

LEGISLATIVE ASSEMBLY

Thursday 13 November 2003

Mr Speaker (The Hon. John Joseph Aquilina) took the chair at 10.00 a.m.

Mr Speaker offered the Prayer.

EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) AMENDMENT BILL

Second Reading

Debate resumed from 12 November.

Mr ANDREW TINK (Epping) [10.00 a.m.]: This bill was introduced into the Parliament at 10.22 p.m. last night, and not 12 hours have passed since the bill was introduced. Some of us have had about six hours of sleep since the bill was introduced, and there has been no time whatsoever to consult anybody in relation to this bill. There has been no time to consult the Law Society, the Bar Association or the Public Interest Advocacy Centre, and no time to undertake any consultation whatsoever in relation to the parties who will be affected by this bill. This bill will affect the rights of accused people in this State. The way the Government is running this Chamber and this Parliament is disgraceful. The Leader of the House ought to get a grip. He should organise the work of this Chamber in the proper manner by allowing the correct period under standing and sessional orders of this Parliament for proper consultation and enabling the proper procedures of this House to be undertaken. These matters must be debated in the best interests of the people of New South Wales by allowing full consultation.

The Attorney General, who is responsible for this legislation, did not even come into the House last night to introduce the bill. I do not even know if he was present in the House at the time it was introduced or even present in the building: he probably was not. He seems to be very much off his game at the moment—very distracted and disinterested about matters that ought to be of prime concern to him as matters of ministerial responsibility. There could not be an area of more responsibility and more concern to an Attorney General than a bill that affects the rights of an accused person to be present at court proceedings for serious criminal offences. I would imagine that by 10.22 p.m. last night anyone would have been flat out finding any Minister in this Chamber. In fact, there was not a Minister in this Chamber, and there was probably no Minister in this building.

The running of the Parliament has been delegated to parliamentary secretaries who know nothing about the legislation they are introducing into the Parliament. The Parliamentary Secretary, Mr Tony Stewart, is not even a lawyer, yet he is introducing into the Parliament legislation affecting the rights of accused people. This House is becoming a procedural joke. It is becoming a complete farce when it comes to procedural fairness and when it comes to providing a mechanism for proper consultation with groups who are affected by the laws of this State and the laws that are to be passed. The first object of the Evidence (Audio and Audiovisual Links) Amendment Bill is:

- (a) to require a court to take into account certain factors in determining whether it is in the interests of the administration of justice to direct an accused detainee other than an accused child detainee to appear in certain criminal proceedings by audio visual link...

Mr Alan Ashton: Point of order: The shadow Attorney General—I presume that is his role, from the manner in which he is speaking—is raising the issue about this Parliament and what this House is doing. I remind him—and I ask you to rule on this, Mr Speaker—of the decision by the upper House, to which the Liberal Party was a party, requiring bills to be received by a certain date. If we cannot deal with them in this House, how can we get them to the upper House?

Mr Andrew Tink: To the point of order: If the honourable member had been paying attention, he would know that I was referring to the first page of the bill when he took his point of order. Not only do we have a Government that rushes through legislation in 12 hours but also we have a conga line of members taking points of order who are not even listening to what is being said. The member takes a point of order on relevance, and he is not even listening and does not know that I am referring to page 1 of the bill.

Mr SPEAKER: Order! There is no point of order. The honourable member for Epping may proceed.

Mr ANDREW TINK: I will read again the first object of the bill, which states:

- (a) to require a court to take into account certain factors in determining whether it is in the interests of the administration of justice to direct an accused detainee other than an accused child detainee to appear in certain criminal proceedings by audio visual link...

That is a critical question pertaining to the administration of justice in this State, that is, whether it is in the interests of the administration of justice to direct an accused detainee to appear by audiovisual link. That proposal affects the rights of an accused person in a serious case to appear in court, to face his accusers, to be able to see personally what the witnesses are saying, and to be able to see personally and relate personally in the context of court proceedings to his counsel to give instructions and advice. In that context, this bill is a fundamental departure from the current rules. The first point I make is that in the time available—less than 12 hours—I understandably have not been able to have any meaningful discussions or any discussions at all with the Law Society, nor have I been able to have meaningful discussions with the Bar Association, the Public Interest Advocacy Centre and 30 members of the Parliament who represent one-third of the people of New South Wales to determine a position on this bill. Procedurally, it is appalling that I am not fully in a position to address the bill before the House.

In those circumstances it is little wonder that the upper House has a rule requiring the Government to bring legislation before it by a certain time. Thank heavens the upper House will have time to consider this bill fully and thoroughly. Thank heavens the upper House will have time to consult all the interest groups on this bill, including the Law Society, the Bar Association and the Public Interest Advocacy Centre, because members of the lower House will have no such opportunity. As I have said, even at this point members of this House have not had the benefit of the Attorney General gracing them with his presence to present the bill and present arguments in support of it. The second principle apparently addressed by this bill—

Mr Alan Ashton: Point of order: The honourable member has now accepted the point of order that I took earlier. Because of the rule of the upper House, it is a matter of the upper House having to have the bill before it.

Mr SPEAKER: Order! There is no point of order. The honourable member for Epping may proceed.

Mr ANDREW TINK: I treat what the honourable member for East Hills just said as an interjection and simply say that, yet again, the member has taken a point of order on relevance at the very time I am addressing the second object of the bill. If the honourable member would like to peruse a copy of the bill, there is one in pigeonhole No. 10 at the table.

Mr Alan Ashton: Are you canvassing Mr Speaker's ruling?

Mr ANDREW TINK: No, I am not.

Mr SPEAKER: Order! The honourable member for East Hills will cease interjecting.

Mr ANDREW TINK: I am addressing the issue raised by the honourable member. If he would like to take a copy of the bill from pigeonhole No.10 at the table, he could turn to page 2 and note paragraph (b) at the top of the page. He might then be able to get through his head that I am addressing a key part of the bill—a relevant matter that members of the Opposition have had less than 12 hours to consider. The second object of the bill is:

- (b) to enable rules of court to be made to require a court to take into account such factors in determining whether it is in the interests of the administration of justice to direct an accused child detainee to appear in certain criminal proceedings by audio visual link ...

The main concern—one amongst many—I have about this objective is whether dealing with provisions that relate to the rights of a defendant should be a matter for rules of court. It may, and possibly should, be a matter for Parliament to include this type of detail in the Act. Again, I would like to have the opportunity to take the advice of the Law Society and the New South Wales Bar Association on this point. They may advise that the Parliament should deal with this matter as the bill goes through the Parliament rather than trust the detail to others after the skeleton of the legislation has been put in place.

A strong argument could be put that when dealing with such important issues the rules of court should form part of the skeleton of the legislation, which can be considered by the Parliament, rather than by rules or regulations at a later time. A rule or regulation is in force from the date of gazettal. If at a subsequent time either House of Parliament successfully moves a motion to disallow, the rule or regulation is considered never to have been applicable in law. I am concerned that if the rules of court, as referred to in object (b), are introduced by regulation, which is subsequently disallowed, the rules of court may already have been applied in some cases. That creates a problem where defendants have been dealt with pursuant to a regulation that is subsequently disallowed.

Further, 15 sitting days must elapse before a rule or regulation is disallowed. Over a lengthy adjournment, 15 sitting days could extend over a considerable period of time. During that period, between the date of gazettal of a regulation to make the rules of court and the date of disallowance, a number of cases may have been heard. That would be an intolerable interregnum. Another concern is when members are deciding whether to move a motion to disallow a rule or regulation, they should not be forced to take into account the impact of the retrospective effect. They should be able to make their decision based solely on the appropriateness or otherwise of the rule or regulation. For those reasons, when dealing with such a significant change, I believe the rules of court should be part of the Act of Parliament.

Alternatively, the Attorney General—who has not bothered to speak on the bill in the House—could present a draft regulation and say, "I want to put through a bill that provides for rules of court in these circumstances. As an act of good faith I present a draft of the proposed rules of court." That is not too much to ask when dealing with a change of this nature. It would be an appropriate and responsible approach for the Attorney General to undertake, on the parliamentary record, to present and perhaps table a draft of the rules of court. In that way the rules of court could be put before the Parliament for consideration and we could proceed on the undertakings of the Attorney General. However, as I said, the Attorney General has left the carriage of the bill to the Parliamentary Secretary the honourable member for Bankstown. The third object of the bill is:

- (c) to make it clear that Part 1B of the Principal Act applies to an accused detainee required to appear in criminal proceedings brought against the accused detainee for an offence even if the offence concerned is not the offence for which the detainee is in custody ...

Again, this object further extends the scope of the Act and is yet another reason why the Opposition needs more than 12 hours to consider the bill. It is vitally important that we are given the opportunity to consider the matter and to undertake appropriate consultation. It is regrettable that we have been forced into this position. The fourth object of the bill is:

- (d) to alter references in Part 1B to the interests of justice so as to refer to interests of the administration of justice (consistently with usage elsewhere in the Principal Act) ...

I assume that is a procedural requirement brought about by consequential drafting, rather than a matter that relates to the principal provisions of the legislation. Again, I ask the Attorney General to clarify that matter, together with all the other matters in the bill that need clarification. The fifth object of the bill is:

- (e) to make it clear that any entitlement of a person under section 14 of the Criminal Appeal Act 1912 to be present in proceedings on the hearing of an appeal is taken to be satisfied if audio visual links are used in relation to the person under the Principal Act.

Again, I assume that is a consequential matter, but I would like the Attorney General to confirm that aspect and allow us more time to consult. I now turn to the second reading speech, which I note is less than 12 hours old. At page 102 of the *Hansard* proof the Parliamentary Secretary the honourable member for Bankstown said:

Advice provided by the Crown Solicitor's Office indicates that any decision by a court as to whether a certain course of action will be in the "interests of justice" will always involve a balancing exercise. In making such a determination the court will weigh issues such as procedural fairness to the accused alongside matters such as the security of the court system and the health and safety of other court users.

The Government has the benefit of advice from the Crown Solicitor's Office. The Coalition would like to obtain its own advice. In the past when the Coalition has had concerns about legal issues and matters of great importance to the Parliament, we have obtained our own legal advice—often from very senior counsel, including on one occasion from Mr Temby—and presented opinions to the Parliament that differ from the Crown Solicitor's advice. On numerous occasions—and, in particular, I recall a matter about a former Minister for Police and hotel ownership—our advice differed from the advice provided by the Crown Solicitor.

We have learnt from bitter experience that an opinion provided by the Crown Solicitor's Office is not necessarily correct. In the way the Government has presented this bill we have been robbed of the opportunity to obtain legal advice about significant matters that affect the rights of defendants. We want to obtain advice on the balance of the interests of justice: procedural fairness to the accused and the security of the court system. Many issues of procedural fairness are of great importance and have to be weighed carefully against issues relating to the security of the court system. The Opposition would like the issues relating to procedural fairness to be itemised so it could seek advice on them. We do not simply accept the statement that because the Crown Solicitor is happy with certain courses of action, broadly speaking, we should all be happy; not even the Attorney General spoke on this. The Opposition would like further consideration given to some of the issues at the extreme end of procedural fairness, the most important issues. For instance, are there other ways to secure the court system so that the scales can be slightly balanced in a different way? The Parliamentary Secretary said:

The Crown Solicitor's Office is of the view that evidence that court staff or members of the public may be endangered by the presence of the accused in court could be a relevant factor in tipping the interests of justice in favour of requiring AVL to be used.

AVL is a reference to the audiovisual link. I can see the point of that. However, when that evidence is introduced in criminal proceedings I would be concerned about what measures were in place to ensure that that type of evidence not jeopardise the trial of an accused. Obviously if evidence is led from court staff or members of the public that there is a danger in the presence of an accused, there is a real issue about how that evidence is led. Is it led in a way that does not subsequently prejudice the trial of that person in the minds of the jury? Should it be a separate hearing? Should it be a hearing in the absence of the jury? Should it be done at a preliminary hearing? Is the hearing to take place in public, or not? What type of orders would be made in relation to evidence that might be led about the person being a danger?

Those questions are of enormous practical consequence. The one underlying point that we would all agree on is, if there is a strong case against the person before the court and the person has a violent history, the last thing we would want is evidence on some procedural preliminary issue led in such way that it affects the ultimate trial. For example, if a jury finds the person guilty, an appeal point could be taken that the evidence was in the mix in relation to a preliminary point about court security, and because of some technical point a convicted person could get off on appeal. That would be an appalling outcome. Yet, that is precisely the possible outcome if evidence is taken from court staff or members of the public on a preliminary point about whether the accused should be present in the court room.

That matter could be dealt with by way of an interlocutory hearing before the start of the trial. If so, the issue still remains that on the face of it such hearings are held in public, they are reportable. These days it is a matter of record that the courts often report very extensively on interlocutory hearings. There is often a great deal of publicity about interlocutory hearings. For example, in today's *Daily Telegraph* there is a story about a person allegedly found in possession of seven guns who was granted bail; that person had already been convicted and dealt with by the court for serious violent offence matters. Today there is extraordinary interest in criminal trials and all things to do with criminal proceedings. In the past an interlocutory hearing probably would have gone without any media coverage, except in the most extraordinary circumstances.

Today those types of hearings are increasingly attracting significant public attention. It is not beyond the bounds of possibility that on an interlocutory hearing it will be said that court staff or members of the public are in fear of the defendant and that an audiovisual link is needed to take certain evidence. Plainly that could be reported in the media in a way that could have a prejudicial impact at the subsequent trial, resulting in someone getting off on appeal on a technicality because the case had been in some way affected by publicity of the interlocutory hearing. These are all vitally important issues, not all of which have been addressed in the second reading speech. There was only passing reference to the Crown Solicitor's view. With great respect, we have to do better than that. In light of some of the differences of opinion in the past about the Crown Solicitor's advice on various matters, members on this side of the House are certainly not comfortable with that type of generalisation.

The Opposition has had less than 12 hours to consider the second reading speech, and we believe it requires real scrutiny. This is precisely the sort of issue that could end up in the rules of court, precisely the sort of issue where the devil will be in the detail; the devil will not be in the bill, but in subsequent rules. The proper way to deal with this is to make the Crown Solicitor's advice available. If the Crown Solicitor is advising the Government on a bill that is to be debated in Parliament, we should all have access to the Crown Solicitor's advice. I ask the Attorney General to provide the Crown Solicitor's advice in relation to both issues referred to by the Parliamentary Secretary before the bill is voted on in this House this morning. Later, the Parliamentary Secretary said:

The factors to consider include, but are not limited to, the risk that the physical security of any particular person or persons will be endangered by the presence of the accused; the risk of the accused person escaping, or attempting to escape, from custody when attending court; the past behaviour of the accused person at court appearances; and the conduct of the accused person while in custody, including the accused person's conduct during previous imprisonment if applicable.

