another person, or to the security of a correctional centre, or to the good order and discipline of a correctional centre. An inmate may be placed in protective custody for the personal safety of that inmate, either at the inmate's own request, or if the governor of a correctional centre believes the association of the inmate with other inmates constitutes a personal threat to the inmate's safety. Currently, a segregated or protective custody direction can be given for an initial period of 14 days, and subsequently extended for periods of up to three months at a time. There is no limit to the number of extensions.

Under the proposed division, a segregated or protective custody direction, once given, will continue in force until it is revoked. The governor of a correctional centre must, however, submit a report about the direction to the commissioner within 14 days of the direction being given, and the commissioner must review the direction and either revoke, confirm or amend it within seven days after receiving the report. Subsequently, the governor of the correctional centre at which a segregated or protective custody inmate is held must submit a report to the commissioner about the direction at intervals of three months after the direction was first given, and the commissioner must again review the direction within seven days of receiving each report.

Under the proposed division, as soon as practicable after issuing a segregated or protective custody direction in respect of an inmate, the governor of a correctional centre must provide the inmate with information concerning the inmate's rights to a review of the direction. The inmate may apply to the Serious Offenders Review Council for a review of the direction after 14 days of segregated or protective custody. The review council may confirm, amend or revoke the segregated or protective custody direction. The inmate may also apply to the review council for a review of a segregated or protective custody direction at three-monthly intervals. Currently, a direction made by a governor of a correctional centre does not apply to any other correctional centre, resulting in administrative complexity when an inmate held in segregated or protective custody is transferred from one correctional centre to another.

The proposed division provides that a segregated or protective custody direction made by a governor of a correctional centre continues to apply to an inmate during the transfer of the inmate to another correctional centre, and at the correctional centre to which the inmate is transferred. The proposed division requires the governor of the receiving correctional centre to review the segregated or protective custody direction applicable to the transferred inmate within 72 hours of the inmate's arrival, and to determine whether the direction should be confirmed, revoked or amended. It needs to be emphasised that a segregated custody direction is not a punishment. It is a means by which correctional management is able to respond to a threat to the personal safety of another person, or to the security of a correctional centre, or to the good order and discipline of a correctional centre.

Under existing section 18 the Minister for Corrective Services may confirm, amend or revoke a direction by the commissioner extending a period of segregated custody or protective custody. This power of the Minister is not included in the proposed division. Instead, the Serious Offenders Review Council will be the

only avenue for review of a segregated or protective custody direction, and the review council's review determination will be final—at least until a period of three months has expired and the inmate concerned may seek a further review by the review council. The proposed amendment to section 76 brings that section into line with section 75, which relates to confiscated inmate property.

The amendment will mean that unclaimed property found within a correctional centre may be sold or otherwise disposed of as the commissioner may direct—for instance, by being thrown out, destroyed or given to charity. Such unclaimed property is generally property left behind by released inmates who may have been bailed at court, or property belonging to a deceased inmate which is not claimed by the inmate's next of kin. The proposed amendment to section 107 clarifies the definition of "relevant maximum period", which refers to the time available for an offender to perform his or her obligations under a community service order. The amendment makes it clear that if a court imposes two or more community service orders on an offender, the maximum period of time for the offender to complete each community service order commences when the order is made.

Section 107 currently stipulates the relevant maximum period as being 12 months if the required number of hours under the order is less than 300, or 18 months if the required number of hours under the order is 300 or more. For instance, an offender sentenced to 200 hours of community service has 12 months in which to perform his or her obligations under the order, whereas an offender sentenced to 360 hours community service has 18 months to do so. Existing section 107 is, however, silent on the situation where a court imposes consecutive community service orders on an offender for separate offences, or where a second court imposes a community service order while an existing community service order is uncompleted or partially completed.

If a court imposed, say, two consecutive community service orders of 200 hours each—or two different courts impose separate orders of 200 hours each, but several months elapse between the date of the imposition of the first order and the date of the imposition of the second order—it is currently unclear how long the offender has in which to complete the orders: 12 months in respect of each order, or 18 months from the date of either the first order or the second order. The proposed amendment makes it clear that, in such a situation, the offender must complete each community service order within 12 months from the date the order was made, and the Probation and Parole Service may take revocation action if the offender fails to do so in respect of any one order.

The proposed amendment reinforces the Government's policy that offenders who break the law cannot ignore or flout court orders. The amendment will enable the Probation and Parole Service to more rigorously supervise offenders subject to community service orders, and will ensure that offenders who ignore their obligations under community service orders will be subject to revocation action sooner rather than later. Section 197 of the Act sets out the functions of the Serious Offenders Review Council. Existing section 197 (3) enables the review council to delegate any function that it has relating to segregated and protective custody directions to the chairperson or to a judicial member of the review council. The proposed amendment to section 197 provides that the judicial member to whom a function is delegated is to be nominated by the chairperson.

The proposed amendment to section 228 will enable an Official Visitor to a correctional centre, periodic detention centre or correctional complex to interview non-custodial members of staff as well as correctional officers and inmates. This amendment implements a recommendation made by the Inspector-General of Corrective Services. New section 235C enables the commissioner to confer such of the functions of a correctional officer on a transitional centre officer as the commissioner may determine. A transitional centre officer is a person who is employed at a transitional centre for the purpose of supervising inmates residing at the transitional centre. In a minor amendment, "transitional centre" has also been defined in section 3 (1) of the Act as premises managed or approved by the Commissioner for the purpose of accommodating certain inmates prior to their release from custody.

New section 235D is a parallel section to new section 235C. New section 235D enables the commissioner to confer such of the functions of a correctional officer on a periodic detention field officer as the commissioner may determine. A periodic detention field officer is a person employed for the purpose of supervising offenders subject to periodic detention orders whilst the offenders are outside a periodic detention centre—for instance, on a site where periodic detainees perform community service work. New sections 235C and 235D will allow, for example, a transitional centre officer or a periodic detention field officer to carry out a breath test or a urinalysis test on an offender subject to the officer's supervision.

The Chief Executive Officer of the Corrections Health Service has various functions under the Crimes (Administration of Sentences) Act 1999. An amendment which inserts new section 236D (1) into the Act will

give to the Chief Executive Officer of the Corrections Health Service the same power of delegation, and impose the same restrictions on that power of delegation, as currently applies to the Commissioner of Corrective Services. New section 236D (2) makes it clear that the chief executive officer cannot delegate the chief executive officer's right of free and unfettered access to correctional centres, to medical records and to offenders held in custody in any correctional centre.

The bill inserts new division 5 into part 11 of the Act. This is an important amendment which deals with the mandatory testing of members of correctional staff on a random or targeted basis for alcohol and prohibited drugs. The proposed division is derived from section 211A of the Police Act 1990, which provides for the testing of police officers for alcohol and prohibited drugs. Under the proposed new division, a member of correctional staff may be required to undergo a breath test, or to provide a sample of urine or hair. A member of correctional staff may also be required to undergo such a test, or give such a sample, if the member of staff is involved in an incident in which a person dies or is injured while in the custody of the member of staff, or as a result of the discharge of a firearm by a member of staff.

If a member of correctional staff attends or is admitted to hospital for examination or treatment because of such an incident, the member of staff may be required to provide a sample of his or her blood, urine or hair. Regulations in connection with testing for alcohol or prohibited drugs may be made with respect to the matters specified in proposed section 236I. The bill inserts new division 6 into part 11 of the Act. This proposed division provides for the appointment of recognised interstate correctional officers who will have all the functions of a correctional officer under the Crimes (Administration of Sentences) Act 1999 or any other Act, subject to the conditions of appointment under proposed section 236K.

Persons who may be appointed as recognised interstate correctional officers are any person who is employed as a correctional officer in the public service of another State or Territory other than a probationary correctional officer; any member of the police force of another State or Territory other than a probationary constable; and any member of the Australian Federal Police. Currently, if an inmate needs to be transported interstate for medical treatment which involves a stay in hospital lasting several days, correctional officers escort the inmate interstate but do not stay interstate to guard that inmate: they return to their correctional centre and the inmate is guarded in hospital by interstate correctional officers or interstate police officers who are sworn in as special constables under New South Wales legislation for that purpose. New South Wales correctional officers return to collect the inmate when the inmate is discharged from hospital, and return the inmate to a correctional centre in New South Wales.

In due course recognised interstate correctional officers will perform the functions currently exercised by these special constables. It is not intended that recognised interstate correctional officers be appointed until reciprocal arrangements are enacted in other States and Territories allowing correctional officers and police officers employed in those States to be appointed as recognised interstate correctional officers in New South Wales. The Department of Corrective Services will commence liaison with other States and Territories for this purpose.

Section 260 of the Act enables the Commissioner of Corrective Services or other prescribed person to issue certificates about certain matters. Such a certificate is admissible in any legal proceedings and is evidence of the facts stated in the certificate. The proposed amendment to section 260 will enable an evidentiary certificate to be issued stating that on a date or during a period specified in the certificate, a specified person was in the custody of the designated officer within the meaning of section 38 or section 249. Such a certificate might be used in court proceedings where the fact that an inmate was in lawful custody was a fact in issue, such as proceedings for escaping or attempting to escape from lawful custody.

The proposed amendment will clarify whose custody an inmate was in, in cases where an escape or attempted escape occurs other than from a correctional centre, such as from an escort vehicle or from a hospital to which the inmate has been escorted. Section 267 of the Act has been rewritten. This section currently enables the commissioner to supply records and information to persons undertaking research in connection with the administration of correctional centres or other specified matters. The proposed new section clarifies that such a person must obtain the commissioner's approval before obtaining access to certain information or facilities, to persons held in custody by the Department of Corrective Services, to persons supervised by the department and to persons employed by the department or a management company that manages a correctional centre.

The proposed section also expressly enables the commissioner to have regard to any recommendations of an ethics committee about the proposed research, and revises the list of specified research matters. The

Department of Corrective Services Ethics Committee is established under clauses 170 and 171 of the Crimes (Administration of Sentences) Regulation 2001. Several proposed amendments deal with the Parole Board and the Serious Offenders Review Council. Procedures of the Parole Board are governed by schedule 1 to the Act, and procedures of the review council are governed by schedule 2 to the Act. Proposed new section 11 (5) will enable the Parole Board to hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if all the members can be heard by all other members and by the public, if the meeting is open to the public. Currently, clause 16 of schedule 1 provides that if the chairperson of the Parole Board and the alternate chairperson or deputy chairperson, or both, are present at a meeting of the Parole Board, only the chairperson is entitled to vote with respect to any decision.

New clause 16 (2) will enable the chairperson, alternate chairperson and the deputy chairperson to each vote at a meeting, but only if it is a meeting that all the community members of the Parole Board are entitled to attend. Usually, no more than four community members of the Parole Board may attend a meeting of the Parole Board for the purpose of constituting the Parole Board. However, the chairperson may convene up to six meetings per year of the Parole Board at which all community members may attend.

Clause 17 of schedule 1 has been replaced in order to provide that a decision of the Parole Board is made by a majority of members of the Parole Board, whether or not a judicial member forms part of the majority, and to provide that a decision of a division of the Parole Board is made by a majority of members of the division, rather than by the judicial member and at least one non-judicial member of the division. This amendment has been prompted by a recent decision of the Court of Criminal Appeal, *Sides v Parole Board of New South Wales*, in which existing clause 17 was criticised.

New clause 22A of schedule 1 provides that, at a meeting of the Parole Board, a question of law, or a question as to whether a question is a question of law or a question of mixed law and fact, is to be decided solely by the judicial member presiding at the meeting. The amendments to schedule 2 to the Act relating to the voting procedures of the Serious Offenders Review Council are parallel to the amendments to schedule 1 relating to the voting procedures of the Parole Board and will have the same effect on the review council. Additionally, the bill proposes amendments to clause 11A of schedule 2, which deals with the conduct of proceedings before the review council by the use of audiovisual links. The proposed amendments make minor changes to references to the term "party" in the clause to accommodate the fact that some persons involved in proceedings before the review council may not, strictly speaking, be parties to the proceedings. I commend the bill to the House.

Debate adjourned on motion by Mr R. H. L. Smith.

HEALTH RECORDS AND INFORMATION PRIVACY BILL

Second Reading

Debate resumed from 5 September.

Mrs SKINNER (North Shore) [7.57 p.m.]: The bill was introduced in the other place and was supported by the Coalition because it protects the privacy of the health records of individual patients. The increased use of information technology and linked electronic health records have enormous potential benefits for patients. However, there have been instances where incomplete information about a particular treatment has jeopardised the safety of a patient. This bill will go a long way towards ensuring that does not recur. The privacy of all patients must be respected and this bill provides the framework for that.