At best that is the broadest summary of the type of factors to be taken into account. Again, the devil is in the detail; in the circumstances in which that evidence is to be led, the timing for that evidence being led in relation to the trial, whether the matters are made public, whether the hearing is in public, the consequences of the hearing being in public. All of those matters arise out of the proposal, but we do not have the details. However, we do have a passing reference. In the next paragraph the Parliamentary Secretary said:

The need to protect the rights of the accused in criminal proceedings where the accused may be in danger of losing his or her liberty is recognised—

supposedly—

by the retention of the basic presumption in favour of physical appearance in "relevant criminal proceedings", including all first bail appearances, as such physical appearance will continue to be the default option to be applied by the court in the vast majority of cases.

That may be so in the vast majority of cases, but in one sense they are not the cases to be worried about. The cases to be worried about are the minority in which a defendant who is, in all probability, before the court on the most serious charges. That is the type of defendant about whom we do not want any procedural problems that may give rise to an appeal point down the track. That is the type of defendant who, if found guilty, should have a case run against him or her that is so fair, comprehensive and professional that there is no appeal point. My concern is that this whole structure is being set up without sufficient detail. There are holes in the bill that will allow appeal points to be taken when they should not be available to be taken.

Opposition members cannot support this bill because we have had less than 12 hours to deal with it. I am in a very difficult position because there is a real public interest in striking the right balance between the personal appearance of defendants and defendants not being present but being able to view proceedings from a secure location. Everyone acknowledges the principle that the bill is seeking to address. However, given the time available, we are not in a position to assess whether this attempt by the Government to find the right balance is successful.

Honourable members on this side of the House have found from bitter experience that legislation introduced by the Attorney General has been found extremely wanting when tested in the courts. Issues not initially apparent have arisen and problems have emerged. Apparently the last Parliament had the answer to the problem of bail for repeat offenders. To the Government's shame, it has had to introduce a raft of new legislation to deal with the problems that have emerged and it has acknowledged that still more work needs to be done. The best word from the Attorney General at one point is often found not to be the right word when legislation is implemented.

The new sentencing laws dealing with mitigating and aggravating factors have been found wanting by the courts. In the Penisini case and the MA case involving the murder of Jai Jago the courts have relied on statutory mitigating factors to reduce gaol terms. That was not the intent of the legislation and it was not how the Premier presented it. However, those cases reflect the problems in the drafting of the legislation. I have no confidence that this bill is in an acceptable form. Given the information available to the Opposition, honourable members cannot support the legislation. The Parliament will sit tomorrow and next Tuesday, so there is plenty of time for us to get instructions on this bill. As far as I am concerned it could be debated tomorrow morning.

The Opposition is asking for time to consult and for the Attorney General to provide the Crown Solicitor's advice. If he has been prepared to provide it to the Government he should provide it to all honourable members. If he is not prepared to provide it to all honourable members Government members have an advantage. I understand the Crown Solicitor's position in respect of sensitive information provided to the Government. Obviously I would like to see that advice, but there is an argument that I cannot because it is privileged information. However, no argument can be put that advice in relation to a government bill proposed for application across the State should be kept secret. That is untenable. We should see that advice and we should be given a reasonable amount of time to consider this legislation. For those reasons I cannot support the legislation.

Ms MARIANNE SALIBA (Illawarra) [10.33 a.m.]: I have never heard so many hypocritical comments made in this House. The mob opposite want to lock up criminals and throw away the key. They want

mandatory sentencing but they do not accept that sometimes people need to be protected. The honourable member for Epping said that the Government has introduced amending legislation. There will always be work to be done in this Chamber. If we believed that all the legislation was perfect we would all walk out now; we would not need to do anything more. However, ours is a growing and learning society and we must be prepared to move on and to do things better. Let us get it right. We can all do things better. Honourable members opposite should get on board and support this legislation.

Mr SPEAKER: Order! The honourable member for Baulkham Hills will come to order.

Ms MARIANNE SALIBA: The integrity of our justice system relies on members of the public having confidence that court proceedings will be conducted in an environment that is safe for all. The amendments contained in this bill do not alter the basic assumption that the accused persons in criminal proceedings are entitled to appear physically in court to participate in any criminal matter affecting them. However, courts already have the option to order an accused person who is detained in custody to appear by audiovisual link if they are satisfied that it is in the interests of justice to do so. This bill will provide guidance to the court in making such decisions to ensure that if serious and credible security concerns have been identified the court can make appropriate arrangements to deal with them.

The Government remains committed to addressing issues such as court security and escape risks through the implementation of appropriate operational initiatives. There is already a wide range of measures in place in courthouses throughout the State to deal with potential breaches of security. They include high-security docks, closed-circuit television, metal scanners and perimeter security systems. The Government is also committed to maintaining and extending the physical presence of highly trained and appropriately equipped sheriff's officers—a well-established deterrent to those keen on disrupting court proceedings or threatening court users.

In rare cases in which a high security risk is identified, arrangements are made with the courts, the sheriff's officers, the Department of Corrective Services and NSW Police to employ additional measures to respond appropriately. These agencies have a longstanding and well-established partnership in the court security area. With the retention of the presumption in favour of physical appearance, an appearance in court by an accused person will remain the default position in the vast majority of criminal proceedings. The exercise of the court's discretion will always be a balancing process in which issues such as procedural fairness to the accused will be weighed against the security of the court system and the health and safety of other court users.

It is recognised that while the right of an accused person to be physically present at his or her trial is fundamental, it is not without qualification and may be overturned if the accused behaves in a way that disrupts the orderly conduct of a trial. Nevertheless, it is not anticipated that the amendments contained in this bill will result in a substantive increase in the use of audiovisual links in criminal trials because courts will exercise the discretion only in unusual and extreme circumstances. The proposed amendments will ensure that our courts are able to continue to operate in an environment that is safe for all participants in the justice system. I commend the bill.

Mr MALCOLM KERR (Cronulla) [10.38 a.m.]: The previous speaker said that the right of an accused to appear is fundamental. However, a piece of legislation that affects the fundamental rights of every citizen in this State has been introduced contrary to the standing orders of this Parliament. The Government moved to suspend the standing orders to enable it to ram through legislation that changes the rights of citizens in this State. This Government does not operate on the Westminster system; it operates on the Axminster system. It has a fundamental duty to protect the rights and liberties of the citizens of New South Wales. I noted with interest the second reading speech of the honourable member for Bankstown, a Parliamentary Secretary in this House. The Government acknowledged that this legislation will affect the fundamental rights of citizens, but it was not even introduced by the first law officer of this State.

Mr Wayne Merton: Where is he?

Mr MALCOLM KERR: That is a very good question. There was no appearance by the Attorney General.

Mr Thomas George: They have sent down the young talent team.

Mr SPEAKER: Order! The honourable member for Lismore will come to order.

Mr MALCOLM KERR: Reference was made to the young talent team. Government members are a bit short on talent. I am sure the Government would find that it was a bit short on votes if it opened up the telephone lines to the voters of New South Wales.

Mr Neville Newell: They did not think that in March.

Mr MALCOLM KERR: The Government might not have thought that in March.

Mr SPEAKER: Order! Opposition members will refrain from interjecting and Government members will refrain from responding to those interjections.

Mr MALCOLM KERR: This is important legislation. The honourable member for Illawarra said that it behoves us to get this legislation right and to do things well. That is our duty as members of Parliament, but the Government has undermined that process. Because of time constraints the shadow Attorney General, who led for the Opposition in this debate, was denied access to stakeholders and to people who would assist him to get it right. The shadow Attorney General said that there are important considerations in this bill that would enjoy bipartisan support. We must balance what has been described by a Government member as the fundamental right of an accused to be physically present in court. On page 103 of yesterday's *Hansard* proof the Parliamentary Secretary, in his second reading speech, acknowledged that fundamental right when he said:

The need to protect the rights of the accused in criminal proceedings where the accused may be in danger of losing his or her liberty is recognised by the retention of the basic presumption in favour of physical appearance in "relevant criminal proceedings", including all first bail appearances, as such physical appearance will continue to be the default option to be applied by the court in the vast majority of cases.

The court will not be limited to considering the factors specified in the bill in determining whether an order to appear by AVL is in the interests of the administration of justice.

This legislation is not a code. Earlier the honourable member for Illawarra said that this bill would offer guidance. It is not the determinant for the appearance of accused persons. The Parliamentary Secretary went on to state:

The court will be directed to consider only such of the factors specified in the bill as are relevant to the particular circumstances of each case in determining whether an order to appear by AVL is in the interests of the administration of justice.

Earlier in his speech the Parliamentary Secretary said:

The court will not be limited to considering the factors specified in the bill in determining whether an order to appear by AVL is in the interests of the administration of justice.

I look forward to hearing the contribution of the honourable member for Heathcote in debate on this bill. He might refer to other factors relating to the appearance of an accused. No doubt the honourable member will refer to those provisions in the bill.

Mr Paul McLeay: I will refer to section 5BA.

Mr SPEAKER: Order! The honourable member for Heathcote will have the opportunity to participate in the debate at the appropriate time.

Mr MALCOLM KERR: I was shocked at that outburst.

Mr SPEAKER: I take it that the honourable member for Cronulla is not referring to me.

Mr MALCOLM KERR: I am referring to the honourable member for Heathcote. I was quite shocked by his outburst. However, I look forward to his contribution in this debate. No doubt a number of people will be listening to his contribution, through either audio or video links. I am sure that the honourable member will refer to the other factors that have to be taken into account when a court is determining such a matter. Earlier the shadow Attorney General referred to the need for the Crown Solicitor's advice to be made public. I would like to hear what the honourable member for Heathcote has to say about that. Does he think it is in the public interest for that report to be made available? In the absence of any arguments that might be put forward by the honourable member, there is no reason that that would not be in the public interest.

As the shadow Attorney General said, it is not appropriate to make public certain advice provided by the Crown Solicitor because of its commercial confidentiality and because of security issues. However, I believe that this report should be made public so that it can be judged against the provisions in this bill. Has the Crown Solicitor's advice been implemented in this bill? Opposition members seek clarification on a number of issues before they can support the bill. The Parliamentary Secretary also said:

It is a well-recognised principle of law that the right of the accused to be physically present at his or her trial must be balanced against the need to protect all participants in the justice system, including judicial officers and members of the public, and to preserve the integrity of the due administration of justice. Accordingly, the proposed amendment will ensure that our courts are able to continue to secure these aims.

The Parliamentary Secretary referred to participants in the justice system, to judicial officers and to members of the public, but no mention was made of the victim. I would have thought that the victim would be a significant participant. It is fortunate that we have people like Ken Marslew to remind this Government that victims should play a role in the criminal justice system. When the former member for Auburn, Peter Nagle, left this Parliament the Government realised that it would have a problem in relation to this legislation. It realised that it would be lacking in legal firepower in the future.

Mr Neville Newell: I think I might take a point of order on that one. Get back to the bill.

Mr MALCOLM KERR: I am getting back to the bill. The Government took one look at caucus, saw the honourable member for Miranda and the honourable member for Kiama, and realised that it would have a problem when it required legal advice in the future. It solved that problem by setting up the Legislation Review Committee to look at legislation that comes before this Parliament. The honourable member for Miranda chairs that committee.

Mr Neville Newell: Very ably.

Mr MALCOLM KERR: As the honourable member said, the honourable member for Miranda chairs that committee. He is ably assisted by the honourable member for Illawarra, the Hon. Peter Breen, the Hon. Don Harwin, the Hon. Peter Primrose, the honourable member for Strathfield and the honourable member for Orange. However, in light of the absence of the former member for Auburn, it was considered necessary that that body should be assisted by a panel of legal advisers: Professor Philip Bates, Mr Simon Bonnett, Dr Stephen Churches, Dr Ann Cohen, Professor David Ferrier, John Garnsey, QC, Associate Professor Luke McNamara, Ms Rachel Pepper, Mr Roland Price, Ms Diana Skapinker, Ms Jennifer Saki-Clarke and Professor George Williams.

It is interesting that the honourable member for Illawarra says we need to get this legislation right. The House would have been assisted if the Legislation Review Committee had reviewed the legislation and tabled a report. That committee has looked at a number of pieces of legislation that do not affect the fundamental rights of citizens. Yet, when legislation which does affect the fundamental rights of citizens comes before the House under cover of darkness we do not have the benefit of the Legislation Review Committee or the Legislation Review Digest to assist members as well as the public.

The Government has provided no explanation whatsoever for this state of affairs. It should listen to the honourable member for Illawarra when she says we do not live in a perfect world, we live in a changing world, and that we have to meet those changes. The best way to meet those changes is to seek the assistance of all stakeholders regarding legislation that comes before the Parliament. The words of the honourable member for Illawarra are even more potent when we are dealing with legislation that affects the fundamental rights of citizens. Firstly, in light of the way the Government has gone about introducing this bill, the Opposition has been placed in the invidious situation of not having the opportunity to obtain appropriate advice to enable it to make an informed decision. That is a dilemma that is of the Government's making.

Secondly, the Government has referred to Crown Solicitor's advice that it has kept a State secret. The Government should publish that advice as soon as possible, and in fact table it in this House. Indeed, I suggest the Government table the advice during the course of this debate. I would be interested to hear from the honourable member for Heathcote whether he has read the Crown Solicitor's advice. They are the two conditions precedent that would be required before the Opposition could fully support the legislation.

Mr PAUL McLEAY (Heathcote) [10.53 a.m.]: The contribution of the honourable member for Cronulla was not what I would call enlightening. I wish to clarify a matter that the honourable member for

Epping appears to be extremely concerned about. The Crown Solicitor's advice referred to was in relation to a recent high-profile case. The advice highlighted the fact that the existing provisions—which I note have been in place for some years—would benefit from clarification. That is what this bill does. The Crown Solicitor's advice was not advice on this bill. I applaud the Government on progressing this legislation. It addresses the fundamental issues of court security and the importance of maintaining the integrity of our judicial processes.

The Government is committed to continuing its work to improve court security to ensure that we have a justice system that is safe and accessible to all users. As referred to in the second reading speech, in excess of \$7 million in additional funding has been committed to improving court security over the next four years. The implementation of the Government's strategy to further upgrade security in the State's courts is off to a positive start, with an intake of new sheriff's officers currently in training. Recruitment of additional officers will continue in 2004, and with this increased staffing capacity we will be well on our way to ensuring that a sheriff's officer is available for every sitting Local Court in the State.