The bill was drafted through a committee established by the Government which was chaired by the Privacy Commissioner, Mr Chris Puplick, whom I have consulted about the bill. A number of health privacy principles are referred to in the overview of the bill. I will highlight some of them, as they are important to the protection of individuals. The first relates to the purposes of collection of health information and provides that information collected must be directly related to the function of a particular organisation and must be reasonably necessary. The second principle states that the information collected must be relevant to the purpose for which it is collected, it must not be excessive, it must be accurate and it must not be intrusive.

The third principle is that information should be collected only from the individual concerned unless this is unreasonable or impractical. The information must be collected in accordance with any guidelines issued by the Privacy Commissioner. The fourth principle seeks to ensure that the individual from whom the information is collected is aware of certain matters, including the identity of the organisation collecting the

information, the fact that the individual is able to request access to that information, the purposes for which the information is collected, the persons to whom the organisation usually discloses information, any law that requires particular information to be collected and the main consequences for the individual if all or part of the information is not provided. The latter is a very important provision.

Under this principle the organisation collecting information about an individual must take reasonable steps to ensure that the individual is generally aware of these matters, particularly if they could pose a serious threat to the individual's life or health. The collection must be made in accordance with guidelines outlined elsewhere in the legislation. It is provided that the Privacy Commissioner may issue guidelines setting out circumstances in which an organisation is not required to comply with those provisions. An organisation is not required to comply in circumstances when the individual to whom the information relates has expressly consented to that organisation not complying or when the organisation is lawfully authorised not to comply. There are other provisions along those lines.

The fifth principle relates to the retention and security of health information collected and provides that the organisation should ensure that the information is kept for no longer than is necessary for the purposes for which it is to be lawfully used. The information must be disposed of securely and protected with security safeguards. If it is necessary to give the information to someone other than the person who collected the information, this should be done in such a way as to prevent any unauthorised use or disclosure. There are also provisions that allow an organisation not to comply. The sixth principle requires an organisation that holds health information to take steps to enable an individual to ascertain certain things about that information. The individual must know the nature of the information and the purpose for which it will be used. The individual is entitled to request access to that information.

The seventh principle is about accessing health information. It provides that an organisation that holds health information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide access to that information. The eighth principle is about amending health information and provides that the organisation that holds the information must, at the request of the individual, make appropriate amendments to ensure that the information is accurate and, having regard to the purpose for which the information was collected, ensure that it is up to date, relevant, complete and not misleading. If the organisation is not prepared to amend the information that it holds, the individual can take steps to appeal the matter.

The ninth principle is about accuracy, which speaks for itself. The tenth principle sets out limitations on the use of health information. It provides that the use of information for a secondary purpose requires the consent of the individual, that the use must be related directly to the primary purpose and that the individual must reasonably expect the organisation to use the information for that purpose. This principle contains other provisions regarding research. The eleventh principle outlines limits on disclosure of health information, such as consent and so on. The twelfth principle refers to identifiers and points out that an organisation may assign identifiers to individuals only if the assignment of identifiers is reasonably necessary to enable the organisation to carry out any of its functions efficiently. A private sector person may only adopt an identifier that has been assigned by a public sector agency.

There are provisions about transborder data flows, data flows to Commonwealth agencies and the linkage of health records. An organisation must not include health information about an individual in a health records linkage system unless the individual has expressly consented to its inclusion. The organisation must not disclose an identifier of an individual to any other person if the purpose of the disclosure is to include health information unless the individual has expressly consented to this. This legislation is in line with Commonwealth legislation and the Coalition is satisfied that the privacy principles it contains provide the necessary protections for individuals. They will ensure that information is accurate, that it is not held inappropriately and that it cannot be passed on inappropriately. Perhaps most importantly, the bill contains provisions governing the linkage of health records to other records to ensure that there is no inappropriate second party transfer. The Coalition supports the legislation.

Ms ANDREWS (Peats) [8.06 p.m.]: It gives me great pleasure to speak in support of the Health Records and Information Privacy Bill, the purpose of which is to implement recommendations made by the Ministerial Advisory Committee on Privacy and Health Information. The Ministerial Advisory Committee was established by the Minister for Health in June 2000. It was chaired by the New South Wales Privacy Commissioner, Mr Chris Puplick, and tasked with considering the implications of introducing linked electronic health records in New South Wales. The committee reported in December 2000 and its recommendations included the introduction of health-specific privacy legislation in New South Wales to cover both private and public sectors. There was wide consultation prior to the bill's introduction in this place.

The Minister requested the committee to investigate and advise on privacy issues relating to health information. The committee reported to the Minister in December 2000 after conducting extensive consultation with key stakeholder groups and the public, including two public forums on health privacy issues and a workshop conducted as part of the Consumers Health Forum national consultation process on electronic health. The committee also received 42 written submissions. One of its main recommendations was the introduction of health records and information privacy legislation to protect health information held in both private and public sectors.

This bill will apply to both public and private sectors and relies on 15 health privacy principles [HPPs] that cover a wide range of health information issues, including when and how information should be collected, how it should be stored and retained, when a person can access his or her health information, and when an organisation can use and disclose information. The content of the HPPs and the terms of the bill are generally in line with current State public sector privacy legislation, the Privacy and Personal Information Protection Act 1998; recent legislation in Victoria, the Health Records Act; and the Commonwealth Privacy Act, which became operational in the private sector on 21 December 2001.

The bill has been developed with the aim of ensuring that it places no greater compliance burden on organisations than that which is already imposed by the Commonwealth Act. The main differences include New South Wales specific complaints mechanisms developed in consultation with the New South Wales Privacy Commissioner, and a specific principle dealing with linked electronic health records. As a result of wide consultation, the bill has been finetuned to enhance alignment of its provisions with the Commonwealth Privacy Act, streamline the mechanisms under which private sector bodies will be required to give access to and amend records, introduce a regulation-making power to allow for the development of compliance-based enforcement programs, ensure that information necessary for health care can be shared appropriately between treating practitioners, and revise the principle dealing with linked records to ensure that it focuses on the linkage of health care records. This bill is much needed in this State, and I take pleasure in commending it to the House.

Ms MEAGHER (Cabramatta—Parliamentary Secretary) [8.10 p.m.], in reply: I thank honourable members for their contributions to this debate.

Motion agreed to.

Bill read a second time and passed through remaining stages.

MISCELLANEOUS ACTS AMENDMENT (RELATIONSHIPS) BILL

Second Reading

Debate resumed from 4 September.

Mr HARTCHER (Gosford—Deputy Leader of the Opposition) [8.11 p.m.]: The Coalition does not oppose the bill, and that position was made clear in the Legislative Council. I do not intend to cover all the changes the bill makes to the various Acts as that was done during debate in the Legislative Council and is recorded in *Hansard*. It is appropriate that the Legislative Assembly act as a clear debating chamber; it is not simply for me to re-read what the bill does. This bill follows on from the property relations legislation which recognised the rights of partners in relationships to superannuation, visitation rights, legacies, and all the property rights that people have once they develop close and ongoing personal relationships. It recognises those rights for same-sex couples, as it does for de facto couples and as was always the case in our society for people who were married according to law.

We live in a society in which the nature of relationships has changed in recent years. People have their own opinions on that, and that is a matter for private judgment. However, the role of the law is to recognise the existing exigencies in society, to ensure that the law reflects the operation of society and, as much as possible, to ensure that justice is done in our society. People who have caring and ongoing relationships should not be denied the normal property rights that would be expected to flow from that relationship. As I said, the Coalition did not oppose the original bill, the Property (Relationships) Bill, and it certainly does not oppose this bill, which simply amends a large number of Acts to maintain a consistency of spirit with the property rights legislation.

In Committee my colleague the honourable member for Oxley will be moving an amendment to the definition of "spouse". I indicate that the Coalition accepts the Government's foreshadowed amendment. The

argument for the Coalition's amendment was put by my colleague the Hon. Dr Brian Pezzutti in the Legislative Council and relates to the amendment moved in the Legislative Council by Reverend the Hon. Fred Nile, which was supported not only by the Coalition but by the Hon. John Tingle, the Hon. David Oldfield and the Hon. Malcolm Jones. However, that amendment was not accepted in the Legislative Council. What is the purpose of the amendment? Reverend the Hon. Fred Nile moved two amendments in the Legislative Council, but the Coalition in this House will move only one of those amendments.

The amendment moved by Reverend the Hon. Fred Nile related to the fact that the bill should contain a clause providing that it did not endorse same-sex marriages. The Coalition takes the view that marriages are a matter of Federal law, that the Federal Marriage Act covers the field, and that this legislation simply relates to property rights between two persons who are either of the same sex or of different sexes who have come together in a relationship and property rights have flowed out of that relationship. That matter is material to State law and that is what State law should regulate. Therefore, it is not appropriate for the Government to amend legislation to deal with policy matters that are appropriately dealt with by the Federal Parliament. If honourable members wish to take a view on the issue they may do so either by representation to the Federal Parliament or by a motion that can be debated in the Legislative Council or the Legislative Assembly.

The Coalition does not in any way endorse same-sex marriages. That is not a Liberal Party policy and I am sure the honourable member for Oxley will confirm that it is not National Party policy. These are matters appropriately dealt with by the Federal Parliament. The Coalition in the Legislative Council supported the other amendment moved by Reverend the Hon. Fred Nile, and that amendment is supported by the Coalition in the Legislative Assembly. The definition of "spouse" will be covered in greater detail by my colleague the honourable member for Oxley when he moves the amendment in Committee. I simply say that we have received representations from the Anglican Church, the Catholic Employment Commission and the Catholic Education Commission. We have also received individual representations from constituents across the State who have said—and we agree—that the concept of "spouse" is the concept of a relationship between a husband and a wife. "Spouse" is a traditional word sanctioned by long custom and long usage. In no way do we seek to disparage other relationships. As I said earlier, we acknowledge that other relationships exist, and that is a matter for individual judgment and individual choice in a free society.

Marriages have the right to be acknowledged and respected. However, that role and concept should not simply be transferred to all other relationships. As I said, that does not denigrate from or insult other relationships. It simply acknowledges that marriage is an important and fundamental relationship in our society. Marriage is sanctioned by law and by the religious traditions of all faiths in our multicultural society, be they Christian, Jewish, Islamic or Buddhist. Marriage is recognised as an institution in all religions, and it is recognised as a civil institution. Accordingly, the concept of marriage should be, and rightfully is, maintained. Therefore, we support the amendment which simply states that the definition of "spouse" relates to a husband and a wife lawfully wedded, and that other relationships can be properly and respectfully dealt with under a separate heading.

I emphasise this point. It is important that we acknowledge and respect other relationships. We are not seeking to derogate from them but we are seeking to preserve the particular and traditional rights associated with marriage. Marriage is a religious institution as well as a civil institution. It is a religious institution hallowed and respected by all the great religions which are now present and practising in Australia. I understand from my colleague that the amendments, which relate to one concept, will be moved in globo so that they can be debated together. I am sure the Attorney will grant leave for the amendments to be dealt with as one rather than 47 separate amendments. Though I do not wish to verbal him, I would think that is a reasonable assumption.

Mr Debus: It is a reasonable assumption.

Mr HARTCHER: I thank the Attorney for that in advance. As I confirmed today in a media interview, the Opposition accepts the principle of this bill as we accepted the principle of the Property (Relationships) Bill and we acknowledged the manifold relationships that exist in our society. We respect them. We hope all relationships are happy and harmonious. Many of them are. Many de facto relationships are successful and very happy. Many same-sex relationships are successful and very happy. Relationships are, after all, the underpinning of our society. Human beings operate with other human beings.

Very few of us are islands entire of ourselves, as the poet John Donne said. We, all of us, have to relate to other people either in small groups or in large groups. But the closest relationships we have normally are one-to-one relationships. The overwhelming majority of them are intergender but many of them now are of the same

gender, and the Coalition respects and acknowledges that. However, we do respect and acknowledge the great institution of marriage. We do believe that it should be respected and maintained. Accordingly, we will move the appropriate amendments through the good offices of the honourable member for Oxley in Committee.

Mr ASHTON (East Hills) [8.22 p.m.]: The Government appreciates the acceptance by the Coalition of the Miscellaneous Acts Amendment (Relationships) Bill, though it will move to amend the bill in one respect. As the shadow Attorney General said, while the institution of marriage might still be the main theme in society generally, we need to recognise that there are so many people in de facto relationships. Some have been in them; some will be in them. This bill is to, in a sense, empower what was done in the Property (Relationships) Legislation Amendment Act, which I also spoke on when it was being debated.

The object of the bill is to promote the equality of same and opposite sex de facto couples under New South Wales law. It achieves this by building on the commitment to same-sex law reform that was initiated by this Government in 1999. The reforms contained in the 1999 Act revolutionised relationship recognition in this State by acknowledging and supporting the reality that people in our society choose to live in de facto relationships. I do not have statistics off the top of my head but many people who end up married have been in long-time de facto relationships. Some people who choose never to get married remain in de facto relationships. Some people who have been in de facto relationships for many years get married and within a very short time the marriage ends. For those who claim the sanctity of marriage is the only option for a man and woman, the statistics of two women or two men living together would be quite revealing.

The definition of "de facto relationship" introduced in the 1999 Act and now contained in the Property (Relationships) Act 1994 speaks of a relationship between two adult persons who live together as a couple and who are not married to each other or related by family. Phrased in these terms, the definition puts the question of sexuality to one side and focuses instead on the day-to-day legal consequences that arise from choosing to be a partner to a committed, adult relationship. I presume—I may be incorrect—that Reverend the Hon. Fred Nile's amendment may go to the heart of that, but I am not sure what the Coalition will move in this Chamber. But essentially what the Government is saying is that we are putting a matter of what sexual relationship is involved outside the purposes of the Act so that the Act recognises de facto couples—men-men, women-women, men-women. That is the key.

After passage of the Act a couple of years ago that made that the most important part, the property recognition in terms of wills and estates and how property could be divided up in the event of the death or separation, it was recognised that many areas of other Acts could be affected. Although these reforms represented a legal landmark for same-sex couples, many areas remained unaffected by the 1999 amendments. The purpose of this bill is to correct that situation by extending the sexuality-neutral definition of "de facto relationship" contained in the Property (Relationships) Act to a wide range of statutes that confer employment benefits and entitlements or other rights, powers or protections that arise as a legal consequence of being a spouse. Same-sex de facto couples should be granted parity with opposite-sex de facto couples through the operation of the statutes. That is what the bill will do.

I will not deal with the provisions of the bill in detail because the Minister has done that in his second reading speech and we have just heard from the Deputy Leader of the Opposition of the Opposition's basic support for the bill. The Acts amended by the bill include the Adoption Act, the Adoption Information Act, the Conveyancers Licensing Act, the Credit Act—a very important Act when a de facto couple is involved in seeking credit to buy things such as a house or car—the Crimes (Administration of Sentences) Act, the Criminal Procedure Act, the Defamation Act, the Police Service Act and the Motor Vehicles Taxation Act. I have been advised by the Attorney General that two others Acts should be added to the list of 25 Acts that will be amended by the bill.

A couple of areas are worthy of extra comment. The Public Sector Management Act allows unpaid leave entitlements of a deceased public servant to be paid to their de facto partner. At present such benefits are payable only to the widow, widower or dependent relative. The Public Sector Management Act covers all government employees in New South Wales so it affects many people. It is obviously unfair that unpaid leave entitlements, accrued leave entitlements, holiday pay entitlements—whatever entitlements have been accrued by one person in a de facto relationship—should be just lost because the person who is deceased was a man and the partner is also a man; or if the two partners to the relationship are both women.

The Act recognises only fairly outdated terms such as "widow", "widower" and "dependent relative", the latter probably being a reasonable term. I have always thought the words "widow" and "widower" to be

characteristic of the fifteenth or sixteenth century. The extension of this bill to the operation of the Public Sector Management Act to enable entitlements under that Act to be passed on is very important. The Police Service Act provides that special risk benefits will be paid to a spouse or heterosexual de facto partner when a police officer on duty is injured. Those benefits will be extended to a same-sex partner by virtue of this bill—another important change. The Sporting Injuries Act will allow sporting injuries benefits payments to be made to same-sex partners on the death of the injured person. The provision currently applies only to spouses or heterosexual de facto partners. That is another anomaly that extension of the provisions of this bill will cure.

The Government has recognised that legislation which could improve 25 Acts, but does not, is not of much use. The essence of this bill is to extend the categories of people who receive benefits and bring the existing legislative provisions into line. As a result of this bill, de facto relationships will in future be defined without regard to the sexual persuasion of the people involved. The Evidence Act also contains provisions stipulating that a spouse or heterosexual de facto partner cannot be compelled to give evidence against their partner in a criminal trial. This reflects a long-standing common law provision which probably dates back to the Magna Carta. This amending bill will extend that legal privilege to same-sex de facto partners.

The inherent equality in that provision is very important. If a husband or wife cannot be compelled to give evidence against the person they married in a court of law, why should a lawyer or judge be able to direct Miss X to give evidence—perhaps incriminating evidence—against Miss Y, or to direct Mr X to give evidence against Mr Y when they do not wish to do so? This bill addresses this obvious anomaly in the law. The Motor Vehicles Taxation Act currently provides for a motor vehicle registration tax concession for married or heterosexual de facto pensioners. The amending provisions of this bill will extend the concession to same-sex partners.

Mr Stoner: Have you costed this out?

Mr ASHTON: It is not a cost at all. These people are entitled to these benefits.

Ms Moore: It is basic human rights that we are talking about.

Mr ASHTON: As the honourable member for Bligh points out, we are dealing with basic human rights. It is not a matter of costing the extension of those rights. These entitlements are not a cost to government. The entitlements have been earned, and if they cannot be passed on, they will be given to the Consolidated Fund. Is it not fair that the benefit of those entitlements should be passed to that person's partner?

Mr Stoner: Concessional vehicle registration is revenue forgone.

Mr ASHTON: I know that people with sexual hang-ups, such as the honourable member for Oxley, would perceive that to be a great problem.

Mr Stoner: I did not raise sexuality. You just get down in the gutter, you boofhead. I just asked about costs.

Mr ASHTON: And I said that the extension of these provisions will not be a cost to government.

Ms Moore: We are talking about social justice.

Mr ASHTON: Exactly. If the honourable member for Oxley interrupts me with a question relating to costs, then he is running a different argument.

Mr Stoner: All I am asking is whether it has been costed.

Mr ASHTON: These are entitlements that have been earned during the period of a de facto relationship. They are not costs if the relationship is constituted by a man and a woman, but the honourable member for Oxley regards them as a cost if the relationship is between a man and another man or a woman and another woman.

Mr Stoner: It is forgone revenue.

Mr ASHTON: They are not costs; they are entitlements. I do not expect the honourable member for Oxley to understand because where he comes from there are probably quite a few people who are involved in relationships and they are not quite sure who are their relatives and who are not.

Mr Stoner: We can always count on you, you boofhead, to lower the debate to the most base level.

Mr ASHTON: The honourable member for Oxley can only call me a boofhead, but I have used much better language to offend him, and I have put him in his place.

Mr Stoner: Yes, you are offensive.

Mr ASHTON: Keep calling me a boofhead. I know better names than that. Is that the best you can do?

Mr Stoner: I do not want to stoop to your level, you clown.

Mr ASHTON: The honourable member for Oxley called me a boofhead and a clown, but I have answered his comment on costs. It is not a cost; it is an entitlement.

Mr Stoner: You have answered my question—"No, it has not been costed".

Mr ASHTON: It is an entitlement.

Madam ACTING-SPEAKER (Ms Beamer): Order! I am sure the honourable member for Oxley will want to speak on this bill. I suggest that he stop interjecting.

Mr ASHTON: I think I will stick around. I have thoroughly dealt with him and I do not think he will raise his head again. The only thing I can say about the honourable member—and I cannot always remember his electorate—is that, as I think most honourable members would know, he will never get meningitis because it is a brain disease. That is better than calling someone a boofhead. The point I make is that this amending bill will clarify the entitlements of de facto partners for many couples, who may not have been heard of in the Oxley electorate where there is probably a big sign stating "Gay couples not welcome here".

Mr Stoner: You have just insulted all the people who live in Oxley. Obviously they would love to be insulted by the likes of you.

Mr ASHTON: In the Labor Party, being called a clown rates very low—approximately minus seven out of about 37. Ours is a harder school than the Coalition.

Mr Stoner: The people of Oxley would really like being insulted by the likes of you.

Mr ASHTON: The honourable member for Oxley was the one talking about costs. He obviously does not understand the nature of the bill. The bill does not relate to costs; it relates to entitlements that have been earned by people who are in a relationship. Why should not the benefit of those entitlements go to the partner? What does the honourable member want to do with the monetary equivalent—send it to the Consolidated Fund so that it can be spent on building a bridge in the Oxley electorate?

Mr Stoner: I am talking about forgone revenue as a result of the bill. You are the one who is talking about licences.

Mr ASHTON: It is not a cost; it is an entitlement that has been earned. The Government is proud of this bill. I am sure that what I am saying will be supported by the honourable member for Bligh and I hope that she will support the bill. The property rights of people in de facto relationships was recognised in this House a couple of years ago at least. This legislation ensures that that recognition will be extended to many more areas. I spent 22 years as a schoolteacher and I am sure that by extending the provisions of this bill to the Teaching Services Act, gay couples in a relationship who have accrued long service leave and other leave entitlements will benefit. I am in a similar position. If I were to die, my wife would receive the benefits, but if I were in a same-sex relationship my entitlements would have been lost.

The cost referred to by the honourable member for Oxley is not a cost. It is an entitlement that has arisen as the relationship has built up, and it is entitled to be passed on to the other party. I thank the honourable member for Oxley for his interjections because they make clear why the Opposition's amendment will most likely not be accepted. This legislation draws the line between this caring Government, which recognises changes, and the National Party, which is completely obsessed.

Mr Stoner: We have already said that we are not opposing this, you clown.

Mr ASHTON: The honourable member for Oxley is content to use terms such as "clown" and "boofhead" because where he comes from that is really offensive. If the honourable member were to come over to the Labor side of the Chamber he would learn a little more.

Mr STONER (Oxley) [8.37 p.m.]: The National Party believes in the family unit as the basis of a strong and stable society. We believe in the value of traditional marriages as an affirmation of the commitment between a husband and wife. This is critical from the perspective of raising well-adjusted children in a stable family environment. While the Miscellaneous Acts Amendments (Relationships) Bill is apparently intended to standardise the definition of "spouse" across a number of Acts consistent with the Property (Relationships) Act, it represents a further dilution of the definition of "spouse" as either a married man or married woman. With the need for consistency and the removal of discrimination in mind—contrary to the loud protestations made by the honourable member for East Hills—the Opposition does not oppose this legislation and does have the need for consistency and removal of discrimination in mind. But we also seek to uphold the status of traditional marriages.

In the other place the Opposition supported an amendment moved by Reverend the Hon. Fred Nile to insert the words "de facto partner" along with the word "spouse" wherever that term appears in the bill. That is a very sensible amendment. It reinforces the fact that the word "spouse" means a husband or wife and that a different term is used for a person in a de facto relationship. The honourable member for Coffs Harbour, who has discussed this matter with Reverend the Hon. Fred Nile, is very much of the same view. This amendment is sought by the Council of Churches in New South Wales, which represents a large number of churches in this State. The council, in correspondence to me dated 12 September 2002, stated:

The Council endorses the concerns expressed by the General Secretary of the Anglican Diocese of Sydney concerning the redefining of the term "spouse" in the relevant Acts to include partners to all de facto relationships and same-sex relationships, as well as the traditional meaning of male and female married persons.

The Anglican Diocese of Sydney, in a media release dated 11 September 2002, stated:

Our concern is that this legislation is the first step to change by stealth the community understanding of the marriage relationship, and ultimately to erode marriage, so that it is generally seen as equal to de facto relationships and same-sex unions.

In conjunction with our Roman Catholic colleagues, the Anglican Church suggested to the Attorney General and the Shadow Attorney General that the term "spouse" be given the traditional meaning in the legislation and that another term be used to describe parties in a de facto relationship.

Of course, those suggestions fell on deaf ears in the case of the left-wing Labor Attorney General. Surely we should listen to the unified voice of the spiritual leaders of our communities, who are of the view that we should preserve the term "spouse" as meaning a married man or woman. Surely, even the Labor Party would acknowledge the concerns about the consequences of watering down an institution that has served the civilised world so well for thousands of years. By saying that the term "spouse" includes de facto and same-sex relationships, the Government is saying "We don't care whether you get married or not."

What message does that send to young people contemplating the commitment of marriage? What might the consequences be of disposable relationships? Many in the community would say that the problems currently faced by society in this State with juvenile crime, drug abuse by young people and youth suicide are linked to family breakdowns. Those problems might be the result of social engineering, which has removed the incentive for couples to commit to each other and their children for the long haul. Changing the legal meaning of the term "spouse" is just that: social engineering. Therefore, I will seek to amend the bill in Committee to ensure a different terminology to that of "spouse" in respect of de facto partnerships. This will not prevent persons not in the traditional marriage from accessing employment and other entitlements under the range of Acts stipulated in the explanatory note to the bill. Hence, I see no reason why the Labor Party would oppose my amendments.