In addition to increasing the presence of security personnel, the Attorney General's Department has been continuing a major program of works aimed at enhancing court building security and upgrading security systems. A key component of this work during the current financial year includes implementing security screening in the State's eight major centralised committal courts, at Burwood, Newcastle, Campbelltown, Penrith, Lismore, Liverpool, Wollongong, and my electorate of Sutherland. Walk-through scanners and baggage X-ray machines will be installed at each of these courts to facilitate perimeter searches. There will also be high-security docks in one courtroom at each complex, to allow prisoners to be restrained where necessary.

The works program also includes improved closed-circuit television [CCTV] and alarm systems to assist security personnel working on the ground. In addition to these practical improvements, justice sector agencies are continuing to work together to conduct risk assessments at both a site-specific and a strategic level. Ongoing reviews of court conditions will further enhance the implementation of security measures. In this process, I congratulate Mr Peter Long, the chair of the Sheriff's Officer Vocational Branch [SOVB] of the Public Service Association. The SOVB has been running a strong and considered campaign to protect not only the workers but also the integrity of the justice system itself.

Both Peter Long and Peter Butler, whom I class as friends, should be commended for their ongoing roles in this process. While every effort is being made to improve in-court security measures, there will continue to be instances of security threats that call for an alternative approach. The right of an accused person to be physically present at his or her trial must be balanced against the need, in some circumstances, to protect other participants in the justice system, including judicial officers and members of the public. I have had the opportunity to discuss this matter with Mr John Scullion, the Principal Industrial Officer of the Public Service Association of New South Wales, which is the registered trade union for prison officers in this State.

Mr Scullion informed me that the system is at its most vulnerable when the accused is in transport. When used in the limited circumstances referred to, the bill will ensure a safer work environment for prison officers and others who may be under threat. The bill is good news for those hardworking and vulnerable workers. In exceptional cases that raise particularly serious security concerns, the use of an audiovisual link to facilitate a court appearance by the accused from his or her place of detention may be the most appropriate option available. The amendments proposed in the bill will put beyond doubt the capacity of the court to make such an order in the unusual and extreme circumstances where it may be necessary, and I commend the bill to the House.

Mr ANDREW HUMPHERSON (Davidson) [11.00 a.m.]: I move:

That this debate be now adjourned.

The House divided.

Ayes, 33

Mr Aplin	Mr Humpherson	Ms Seaton
Mr Armstrong	Mr Kerr	Mrs Skinner
Mr Barr	Mr McGrane	Mr Slack-Smith
Ms Berejiklian	Mr Merton	Mr Souris
Mr Cansdell	Ms Moore	Mr Tink
Mr Constance	Mr Oakeshott	Mr Torbay
Mr Debnam	Mr O'Farrell	Mr J. H. Turner
Mr Draper	Mr Page	
Mrs Hancock	Mr Piccoli	
Mr Hartcher	Mr Pringle	<i>Tellers,</i>
Mr Hazzard	Mr Richardson	Mr Maguire
Ms Hodgkinson	Mr Roberts	Mr R. W. Turner

Noes, 48

Mr Amery	Mr Hunter	Mrs Perry
Ms Andrews	Mr Iemma	Mr Price
Mr Bartlett	Ms Judge	Ms Saliba
Ms Beamer	Ms Keneally	Mr Sartor
Mr Black	Mr Knowles	Mr Scully
Mr Brown	Mr Lynch	Mr Shearan
Ms Burney	Mr McBride	Mr Stewart
Miss Burton	Mr McLeay	Mr Tripodi
Mr Collier	Ms Meagher	Mr Watkins
Mr Corrigan	Ms Megarrity	Mr West
Mr Crittenden	Mr Mills	Mr Whan
Ms D'Amore	Mr Morris	Mr Yeadon
Mr Gaudry	Mr Newell	
Mr Gibson	Ms Nori	
Mr Greene	Mr Orkopoulos	<i>Tellers,</i>
Ms Hay	Mrs Paluzzano	Mr Ashton
Mr Hickey	Mr Pearce	Mr Martin

Pairs

Mr Fraser	Ms Allan
Mrs Hopwood	Ms Gadiel

Question resolved in the negative.

Motion for adjournment negatived.

Mr SPEAKER: Order! Members, including the Parliamentary Secretary and the honourable member for Baulkham Hills, will resume their seats until the House comes to order.

Mr NEVILLE NEWELL (Tweed—Parliamentary Secretary) [11.09 a.m.], in reply: I would like to thank—

Mr Wayne Merton: I seek the call—

Mr SPEAKER: Order! I have given the call to the Parliamentary Secretary.

Mr Chris Hartcher: Point of order: The debate continues.

Mr SPEAKER: Under what procedure?

Mr Chris Hartcher: The honourable member for Baulkham Hills sought the call.

Mr SPEAKER: Order! The Parliamentary Secretary sought the call before the honourable member for Baulkham Hills.

Mr Chris Hartcher: No, he did not. He sought the call over there. The vote was on whether the debate should be adjourned. The second reading debate continues until all members have been heard, unless the question is put. The Parliamentary Secretary is seeking the call. I ask you to uphold the traditions and customs of the House.

Mr Carl Scully: To the point of order: Members have to be prompt in seeking the attention of the Speaker. The honourable member for Baulkham Hills was not prompt in doing so. The Speaker gave the call to the Parliamentary Secretary and he is now standing up.

Mr Chris Hartcher: The honourable member for Baulkham Hills was standing up—

Mr Wayne Merton: I was up before the Parliamentary Secretary.

Mr SPEAKER: Order! I will seek the advice of the Clerk.

I need to hear further on the point of order. Does the honourable member for Gosford wish to speak further to the point of order?

Mr Chris Hartcher: No, I have taken the point of order.

Mr Carl Scully: The honourable member for Gosford makes a valid point. All members are entitled to put their views during the second reading debate. However, members have to be prompt in seeking the call. I observed the honourable member for Baulkham Hills rising after the Parliamentary Secretary.

Mr Chris Hartcher: You were not in the House! You were not here!

Mr Carl Scully: I was in the House. Do not tell me I was not here. I was over there. I saw the Parliamentary Secretary rise and seek the call of the Speaker. Mr Speaker, you gave him the call. He is entitled to speak in reply.

Mr SPEAKER: Order! I have heard enough on the point of order. When I announced the result of the division I ordered that the doors be unlocked. The Parliamentary Secretary sought the call from the Opposition side of the House. I instructed him to come to the Government side of the House until order was restored. At that time the Parliamentary Secretary was standing at the table. The honourable member for Baulkham Hills then also stood at the table. I asked all members to be seated until order was restored. It was at that time that I called the Parliamentary Secretary. He has the call.

Mr CHRIS HARTCHER (Gosford) [11.12 a.m.]: I move:

That the honourable member for Baulkham Hills be heard.

The House divided.

Ayes, 34

Mr Aplin
Mr Armstrong
Mr Barr
Ms Berejiklian
Mr Cansdell
Mr Constance
Mr Debnam
Mr Draper
Mrs Hancock
Mr Hartcher
Mr Hazzard
Ms Hodgkinson

Mr Humpherson
Mr Kerr
Mr McGrane
Mr Merton
Ms Moore
Mr Oakeshott
Mr O'Farrell
Mr Page
Mr Piccoli
Mr Pringle
Mr Richardson
Mr Roberts

Ms Seaton
Mrs Skinner
Mr Slack-Smith
Mr Souris
Mr Stoner
Mr Tink
Mr Torbay
Mr J.H. Turner

Tellers,
Mr Maguire
Mr R. W. Turner

Noes, 48

Mr Amery
Ms Andrews
Mr Bartlett
Ms Beamer
Mr Black
Mr Brown
Ms Burney
Miss Burton
Mr Collier
Mr Corrigan
Mr Crittenden
Ms D'Amore
Mr Gaudry
Mr Gibson
Mr Greene
Ms Hay
Mr Hickey

Mr Hunter
Mr Iemma
Ms Judge
Ms Keneally
Mr Knowles
Mr Lynch
Mr McBride
Mr McLeay
Ms Meagher
Ms Megarrity
Mr Mills
Mr Morris
Mr Newell
Mr Orkopoulos
Mrs Paluzzano
Mr Pearce
Mrs Perry

Mr Price
Dr Refshauge
Ms Saliba
Mr Sartor
Mr Scully
Mr Shearan
Mr Stewart
Mr Tripodi
Mr Watkins
Mr West
Mr Whan
Mr Yeadon

Tellers,
Mr Ashton
Mr Martin

Pairs

Mr Fraser
Mrs Hopwood

Ms Allan
Ms Gadiel

Question resolved in the negative.

Mr NEVILLE NEWELL: I thank honourable members for their contributions to the debate, and commend them for their enthusiasm and keenness to participate in it. I am pleased to note the support for the bill, particularly from the Government side. I shall address some of the concerns raised by honourable members opposite. The Evidence (Audio and Audio Visual Links) Amendment Bill contains amendments to the Evidence (Audio and Audio Visual Links) Act 1998 to clarify the discretion of the court to require an accused detainee to appear in court by audiovisual link in proceedings where serious and credible security concerns have been identified. The basic right of accused persons to be present at criminal proceedings where they may be in danger of losing their liberty is recognised by the retention of the basic presumption in favour of physical appearance in "relevant criminal proceedings", including all first bail appearances, and such physical appearance will continue to be the default option to be applied by the court in the vast majority of cases.

Under these amendments, there is no change to the presumption that accused persons in criminal proceedings should physically attend court for all substantive criminal matters. The court will be given the option to order appearance by audiovisual link if serious and credible security concerns have been identified and such an order is considered to be in the interests of the administration of justice. However, it will be only in unusual and extreme circumstances that a court will make such an order. The court will not be limited to considering the factors specified in the bill in determining whether an order to use an audiovisual link is in the interests of the administration of justice. The exercise of the court's discretion will always be a balancing exercise in which issues such as procedural fairness to the accused will be weighed alongside matters such as the security of the court system and the health and safety of other court users.

The right of the accused to be physically present at his or her trial must be balanced against the need, in some circumstances, to protect participants in the justice system, including judicial officers and members of the public, and to preserve the integrity of the due administration of justice. It is well recognised at common law that while the right of an accused person to be physically present at his or her trial is a paramount consideration, it is not without qualification and may be displaced if the accused's conduct is such that the orderly procedure of a trial is not permitted to function—see *Eastman v The Queen* (1997) 158 ALR 107 at 138.

Mr Andrew Humpherson: Point of order: The purpose of a reply is to enable a brief response to matters that have been raised in the debate. I submit that the remarks being made by the Parliamentary Secretary are not in response to the debate; in fact, his contribution so far has been a restatement of the second reading speech. He is reading from a typed speech, which just shows that he is not responding to the debate that has occurred in this Chamber over the past hour and a half.

Mr ACTING-SPEAKER (Mr Paul Lynch): Order! There is no point of order.

Mr NEVILLE NEWELL: Furthermore, it should be noted that while an order requiring appearance by audiovisual link does prevent the accused from being physically present in the courtroom, he or she will still be able to be present at the hearing and will be able to participate fully in proceedings through the audiovisual link. The proposed amendment will provide guidance to the court in the exercise of its discretion to order the use of the audiovisual link and ensure that our courts are able to continue to operate in an environment that is secure for all court users. The honourable member for Epping raised the issue of rules of court to be made in relation to the use of the audiovisual link by children. The Evidence Legislation Amendment (Accused Child Detainees) Act 2003, which was passed by this Parliament on 28 October 2003, outlines a separate regime for the use of an audiovisual link for child detainees.

This scheme was developed recognising the specialised nature of Children's Court proceedings and the particular needs of children in obtaining legal advice and representation. This proposal was the subject of extensive debate amongst stakeholders, including the Law Society. While it was agreed that the amendments in the current bill should be extended to juvenile detainees, it was considered appropriate to retain a separate scheme for deterring the use of the audiovisual link in cases involving children. Rules are to be developed by the Children's Court Advisory Committee in consultation with all key stakeholders, including members of the legal profession. Those rules will allow the court to consider a wide range of issues in balancing the interests of children.

In response to the questions of the honourable member for Epping as to whether the amendments outlined in (c) through (e) of the explanatory notes to the bill are technical and procedural in nature, I can assure the honourable member that that is the case. The drafter has taken this opportunity to clarify some potential inconsistencies in the existing legislation. These amendments will not substantially alter the effect of the Act. I reiterate: the primary amendment proposed in the bill does not substantially alter the positions under current legislation. The presumption in favour of physical appearance is retained. All that these amendments do is provide the court with guidance in the exercise of its existing discretion under the current Evidence (Audio and Audio Visual Links) Act 2003. The court already has the power to require an accused detainee to appear in court by audiovisual link. These amendments merely clarify the kinds of circumstances in which the court may do so.

Prior to the drafting of this bill the Attorney General met with the Minister for Police, the Minister for Justice and the Chief Magistrate when it was agreed that there was an urgent need to ensure that the courts have the option to order an accused detainee to appear by audiovisual link when serious security concerns warrant such an arrangement. Following preparation of the draft bill by Parliamentary Counsel, the heads of jurisdiction of the Local Court, the District Court and the Supreme Court, as well as the Director of Public Prosecutions, the Legal Aid Commission, the Senior Children's Court Magistrate, the Law Society of New South Wales and the New South Wales Bar Association were invited to provide comment on the bill prior to its introduction.

Comments on the bill have been received from the Chief Magistrate and the Senior Children's Magistrate, both of whom supported it in its current form. The Law Society of New South Wales, the New South Wales Bar Association, the Legal Aid Commission and the Director of Public Prosecutions have also made submissions on the bill. The Law Society, the Bar Association and the Legal Aid Commission have expressed concern that the proposed amendments undermine the right of an accused person to be present in court at trial. The Act already allows a court to order an appearance by audiovisual link when it is considered in the interests of justice to do so. The proposed amendments make no significant departure from this position. The presumption in favour of a physical appearance is retained.

The amendments merely provide guidance to the court in exercising its existing discretion. A number of other points were raised about the Act more generally, but they are not appropriate for inclusion in the bill. They will be considered more thoroughly in the context of the statutory review of the Evidence (Audio and Audio Visual Links) Act 1998, which is currently under way. The current proposals achieve an appropriate balance between the right of an accused to be present and the need to ensure the physical security of individuals involved in the judicial process, which is an overriding priority in the rare circumstances when such an approach is warranted. The proposals in the bill reflect the Government's ongoing commitment to enhancing court security and meeting community expectations about the physical safety of all court users. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Schedule 1 agreed to.

Mr ANDREW TINK (Epping) [11.32 a.m.]: I move the following Coalition amendment:

Page 6, schedule 2 [5] Lines 18 to 24. Omit all words on those lines.

The amendment will omit the words relating to the rule-making power. If rules are to be made preventing defendants from being present for proceedings in which they are involved, at the very least a draft set of rules should be available to the House for scrutiny and the Attorney General should give an undertaking that such rules will come into force if the bill is passed. From the start to the finish of the second reading debate on this bill we have not seen the Attorney General. We have seen two Parliamentary Secretaries, one at 10.22 p.m. last night and one a few minutes ago, running the debate. The Attorney General still may be in the Blue Mountains somewhere. He might be at the Paragon having a coffee, I do not know, but it is clear that he should be here.

The CHAIRMAN (Mr John Mills): Order! The honourable member for Epping should confine his remarks to the amendment before the Committee.

Mr ANDREW TINK: I am confining my remarks to the amendment. I am saying that the Attorney General of this State, who is responsible for this bill, should be present in this Chamber and should have the courtesy to address the House at either the second reading stage or in reply. Delegating material of this sort to Parliamentary Secretaries is a disgrace!

Mr Bryce Gaudry: Point of order: As you ruled, the role of the honourable member for Epping, having moved the amendment, is to speak strictly to it and not use the debate for the purposes of a broad-ranging discussion.

The CHAIRMAN (Mr John Mills): Order! I uphold the point of order.

Mr ANDREW TINK: We now have the assistance of a third Parliamentary Secretary, but there is still no sign of the Attorney General. How many Parliamentary Secretaries are there in this Government? About eight or nine are pulling salaries for doing jobs that Ministers ought to do. The Attorney General should be here to give an undertaking about these rules. If the Attorney General had been here at any time during the debate, either last night or this morning, the amendment may not have been necessary. If the Attorney General had been here to say, "We have had discussions and we have thought about it. We have draft rules and I will make them available to you between now and when the bill goes through the House", I might not have had to move the amendment.

Mr Brad Hazzard: He probably wants an audiovisual link. He wants to do it from his office.

Mr ANDREW TINK: That will be the next step. I confidently predict that Parliamentary Secretaries will deliver by audiovisual link second reading speeches that the Attorney General of this State should deliver. We are probably voting on a precedent that will be brought into practice. All honourable members have access to the Internet. We will see the Attorney General in the Paragon saying, "I have the rules up here."

Mr Bryce Gaudry: Point of order—

The CHAIRMAN (Mr John Mills): Order! If it is the same point of order the Parliamentary Secretary took a moment ago, I will uphold it again and ask the honourable member for Epping to speak to the amendment.

Mr Bryce Gaudry: Sit him down if he doesn't!

Mr ANDREW TINK: I can see that this will be a day for sitting people down. This will be a day for the Government, in good old Neville Wran mode—

The CHAIRMAN (Mr John Mills): Order! The honourable member for Epping will speak to his amendment. He will comply with the standing orders and accord the Committee the courtesy that is being accorded to him.

Mr ANDREW TINK: I would appreciate it if the Attorney General showed some courtesy and turned up for this debate. The basis of the rules is "trust us". The honourable member for Tweed, the Parliamentary Secretary who was last in the chair but has gone I know not where, referred to specialised rules relating to children as a precedent. That is the point: they are specialised rules that relate to children but do not necessarily relate to adults. I do not know. I would like to see the rules to determine whether it is now proposed to have rules for adults that are the same as the rules for children. Is that the specific proposal? I would like to run down the left-hand column and say, "Yes, these are the rules for children and these are also the rules for adults." Instead, we get a fairly airy passing reference in reply only to other people, who have allegedly been consulted.

There is still no sign anywhere of the Crown Solicitor's advice, which we are required to take on the basis of trust. I do not know what the Crown Solicitor says about these rules. I do not know what the Crown Solicitor may say about the rules for children applying to adults. Does the Crown Solicitor say anything about that? I do not know. If he does, what does he say? I do not know. Why do I not know? Because the advice is not available. Why is the advice not available? I do not know. It should be. Why is the Attorney General not here to make the advice available? I do not know. He should be. Why are the draft rules not here? They should be. The situation is fundamentally unsatisfactory. On a procedural basis we have no choice but to take these steps to try to make the point that important legislation relating to the rights of defendants should not be treated in such a cavalier fashion.

We do not know what the Law Society said to the Government. I do not know whether it has expressed reservations about the bill. I do not know whether it has given it a 100 per cent tick. I do not know whether the Bar Association has given the bill a 100 per cent tick. All I know is that we have not been given time to consult them, we should be given time to consult them and we should consult them. I do not know whether the implementation and structure of the rules, proposed or otherwise, will affect the trial of those who should be convicted and spend lengthy terms in gaol. I do not know whether they will give rise to some cheap appeal points that will allow people who should be behind bars for a long time to get off on a technicality. They are the issues that have forced the Opposition, having no choice, to take a point of principle against the Government's use of subsidiary rules to legislate when the bill from which the subsidiary rules derived has been before this Parliament for a little over 12 hours. I press the amendment. I make the point that the procedural conduct of the Government in its treatment of this important legislation is disgraceful.

Mr WAYNE MERTON (Baulkham Hills) [11.39 a.m.]: Since Adam was a boy it has been a fundamental right of accused people in our judicial system to face their accusers and appear in court at their trial or during applications for bail. The Government is about to change that dramatically and take the rights of individuals into the unknown. The Opposition concedes that there may be circumstances, in the interests of the accused or in the public interest, that justify denying the accused the right to attend his or her trial, but the Opposition is being asked to take the justification for departure from that fundamental procedure on trust. The Government has put the Opposition in the position of having to trust even when we cannot see. The amendment proposes to elicit the circumstances that would justify denying an accused person the right to appear in court. At this stage, the circumstances will be determined by the application of some rules of court that will be formulated at another time and without any direct input from this Parliament. The Government says that the Opposition will be apprised of those rules in due course.

That is fundamentally wrong. I reject any suggestion that the Opposition's position on this bill is wrong. In doing so I cite the second reading speech, which was relied on by a series of Parliamentary Secretaries who agreed that an accused's right to be physically present at his or her trial is a well-recognised principle of law. Without the protection of that right, a person could end up in gaol or face all types of heinous penalties without having appeared at the trial. The Government seeks to deny that right without setting out any guidelines and without making clear the circumstances that must exist before that right is denied. It is all part of the sledgehammer approach adopted by the Government.

This legislation was introduced at 10.22 p.m. last night, and the debate affecting the liberty of individuals commenced at 10.00 a.m. this morning. If the Government had adopted a fair process and had given the Opposition the chance of examining the bill by passing on legal opinions about it, we would not be arguing. The Government has been the author of its own harm by being too smart by half. At the end of the day, it will be the people of New South Wales who would be the victims of this Government's sledgehammer tactics.

Mr BRAD HAZZARD: Mr Chairman—

Mr BRYCE GAUDRY: Mr Chairman—

The CHAIRMAN (Mr John Mills): Order! I call the Parliamentary Secretary.

Mr Brad Hazzard: I sought the call before the Parliamentary Secretary. I am a bit quicker.

The CHAIRMAN (Mr John Mills): I call the Parliamentary Secretary.

Mr Brad Hazzard: Mr Chairman, you will have another fight because I sought the call and the Parliamentary Secretary sought the call after I did.

The CHAIRMAN (Mr John Mills): Order! The Parliamentary Secretary being given the call will not prevent me from giving the call next to the honourable member for Wakehurst.

Mr Brad Hazzard: In that case, I retract my somewhat hostile interjection. I appreciate your indulgence, Mr Chairman.

Mr BRYCE GAUDRY (Newcastle—Parliamentary Secretary) [11.43 a.m.]: The Government opposes the Opposition's amendment. At the outset I make it perfectly clear that as recently as 28 October the Parliament passed a bill providing for the making of rules of court relating to children's matters. That Act set up a separate

regime. By virtue of this amendment, the Opposition puts itself at odds with legislation it supported only a few weeks ago. When part 1B of the Evidence (Audio and Audio Visual Links) Act 1998, which regulates the use of audiovisual links by accused adult detainees, was enacted in 2001, it was not extended to child detainees because of the different nature of criminal proceedings for children. It was agreed then that the Attorney General's Department would develop a separate proposal for the use of audiovisual links by accused child detainees following an appropriate consultation process.

The Evidence Legislation Amendment (Accused Childhood Detainees) Act, which was passed by Parliament on 28 October 2003, outlines a separate regime for the use of audiovisual links by child detainees. This separate scheme for children was developed to recognise the specialised nature of Children's Court proceedings and the particular needs of children in obtaining legal advice and representation. The form of the proposal was the subject of extensive debate among stakeholders and represents a compromise position that all stakeholders were prepared to accept after a number of different options had been canvassed. The bill that is currently under consideration amends part 1B of the Evidence (Audio and Audio Visual Links) Act 1998 to require a court to take security risks into account when determining whether it is in the interests of the administration of justice to order an accused detainee to appear by an audiovisual link.

While it was agreed that that amendment also should be extended to the Children's Court jurisdiction, it was considered appropriate to retain a separate scheme for determining the use of audiovisual links by child detainees. Accordingly, instead of specifically requiring the security factors listed in item [9] of schedule 1 to the bill to be applied to child detainees, the bill enables rules to be made with respect to those factors. This approach is consistent with the approach that was taken in the Evidence Legislation Amendment (Accused Child Detainees) Act. The rules currently are under consideration by a senior officers' working group, involving all relevant stakeholders. The rules will examine all relevant factors that are pertinent to the use of audiovisual links in respect of children. The rules are due to be implemented by the Children's Court advisory committee by the end of this year. I reiterate that the Government opposes the amendment.

Mr BRAD HAZZARD (Wakehurst) [11.46 a.m.]: Obviously the amendment moved by the shadow Attorney General seeks to address an issue of concern to the Opposition, namely, that this bill will place into the hands of people who are not necessarily publicly accountable the determination of rules governing the appearance of accused persons by audiovisual links. As pointed out by the Parliamentary Secretary, in some circumstances audiovisual links may be appropriate. However, the Opposition is particularly concerned that this bill was introduced late last night. Clearly, there has not been sufficient time allowed for the Opposition to consult broadly on the bill or on the amendment which has been moved to address the bill's apparent shortcomings.

Difficulties are created when the Government introduces a bill late one night and then rams it through the House the next day. The adoption of such an approach does not make for sensible debate and does not provide for the bill to be worked through in a proper manner. I was fascinated to hear the Parliamentary Secretary, the honourable member for Tweed, who was at the table earlier, say that the bill had been approved by the Chief Magistrate and the Children's Magistrate. However, he added, by the use of some curly and rather ambiguous terms, that consultation and submissions had been received from the Bar Association and the Law Society, among other groups. He gave no indication whether the Bar Association or the Law Society regard the bill as acceptable.

As a lawyer and as a parliamentarian, I place on the record that I would have liked to have been made aware of any opinions expressed by the Law Society or the Bar Association on the bill and the amendment to address the apparent shortcoming. I assume the shadow Attorney General may not have heard from those organisations either. If those organisations are to be proactive in ensuring that these sorts of bills are dealt with, even within short time frames, I ask them to make more of an effort to consult with those who are likely to debate the bills. If this bill goes through without the amendment moved by the shadow Attorney General it will, in effect, delegate authority to faceless people to determine what factors are to be taken into account in determining whether someone should or should not appear by audio visual link.

The whole concept of an alleged offender appearing in person before a court is fundamental to the common law and the criminal law. As observed by the Parliamentary Secretary, the honourable member for Newcastle, the Government was prepared to concede that there are some circumstances in which we need to have audio and audiovisual links available. Members of the Liberal Party and National Party are concerned that those circumstances need to be well identified. However, the bill has been rushed through at a great rate of knots. The Parliamentary Secretary said that it has been sent to the senior officers group [SOG].

Mr Bryce Gaudry: Don't you have confidence in those people?

Mr BRAD HAZZARD: I do not even know them. They are identified by yet another acronym, SOG. Why should I have confidence in a senior officers group? I am more worried about the directions that the Government and the Labor Party are giving to the senior officers group. I find it hard to believe that the Parliamentary Secretary made that comment. Normally he would be arguing strongly for openness, parliamentary democracy and a complete review. Perhaps he is just carrying out the wishes of his masters and the absent Attorney General, who should be here to listen to this debate and to give the House and the elected representatives of the people of New South Wales the assurances we need to make sure that our legal system remains as strong as it has been in the past.

The fact that a group of people will determine whether it is in the interests of justice for people to be dealt with by audiovisual link is a worry. Any reasonable person would have to be concerned about exactly what the Government is doing to maintain its commitment to the principles of justice. The bill suggests that we will no longer talk about the interests of justice, but rather the interests of the administration of justice. That is a big move, but it has been subtly slipped into the bill. It means that we are talking about making it easier for the Government to provide justice on the cheap. Who knows what it means? The bill does not give the community a gilt-edged guarantee of what we in this mighty democratic State and country have a right to expect, that is, that we are looking at the interests of justice in the purist sense—not whether it is cheaper, easier or simpler because it is in the interests of the administration of justice. That is not what the bill should be about.

The honourable member for Epping moved an amendment. That amendment is necessary because of the absence of any clarifying statement of factors that would otherwise be taken into account by the senior officers group, or whoever the people behind the scenes are. I remember an old legal maxim from my university days, delegates non potest delegare, which means that a delegate cannot delegate. The Attorney General is the elected official who is tasked with the mighty obligation of making sure that the interests of justice—not necessarily the administration, the paperwork—are maintained effectively. He has been delegated by the people of New South Wales to make sure that the job is done properly, but he is not in the Chamber.

I express my disappointment about that, because if he were here I am sure he would listen carefully, as he has listened in the past, to the arguments from both sides. On occasions the Attorney General has shown a preparedness to be flexible and to take on board amendments moved by the Opposition—or at least discuss them. I am disappointed that the Government has seen fit to rush this bill through the House and not have the delegate of the people, the Attorney General, present in the Chamber to hear the concerns of the Coalition. After all, we are trying to guarantee that the view of everyone in New South Wales—whether they are present or future voters for the Labor, Liberal or National parties who may be on the receiving end of the justice process—is expressed. We are simply trying to make sure that our fundamental legal rights are not eroded, and we are not having a fair dinkum debate on that today.