Ms MOORE (Bligh) [8.43 p.m.]: I welcome this bill, which represents a step in the slow process of legislative reform to provide lesbians and gay men with the same basic human rights that the rest of us take for granted. During debate on the Property (Relationships) Legislation Amendment Bill in 1999 I raised concerns that that bill did not give same-sex couples full equality and that numerous other New South Wales statutes required amendment in that regard. In several instances, that bill specifically ensured that same-sex partners would not have the same rights and obligations as heterosexual de facto partners. These amendments should no longer be contentious, following bipartisan support for the Property (Relationships) Act, and I had hoped that this House would quickly pass this bill without the shameful homophobic rhetoric that has accompanied past debates on gay and lesbian law reform, certainly in my experience over the past 14½ years. And I regret the performance I just witnessed.

This bill will update 25 pieces of legislation by inserting the non-discriminatory definition of "spouse" and "de facto relationship" used in the Property (Relationships) Act. The changes will reduce discrimination against gay and lesbian de facto couples, who are not legally able to marry. On 28 March 2002 the *Sydney Star Observer* reported that this legislation would be introduced to honour commitments that the Government made to the Gay and Lesbian Rights Lobby in August last year. In April I wrote to the Attorney about remaining areas of discrimination in New South Wales laws, particularly in relation to same-sex relationships and the age of consent. I welcome the action this bill takes to reduce the discrimination that I detailed in my letter, as well as some additional legislation, and I again call for further action to remove all discrimination.

This bill deals with workplace entitlements. As requested in my letter to the Attorney, the Electricity (Pacific Power) Act 1950, the Public Sector Management Act 1988, the Teaching Services Act 1980 and the Transport Administration Act 1988 will be updated to enable same-sex partners to inherit the unpaid balance of a deceased de facto partner's unpaid long service leave on the same basis as heterosexual partners inherit such entitlements. For the information of the honourable member for Oxley, we are dealing with basic human rights. The Police Service Act 1990 and the Sporting Injuries Insurance Act 1978 will be brought in line with the Property (Relationships) Act to ensure that death or injury benefits are paid to the employee's or insured's partner. Again, I say to the honourable member for Oxley: basic human rights. The Industrial Relations Act 1996 will be amended to extend unpaid leave to the non-biological parent, the co-parent, of a child born to or adopted by a lesbian or gay couple.

Co-parents will be able to take carer's leave when their child falls ill—a basic human right—providing lesbian and gay parents rights to meet their responsibilities equal to those of heterosexual married or de facto couples. The bill also deals with tenancy legislation. Parliament amended the Retirement Villages Act in 1999 to guarantee continued residency to surviving partners of same-sex relationships in retirement villages. The Landlord and Tenant Act 1899 and the Landlord and Tenant (Amendment) Act 1948 will now be made consistent and provide same-sex partners, including elderly same-sex partners, with the same protection where they are living in private accommodation. Again, basic human rights. I also welcome the response on other legislation discriminating against same-sex couples. The Evidence Act 1995 will be amended to ensure that same-sex partners may be excused from giving evidence against his or her partner. The Health Insurance Levies Act 1982 will be updated to give partners with children access to the family rate of contribution. Again basic human rights.

The Local Courts (Civil Claims) Act 1970 will extend to same-sex partners the right to appear before a Local Court, and the Adoption Act 2000 and Adoption Information Act 1990 will be amended to enable same-sex partners to access adoption records after the death of an adopted person or birth parent. How logical; how sensible; how just! Similar changes will be made to other Acts to remove gender-specific language and to ensure that the words "spouse" and "de facto" cover same-sex relationships. Again, fair, sensible and just. However, there is still more to be done. While my constituents welcome these improvements, many are concerned that this is a slow process of reform and that could lead to continuing discrimination. My constituents are calling for further urgent action by the New South Wales Government and Parliament to address those areas of discrimination. Additional areas for reform include anti-discrimination, adoption and equal age of consent. While this bill aims to provide recognition for same-sex relationships, I understand that these additional areas of discrimination prevent full recognition of same-sex relationships.

In debate on the Property (Relationships) Legislation Amendment Bill I raised concern about amendments that specifically embedded discrimination in the Local Government Act. This still remains, and I understand that the problem relates to pecuniary obligations that would require disclosure of a same-sex spouse. Action on equality in this regard is dependent upon reform of the Anti-Discrimination Act to provide protection against discrimination on the grounds of a same-sex relationship. In my letter to the Attorney, I also raised concern about the Liquor Act 1982, which uses the term "spouse" without a reference to the Property (Relationships) Act. I understand that this reform, to enable a same-sex partner to carry on business when the licensee dies or is disqualified, is reliant on equalisation of the discriminatory age of consent. These are only two examples that highlight how deeply discrimination is embedded in New South Wales legislation and the consequences of piecemeal reform.

In addition to protection from discrimination on the basis of a same-sex relationship, the Anti-Discrimination Act 1977 requires amendment to ensure that gay men and lesbians have equal protection from discrimination. Some of my lesbian and gay constituents are directly affected by exemptions that allow discrimination on the grounds of homosexuality. They include lesbian and gay teachers and other employees in the private education system, gay men and lesbians working in businesses with five employees or less, lesbians

and gay men working in private households, and gay and lesbian employees of religious bodies. I ask for action to remove these exemptions to ensure that they can enjoy the same security in employment as heterosexual employees.

My lesbian and gay constituents also include those who have taken on the responsibility of caring for children. They are concerned that their relationships with these children are protected. I am informed that the only means of achieving this is through parenting orders from the Family Court. Such orders are limited in effect and do not continue once the child is of age, nor do they cover inheritance. The Gay and Lesbian Rights Lobby has suggested that the Adoption Act be amended to include same-sex de facto couples providing for the best interests of children and give legal protection that reflects reality. My gay and lesbian constituents remain gravely concerned that the age of consent for consensual male homosexual sexual activity is 18 years, while the age of consent for consensual heterosexual sexual activity is 16 years. A study by Richard J. Roberts and Peter Maplestone of the University of New South Wales School of Social Work examined the adverse impact of this discriminatory age of consent on young gay males. Their report concluded:

No substantial evidence was found to support a higher age of consent for young homosexual men. The evidence supports the position that the age of consent should be equalised on the grounds that the current position is not only discriminatory against young gay men but is harmful in inhibiting their access to educational, health and welfare services at a time when they need them most.

This conclusion is in keeping with the Wood royal commission's recommendation relating to an equal age of consent, the recommendation of the Anti-Discrimination Board as far back as 1984, and many inquiries and research reports. New South Wales was once in the forefront of gay and lesbian law reform but is now the only Australian State that has a discriminatory age of consent. It is therefore particularly disappointing that a private member's bill introduced in the Legislative Council has been referred to a committee for inquiry into "the social and legal impact of the lowering of the age of consent for homosexual males to the same age which applies to heterosexual males and females and lesbians".

This seems to me to be no more than a stalling tactic similar to that used in 1998, when the Government referred the recognition of same-sex relationships to a committee less than six months before the last election—despite commitments made prior to 1995 to ensure that same-sex partners had the very same rights and responsibilities as heterosexual de facto couples. In this House in April, in response to my question, the Premier stated that he could "think of no substantial argument against introducing a uniform age of consent", provided any legislation included "guarantees regarding the protection of people aged under 16 years". The Premier previously suggested that any moves to change the age of consent would be a matter for private members, consistent with the policy of the New South Wales branch of the Australian Labor Party to deal with homosexual law reform by conscience votes.

Partial homosexual law reform was achieved in 1984 by a private member's bill introduced by the then Premier, Neville Wran, and supported by the then Leader of the Opposition, Nick Greiner. During his speech introducing the bill, Premier Wran acknowledged its limitations, including the discriminatory age of consent, and expressed the hope that a future Parliament would remove the discrimination. Nearly 20 years on, gay men and lesbians are still waiting. Similar leadership to that demonstrated by Premier Wran is now required to complete the reform process. I have previously called upon the Premier to show such leadership. Now is the ideal time for him to do so, as the Leader of the Opposition is on the public record supporting an equal age of consent. A private member's bill providing for an equal age of consent could and should now enjoy the same bipartisan leadership support that the Crimes (Amendment) Bill enjoyed in 1984. That bipartisan support was undoubtedly instrumental in gaining the support of those government and Opposition members of Parliament who otherwise would have hesitated in supporting such legislation. I urge the Attorney General, in the remaining eight weeks of this Parliament, to introduce and support such a bill.

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [8.54 p.m.], in reply: I thank honourable members at least for their general support of this significant legislation. The bill builds upon the commitment to same-sex law reform that was initiated by the Government with the passage of the Property (Relationships) Legislation Amendment Act 1999—reforms that achieved in 1999 something of a revolution in relationship recognition in this State and enabled New South Wales law to better accommodate the range of domestic relationships that exist in our society.

By way of response to the remarks of the honourable member for Bligh I should mention that the question of referring the private member's bill concerning the age of consent to the Standing Committee on

Social Issues of the upper House is one of seriousness. This is not a matter that has been dealt with lightly, at least from my perspective. It is very important to understand that the upper House has begun a process, and it is clear that unless the upper House is able to sort out, amongst its various members in particular, some questions concerning penalties and offences surrounding the whole question of the setting of an equal age of consent, then the bill will not pass the upper House. It is necessary that some of those matters be resolved in the process before the issue is again brought before the upper House and then, presumably, before this place.

Ms Moore: Every other Parliament has dealt with it.

Mr DEBUS: Every other Parliament may have done those things, but we have to deal with our reality. The honourable members saw that reality demonstrated, for instance, in the words of the honourable member for Oxley—horrible as that may be. On the question of the Anti-Discrimination Act issues raised by the honourable member for Bligh, I simply point out that the Government is conducting a wider review aimed at addressing the effect of exemptions and possible new grounds of anti-discrimination. That inquiry is under way. The definition of "de facto relationship" introduced in 1999, now contained in what is called the Property (Relationships) Act 1984, speaks of a relationship between two adult persons who live together as a couple and who are not married to each other or related by family. Phrased in these terms, the definition puts the question of sexuality to one side and focuses instead on the day-to-day legal consequences that arise from choosing to be a partner to a committed, adult relationship.

The 1999 Act established a property division regime that applies equally to same and opposite sex de facto couples, and put same-sex partners on the same footing as heterosexual couples with regard to wills and estates and in the event of the hospitalisation or incapacitation of their partner. Although these reforms represented a legal landmark for same-sex couples in New South Wales, many areas remain unaffected by those 1999 amendments. The purpose of this bill is to correct that situation by extending the sexuality-neutral definition of de facto relationship to a wide range of statutes that confer employment benefits and entitlements, or other rights, powers or protections that arise as a legal consequence of being a spouse. Equality requires that same and opposite sex couples receive the same treatment in the operation of those statutes. The passage of this bill will enable that equality to be achieved.

Recent developments in other Australian States make it particularly timely to build upon the Government's commitment to same-sex law reform. Since our 1999 Act was introduced, Queensland has enacted similar reforms and last year Victoria went even further, with amendments to 43 Acts to extend equal rights to same-sex relationships under its Statute Law Amendment (Relationships) Act. Most recently, in March Western Australia began stage one of a comprehensive same-sex law reform agenda, and the second stage of reforms to amend any remaining West Australian Acts will be pursued later this year.

The passage of this bill will also help to further the desirable goal of achieving a consistent definition of "de facto relationship" across all New South Wales legislation. In doing so, however, the bill does not in any way seek to equate de facto relationships with marriage. The bill does not make de facto relationships the same as marriage; rather it simply extends certain legislative provisions referring to "spouses" to include partners to a de facto relationship. "Marriage" and "de facto relationship", therefore, remain as distinct concepts.

In any event, as even the Deputy Leader of the Opposition has acknowledged, this Parliament has no power to make laws that affect the status of marriage because that falls within the legislative competence exercised exclusively by the Commonwealth. Nor, as has been suggested in some circles, does the bill seek to undermine the status of the family. Quite the opposite: by extending the Property (Relationships) Act definition of "de facto relationship" to a wide range of contacts that relate to the day-to-day consequences of being a party to a committed relationship, the bill helps to promote the greater inclusion of people who live in non-traditional families into the general community.

There could be no more appropriate time than now to build upon the reforms commenced in 1999. The prevalence of same-sex couples is increasingly recognised. The recently released 2001 census results reveal that 8,447 cohabiting couples in New South Wales identified as living in same-sex relationship. That is twice the number in the 1996 census and twice the number recorded for any other State. Everybody understands that there are many who would not so reveal themselves in a census. To continue to deny this significant number of people access to the same legal rights, powers, protections and benefits enjoyed by heterosexual couples would be both discriminatory and unjust. That is not an outcome the Government wishes to facilitate or endorse.

I should take the opportunity to foreshadow the amendments the Government will move in Committee, which will insert a new definition of "de facto relationship" into the Road Transport (Heavy Vehicles

Registration Charges) Act 1995 and the Road Transport (Vehicle Registration) Regulation 1998. The Minister for Transport recently advised me that this Act and regulation have been identified as containing discriminate provisions, which, I believe, even the eagle eye of the honourable member for Bligh had not discerned. It follows from what I have said that the Government will not support the amendments foreshadowed by members of the Opposition. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Clause 3

Amendment by Mr Debus agreed to:

Page 2, clause 3, line 9. Omit "Regulation". Insert instead "Regulations".