Mr BRYCE GAUDRY (Newcastle—Parliamentary Secretary) [11.55 a.m.]: I make it clear that the court will ultimately determine every case. The court will determine the application of the rules. The courts will be advised by the group that is now working on the rules.

Amendment negatived.

Schedule 2 agreed to.

Bill reported from Committee without amendment and report adopted.

Third Reading

Mr BRYCE GAUDRY (Newcastle—Parliamentary Secretary) [11.57 a.m.]: I move:

That this bill be now read a third time.

Mr ANDREW TINK (Epping) [11.57 a.m.]: I move:

That the motion be amended by leaving out the word "now" with a view to adding "on Tuesday 18 November 2003".

Even on the worst construction placed on the contribution by the Leader of the House last night when he moved to suspend everything under the sun to allow a raft of bills to go through in this so-called State, there is no

reason for this bill to be read for a third time today. The Leader of the House said that the requirement was to have legislation to the upper House by 18 November. The bill can be stood over until Tuesday, as will be the case with other bills that will be shoved through this House this morning, this afternoon and, no doubt, tonight. That will allow the matter to be dealt with by the other House before Christmas. It will also allow this House to have time to fully and properly consider the significant issues at stake.

Adjourning the third reading debate until 18 November will allow the Attorney General to give us the benefit of his views. This step is necessary because it is the sad fact that we have heard from no less than three Parliamentary Secretaries in the debate thus far. There is no continuity from the Government in the debate. The Attorney General has not made an appearance and in a third reading debate he could address the important issues that have been raised relating to rule making and the Crown Solicitor's advice.

Opposition members do not oppose the substance of this bill. We have been forced into opposing it purely from a procedural point of view, as we have no other way of getting any undertakings from the Government. What we require is pretty simple. Will the Attorney General please provide the rules, the Crown Solicitor's advice, the Law Society advice and the Bar Association advice? We should be allowed to obtain advice from the Law Society and the Bar Association. I understand that from time to time the Law Society and the Bar Association give the Government advice on a confidential basis. I am not complaining about that fact. However, I am complaining about the fact that when something comes to the knowledge of Opposition members they are not given an opportunity to approach the Law Society and the Bar Association to seek advice from their perspective.

I heard nothing from any of the three parliamentary secretaries who contributed to debate on this bill that in any way suggested there was support for the proposals that have been put forward by the Bar Association and the Law Society. The Government simply said that they had been consulted, but that does not mean the Government has accepted their proposals. I am asking, even at this late stage, for time to consult with those bodies. I know that barristers and solicitors work long hours but as this bill was read a second time at 10.20 last night it would have been a bit over the odds if Opposition members had rung barristers and solicitors at that time of night to obtain advice. We should be able to do that in a proper and considered way. We should be given at least a few days in order to be able to do that. The standing orders of the Parliament are quite clear. All things being equal, we have five days after adjourning this matter to look at issues in the bill that are at stake.

The amendment that I have moved will give Opposition members time to consult appropriate bodies before the upper House time limit has to be met. Some honourable members have criticised the time limits that have been set by the upper House. All I can say is: Thank God the upper House has a time limit. Because of the way in which this Government is dealing with legislation this close to Christmas I am grateful that at least the upper House has the numbers and the power to consider legislation that we are not able to consider in this House. In a few minutes I am sure that my amendment will be defeated. Thank heavens the upper House has the power to consider legislation that we have not been able to consider today. I commend the amendment to all honourable members.

Mr CARL SCULLY (Smithfield—Minister for Roads, and Minister for Housing) [12.03 p.m.]: What an extraordinary contribution by the honourable member for Eastwood! Did he inform his upper House colleagues of his displeasure at having them trample on the rights of members of Parliament? Everyone in this Chamber should have an opportunity to contribute to debate on the second reading of a bill. However, members of the Coalition voted for a motion that prevents the Legislative Assembly from proceeding, unimpeded, with its business. When the honourable member for Eastwood goes home tonight he will know why I am opposed to this amendment. He will look in the mirror and see the person responsible for doing a deal in the upper House which led to the Government pursuing these tactics.

It gives me no pleasure to truncate debate on legislation and to ram it through this Chamber. I would prefer not to do that. The honourable member for Eastwood said earlier that someone else was responsible for the passage of the upper House motion. That motion was agreed to because the requisite numbers of Coalition members were present in the Chamber to vote for it. The honourable member's colleagues in the upper House have trampled on our rights and denied us the right to have proper parliamentary debate. I strongly reject the amendment moved by the honourable member for Eastwood.

Mr BRAD HAZZARD (Wakehurst) [12.05 p.m.]: I support the amendment moved by the shadow Attorney General. The Leader of the House did not address the bill; in fact, he was totally outside the leave of the bill. I hope I am also given licence to do that.

Mr ACTING-SPEAKER (Mr Paul Lynch): Order! I remind the honourable member for Wakehurst that the question before the chair is that the bill be now read a third time, to which the honourable member for Epping has moved that the word "now" be replaced.

Mr BRAD HAZZARD: That is right; this is a third reading debate. The Minister who sought the call contributed in debate on the third reading but he did not discuss any aspect of the third reading of this bill.

Mr ACTING-SPEAKER (Mr Paul Lynch): Order! It is not appropriate for the honourable member for Wakehurst to have a conversation with the Chair. I have said that an amendment has been moved to replace the word "now".

Mr BRAD HAZZARD: The simple fact of the matter is that this bill should not have been rushed through this Chamber. The honourable member for Epping moved an amendment to the motion for the third reading of this bill. Opposition members are saying to the Government and to the community: It is not in the interests of justice or in the interests of the people of New South Wales to rush through this Chamber substantial and serious bills that will impact on our legal system. This bill should not be rammed through the Parliament. The honourable member for Eastwood is requesting that the Opposition be given time—effectively, just two business days, Friday and Monday—to consult with the Bar Association, the Law Society and members of the public who may have an interest in and are prepared to comment on this issue. That will also give the Government time to provide the sorts of briefings that it says it has already received from a number of different avenues.

The honourable member for Tweed said earlier that the Government had received submissions from the Law Society and from the Bar Association—two fundamental organisations that protect our principles and the interests of justice in New South Wales. The Government must ensure that Opposition members are fully consulted on this matter. Opposition members should also be given whatever submissions the Government has received from the Bar Association and the Law Society. The Opposition is seeking to adjourn this matter effectively until next Tuesday, which will not cause any difficulty if we take into account the tight timetable imposed on us by the Government. This morning I listened to Alan Jones; I usually listen to him in the morning—

Mr Alan Ashton: I listen to Angela Catterns.

Mr BRAD HAZZARD: I occasionally listen to Angela Catterns. However, I enjoy listening to Alan Jones and to Merrick and Rosso on Nova. This morning I heard one of the most disturbing things that I have heard for quite a while. Alan Jones said that there are only six weeks until Christmas. I thought, "Heavens, that means we have six more weeks within which to debate and legislate and make New South Wales a better place." When I arrived at work this morning, having been ill yesterday, I found that the Government had already used the guillotine to prevent honourable members from debating this bill.

Mr Gaudry: Point of order: This is not the appropriate place to make a personal explanation. The honourable member should be brought back to debating the amendment.

Mr DEPUTY-SPEAKER: Order! I uphold the point of order. The honourable member for Wakehurst will confine his remarks to the question before the Chair.

Mr BRAD HAZZARD: The amendment that was moved by the shadow Attorney General would give us an opportunity to have a serious debate on this bill. It would also give members of the community time to discuss and consider it. This Government must not ram legislation such as this through the Chamber. I find it hard to believe that some Government members, in particular the honourable member for Newcastle, who is in the Chamber, think that is the way to go. I appreciate that the right wing of the Labor Party holds the numbers. It is used to crunching and gutting legislation and throwing the offal to the dogs. In this case we require more than that; we require a full review of the legislation.

The Opposition and the people of New South Wales want to know what is going on. We request from the Government the advice that it has received from the Bar Association and the Law Society. I ask all honourable members and, in particular, those left-wing members of the Labor Party who believe in the principles of justice, not to follow the party line when they vote on this amendment. They should vote with Opposition members and support democracy in the interests of justice. If they do not they might have to explain to their constituents why they are not receiving the benefits that they should as the result of the passage of this legislation.

Mr ANDREW TINK (Epping) [12.09 p.m.]: By way of explanation under Standing Order 73, the Leader of the House referred to the upper House motion. It is only through that motion that Parliament can consider adequately the massive bills that are rammed through this place, such as motor accidents, superannuation, evidence and workers compensation legislation. Thank heavens the upper House will have time, under that motion, to consider issues that the lower House cannot. This legislation should have been before the House long ago. A Leader of the House who had his act together would have put this legislation before the Chamber long before what is effectively legislative Christmas Eve.

Mr ANDREW HUMPHERSON (Davidson) [12.10 p.m.]: I shall respond to the comments made by the Leader of the House in this debate. I make one point clear: The Opposition amendment seeks to ensure that this legislation can be scrutinised fully and publicly in line with the appropriate functioning of this place before it is passed by the House and forwarded to the Legislative Council. The amendment nominates the date of 18 November—next Tuesday—which allows a reasonable amount of time to consider the issues involved. That date was also nominated by the Leader of the House in his motion of yesterday, which established a deadline for the forwarding of legislation to the upper House. So the Opposition amendment is completely in accordance with the motion of the Leader of the House.

Mr CARL SCULLY (Smithfield—Minister for Roads, and Minister for Housing) [12.11 p.m.]: I move:

That the question be now put.

The House divided.

Ayes, 48

Mr Amery	Mr Hunter	Mr Price
Ms Andrews	Ms Judge	Dr Refshauge
Mr Bartlett	Ms Keneally	Ms Saliba
Ms Beamer	Mr Knowles	Mr Sartor
Mr Black	Mr Lynch	Mr Scully
Mr Brown	Mr McBride	Mr Shearan
Ms Burney	Mr McLeay	Mr Stewart
Miss Burton	Ms Meagher	Mr Tripodi
Mr Collier	Ms Megarrity	Mr Watkins
Mr Corrigan	Mr Mills	Mr West
Mr Crittenden	Mr Morris	Mr Whan
Ms D'Amore	Mr Newell	Mr Yeadon
Mr Gaudry	Ms Nori	
Mr Gibson	Mr Orkopoulos	<i>Tellers,</i>
Mr Greene	Mrs Paluzzano	Mr Ashton
Ms Hay	Mr Pearce	Mr Martin
Mr Hickey	Mrs Perry	

Noes, 36

Mr Aplin	Mr Humpherson	Mrs Skinner
Mr Armstrong	Mr Kerr	Mr Slack-Smith
Mr Barr	Mr McGrane	Mr Souris
Ms Berejiklian	Mr Merton	Mr Stoner
Mr Cansdell	Ms Moore	Mr Tink
Mr Constance	Mr Oakeshott	Mr Torbay
Mr Debnam	Mr O'Farrell	Mr J. H. Turner
Mr Draper	Mr Page	Mr R. W. Turner
Mr Fraser	Mr Piccoli	
Mrs Hancock	Mr Pringle	<i>Tellers,</i>
Mr Hartcher	Mr Richardson	Mr George
Mr Hazzard	Mr Roberts	Mr Maguire
Ms Hodgkinson	Ms Seaton	

Pairs

Ms Allan
Ms Gadiel

Mr Brogden
Mrs Hopwood

Question resolved in the affirmative.

Question—That the word stand—put.

Ayes, 48

Mr Amery
Ms Andrews
Mr Bartlett
Ms Beamer
Mr Black
Mr Brown
Ms Burney
Miss Burton
Mr Collier
Mr Corrigan
Mr Crittenden
Ms D'Amore
Mr Gaudry
Mr Gibson
Mr Greene
Ms Hay
Mr Hickey

Mr Hunter
Ms Judge
Ms Keneally
Mr Knowles
Mr Lynch
Mr McBride
Mr McLeay
Ms Meagher
Ms Megarrity
Mr Mills
Mr Morris
Mr Newell
Ms Nori
Mr Orkopoulos
Mrs Paluzzano
Mr Pearce
Mrs Perry

Mr Price
Dr Refshauge
Ms Saliba
Mr Sartor
Mr Scully
Mr Shearan
Mr Stewart
Mr Tripodi
Mr Watkins
Mr West
Mr Whan
Mr Yeadon

Tellers,
Mr Ashton
Mr Martin

Noes, 36

Mr Aplin
Mr Armstrong
Mr Barr
Ms Berejikian
Mr Cansdell
Mr Constance
Mr Debnam
Mr Draper
Mr Fraser
Mrs Hancock
Mr Hartcher
Mr Hazzard
Ms Hodgkinson

Mr Humpherson
Mr Kerr
Mr McGrane
Mr Merton
Ms Moore
Mr Oakeshott
Mr O'Farrell
Mr Page
Mr Piccoli
Mr Pringle
Mr Richardson
Mr Roberts
Ms Seaton

Mrs Skinner
Mr Slack-Smith
Mr Souris
Mr Stoner
Mr Tink
Mr Torbay
Mr J. H. Turner
Mr R.W. Turner

Tellers,
Mr George
Mr Maguire

Pairs

Ms Gadiel
Mr Iemma

Mr Brogden
Mrs Hopwood

Question resolved in the affirmative.

Amendment negatived.

Motion agreed to.

Bill read a third time.

POLICE LEGISLATION AMENDMENT (CIVIL LIABILITY) BILL

Bill introduced and read a first time.

Second Reading

Mr JOHN WATKINS (Ryde—Minister for Police) [12.30 p.m.]: I move:

That this bill be now read a second time.

Our police need and deserve the community's full support in tackling crime and making the community safe. They need to know that in carrying out their challenging duties—in a fair and impartial manner—they will not be subject to spurious claims that will put them and their families at risk. They need to know that if a criminal tries to abuse the system to escape justice, the system will back them up. That is why the Police Legislation Amendment (Civil Liability) Bill is so important. It will provide protection against legal claims for police and swing the balance back in their favour. This bill continues the reforms brought forward under the Civil Liability Act 2002 and the Civil Liability Amendment (Personal Responsibility) Act 2002.

The bill strikes the necessary balance. It protects police from personal legal claims, while still ensuring officers who have engaged in serious and wilful misconduct can be held accountable. The bill is governed by a fundamental principle: no police officer should ever fear that their home or other personal assets are at risk simply because they have done their job. In November last year the Australasian Centre for Policing Research published a paper entitled "Issues in Civil Litigation Against Police". It found the incidence and nature of civil litigation by members of the public against police are growing issues of concern. Although New South Wales has laws to prevent individual police and other public officers from being personally liable for damages arising from their acts or omissions, the Government believes these additional measures are needed.