Clause 3 as amended agreed to.

Clause 4 agreed to.

Schedule 1

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [9.06 p.m.]: I move Government amendment No. 2:

No. 2 Page 18, schedule 1. Insert after line 15:

1.22 Road Transport (Heavy Vehicles Registration Charges) Act 1995 No 72

[1] Section 25 Exemption for eligible pensioners

Insert "or in a de facto relationship with each other," after "married to each other" in section 25 (3).

[2] Section 25 (4)

Insert after section 25 (3):

(4) In this section:

de facto relationship has the same meaning as in the *Property (Relationships) Act 1984*.

1.23 Road Transport (Vehicle Registration) Regulation 1998

[1] Clause 82 Exemption for eligible pensioners

Insert "or in a de facto relationship with each other," after "married to each other" in clause 82 (3).

[2] Clause 82 (4)

Insert in appropriate order:

de facto relationship has the same *meaning* as in the *Property (Relationships) Act 1984*.

This amendment amends the Road Transport (Heavy Vehicles Registration Charges) Act 1995 and the Road Transport (Vehicle Registration) Regulation 1998. The amendment is non-controversial in that it is identical in terms and effect to the provisions of the Motor Vehicle Taxation Act 1988 that are already included in the amendments contained in the bill. The reason it is proposed at this late stage is that the Act and regulation were inadvertently overlooked during the process of identifying legislation that required amendment in accordance with the policy of the bill.

Like the changes to the Motor Vehicles Taxation Act already contained in the bill, the effect of the amendment will be to extend to de facto couples a tax exemption in respect of registration fees paid by

pensioners for motor vehicles used for social or domestic purposes. By adopting the definition of "de facto relationship" contained in the Property (Relationships) Act, the amendment will ensure that this benefit is enjoyed equally by the same-sex and opposite-sex spouses.

Amendment agreed to.

Mr STONER (Oxley) [9.07 p.m.], by leave: I move Opposition amendments Nos 1 to 48 in globo:

No. 1 Page 3, schedule 1. 1 [1]. Insert after line 5:

Omit "or spouse" from section 137 (1) (a) and (b) wherever occurring. Insert instead ", spouse or de facto partner".

[2] Section 137 (1)

No. 2 Page 3, schedule 1.1 [3], line 12. Omit "spouse of a deceased person includes". Insert instead "de facto partner of a deceased person means".

No. 3 Page 3, schedule 1.1 [3]. Insert after line 15: spouse of a deceased person means the husband or the wife of the deceased.

No. 4 Page 4, schedule 1.2 [1]. Insert after line 3: Omit "or spouse" from section 9 (1) (a) and (al), (2) and (2A) wherever occurring. Insert instead ", spouse or de facto partner".

[2] Section 9 (2)

No. 5 Page 4, schedule 1.2 [2], line 8. Omit "spouse of a deceased person includes". Insert instead "de facto partner of a deceased person means".

No. 6 Page 5, schedule 1.4. Insert after line 20:

[1] The whole Act (except section 5 (1))

Insert "or de facto partner" after "spouse" wherever occurring.

No. 7 Page 5, schedule 1.4, line 23. Omit "spouse of a person includes". Insert instead "de facto partner of a person is".

No. 8 Page 6, schedule 1.6 [1], line 25. Omit "the spouse of an accused person includes". Insert instead "the de facto partner of an accused person means".

No. 9 Page 7, schedule 1.6 [2], line 2. Insert "or de facto partner" after "spouse".

No. 10 Page 7, schedule 1. 7, lines 11-17. Omit all words on those lines. Insert instead: Insert "or de facto partner" after " the person's spouse" in section 56 (1) and (2) wherever occurring.

[2] Section 56 (3)

Omit section 56 (3). Insert instead:

(3) in this section, in relation to an answer, discovery or production by any person.. de facto partner means a person with whom the person has a de facto relationship within the meaning of the *Property (Relationships) Act 1984* at the time of the answer, discovery or production. spouse means the person's spouse at the time of the answer, discovery or production.

No. 11 Page 8, schedule 1.9 [1], line 13. Insert "or de facto partner" after "spouse".

No. 12 Page 8, schedule 1.9 [2], line 17. Omit "a spouse". Insert instead "spouse or de facto partner".

No. 13 Page 8, schedule 1.9 [3], line 23. Omit "spouse of a person includes". Insert instead, "de facto partner of a person means".

No. 14 Page 9, schedule 1.11. Insert after line 13: Insert "or de facto partner" after "to the spouse" in section 16B (3).

[2] Section 16B (4)

No. 15 Page 9, schedule 1.11, line 16. Omit "spouse of a person includes". Insert instead "de facto partner of a person means".

No. 16 Page 10, schedule 1.12, lines 5-11. Omit all words on those lines. Insert instead:

member of the family of a person, means (in section 265 and Chapter 6) the person's spouse, de facto partner, parent, grandparent, child or sibling, any such relative by marriage or de facto partnership and any step-parent or step-child (with a person's de facto partner being a person with whom the person has a de facto relationship within the meaning of the Property (Relationships) Act 1984).

No. 17 Page 10, schedule 1.13 [1], line 27. Insert "or de facto partner" after "his or her spouse".

- No. 18 Page 10, schedule 1.13 [2], line 30. Insert "or de facto partner" after "the spouse".
- No. 19 Page 11, schedule 1.13 [3], line 4. Omit "spouse of a person includes". Insert instead "de facto partner of a person means".
- No. 20 Page 11, schedule 1.13 [3], lines 7-13. Insert "or de facto partner" after "spouse" wherever occurring.
- No. 21 Page 11, schedule 1.13 [4], line 15. Insert " or de facto partner" after "spouse".
- No. 22 Page 11, schedule 1.13 [5], line 19. Omit "spouse of a person includes". Insert instead "de facto partner of a person means".
- No. 23 Page 12, schedule 1.14 [1], line 4. Omit "spouse of a person includes". Insert instead "de facto partner of a person means".
- No. 24 Page 12, schedule 1.14 [2], line 9. Insert " or de facto partner" after "spouse".
- No. 25 Page 12, schedule 1.14 [3], line 12. Omit "did not have a spouse". Insert instead "did not have a spouse or a de facto partner".
- No. 26 Page 12, schedule 1.14 [4], line 15. Insert "or de facto partner" after "spouse".
- No. 27 Page 12, schedule 1.14 [5], line 18. Omit "did not have a spouse". Insert instead "did not have a spouse or a de facto partner".
- No. 28 Page 13, schedule 1.15 [1], line 4. Insert ", de facto partner" after "spouse".
- No. 29 Page 13, schedule 1.15 [2], line 8. Omit "spouse of a person includes". Insert instead "de facto partner of a person means".
- No. 30 Page 15, schedule 1.17. Insert after line 2: Insert ", de facto partner" after "party's spouse" in section 11 (1) (b).

[2] Section 11 (1 C)

- No. 31 Page 15, schedule 1.17, line 4. Omit "spouse of a party includes". Insert instead "de facto partner of a party means".
- No. 32 Page 16, schedule 1.19 [1], lines 4 and 5. Omit all words on those lines. Insert instead:
- Omit "the Commissioner may pay an amount calculated in accordance with this section to the spouse of the police officer or (if the police officer is not survived by a spouse)" from section 216(2).
- Insert instead:
- "the Commissioner may pay an amount calculated in accordance with this section to the spouse or de facto partner of the police officer or (if the police officer is not survived by a spouse or de facto partner or is survived by more than one spouse or de facto partner)".
- No. 33 Page 16, schedule 1.19 [2], line 8. Omit "spouse of a police officer includes". Insert instead "de facto partner of a police officer means".
- No. 34 Page 16, schedule 1.20 [1], line 27. Insert "or de facto partner" after " spouse".
- No. 35 Page 17, schedule 1.20 [2], line 4. Omit "as a spouse". Insert instead "as spouse or de facto partner".
- No. 36 Page 17, schedule 1.20 [3], line 9. Omit "spouse of an officer includes". Insert instead "de facto partner of an officer means".
- No. 37 Page 17, schedule 1.21 [1], line 28. Insert at the end of the line: Insert instead ", de facto partner".
- No. 38 Page 18, schedule 1.21 [2], line 1. Omit "spouse of a person includes". Insert instead "de facto partner of a person means".
- No. 39 Page 18, schedule 1.22 [1], lines 19 and 20. Omit "child or spouse". Insert instead "child, spouse or de facto partner".
- No. 40 Page 18, schedule 1.22 [2], line 23. Omit "spouse of a deceased person includes". Insert instead "de facto partner of a deceased person means".
- No. 41 Page 19, schedule 1.23 [1], line 24. Insert "or de facto partner" after "spouse".
- No. 42 Page 19, schedule 1.23 [2], line 28. Omit " as a spouse". Insert instead "as spouse or de facto partner".
- No. 43 Page 20, schedule 1.23 [3], line 3. Omit "spouse of an officer includes". Insert instead "de facto partner of an officer means".
- No. 44 Page 20, schedule 1.24 [1], line 23. Insert "or de facto partner" after "spouse".

No. 45 Page 20, schedule 1.24 [2], line 27. Omit "as a spouse". Insert instead "as spouse or de facto partner".

No. 46 Page 21, schedule 1.24 [3], line 3. Omit "spouse of an officer includes". Insert instead "de facto partner of an officer means".

No. 47 Page 21, schedule 1.25 [1], line 21. Insert ", de facto partner" after "spouse".

No. 48 Page 21, schedule 1.25 [2], line 25. Omit "spouse includes a party". Insert instead "de facto partner means a party".

These are commonsense amendments that give effect to the widely accepted notion that marriage is different to other relationships. In 1999 the Labor Party supported these amendments to the Property (Relationships) Act. Church leaders, including the Anglican and Catholic churches and the New South Wales Council of Churches, keenly seek these amendments. It is certainly worth preserving the institution of marriage while not opposing the principle of the bill, which is to allow access to entitlements to those not only in marriage relationships but in other relationships.

I reiterate that these amendments would not prevent those not in a traditional marriage from accessing entitlements under the range of legislation covered by the bill. They merely reinforce the existing definition of "spouse" as "husband and wife", while allowing those in a de facto and same-sex relationship to also access entitlements of their partner. I reject totally the accusations of homophobia and lack of appreciation of human rights raised by the honourable member for Bligh and the honourable member for East Hills under privilege. At no stage did I suggest that a de facto or same-sex partner should not have the same rights as legally married people.

Why did they protest so much? What have they got against the great institution of marriage? When I asked earlier whether the bill had been costed, the honourable member for East Hills resorted to personal insult. Surely the taxpayers of New South Wales would be interested in additional costs associated with any piece of legislation passing through this place. I again state that these are commonsense amendments which would be supported by the majority of the citizens of this State, including our spiritual leaders, because they preserve the definition of traditional marriage whilst allowing access to entitlements by people who are not in that type of relationship. Overall, the Coalition does not oppose in any way the principles of this bill. I urge the Labor Government and members on the crossbenches to support these sensible amendments.

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [9.11 p.m.]: I have said that the Government will not support these amendments. I said that this bill takes exactly the same approach as when the parent bill passed in 1999, which extended non-discriminatory approaches to more than 20 other Acts. Quite contrary to the claim just made by the honourable member for Oxley, the definitions of "spouse" and "de facto relationship" in this bill are the same as in the 1999 bill.

Back in 1999 the Opposition supported that approach, but, of course, the Opposition is now under a new and much more reactionary leadership, influenced by the honourable member for Gosford and the honourable member for Oxley, amongst others. They now seem to be in full support of what can only be described as a position discriminatory to contemporary relationships. Traditional marriage is in no way threatened by this bill. It is absolutely untrue for Opposition members to suggest that this bill will in any way diminish the power of traditional marriage. The Government cannot support what, in effect, are discriminatory amendments.

Mr HARTCHER (Gosford) [9.12 p.m.]: The Coalition accepted the purpose of this bill and it has moved amendments that in no way derogate from relationships or partnerships, nor do they change in any way the rights that this bill will give people in partnerships, be they de facto partnerships or same-sex relationships. These amendments will not change, in the Miscellaneous Acts Amendment (Relationships) Act or the Property (Relationships) Act, any of the rights that flow from the bill. The amendments seek to preserve traditional respect for the institution of marriage. Marriage is a relationship in our society which is regulated and sanctioned by law. Other relationships are not. They are not illegal, but they are not relationships that are founded upon a legal framework.