There is no organisation with greater responsibility for the protection of persons or property than NSW Police. In 2002-03, 44 of the 186 police tort claims involved claims against individual officers as well as the Crown, with a total of 82 officers being individually sued. Clearly, some of these claims against individual officers are lodged as revenge for the entirely appropriate apprehension of criminals. Although individual officers may not be personally liable to pay damages at the end of civil proceedings, joining them as a defendant is a significant cause of stress—often over an extended period of time. That is why the NSW Police Family Alliance has had serious concerns that stress extends to officers' families and to the community at large.

I turn to the detail of the bill. The most significant provisions are in schedule 2 to the bill, which amends the Law Reform (Vicarious Liability) Act. Items [1] to [4] of schedule 2 are machinery provisions that make that Act easier to read and interpret. Item [5] of the schedule inserts into the Act a new part 4 to deal with legal proceedings for the torts of police officers. A new section 9B is the central provision of the bill. Section 9B (1) provides that, subject to specified exceptions, a person cannot directly sue a police officer for a police tort claim. Section 9B (2) provides that in such cases the plaintiff can only sue the Crown. Section 9E (f) makes it clear that this restriction does not apply where the plaintiff is suing the police officer for something the officer did in a personal capacity. The practical effect of subsections (1) to (3) of section 9B is to prevent an individual officer from being directly sued, unless the vicarious liability of the Crown is ultimately an issue in dispute.

Section 9B (4) provides important safeguards for plaintiffs. If the Crown files a defence that makes vicarious liability an issue the plaintiff will be able to amend its statement of claim. Section 9C requires the court, where practicable, to make an initial determination on the issue of vicarious liability where the Crown contends it would not be vicariously liable in the event of the tort being established. Section 9D requires the court, subject to the exceptions at section 9E, to strike out the claim against any individual officer where the Crown concedes it would be vicariously liable if the tort were established, or where the court makes an initial determination that the Crown would be so liable. As sections 9C and 9D apply to cases brought against individual officers in their personal capacity, where the issue of vicarious liability is subsequently raised, section 9 makes it clear that the new part 4 of the Act extends to all claims made against police officers, whether or not acting in a personal or official capacity.

New guidelines and educational material will be developed to support the efficient and transparent management of police tort claims, with officers being made aware of the circumstances in which they may claim privilege and the circumstances in which their admissions can be used in other proceedings. The Police Association will be fully consulted in developing this material. Schedule 1 to the bill also amends the Employees Liability Act 1991 to make it clear that police are employees for the purposes of that Act. Section 9G applies the new provisions to torts committed before the commencement of the section. As plaintiffs' rights

of recovery are not affected by the bill, and the provisions are of benefit to all parties, this retrospective application is appropriate. We do not want a situation where these beneficial reforms do not apply to claims for past events that may be made years in the future.

Section 9A makes it clear that the provisions apply to persons who were police officers at the time of the alleged tort, as civil claims may be made well after the event and an officer has ceased service. Section 213 limits the personal liability of NSW Police for good faith acts or omissions in its exercise of a function conferred or imposed by any Act or law with respect to the protection of persons from injury or death or property from damage. The necessity for this bill was made very clear to me just last week when I visited the Bega police station and there met a young police officer who for five years had been in fear arising from ongoing civil action in which she had been named. Thankfully, the proceedings were recently resolved positively. However, she spoke of five years of concern for herself and her family—five years of experiencing fear of losing her house and other assets. She and her colleagues are very appreciative of this legislation.

I take the opportunity to thank the Police Association for its efforts in drawing these problems to my attention and working with the Government and the force to progress these reforms. I draw the attention of the House to the presence in the gallery of the Police Association President, Ian Ball, and secretary, Peter Remfrey. I thank them for their attendance. I pay special tribute to Ian Ball, Peter Remfrey and former president Phil Tunchon for their work to bring the bill to this stage. This bill is a message to our record number of police: From now on, vexatious complainants will not be able to sue you; they will have to sue me. I commend the bill to the House.

Debate adjourned on motion by Mr Peter Debnam.

BUSINESS OF THE HOUSE

Bill: Suspension of Standing and Sessional Orders

Motion by Mr Carl Scully agreed to:

That standing and sessional orders be suspended to allow the resumption of debate, and progress through all stages at this sitting of the Transport Legislation Amendment (Safety and Reliability) Bill.

TRANSPORT LEGISLATION AMENDMENT (SAFETY AND RELIABILITY) BILL

Second Reading

Mr JOSEPH TRIPODI (Fairfield—Parliamentary Secretary) [12.40 p.m.], on behalf of Ms Reba Meagher: I move:

That this bill be now read a second time.

On 8 April this year the Minister for Transport Services announced his intention to put in place a range of reforms to focus the full resources of the State's public transport system on safety, reliability and cleanliness. The most important of these initiatives is safety. The Transport Legislation Amendment (Safety and Reliability) Bill establishes the Independent Transport Safety and Reliability Regulator as a stand-alone statutory authority. The regulator will be independent of the Ministry of Transport and transport operators. It will have the authority to regulate and audit the safety of transport services, investigate transport accidents, and advise on the reliability and performance of transport service providers. The Independent Transport Safety and Reliability Regulator will have as its principal objective the safety of transport services in New South Wales, including bus and ferry passenger services and rail passenger and freight services.

The rail safety powers under the Rail Safety Act will transfer to the new Independent Transport Safety and Reliability Regulator. The bill extends these principles across the other transport modes. Within the regulator, the audit and investigation functions are independent, with accountabilities separated. The bill establishes the Office of Transport Safety Investigation, headed by a Chief Investigator, which will have separate lines of reporting to that of the regulator. This will enable the Chief Investigator to investigate the role of the regulator in the event of an accident or incident. Independence is critical for the regulatory and investigative functions to be effective. That is why the regulator will be a stand-alone statutory authority. It will report to Parliament through the Minister for Transport Services.

To ensure the regulator remains independent, the bill provides for strict limitations on the ministerial control and direction. The Minister will have no control or power of direction in relation to decisions regarding

accreditation, decisions to prosecute, decisions to investigate or audit, the conduct of any investigation or audit, or the contents of any report or recommendation. However, the Minister will be able to direct that an investigation be undertaken. This regulatory model is consistent with the Commonwealth model for regulating and investigating air safety. The corporate governance provisions of this bill will provide further protection in regard to the independence of the new regulator. The bill provides for the creation of an advisory board consisting of a chairperson, the chief executive officer of the regulator and three independent members.

Importantly, the bill provides that the chairperson of the independent regulator must have experience in transport safety management systems. Other members of the board must collectively have experience in areas such as safety management, safety science, customer service, accident investigation and public administration. This will provide the regulator with greater access to technical and industry expertise, and ensure strong mechanisms to review the rigour of its activities. An amendment passed by the Legislative Council states that a deputy appointed to the board must have similar experience. While the Government did not oppose this amendment, we believe it was not necessary. Mr Christie recently appeared before the upper House inquiry into the bill and was questioned on the appointment of deputies and the criteria applied to full-time board members. He said:

I would feel bound by the criteria in the Act.

The Government is committed to transparency in the operations of the transport agencies. Honourable members need only look at the range of reports and information now made available on the transport agency web sites to see this commitment in action. As I mentioned earlier, the Rail Safety Act 2002 significantly strengthened the regulatory powers for rail safety and the requirements for open and transparent reporting of rail safety issues. The Act requires the Rail Safety Regulator to prepare an annual industry safety report, and to report to the Minister on all accident investigations undertaken by it. The bill extends these public reporting requirements to other transport modes, including buses and ferries. The new regulator will be required to provide an annual report to the Minister on both the safety and reliability of transport services across all modes.

These reports, along with any transport accident investigation report, must be tabled by the Minister in the Parliament no later than 28 days after their receipt. These reports will be posted on the regulator's web site. This bill also strengthens the requirements of operators of transport services in relation to their provision of safe services for the people of New South Wales. The Rail Safety Act 2002 introduced a specific requirement for rail operators to have and maintain a safety management system to underpin their operations. This bill introduces a similar requirement for bus and ferry operators. The bill provides a transition period of 12 months for operators to ensure their systems are in place. The new regulator will work with the Ministry of Transport's Operations Division, the Roads and Traffic Authority and the Waterways Authority to assist the bus and ferry industries in introducing the required systems.

This rigorous approach to safety management across mass transport in New South Wales will be backed up with budgetary and staffing resources to enable the independent regulator to do its job. The Transport Safety and Rail Safety Division within the Ministry of Transport has a budget of \$4.9 million. The new regulator will have a budget of more than \$17 million. The current regulator has a staff of 26. We will provide funding for more than 80 positions in the new organisation. The current regulator has 5 field inspectors. The new regulator will have 13 field inspectors plus a further 3 field officers dedicated to specific safety projects. It will also have a number of technical experts in civil engineering, structures, signalling, rolling stock and communications. They will also have a field inspection role. There will also be a significant increase in resources available to collect and analyse transport safety data and other information, such as investigation reports from other Australian and overseas jurisdictions.

The regulator will also provide independent expert advice on whether operators are meeting the performance standards the Government has set. This performance-monitoring role will enable the regulator to identify problems and notify the Government of them before they become safety critical. This arrangement will ensure responsibility for safety is not compromised or over-ridden by responsibility for driving performance. Given its importance and the establishment of new transport agencies, the Government intends to set up the new regulator promptly. We will review the legislation in 12 months. This review will provide an opportunity to consider the final outcomes of the Waterfall inquiry. As the Minister advised members in the other place, the commission of inquiry sought an extension on report. In granting his extension, the Premier has advised Justice McInerney that the Government is proceeding with its legislation, and would reconsider safety legislation following the receipt of his final report.

The Opposition amended the bill in the other place so the review would be completed with 15 months of the commencement of the legislation. The Government did not oppose the amendment. The Opposition also proposed amendments to the bill that would significantly alter the structure of the regulator. I am pleased to say that members in the other place found the Opposition's proposal unworkable, and they rejected it for blurring the lines of accountability on safety. The Government is pleased to bring forward the safety improvements that will arise from this bill. I commend the bill to the House.

Mr PETER DEBNAM (Vaucluse) [12.48 p.m.]: I am pleased to speak to the Transport Legislation Amendment (Safety and Reliability) Bill. About a year and one hour ago I spoke to the Rail Safety Bill, which dealt with a number of issues that are canvassed further in this bill. I began my contribution to that debate by saying:

At the outset I indicate that the Coalition will not oppose the bill. In fact, it will ensure that its passage through both Houses is not delayed.

However, we wish to highlight a number of concerns about rail safety generally, and about the independence and powers of safety regulators specifically. I said:

We serve notice on the Government that if it does not amend the bill to improve the independence, powers and resources available to the safety regulators a Coalition government will do so immediately after the coming State election.

The election has come and gone, but we are still discussing the same issue. As the Parliamentary Secretary indicated, in the other place the Opposition moved a number of amendments because we remain concerned about independence. The Opposition will move other amendments today. It is worth noting that a year ago I placed on the record my thanks to a number of people who had assisted the Opposition to understand the Rail Safety Bill by arranging a number of visits. I am sure honourable members would be intrigued to know that I also placed on the record concern about those visits. I stated:

Members of this House and members of the public will not be surprised to hear that the first visit that was denied to the Opposition was a visit to the manufacturer of the Millennium trains.

I pointed out that the Government's refusal to allow visits to sensitive areas indicated that it had not been sincere about accountability. I will deal with that point in more detail later. The Parliamentary Secretary went to some lengths during the second reading speech to refer to accountability and transparency. Clearly, that rhetoric is coming from the new Minister for Transport Services, Michael Costa, just as it did from the former Minister for Transport, Carl Scully. Nothing could be further from the truth. This Government is not about transparency or accountability when safety, especially public transport safety, remains a concern to the Opposition and to the community. During a speech I made a year ago I also stated:

The second visit that was denied to the Opposition was a visit to the monitoring centres for the closed-circuit television [CCTV] and help points across the rail system.

I made that speech in November last year, when security and violence in the transport system were matters of major concern—and they continue to be so. The second refusal on the part of the Government was another indication that it is not serious about accountability. In the Minister's second reading speech to the Rail Safety Bill he stated:

This bill is the final step in the establishment of that framework—

the framework referred to was the one that will implement Mr Justice McInerney's recommendations—

and enacts the Government's response to Justice McInerney's report.

Again, nothing could be further from the truth. At that stage the Minister for Transport was the Hon. Carl Scully. The Minister also stated in his second reading speech:

The Regulator is accountable through the Director-General to the Minister for Transport. This model recognises that, ultimately, the public and you will hold me accountable for rail safety.

By those words, the Hon. Carl Scully indicated that the bill that was passed a year ago recognised that, ultimately, the public and members of Parliament would hold him accountable for rail safety. That is what the Opposition did. Later I will deal in more detail with what has happened between the time the statement was made by the Minister in November last year and the present. Another point I made a year ago during debate on

the Rail Safety Bill relates to what is currently happening in New South Wales, specifically in regard to public transport safety. I stated:

Obsessive secrecy about rail safety is just plain dangerous. Last week the Carr Government refused to release annual safety reports of the rail network. The refusal came 10 weeks after the Opposition sought copies of these safety audits under freedom of information applications...

The Government agonised for a number of weeks over the release of the reports and after the Bali bombing it decided to use the threat of terrorism as an excuse for denying public scrutiny of the politically sensitive audit reports. The terrorism excuse is absurd.

I note that the Government subsequently released those safety reports because the issue was of major concern to the community in November last year. The reports were released on Christmas Eve, along with a number of other reports. As members of the Opposition realised when they examined the report, its findings were matters of extreme concern to anyone who travels by rail. During debate on the Rail Safety Bill last year I also stated:

Rail safety and the Carr Government's culture of cover-up became such a concern in late June [of 2002] the Opposition moved a motion of no confidence in the Minister for Transport. I remember that day, Thursday 27 June.