Marriage is a relationship that is blessed and hallowed by every major religion in our society, be it Christian, Jewish, Islamic, Buddhist or Sikh. Each religion has marriage ceremonies and a system of regulating marriage. Marriage, accordingly, is a religious and civil institution. While we respect and acknowledge the property rights of other relationships, they do not fall into the same category. It is, therefore, not appropriate for other relationships to be subsumed into the marriage relationship. These amendments simply seek to identify and separate the institution of marriage from other relationships. They in no way insult or derogate from other relationships.

These amendments were moved by the Opposition, conscious that it has the support of the diocese of the Anglican Church—the archdiocese of Sydney and the diocese of Wollongong have both made representations—and the support of the Catholic Education Office and the Catholic Employment Commission speaking on behalf of other agencies that comprise the Catholic Church. Opposition members, consistent with the position they took in the Legislative Council, are determined to ensure that proper respect is given to the institution of marriage. We therefore invite the Government to accept these amendments. The Government indicated in 1999 that it agreed with the amendments, and they were then pushed in 1999. However, the Government did not proceed with the agreement.

The Government's argument is that this bill is not anti marriage. We are not saying that the bill is anti marriage; we are saying that words reflect ideas. To give an example, members of the gay community have complained—and quite rightly so—about many of the words that are used about them. I will not repeat those words in Parliament because words reflect ideas. In that case, the words that were used reflected the idea that gay relationships were somehow lesser and wrong, and that people who entered into them were outside the normal bounds of society. They were persecuted because the words we use reflected ideas.

The concept of marriage is personal commitment; not the personal commitment in same-sex or de facto relationships but the personal commitment that is based upon religious or civil recognition. Accordingly, marriage is different for those two reasons, both in a secular society and in a society that respects religious belief. Members of this Parliament are conscious of, and are sensitive to, the recognition of the rights of different minorities in our society. That is important, and Coalition members uphold that view. However, members of Parliament should also recognise and respect the rights of those who believe in marriage as a religious institution, which, as I said, is the view of every major faith.

The Coalition is disappointed that the Government will not accept these amendments and will divide on them as an important matter of principle. It is a clear delineation of where we stand and where the Labor Party stands. We invite members on the crossbenches to join us because we believe that this issue will be publicised throughout the community. We would expect the community to be able to form a view of their members of Parliament based on how they vote tonight. I urge Government members to be conscious that they should have respect for religious belief, just as they have a respect for other beliefs in our society.

To insult religious belief by opposing these amendments would simply demonstrate that, while Government members are prepared to adopt a sensitive approach to the rights of certain groups in our society, they are not prepared to extend that approach to other groups in our society with whom they do not agree. It would be disappointing if some members on the crossbenches were prepared to take a stand against these amendments. I hope they do not. I hope that they accept the spirit in which these amendments were moved, and that they, too, acknowledge the rights of religious groups in our society to have the hallowed institution of marriage duly acknowledged through their customs and observances. Accordingly, I support the amendments and I hope they will have the enthusiastic support of all honourable members.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 32

Mr Armstrong	Mr Humpherson	Mr Slack-Smith
Mrs Chikarovski	Dr Kernohan	Mr Souris
Mr Collins	Mr McGrane	Mr Stoner
Mr Cull	Mr Merton	Mr Tink
Mr Debnam	Mr O'Farrell	Mr Torbay
Mr George	Mr D. L. Page	Mr J. H. Turner
Mr Glachan	Mr Piccoli	Mr R. W. Turner
Mr Hartcher	Mr Richardson	Mr Webb
Mr Hazzard	Mr Rozzoli	<i>Tellers,</i>
Ms Hodgkinson	Ms Seaton	Mr Fraser
Mrs Hopwood	Mrs Skinner	Mr R. H. L. Smith

Noes, 45

Mr Amery	Mr Greene	Mr Price
Ms Andrews	Mr Hickey	Dr Refshauge
Mr Aquilina	Mr Hunter	Ms Saliba
Mr Ashton	Mrs Lo Po'	Mr W. D. Smith
Mr Barr	Mr Markham	Mr Stewart
Mr Bartlett	Mr Martin	Mr Tripodi
Ms Beamer	Mr McBride	Mr Watkins
Mr Black	Ms Meagher	Mr West
Mr Brown	Ms Megarrity	Mr Whelan
Mr Campbell	Ms Moore	Mr Woods
Mr Collier	Mr Moss	Mr Yeadon
Mr Crittenden	Mr Newell	
Mr Debus	Ms Nori	
Mr Face	Mr Oakeshott	<i>Tellers,</i>
Mr Gaudry	Mr Orkopoulos	Mr Anderson
Mr Gibson	Mr E. T. Page	Mr Thompson

Pair

Mr Brogden

Ms Harrison

Question resolved in the negative.**Amendments negatived.****Schedule 1 as amended agreed to.****Bill reported from Committee with amendments and passed through remaining stages.****Message sent to the Legislative Council seeking its concurrence with the Legislative Assembly's amendments.****BUDGET ESTIMATES AND RELATED PAPERS****Financial Year 2002-03: Take-note Debate****Debate resumed from 4 September.**

Ms SALIBA (Illawarra) [9.34 p.m.]: I speak in support of the eighth budget handed down by the Hon. Michael Egan, Treasurer of New South Wales, on 4 June this year. As the Treasurer has said, this budget prepares for the future, the difficulties, the challenges and the opportunities. It is a budget that sees improved government services and lower taxes, and it remains in surplus. I recall an interview on *Today Tonight* some months ago with a young woman who was checkout operator and became a millionaire all due to sound financial management. She said that she lives on 70 per cent of her income, pays mortgages on investment properties with 20 per cent of her income, and saves 10 per cent of her income. She now owns seven investment properties. Individuals get ahead by saving and preparing for the future—and so too does the State Government. We have been able to reduce our debts and liabilities, and increase our assets and investments.

The police budget boosts visible street policing in the Illawarra. An allocation of \$1,758 million will fund a restructured police force focused on meeting the community's expectations. More than \$8 million has been allocated to recruiting and training front-line police. Only two weeks ago at the Lake Illawarra Local Area Command the honourable member for Kiama and I welcomed 17 new probationary constables, part of 56 probationary constables who came to the south-east region. These people come from different ethnic backgrounds, different age groups and different life experiences, but the one thing they have in common is enthusiasm and the desire to make the streets safer for the community.

We will continue to see the police force grow with funding for police. This year's budget, with its record allocation for policing, represents a 62 per cent increase over the Coalition's last police budget. The

budget supports new police Commissioner Ken Moroney's priorities of driving down crime, back-to-basics policing, targeting repeat offenders and greater specialisation. Superintendent Gary Hodsdon and his team at the Lake Illawarra Local Area Command are doing a great job to drive down crime and create a safer environment for all.

The police budget included \$236,000 for the upgrading of interview rooms, amenities and police lockers at Warilla police station; \$100,000 for the upgrading of charge rooms and custodial areas at Wollongong police station; and \$443,000 for a trial of civilian managers at police and community youth clubs [PCYCs], allowing police to devote more time to working with young people. Police officers Mark Hedges and Darren Palk are both extremely active at the Lake Illawarra PCYC, along with all the volunteers who support the club in many different ways. The Lake Illawarra PCYC was built using funds raised within the community. The club is very successful because the police and the community are committed to providing excellent activities and sport to meet the needs of our young people. I can testify to that, because my daughter Sara, who is seven years old, attends gymnastics classes at the Lake Illawarra PCYC.

This year's budget provides major funding for health, with \$2.4 million to improve oncology, cardiology and medical officer staffing. An allocation of \$500,000 has been provided for Shellharbour Hospital emergency department as part of a \$5 million expansion package to increase the number of beds from 12 to 20. An allocation of \$32.1 million has been provided for stage-two works at Wollongong Hospital, \$730,000 has been allocated to improve neurosurgery at that hospital, and a further allocation of \$980,000 has been provided for orthopaedic joint replacement operations and two additional intensive care beds at that hospital.

The budget improves education and training in the Illawarra, with two new capital works projects valued at more than \$9.6 million approved to commence in 2002-03. There will be a major upgrade of Shellharbour TAFE and Dapto TAFE, with work to commence in 2002-03. An allocation of \$9,095 million will be used to add a multifunctional complex to Shellharbour TAFE to provide welfare facilities, child studies, specialist health learning, business studies and a learning resource centre. A further \$523,000 has been allocated to build an information technology hardware centre and a workshop at Dapto TAFE. The budget provides a record \$8 billion for education and training. The key priorities are an extra \$88.5 million to be spent over the next four years to improve the quality and supply of teachers and a massive \$963 million upgrade of technology in schools over four years which will include \$247 million for faster Internet access and \$82 million for e-learning accounts, including email and individual web sites for 1.33 million teachers and students.

A mother of four from Dapto, Leanne Heino, was interviewed by the *Illawarra Mercury* on Wednesday 5 June and said that faster and more reliable Internet connections will be fantastic for her children at school. All of her children use computers at school, including the youngest, who is five. She acknowledges that "computer technology is the way of the future so all kids should have the opportunity to learn about them and use them at school". This comment of hers sums it up: "The money they can put into school computers is terrific", and so it is. We need to provide children with every opportunity to keep up with modern technology and have hands-on experience. I know my four children put me to shame when it comes to using the computer. They each have their favourite programs and games. I usually end up asking one of them to assist me when necessary.

TAFE New South Wales will receive more than \$1.3 billion to provide quality vocational education and training across New South Wales. An amount of \$259.3 million, which is an increase of \$14 million on last year's budget, is being provided in school global budgets for items such as reading materials, minor maintenance and stores. Nearly \$500 million will be provided over four years for literacy and numeracy. New South Wales students are among the world's best when it comes to literacy and numeracy, as the Minister for Education and Training stated in this Chamber earlier today. The upgrading works at Shellharbour TAFE and Dapto TAFE will greatly benefit the community.

Rail maintenance work to enhance safety and reliability, and funding for community transport are among the transport highlights of the State budget for the Illawarra electorate. The budget provides for \$5.5 million in transport expenditure for the Illawarra over the next financial year, with \$3.7 million being spent on track reconstruction, rerailing, underbridge renewal, signal and electrical renewal, and other maintenance work to enhance safety and reliability for rail passengers. Another \$135,000 will fund community transport services for people in the area. Many commuters will also benefit from the construction of 41 new outer suburban carriages servicing the Illawarra and other parts of the rail network, with \$4.6 million allocated in this budget.

The Illawarra will also share in the benefits of a \$145 million, or 6.7 per cent, increase in the transport budget to \$2.286 billion. This increase in funding will enhance rail, bus and ferry services, and ensure planning

continues for new infrastructure. It also confirms the Government's ongoing commitment to fund a range of major transport projects designed to improve safety and travel conditions. Spending during this financial year will result in the completion of a number of important projects, creating flow-on job opportunities and laying foundations for new initiatives to benefit communities, families and businesses across the State.

Transport budget highlights for the Illawarra include \$543 million committed by State Rail for capital works and maintenance, with \$377 million allocated for capital projects. The capital works include the construction of the new station at Oak Flats at a total cost of \$2.4 million, with \$2.3 million to be spent this year. On Monday the Minister for Transport turned the first sod for the new station. It was good to see the work begin on this great day. Hopefully, the station will be completed within five months. A further \$1.7 million has been allocated for construction of a \$2.5 million interchange at Oak Flats, with \$400,000 of the total cost to be borne by Shellharbour City Council. In addition, \$864 million has been allocated for the Rail Infrastructure Corporation to maintain and enhance the New South Wales rail network. Funding of \$732 million has been provided for concessions, with school student travel subsidies up by \$11 million to \$427 million and subsidised concessions for students, pensioners, people with disabilities and other travel subsidies increasing by \$5 million to \$305 million.

Roads in the Illawarra region will receive a \$3.9 million boost in the budget. This year's total road spending in the Illawarra is an increase of \$1 million on last year. Major initiatives this year include \$1.5 million for an upgrade of the intersection of the Princes Highway and O'Briens Road at Figtree, including the introduction of dedicated right-turn lanes. The honourable member for Wollongong has pursued this issue in the past. These safety improvements for the Princes Highway and O'Briens Road will improve pedestrian safety while providing for increased traffic flow to nearby residential estates and commercial outlets. I have raised with the Minister for Roads, Carl Scully, the need for funding to improve safety for motorists and pedestrians at this intersection. I was pleased that this allocation was included in the budget. Unfortunately, not long after the release of the budget a fatal accident occurred at the intersection in which a young man was killed. Planning has now been completed and I hope the work will commence in the not too distant future.

A further \$300,000 has been allocated towards a bridge over the Princes Highway at Yallah and \$250,000 for traffic management measures for the Princes Highway at Albion Park Rail, including the introduction of traffic signals at the conjunction with Station Road. Local members and the community have lobbied to have the Princes Highway declared a road of national importance. I cannot understand why the Federal Government will not acknowledge the importance of the Princes Highway to communities on the far South Coast. For these communities the Princes Highway is the major link with Sydney and this road, Highway 1, needs the support of the Federal Government.

There has been an allocation of \$125,000 for traffic planning work for Lake Entrance Road and Captain Cook Drive, and \$100,000 for the widening and introduction of dedicated right-turn lanes on the Princes Highway at Farmborough Road, Unanderra. The budget also includes \$954,000 for important work to improve and maintain the road network. In addition, \$80,000 has been provided for traffic calming at Reddall Parade, Lake Illawarra, and almost \$37,500 is being provided for traffic screens to be built on the F6 and Mount Keira Road. The Shellharbour and Wollongong councils will receive a total of \$962,000 for maintenance of council roads in the area.

I welcome the record \$641.1 million budget for the Department of Community Services [DOCS]. This is an increase of \$48.1 million on last year's allocation. The budget allocation for the southern area of DOCS of \$44.8 million, an increase from \$35.9 million last year, is expected to include ongoing funding totalling more than \$500,000 for around 16 local services within the Illawarra electorate. These services include out-of-home care services; youth, family and individual support; and community development programs, which are funded from the community services grants program, such as the Unanderra-Figtree Youth Project, the Dapto Neighbourhood Centre and the Illawarra Family Support Service. They also include Supported Accommodation Assistance Program funding to youth-supported accommodation, women's emergency services and programs related to the Drug Summit—the Getting It Together initiative. Those services provide valuable support to the local community, and this ongoing funding demonstrates the Government's commitment to children, young people and families in crisis.

There is an extra \$12.3 million for foster care services, \$4.6 million for the new client information system, \$3.8 million to support the permanency planning legislation, \$18.1 million for the Families First initiative, with an additional commitment of \$20.9 million over the following three years, \$13.1 million to assist non-government services with the increased cost of the Social and Community Services award and an extra

\$7.8 million for the DOCS Helpline. This funding reinforces a greater focus on child protection services and will help DOCS to provide more support to families, young people and the communities of New South Wales. Older people, people with disabilities, their families and carers in the Illawarra will benefit from a record \$1.2 billion budget for ageing, disability and related community support programs. This budget aims to improve the quality of life for older people, people with disabilities, their families and carers.

Protection from fire and other emergencies for the community of Unanderra is set to get a boost in this year's budget. This budget will deliver a new fire engine, which will cost \$250,000, for the Unanderra fire station. This is great fire protection news for our local families, businesses and visitors to the area. The new fire engine is due to be delivered in November and I know that the local brigade is anxious for that to happen. It will certainly assist the firefighters in their role. The fire engine expenditure is part of a record \$564.6 million State Government emergency services budget that will ensure that New South Wales Fire Brigades, the New South Wales Rural Fire Service and State Emergency Service workers and volunteers have world-class resources and equipment to carry out their vital role of protecting the communities.

Funding for new homes and improving government-subsidised housing in the Illawarra electorate is an important part of the 2002-03 New South Wales housing budget, with an allocation of \$6.5 million. The Government is working hard for all of New South Wales and is committed to building on its proud record in public, community and Aboriginal housing. This is demonstrated by a \$6.5 million investment to build or buy 36 new homes and modernise existing homes for people in the Illawarra area. Extra homes will also be leased for government-subsidised housing. The Illawarra electorate is part of the south-eastern region of the Department of Housing.

I have a large population of public housing tenants in my electorate. Kate Vasey, Acting Area Manager, and John Quinn, team leader for the Shellharbour office, are committed to providing the best possible service to the people of the Illawarra. This year, \$21.3 million will be spent in the region improving public housing and renewing communities. This is part of the \$244 million to be spent across the State on capital improvement in public, community and Aboriginal housing. A total of \$142 million will be spent on maintenance and day-to-day repairs. The New South Wales housing budget will increase by \$16 million to \$631 million in 2002-03, helping more than 500,000 needy and vulnerable people with a range of housing assistance across the State and will create more than 7,000 jobs.

Another important part of the budget is our ongoing community renewal partnership. Under this project we are working to improve tenants' homes and revitalise housing estates through community development and tenant employment program. Despite continuing Commonwealth cuts the State has increased funding to help those most in need, including the elderly, people with disabilities, large families and people with support needs. The Illawarra regional tourism organisation will receive funding of \$130,000 in 2002-03. Tourism Illawarra is working hard to promote the development of tourism in our area. Linda Marquis, the General Manager of Tourism Illawarra, works tirelessly to promote the area, along with others such as Bob Doyle, the Manager of Wollongong Image Campaign. Last year I visited the Australian Tourism Expo in Brisbane and there were Bob and Linda enthusiastically promoting the Illawarra region. Overall, this budget has been great news for the people of the Illawarra. It proves that the State Government is committed to providing the services needed.

Debate adjourned on motion by Mr Fraser.

PRIVATE MEMBERS' STATEMENTS

Mr WHELAN: I seek the leave of the House to have private members' statements to be noted for a period of up to 40 minutes.

Leave granted.

PORT STEPHENS ELECTORATE KOALA PROTECTION

Mr BARTLETT (Port Stephens) [9.58 p.m.]: This evening I wish to talk about Port Stephens koala protection initiatives, both of which warrant commendation for the Port Stephens electorate. The first initiative I want to talk about is a function I attended on 13 June at the Tomaree koala rehabilitation facility, which looks after injured and sick koalas. It is run in the backyard of the home of Geoff and Betty Bartlett at One Mile. When I move onto the statistics honourable members will realise the tremendous work these people do to

rehabilitate koalas in the Port Stephens electorate. They work under the auspices of the Native Animal Trust Fund and do an extremely good job.

Port Stephens, like many areas in the State, is faced with shrinking koala habitat, more cars, stress on koalas, urban land clearing and the like. The Tomaree koala rehabilitation facility cost \$5,000 and received funding from New South Wales National Parks and Wildlife, Nelson Bay RSL and the Paul Newman Own Foundation, which put in \$2,000. Before I went along to this facility I did not know that Paul Newman raises about \$200 million a year from his food products and gives it to charities all over the world. Geoff and Betty Bartlett have retired from full-time paid employment but they are now full-time volunteers. They work basically 24 hours a day to rehabilitate koalas. On a total of 184 nights from 1 July to 31 December 2001 the rescue facility on the Tomaree Peninsular—not including carers in other parts of Port Stephens—had 285 koalas in its care, which is 1.5 koalas per night. The volunteers are on call 24 hours a day, and they do a magnificent job.

On Tuesday 23 July I officially launched at Eucalyptus Drive—in the same koala rehabilitation area—Port Stephens Council's comprehensive koala plan of management. It has been more than 10 years in the making. In the late 1980s or early 1990s the council committed \$100,000 to this project. Port Stephens has been identified as one of the richest koala sites in the State. A community-based survey resulted in about 4,900 koala records, and it was estimated that the koala population numbered about 500. A co-operative arrangement between the National Parks and Wildlife Service and the Australian Koala Foundation under Deborah Tabart has resulted in ecological research on koalas in Port Stephens over 10 years, which provides essential detailed information to allow the highest level of habitat protection to be directed at the areas of most importance to the koala population.

The draft plan of management was adopted by the Department of Urban Affairs and Planning in 1995 as a model on which all councils should base their koala plans of management. It was the first plan of management of its sort and was referenced in State environmental planning policy 44 as the standard for all subsequent comprehensive koala management plans in New South Wales. Key elements of the plan of management include detailed mapping of koala habitats, proposed zonings, and the introduction of a development control plan and performance criteria for rezoning proposals. The koalas of Port Stephens are as safe as we can possibly make them at this time.

HASTINGS FARMERS MARKET

Mr STONER (Oxley) [10.03 p.m.]: This evening I shall tell the House about a good news story from the electorate of Oxley, specifically from my home town of Wauchope. As honourable members will be aware, the electorate of Oxley is home to many primary producers from a wide range of agricultural industries. Primary producers' incomes have suffered in recent years. Following deregulation of the industry, dairy farmers received as little as 30¢ per litre, while the retail price of a litre of milk—which does not include much value adding—was about \$1.50. That is a 500 per cent mark-up. However, that state of affairs is by no means unique to milk: Virtually all primary produce is beset by the problem of minimum returns to producers and maximum returns to retailers and middle men. In the past 10 years the retail price of bread has risen by 17 per cent but farmers have been paid 19 per cent less for the raw product. Similarly, the price of lamb rose by 10 per cent but producers were paid 16 per cent less. Consumers paid 24 per cent more for vegetables yet farmers were paid 19 per cent less.

Farmers have been at the negative end of increasing competitive pressures and they have been squeezed by the retail sector and middle men. This is borne out by the fact that the 1996 census found that family income levels in Oxley were lower than those in any other electorate in New South Wales. So what is to be done? The people of the Hastings district near Wauchope have arrived at an excellent solution to this problem that works very well. It is called the Hastings Farmers Market where "farm fresh is best". The markets are held every month at the Wauchope Showground and showcase local produce from throughout the Hastings area, from Kendall—where the honourable member for Newcastle was raised and went to school; it is a terrific place—to Comboyne, Blackmans Point, Rollands Plains and Long Flat. Some of the State's best agricultural products are produced in that area.

The farmers markets showcase beef, medicinal herbs, essential oils, exotic fruits, roses, cumquats, olives, duck eggs, organic fruit and vegetables, blueberries, macadamias, avocados, native flowers, organic milk, cheese and yoghurt, goat meat, lemon myrtle, spices, aniseed, confectionery, proteas and carnations. The list of things one can find at the Wauchope farmers markets goes on and on. The markets have proved to be a great success. The first market was held on 23 February this year. I recall trying to pull out of my road, King

Creek Road, onto the Oxley Highway that morning. I intended to travel to Kempsey but I could not move for the traffic. I remember thinking, "What is going on here?" There was a constant stream of traffic from Port Macquarie up the Oxley Highway to Wauchope. Some 5,000 people attended the markets at the Wauchope Showground. The 25 February edition of the *Port Macquarie News* reported:

Overwhelming crowds at the weekend's Hastings Farmers Market left many vendors without stock just hours after opening, organisers touting the inaugural produce event as nothing short of "amazing".

Wauchope became a regional hotspot on Saturday morning as more than 5000 people descended on the town's showground to peruse and purchase some of the area's freshest produce, straight from the farm gate and ready for the dinner plate.

I congratulate the task force members who have made this venture such a success: Councillor David Mayne, Mark Livermore from the Hastings Co-operative, Wilma Miller, Julie Muller from the Wauchope Chamber of Commerce, Ross Lindsay, Lorraine Kirkman, Tony Sarks, Karen Brydon, Peter Daniels, Carolyn Fowler, Elke Kiehn and Alan Horton.

Mr GAUDRY (Newcastle—Parliamentary Secretary) [10.08 p.m.]: I cannot help but congratulate the honourable member for Oxley on his tribute to the wonderful work of the people in the Wauchope area. He mentioned the great town of Kendall, from which I sprang. The produce of that area is myriad and the local people certainly have a wonderful sense of community. It is great to see people coming together at those markets demonstrating their skills and to see those products in the marketplace. I congratulate the honourable member on bringing this venture to the attention of the House.

TRIBUTE TO Mr CONSTANTINE KARANGES, OAM

Mr GAUDRY (Newcastle—Parliamentary Secretary) [10.09 p.m.]: In Newcastle today the community came together to celebrate the life of Constantine Karanges, OAM, to honour his contribution to our community and to pay our respects to his wife, Lela, and to members of the Karanges family and their extended family and friends across Australia. It was both a solemn occasion and a celebration of the life of Con Karanges—a very special man. Con was a proud Australian. He was proud of his Greek origins and culture, and he was a builder of the Greek community in Newcastle and across Australia. This was evident today in the tributes paid to him by the Lord Mayor of Newcastle, the Hon. Peter Morris, and other leaders of the Greek community in Newcastle, Sydney and across Australia. Con Karanges belonged to the wave of young Greek men who crossed the world seeking new opportunities between the two world wars. They experienced the hardships of the Depression years but they clung together, struggled and managed to survive and eventually succeed in their adopted country. Con served in the Greek Army before coming to Australia and he later served in the Australian Army before being demobilised in October 1945.

In the face of adversity, often isolation and loneliness, people like Con triumphed over the difficulties of their early years, and they have seen their descendants become leaders in commerce, doctors, dentists, lawyers, architects, scientists, educationalists, politicians and professionals. Soon after Con's arrival in 1936 he joined the Greek Welfare Organisation Omonia, which was bringing help to Greeks in need. He worked with Omonia and in 1950 it became the Greek Community of Newcastle. The community's reach was extended quickly to help local charities. Every year in Newcastle the proceeds of the annual Greek Ball go to a range of local charities. In 1963 Con joined the Good Neighbour Council. He was soon elected an executive officer and this expanded his opportunities for assistance to migrants. His greatest single satisfaction was to see the hard work and team effort create the Greek Community of Newcastle and the building of its assets structure and the services it gave to the community. Con served as its president for 20 years and then followed on in the role of honorary president.