I still remember that day, particularly the arrogance about the safety of the people of New South Wales displayed by the Hon. Carl Scully. The Transport Legislation Amendment (Safety and Reliability) Bill establishes the Independent Transport Safety and Reliability Regulator [ITSRR], which is accountable to the Minister for Transport Services. The purpose of that office is to investigate transport accidents, set safety standards, make recommendations on performance standards, and conduct safety and performance audits. According to the bill, the Transport Safety Regulator's principal objective is to facilitate the safe operation of transport services. Its other objectives are to exhibit independence, rigour and excellence, and to promote safety and reliability as fundamental objectives. Under the ITSRR, a chief investigator will be appointed to head all safety investigations. Performance and safety monitoring will occur across all modes of public transport, including buses, trains and ferries. This bill does not just concern rail; it concerns all forms of public transport. The ITSRR will absorb the functions of the Office of the Co-ordinator General of Rail and the Ministry of Transport's Safety Division. The objects of the bill are:

- (a) to constitute the Independent Transport Safety and Reliability Regulator... and the Independent Transport Safety and Reliability Advisory Board...
- (b) to confer on the ITSRR the function of accrediting railway operators in this State, and functions relating to the inspection, monitoring and auditing of the safety and reliability of public train, bus and ferries services,
- (c) to confer on the ITSRR the functions of reporting to and advising the Minister as to the safety and reliability of public train, bus and ferries services,
- (d) to remove requirements for licensing of ferries and masters of ferries under the *Passenger Transport Act 1990*, as they are also licensed under marine Legislation,
- (e) to confer on the ITSRR and the Chairperson of the Board the function of holding inquiries into rail, bus and ferry accidents and incidents and reporting on those inquiries,
- (f) to require operators of buses and ferries to have and to implement safety management systems,
- (g) to make provision with respect to the safety of public ferry wharves...

Other purposes are outlined in the bill. It is intended that the ITSRR will commence operations on 1 January 2004. Over the past year, the Opposition has continually referred to the concept of independence. Although the Independent Transport Safety and Reliability Regulator has the word "independent" in its title, it is directly accountable to the Minister. At the most recent State election the Coalition's policy was to establish an independent rail safety ombudsman who would be directly accountable to the Parliament. The Coalition's approach was reiterated when the Minister for Transport Services, Mr Costa, announced the formation of the ITSRR in April this year. The bill does not reflect the recommendations of the Waterfall commission of inquiry. Justice McInerney will hand down his interim report, but the final report will be delayed until April next year. The Coalition understands that Justice McInerney was not consulted about the proposed structure of the ITSRR, nor about the proposed content of the bill.

The Coalition also understands that Justice McInerney was briefed on the bill only in the past few weeks. Clearly, that is an issue the Coalition will raise during the next 12 months in the context of whether this bill sits well with the recommendations made as a result of the Waterfall inquiry. As I stated earlier, the

Coalition will not oppose this bill. However, we will seek to amend it to make the ITSRR accountable to the Parliament rather than to the Minister. The Coalition will continue to present the concept of accountability to the Government. As honourable members know, the Carr Government was elected in 1995. I think the Hon. Carl Scully was the first Minister to speak to the first piece of Carr Government legislation introduced to the House. During the past eight years I have reminded the Hon. Carl Scully of the statement he made on 31 May 1995. He said:

An integral part of our reform agenda is the reintroduction of ministerial responsibility and accountability.

He made his first speech as the Minister for Small Business and Regional Development, Minister for Ports, and Assistant Minister for State Development, and I think it was the first bill presented by the Carr Government. We have moved forward eight years and the Minister for Transport Services, Mr Costa, has introduced this bill for several reasons. He inherited a rail safety crisis from the former Minister for Transport, the Hon. Carl Scully, and he inherited a State Transit Authority cash crisis. On a number of occasions I have described the State Transit Authority as a financial basket case into which the Government had to inject tens of millions of dollars, just to keep it afloat. That occurred during the most recent State election. The current Minister for Transport Services, the Hon. Michael Costa, inherited an organisational disaster in public transport from the former Minister.

Mr Joseph Tripodi: What rubbish!

Mr PETER DEBNAM: The Parliamentary Secretary interjects to say, "What rubbish!"

Debate adjourned on motion, by leave, by Mr Peter Debnam.

[Mr Deputy-Speaker left the chair at 1.00 p.m. The House resumed at 2.15 p.m.]

ANIMAL CRUELTY

Ministerial Statement

Mr DAVID CAMPBELL (Keira—Minister for Regional Development, Minister for the Illawarra, and Minister for Small Business) [2.17 p.m.]: I represent the Minister for Agriculture and Fisheries, who is responsible for animal welfare in New South Wales, in this House. Yesterday afternoon a dead fully-grown male common dolphin in good health with a bellyful of fish washed up on Bondi Beach. It had a puncture wound in its side that was possibly caused by a harpoon or spear. However, that is still unclear. Experts at Taronga Zoo are performing an autopsy to ascertain the cause of death, but a preliminary examination indicates that the puncture may have occurred after death. It will take two weeks to obtain conclusive bacterial data on the dolphin's death.

Our waterways are now the cleanest they have been since European settlement, and that has brought record numbers of dolphins, whales and other marine life back to our harbour and beaches. We have to be more vigilant in protecting those beautiful creatures. That includes watching out for sick-minded individuals who get thrills from killing defenceless animals. That is why I offer this timely warning: Any person harming or killing a protected marine animal could face a fine of up to \$110,000 and/or two years in gaol. While we await final information on the cause of death of the dolphin, I warn the community that anyone caught killing a protected marine animal should face the full force of the law. In the past year there have been 17 detected cases of illegal spearfishing. Thankfully, almost all were minor offences and did not involve major marine life. I urge anyone with information involving the death of this dolphin yesterday to contact Crime Stoppers on 1800 333 000.

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

Mr DAVID CAMPBELL: On another matter of animal welfare and responsible pet ownership, members will be interested to hear that National Parks and Wildlife Service officers and Taronga Zoo staff are working together in a major operation to seize a three-metre crocodile from a Kurnell backyard, which is in the Sutherland shire. Crikey, that is insane! But seriously, we all eagerly await details on how and why that crocodile was in a backyard in the Sutherland shire.

BUSINESS OF THE HOUSE

Routine of Business

[During notices of motions]

Mr SPEAKER: Order! The notice of motion given by the honourable member for North Shore was almost out of order because of its length. I will ask the Clerk to consult the honourable member for North Shore at a later time about shortening the motion.

DISTINGUISHED VISITORS

Mr SPEAKER: I welcome to the public gallery members of the Education and Training Committee from the Parliament of Victoria, comprising Steve Herbert, MP, Chair of the committee; Nicholas Kotsiras, MP, Deputy Chair; Helen Buckingham, MLC; Janice Munt, MP; and Anne Eckstein, MP. I also welcome to the public gallery Mr Warren Mundine, who was today elected as National President of the Australian Labor Party.

PETITIONS

Gaming Machine Tax

Petition supporting the increase in gaming machine taxes and welcoming the fact that all extra revenue will be spent on the health system, received from **Miss Cherie Burton**.

Autism Spectrum Disorder

Petition requesting additional support for children affected by Autism Spectrum Disorder in all educational settings in New South Wales government schools, received from **Mr Daryl Maguire**.

Department of Education and Training Restructure

Petition requesting a delay to the proposed restructure of the Department of Education and Training, received from **Mr Russell Turner**.

Gaming Machine Tax

Petitions opposing the decision to increase poker machine tax, received from **Mr Alan Ashton, Ms Gladys Berejiklian, Mr Thomas George, Ms Katrina Hodgkinson, Mrs Judy Hopwood, Mr Wayne Merton, Mr Steven Pringle, Mr Andrew Stoner and Mr John Turner**.

Cudgen Creek Seaway

Petitions requesting that the Cudgen Creek seaway at Kingscliff be cleared of silt, received from **Mr Steve Cansdell, Mr Andrew Fraser and Mr Russell Turner**.

White City Site Rezoning Proposal

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

Water Police Pyrmont Site

Petition opposing development of the current Water Police Pyrmont site, received from **Ms Clover Moore**.

Lane Cove Rotary Athletics Field

Petition opposing the use of the car park at Rotary Athletics Field, Lane Cove, as a construction storage site, received from **Ms Gladys Berejiklian**.

Coffs Harbour Pacific Highway Bypass

Petition requesting the construction of a Pacific Highway bypass for the coastal plain of Coffs Harbour, received from **Mr Andrew Fraser**.

Coffs Harbour Roads and Traffic Authority Crossing Supervisors

Petition opposing the removal of the crossing supervisors at the corner of Harbour Drive and Curacao Street in Coffs Harbour, received from **Mr Andrew Fraser**.

Tumbarumba to Jingellic Highway Upgrading

Petition asking that the Tumbarumba to Jingellic section of State Road 85 be sealed, received from **Mr Daryl Maguire**.

Windsor Road Traffic Arrangements

Petitions requesting a right turn bay on Windsor Road at Acres Road, received from **Mr Wayne Merton** and **Mr Michael Richardson**.

The Spit Bridge Traffic Arrangements

Petition opposing the proposal to add a two-lane drawbridge next to The Spit Bridge, and calling for a responsible and holistic solution to the transport, traffic, and freight needs of the area, received from **Mrs Jillian Skinner**.

Coffs Harbour Aeromedical Rescue Helicopter Service

Petition requesting that plans for the placement of an aeromedical rescue helicopter service based in Coffs Harbour be fast-tracked, received from **Mr Andrew Fraser**.

CountryLink Rail Services

Petitions opposing the abolition of CountryLink rail services and their replacement with buses in rural and regional New South Wales, received from **Mr Greg Aplin**, **Mr Peter Draper**, **Ms Katrina Hodgkinson**, **Mr Tony McGrane**, **Mr John Turner** and **Mr Russell Turner**.

Redfern and Surry Hills Bus Services

Petition requesting improved bus services in Redfern and Surry Hills, received from **Ms Clover Moore**.

Public Transport

Petition requesting the development of a transport blueprint for public transport as an alternative to private vehicle use, received from **Ms Clover Moore**.

Bus Service 311

Petition praying that the Government urgently improve bus service 311 to make it more frequent and more reliable, received from **Ms Clover Moore**.

Newcastle Rail Services

Petition opposing the closure of the railway line from Broadmeadow to Newcastle, received from **Mr Matthew Morris**.

Tamworth and Armidale Rail Services

Petition opposing the proposed cut to the CountryLink rail service between Tamworth and Armidale, received from **Mr Richard Torbay**.

Community-based Preschools

Petition requesting adjustment of funding to ensure viability of community-based preschools, received from **Mr Thomas George**.

Dunoon Dam

Petition requesting the fast-tracking of plans to build a dam at Dunoon, received from **Mr Thomas George**.

Circus Animals

Petition praying that the House end the unnecessary suffering of wild animals and their use in circuses, received from **Ms Clover Moore**.

Sow Stall Ban

Petition requesting the total ban of sow stalls, received from **Ms Clover Moore**.

MINISTRY

Mr BOB CARR: I advise honourable members that in the absence of the Attorney General, and Minister for the Environment, who is attending a meeting of the Standing Committee of Attorneys-General in Hobart, the Deputy Premier, and Minister for Education and Training will answer all questions relating to his portfolio. The Minister for Health has been delayed due to family reasons and may not be back before the end of question time, and the Minister for Energy and Utilities will answer all questions relating to his portfolio.

QUESTIONS WITHOUT NOTICE

CHILD SEXUAL ASSAULT SENTENCES

Mr JOHN BROGDEN: My question without notice is directed to the Premier. What does the Premier have to say to the mother whose 10-year-old daughter was the victim of an aggravated indecent sexual assault, with the paedophile only given periodic detention because of the incompetence of the Director of Public Prosecutions who downplayed the seriousness of the offences in a submission that the appeal judge described as incomprehensible and startling?

Mr BOB CARR: I understand that this is a case that the Leader of the Opposition has raised in the past. I will seek advice from the Director of Public Prosecutions [DPP]. But I will say that there is no way that the Government will agree to the setting up of a parliamentary committee to oversight the DPP because we believe in an independent DPP—so does every other jurisdiction in Australia—where decisions about who to prosecute and why to prosecute are made by an independent statutory officer, not by an elected person. That system has been part of our justice system across Australia for a long time. One only has to dwell on some of the scandals and inadequacies in the administration of justice in the past to understand why governments from the Coalition and the Australian Labor Party have supported this principle—State, Federal, all States across Australia, both sides of politics. If a parliamentary committee were established to ask why the DPP is doing this or doing that, we would be removing the independence that I think the public wants the DPP to have.

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

Mr BOB CARR: That is a very important principle and we should continue to have an independent DPP. If a committee of politicians were to look at decisions about whether to prosecute one or not to prosecute another we would no longer have an independent DPP.

Mr JOHN BROGDEN: I ask a supplementary question. In view of the Premier's answer, why did the Premier state on 11 October 1997 in an article in the *Daily Telegraph*:

... the Premier also said momentum was developing to set up a parliamentary watchdog to monitor Mr Cowdery.

And the Premier said:

The case is growing for some sort of oversight.

If it is good enough in the United Kingdom why is it not good enough in New South Wales?

Mr BOB CARR: The Government has repeatedly rejected proposals for an oversight committee. The more we have looked at it, the more resolved we have been that interfering with the independence of the Director of Public Prosecutions is wrong.

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

Mr BOB CARR: The Opposition is failing again to develop any new policies and is simply recycling what they have done before.

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

Mr BOB CARR: Not content with recycling what is in the morning papers, the Coalition now goes back through *Hansard*. The Leader of the Opposition in Parliament 18 months ago called for the policy he has unveiled with a little bit of fanfare today.

Mr SPEAKER: Order! I call the Leader of The Nationals to order.

Mr BOB CARR: On 21 March 2002 the Government's response was recorded.

Mr SPEAKER: Order! Although it is early in question time a number of members have already misbehaved in a grossly disorderly way. Ministers who are answering questions should be accorded the courtesy of being heard in silence, in the same way as the Premier accords the Leader of the Opposition the courtesy of listening to his question in silence.

[Interruption]

Mr SPEAKER: Order! I call the Leader of the Opposition to order. A number of members are on two calls to order; others have been called to order once. The Chair intends to take a much more strict view of interjections. They will not be tolerated, and members who continue to interject will be quickly removed from the Chamber. Those members on two calls to order are now deemed to be on three calls.

Mr BOB CARR: I am a great supporter of recycling, but there is no better example of it than what the Leader of the Opposition has done today, going back through the *Hansard* to find a case and a proposal that was made nearly two years ago.

Mr SPEAKER: Order! I call the Leader of the Opposition to order for the second time.

Mr BOB CARR: Because they haven't got a single new idea or policy. They are recycling it and bringing it back to question time today.

CIVIL LIABILITY LEGISLATION REFORM

Mr BARRY COLLIER: My question without notice is addressed to the Premier. What is the Government's response to community concerns about recent court decisions involving public liability, particularly the Kevin Presland matter and the *Cattanach v Melchior* decision in the High Court?