In 1975 Con was appointed to the Advisory Committee for Ethnic Affairs for the Hunter region. He participated in the formative meetings of the New South Wales Ethnic Communities Council and later in the Ethnic Communities Council for the Hunter region. He was responsible for the unification of the two councils. In 1977 he was appointed to the Ethnic Affairs Commission as a part-time commissioner—a role that he relished. A special day in Con's life was Australia Day 1979 when he was awarded the Order of Australia medal—an honour that he treasured. In 1982 he was recognised with a Premier's award during Senior Citizens Week, and the following year he was appointed as a councillor to the Australian Advisory Council of Elders. He was especially proud to work with Newcastle City Council and Australia's first woman lord mayor, Joy Cummings. Con had very progressive views about politics and he was not afraid to share them. He had a fierce commitment to peace and to Australia in general. He touched the lives of many people—people whose lives were happier or more comfortable because of his actions.

Con was a great force for stability who, despite his initial fears and difficulties, grew to love and cherish Australia, even adapting to the 66 years of social, commercial and technological changes he witnessed here. For decades he lifted and guided his beloved Independent Greek Community of Newcastle. Con's interest flowed into the national scene to include the independent Greek communities of Sydney, Melbourne, Adelaide and Wollongong. Con was a very generous man and a man of great dignity, sensitivity and wisdom. Today we pay tribute to a man who made a significant difference to our city, both in bridging the cultural divide between all of our communities by working hard for the diverse ethnic communities in Newcastle and the Labor Party and certainly for ensuring that the Greek Community in Newcastle had a strong voice. We offer our condolences to Con's wife, Lela Karanges, to Noula and Sam Vatsaklis, Alex and Tim, Helen and George Bertsons, James, Amy and Dean, his son, Christos Karanges, Olive Karanges and family, and the extended Karanges and Xelisiahti families in Greece, France and America. [*Time expired.*]

Mr FACE (Charlestown—Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development) [10.14 p.m.]: I also pay tribute to a great citizen of Newcastle and the Hunter. The passing of Constantine Karanges is sad. He made a significant contribution not only to the Newcastle community generally but to the ethnic community in our region. He was part of the Independent Greek Community. Probably one of the few things that would have saddened him even at the time of his passing was the fact that there was a split within the communities which still remains today. One of his highlights was being appointed the first part-time Ethnic Affairs Commissioner. Con was one of the architects of multiculturalism in our region, having been a member of the Good Neighbour Council at a time when people in Australia did not understand what our ethnic brothers and sisters were about.

Con was the mainstay of that multicultural organisation and the organisations that flowed from it. One great thing about Con Karanges was his wise advice and council to many people, including myself, over a long period. He was always stable and balanced. Unlike many other people who wanted to get into wars with the captive nations and all sorts of other things and to carry those wars from their shores into our community, Con was never part of that. In 1979 Con was recognised with an Order of Australia medal, and he gave 89 fruitful years to our community. He was a proud Greek as well as a proud Australian. I pay tribute to Con's wife, Lela, who I know very well, his two daughters, who I do not know so well but have met over many years, and his son, Christos, who was very proud of his father.

RURAL HEALTH SERVICES

Mr TORBAY (Northern Tablelands) [10.16 p.m.]: Doctors in the Northern Tablelands region have responded positively to the Government's recent health initiatives and have welcomed the protection offered by the State's negligence laws. The \$36 million allocated for rural New South Wales, including the \$11 million rural work force package to keep doctors, nurses and allied health workers in the rural health system, has come at a time of crisis. The measures to extend training for doctors and to provide locum support for doctors, nurses and allied health workers are seen as a positive. Recently I attended the graduation of two nurses at Armidale hospital through the Nursing Reconnect scheme, and it has hit the mark locally. I had the opportunity to present the certificates. More nurses who have been out of the profession are already participating in the scheme and say that it is well directed in guiding them back into the work force.

Given the dire predictions that nursing vacancies will soar to 30,000 in four years, we need programs like this, plus a review of wages and conditions, to stem the flow of trained nurses from our hospital system. However, unless the Federal Government reaches a permanent solution to the current medical indemnity crisis before the end of the year, nothing will stop regional doctors from leaving the profession. Many of them are facing retirement within the next five to 10 years and have told me that they will cut their losses and go. This includes specialists and experienced GPs who are the backbone of rural medical practice. They are already in short supply. They are ready to march, and replacing them would be an impossible task. The Prime Minister is reported to be considering a doctor insurance levy to provide cover in the wake of the collapse of United Medical Protection insurance.

I would like to see this taken a step further to become a national debate about a national Medicare levy and the appropriate levels, particularly targeting the shortfalls in rural health services. This would supply a substantial resource for proper long-term planning. It would provide muscle for the already numerous proposals to train doctors, nurses and allied health professionals to work in rural and regional areas. It would supply the resources and infrastructure needed in rural areas to support high-level specialist services. I am told that it will take at least 12 years to turn around the present system of medical training and gear it towards rural and regional practice. If we started immediately, new young doctors, nurses and allied health professionals would be stepping in at a time when a huge percentage of the existing health work force are due to retire.

Succession planning is crucial in well-run business organisations. It is also essential in the public arena. We can continue with the bandaid approach, patching things up here and there in response to crises, and still not reach a solution. Undoubtedly there is a need for short-term policies that would lock into a more comprehensive long-term policy. I suggest that the State Government move immediately to extend its area-of-need guidelines to allow more overseas doctors to practice in rural areas. I am aware that the Minister for Health has intervened on a number of occasions, including in my electorate, where a doctor from South Africa is now operating successfully at Emmaville in Severn shire.

I am told many of these well qualified doctors are available, but the red tape is preventing their entry. This is at a time when most western countries are poaching doctors from each other and we are losing many of our own. One doctor from our area told me that it is only "bloody-minded bureaucracy" standing in the way of this obvious solution. In the area I represent scarcely a month goes by when some doctor, depended upon by the local community, hits the wall through overwork, a lack of locum support, or skyrocketing insurance premiums. Nurses leave the profession because they can get better jobs with better pay and conditions elsewhere. Local people have to travel long distances to access the tests and services they need.

All this is occurring at a time when the population is ageing and patients are requiring more complex life-saving procedures. In rural regions we need more doctors and health professionals who are able to take up the challenge of this new era of life-extending medicine and care. We need the medical quotas to be lifted so that more doctors can be trained through alliances with regional universities and hospitals to specialise in rural practice. With women now making up more than 50 per cent of medical students we must consider the practice of medicine within reasonable bounds to accommodate family and community responsibilities. A debate about a national Medicare levy would also provide the infrastructure needed to attract doctors, nurses and health professionals to the country. I hope that some of these measures can be considered to arrest this urgent situation in health services.

Mr GAUDRY (Newcastle—Parliamentary Secretary) [10.21 p.m.]: The honourable member has launched a compelling argument on the needs of rural communities for medical services, both doctors and nursing services—the obvious impact of the medical indemnity crisis and the need for the Federal Government to do something about that by 31 December this year. I know there are concerns in all the rural communities about that. The Breast Centre in the Newcastle area has been in the news recently. It is facing the same crisis, and a national Medicare levy would be one way of dealing with that issue. As the honourable member has rightly pointed out, the skills of overseas doctors need to be facilitated so they can operate in those areas where there is great difficulty. I am sure those matters will be considered by the Minister for Health.

LAKE MACQUARIE POLICING

Mr HUNTER (Lake Macquarie) [10.23 p.m.]: This evening I wish to speak about the Government's improvements to Lake Macquarie policing. On 30 August I was pleased to join with my other Lake Macquarie parliamentary colleagues, the honourable member for Charlestown, the Hon. Richard Face, the honourable member for Wallsend, John Mills, the honourable member for Swansea, Milton Orkopolous, and the honourable member for Wyong, Paul Crittenden, to welcome the announcement that 14 new probationary constables would be assigned to the Lake Macquarie patrol. On that day the local State members of Parliament were advised by the Minister for Police, the Hon. Michael Costa, that the 14 officers would join the local patrol as part of an all-time record class of 637 new graduates of the New South Wales Police College. We were informed that 68 new officers would be deployed into local area commands from the Lower Hunter to the northern Central Coast, 14 of whom would join the Lake Macquarie patrol.

The 68 officers follow the 22 extra officers received from the last class of 410 police who graduated in May. This new August class represents the largest increase to front-line police we have seen in New South Wales. From the May class six officers were appointed to the Lake Macquarie patrol and now 14 have been appointed from the August class. The Government has already given our local area commands more resources, and this staffing increase will help to strengthen the front line even further. Our 14 new police will be involved in high-visibility policing, the focus of Commissioner Ken Moroney's back-to-basics approach. The new officers have worked hard to complete the Constable Education Program. They deserve our praise for the commitment they have shown to their training and studies. Certainly the police deserve our thanks and respect for the very hard job that they do.

I would certainly urge all members of the local community to welcome the 14 new recruits into our Lake Macquarie patrol. I was pleased to join with my other Hunter parliamentary Labor colleagues a week or so

ago to welcome the 68 new officers to the region. It was certainly a pleasure to meet with them first-hand. We have in Lake Macquarie gained 14 new police now, six additional police from the May graduation and on 1 July an additional 12 police came to the Lake Macquarie patrol. That was as a result of the major restructure of the police service from 11 regions down to five and the transferring of police numbers and resources back to local patrols. So 32 additional police have been appointed to the Lake Macquarie patrol since May.

I was very happy in June when the then commander of the Lake Macquarie patrol, Alan Thompson, announced that he would instigate a three-month trial of 24-hour policing in the Morisset area. The announcement was certainly welcomed by the Morisset community as it would result in better response times in the south Lake Macquarie area. That has been the main issue of concern brought to my attention by local residents in the Morisset district. Following this, I extended an invitation to the Minister for Police, by the Hon. Michael Costa, to visit Lake Macquarie, which he accepted. This was part of an ongoing campaign by myself and the other Lake Macquarie members of Parliament to gain additional resources for the Lake Macquarie Local Area Command.

The Minister visited the electorate in early July and met with community representatives and police and visited local police stations. It gave the people he met an opportunity to put to him the need for further increases in police numbers. The Minister met with representatives from the Toronto Chamber of Commerce, the Morisset Chamber of Commerce, the Toronto Lions Club, the West Wallsend Senior Citizens Club and also West Wallsend business leaders. It was a very fruitful meeting and I was very pleased with the subsequent announcement of an additional 14 police. I believe meeting with the local police and the local community leaders in Lake Macquarie helped the Minister in the decision to assign those additional police resources to the Lake Macquarie patrol.

The announcement of extra police for Lake Macquarie is welcome news. It is also welcome news that today the current commander of the Lake Macquarie patrol, Rex Little, has advised me that the 24-hour operation of Morisset police station is to be made permanent and he has appointed two additional police officers to that station, bringing their complement to 15 officers. Additional police have also been appointed to the Toronto police station, and I believe an increase of police at Swansea will improve policing there. So all across Lake Macquarie we are seeing an increase in police numbers and, therefore, better policing to the Lake Macquarie patrol. Once again, these are positive steps. But I advise the Minister we will not let up, we will continue to lobby. We want additional police resources, additional police coming to the Lake Macquarie patrol from future graduating classes.

Mr GAUDRY (Newcastle—Parliamentary Secretary) [10.28 p.m.]: I congratulate the honourable member for Lake Macquarie on his remarks on the increased police strength in the Lake Macquarie Local Area Command as part of the Government's commitment to bringing 2,100 additional police officers onto front-line duties during its term. It really demonstrates the importance of the whole approach of Commissioner Moroney to visible, front-line policing and police officers going about their business in the community, dealing with local issues and finding local solutions. Together with the members who were referred to by the honourable member for Lake Macquarie, I also had the pleasure of welcoming 68 new constables to the Hunter-Newcastle region a week or so ago. At first I and the other honourable members were struck by the age range of those officers. There were young constables who had just completed their course and people who had re-entered the service, thereby bringing an enormous range of skills into NSW Police.

There were also recruits who had previously worked in the veterinary industry, former teachers, people who had managed medical practices, and those who had been accountants or fitters and turners. The recruits combine a huge range of life skills with front-line police training and have been assigned to communities where obviously they have lived in the past. They therefore have a great knowledge of social structures that operate in communities and have combined that with modern policing skills and modern equipment. They are a fantastic group of people. The honourable member for Lake Macquarie has referred to the importance of those additional police officers to the Lake Macquarie Local Area Command and to the towns and townships in the Lake Macquarie electorate. The increased police strength will improve policing activities in the Lake Macquarie electorate. I congratulate the honourable member on bringing this matter to the attention of the House.

Private members' statements noted.

The House adjourned at 10.30 p.m.