Mr BOB CARR: Over the past two years the Government has embarked on comprehensive reforms to tort law. We have systematically wound back the culture of blame and restored the notion of personal responsibility. We have protected doctors, nurses, police and other professionals from senseless claims. We are reversing the Americanisation of our legal system. The result has been a 43 per cent reduction in businesses experiencing difficulties getting insurance. Public risk actions in the District Court are down 25 per cent.

Mr Chris Hartcher: Point of order: Standing orders do not allow questions that anticipate debate on a matter currently before the Parliament. The response of the Premier addresses the subject of the Motor Accidents Legislation Amendment Bill, which deals with the case that gives rise to the question. That bill will insert into the Act new provisions to reverse the decision in the court case to which the Premier alludes. Mr Speaker, I invite you to hear the question again. It is out of order under the standing orders.

Mr Carl Scully: To the point of order: The honourable member for Gosford is wrong on two grounds. First, the question does not relate to the bill to which he referred. Second, even if it did, the House is entitled to have a question that elicits information that will assist members in debate on bills before the House.

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

Mr BOB CARR: Some courts are starting to get the message. For example, in the case of legal action brought against a Sutherland rollerskating rink by an injured person, the judge said rollerskating has an inherent risk and the warning signs were adequate. The plaintiff lost. But some courts are finding new areas of liability, creating new bodies of law, and awarding damages that the community simply will not tolerate. A case in point is the decision of the New South Wales Supreme Court in Kevin Presland, or that of the High Court on "wrongful birth" in *Cattanach v Melchior*. I can inform the House that the Government will introduce legislation to strengthen the Civil Liability Act 2002 to ensure that neither of those kinds of cases would be successful again.

Kevin Presland presented to John Hunter Hospital with a self-inflicted head injury. He was later referred as a voluntary mental patient to James Fletcher Hospital. He was admitted overnight and then later

released. He went home with his brother, became psychotic and attacked his brother's fiancée, violently murdering her by slitting her throat. Presland was found not guilty by reason of mental illness. He then sued the Hunter Area Health Service claiming it had a duty of care to detain him, and that by releasing him they should compensate him for the fact he killed his brother's fiancée. The court agreed, and awarded \$225,000 for pain and suffering and another \$85,000 for lost earnings because of his detention as a forensic patient. The Government believes the court overstepped the mark. We believe it invented a new, unwarranted, body of law. We are now appealing the decision, but we intend to amend the law.

Under our civil liability reforms, a criminal cannot profit from his or her crime. The court's ruling in this case means persons who, but for being mentally ill, would have been found guilty, can sue, and win and therefore profit from their actions. This means a New South Wales court would have awarded damages to Hannibal Lecter for pain and suffering or emotional distress! The amendments will specifically exclude damages for non-economic loss and lost earnings for a mentally ill person who commits an act which, but for the person being mentally ill, would have constituted a crime. The Presland case prompted others to exploit this new body of negligence law. We are making the amendments retrospective to stop anyone else from profiting in the same way. The legislation also will ensure our hardworking doctors and nurses in mental health units cannot be sued for exercising their professional judgment to detain or release mentally ill people.

The High Court has also embarked on making new liability law. At a time when obstetricians and gynaecologists are under the burden of meteoric costs for medical indemnity premiums—a challenge the Federal Government is still grappling with—the High Court dramatically extended the tort of "wrongful birth". In *Cattanach v Melchior* the High Court awarded \$105,000 in damages from a surgeon to a woman who had a sterilisation, but then conceived and gave birth to a baby—a perfectly healthy and, I believe, well-loved baby. Up until this decision, the law viewed the birth of a child as a "blessing"—not an "injury"—to the parents. Of course, parents have been able to sue a negligent doctor for the additional costs of raising a child with a disability. But that decision opens the possibility of parents suing for skiing trips, private schooling and ballet lessons—just because a sterilisation procedure or a contraceptive failed. The Queensland Parliament has already legislated to stop these claims.

I can advise the House that our new legislation will prevent a wrongful birth claim for the ordinary costs of raising a child, therefore restoring the position that prevailed before that recent High Court decision. If the legislation is passed this will apply for all cases commenced from today. Of course, parents of children with a disability will retain their rights. Our reforms to tort law so far made have significantly changed civil liability in this State. But as courts create new bodies of law, we will need to ensure the Parliament keeps tort law in line with community expectations. There will be consultation with the judiciary about these things. But I think the community expects our vigilance, and it expects the practical gains made by the biggest body of tort law reform in 70 years to be retained and to be protected. We will continue to be vigilant about the decisions that come from the courts.

BAIL LAW REFORM

Ms MARIANNE SALIBA: My question without notice is addressed to the Minister for Police. What is the latest information on bail and gun-related crime?

Mr JOHN WATKINS: The State Government continues to target thugs with guns on the streets of New South Wales. The second stage of the Government's bail reforms will be brought before the House shortly. We will put new legislation before the House to restrict bail for prohibited weapons offences and any gun crime involving a danger to the public. The legislation will send another strong message to the courts and give guarantees to police who must face down these dangerous criminals carrying weapons. The community wants firearms offenders kept behind bars while awaiting trial. We want to ensure that the courts receive a clear message. We make it clear that we want to ensure those caught on gun offences wait in gaol before answering to those new offences.

Honourable members will be aware that on 23 September this year I released a detailed plan to assist police in their fight against firearm-related crime. That plan has been well received by the police and by the community. We now have new legislation: we have given the police the powers they need and we have resourced the police. The new Task Force Gain, put together in recent weeks, has achieved positive early results.

We are delivering a stronger approach to illegal gun availability, detection, apprehension and prosecution—and, now, even tougher bail restrictions for gun-related crime. Those officers involved in Task

Force Gain, and indeed all our record police numbers, are entitled to the legislative support of tougher bail laws. That is why the Government has decided there will be a presumption against bail for all firearms charges relating to prohibited firearms or pistols. There will also be a presumption against bail for firearms offences that involve a danger to the public. Members of this House are well aware of recent media reports concerning bail of offenders found with firearms. This morning it was reported that an offender found with seven prohibited firearms was granted bail.

I understand that the offender was in possession of prohibited weapons, and was charged with the offence of unauthorised possession of firearms in aggravated circumstances under section 51D (2) of the Firearms Act. I advise the House that this matter will be appealed, and that this specific offence is included in the measures I have outlined. The offences for which there will be a presumption against bail are contained in the Crimes Act 1900 and the Firearms Act 1996. The Offences in the Crimes Act that will now attract a presumption against bail include the serious offences of possessing or using a firearm in a public place or in a manner likely to endanger safety, firing at a dwelling house or other buildings, firing into a building or land, and stealing firearms.

As honourable members will be aware, we have toughened up the penalties for drive-by shooting offences, and we have not forgotten that we will have to tighten up the presumption of bail in that regard. In addition to these Crimes Act offences, the Firearms Act offences will be treated more seriously in the courts when considering bail. These offences include possessing or using firearms without authorisation; selling, purchasing, possessing or using unregistered firearms; unauthorised manufacture, sale or purchase of firearms; selling firearms parts on an ongoing basis, and possession of three or more unregistered firearms, which is the type of offence for which the offender was granted bail and reported on in today's media. These provisions for an assumption against bail will ensure that it will be much more difficult for such offenders to be granted bail.

TUGUN BYPASS

Mr ANDREW STONER: I direct my question without notice to the Minister for Roads. Why has he damaged Tweed local businesses and condemned the community to traffic gridlock by pulling the pin on the Tugun bypass project and making a grab for the project's cash, which prompted the Queensland Labor Government to state that he had "acted reprehensibly" on renegeing on the agreement he had signed? It is the height of arrogance.

Mr CARL SCULLY: It may astonish a North Coast National to know that my job is to look after the people of New South Wales, not Queensland.

Mr SPEAKER: Order! The Leader of The Nationals has asked the Minister a question. He will listen to the answer in silence.

Mr CARL SCULLY: When the Governor gave me my commission I do not remember that it included looking after the people of Queensland.

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

Mr CARL SCULLY: I have had a number of discussions over a sustained period of time with the current Premier. When he was Leader of the Opposition he told to me about this on behalf of Marri Rose, the local member. I have had a number of discussions with the Queensland Minister for Transport and his predecessor, Vaughan Johnson. They indicated that to resolve the traffic congestion of the people of Tugun they needed to come into New South Wales, around the Cobaki wetlands and connect to the Pacific Highway. I told them, including Vaughan Johnson prior to the election many years ago of the current Government, that they would have to overcome considerable environmental constraints. Just before the State election John Anderson engaged in a stunt. He wandered up to the Tweed thinking that the promise of \$120 million would somehow cause the defeat of Neville Newell, the honourable member for Tweed, on 10 March. It did not.

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

Mr CARL SCULLY: As far as possible, we have conducted all of the things we could to facilitate the Queensland main roads department investigating all of the route options, including the current one, which is the preferred one. We advised them when significant environmental constraints came to our attention. They wanted us to allow the environmental impact statement process to be completed and then they would be aware that it

could not proceed. I have done the right thing by the Queensland Government. I do not apologise for representing the people of this State.

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

Mr CARL SCULLY: These characters opposite want to bring the Queensland border south. Clearly there is a conflict of interest if a member of The Nationals in New South Wales wants to represent the interests of Queensland. I have no such conflict. When there is an inconsistency between what they wish to do and what is in the best interests of New South Wales I will continue to act in the best interests of the people of this State. The honourable member for Tweed agrees with me. I will not have a project that trashes our environment, but that is what would have happened. Just a small matter of a \$100 million shortfall in a \$340 million project—

Mr SPEAKER: Order! I call the Leader of the Opposition to order for the third time.

Mr CARL SCULLY: John Anderson intended to spend \$120 million of Commonwealth funds that should be earmarked for New South Wales road projects and to pretend that because it was for a Queensland project it could be put in the Australian budget as a New South Wales road project. That is unacceptable. The member was spot on when he said that this project should not proceed because it is damaging the environment.

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

Mr CARL SCULLY: It is irresponsible financially. The money would be better spent in New South Wales on the Sexton Hill upgrade.

MURRAY RIVER ENVIRONMENTAL HEALTH

Mr PETER BLACK: My question without notice is addressed to the Minister for Infrastructure and Planning, and Minister for Natural Resources. What is the latest information on plans to improve the health of the Murray River ahead of this week's meeting of the Murray-Darling Basin Commission?

Mr CRAIG KNOWLES: Tomorrow's meeting of the Murray-Darling Basin Commission is a great opportunity to take the first solid step in returning health to the Murray-Darling system. Tomorrow is the first opportunity to agree on tangible results and a way forward for the Murray following a decision at the August Council of Australian Governments [COAG] meeting to allocate \$500 million. It will be a highly significant meeting.

[Interruption]

It may not be as sick as some people on that side of the Chamber, but we need to address some issues. Yesterday the Premier referred to an editorial in the *Namoi* that talked about the attitude of The Nationals about these matters. As the editor, not me, says: only the churlish would argue against the stance that everyone is now taking on water. His comments describe the sorts of interjections we are hearing—churlish, childish and cynical. They are interjections from people who are very out of touch. Tomorrow's meeting should focus on results underpinning the environmental health of the river and the productive regional economies that provide food and clothing, as well as jobs and opportunities for many millions of Australians. The history of the debate has been dominated by arguments about environmental flows and volumes of water.

Debate revolved around whether 350, 750 or 1,500 gigalitres of water should be sent down the river to improve the environmental health of the river. It is fair to say that the other side of the debate, the social and economic impacts of that sort of action, has been largely ignored. In many ways that sort of debate has missed the point. Obviously water flows sent straight down the river unchecked and untargeted produce highly variable results. Concentrating on volumes of water alone will avoid the tougher questions of what we are trying to achieve with all the water we use. In recent months that debate has changed substantially. The understanding now is that we should focus on the results, and any level of flow that will achieve results has to be tested and targeted against productive capacity as well as environmental dividends.

Over recent months a clear understanding has been reached that these agendas cannot compete with each other: In fact, they have to be melded together as one agenda. Equally it is fair to say that no solutions are possible without money—money to purchase water, money for infrastructure works, and money to assist the adjustment towards a more sustainable future. The August meeting of the Council of Australian Governments

provided the first step along that path with \$500 million over five years being jointly contributed by the majority of the States, commencing on 1 July next year.

[Interruption]

The Leader of The Nationals is being churlish again. This is a co-operative effort between the Commonwealth Government and the States. The Nationals are out of touch, yet all they can do is be churlish. They do not like this. The \$500 million contribution will commence on 1 July 2004 and will allow us to focus on key projects to begin to help the recovery of the Murray River, such as the Barmah-Millewa Forest, the Gunbower, Koondrook-Perricoota forests, the Chowilla flood plain in South Australia, the mouth of the Murray River and Coorong and lower lakes, and the Murray River channel. By focusing on those icon areas of the system we can begin to measure the success of the efforts, gain evidence as we go on the impact of targeted and specific flows of water into those areas, and measure the success or otherwise of matters such as breeding cycles, salinity impacts, reforestation and other indicators of sustainability.

It is also worth noting, particularly in the context of tomorrow's commission meeting, that—even before the money starts to flow on 1 July 2004—the Murray-Darling Basin Commission already has the capacity to spend approximately \$150 million right now on capital works to improve the efficiency of the Murray River system. The \$150 million is currently in the commission's bank account. The commission should commence work now on infrastructure and use that \$150 million as a symbol of the commission's commitment to the productive capacity of the basin and the health of the river. For example, the commission could spend its \$150 million on constructing a fish passage right through the river system, re-snagging the river, strengthening the locks and weirs to support weir level manipulation, removing modification of structures that impede water movement across the flood plain, revegetation of the riparian zone, or the automation and regulation of the barrage gates at the mouth of the Murray River.

These are sensible, logical projects that the commission could begin now as a sign of the faith of the commission in the future economic viability and environmental health of the Murray-Darling Basin. Those measures, together with the icon projects I have mentioned, should allow us to gauge the progress that has been made, and decide on the nature and direction of future expenditure as we move towards the second and subsequent steps. This is a good first step. But it is also worth noting, particularly in the context of those who will be observing tomorrow's commission meeting, that the only way to the second step is through further collaboration between the Commonwealth and the States through the COAG process.

Mr SPEAKER: Order! The Leader of The Nationals will cease interjecting.

Mr CRAIG KNOWLES: I can only again remind the House that that sort of churlish response from the Leader of The Nationals is a sad reflection of the state of The Nationals in this State. Every other jurisdiction's leader, including Deputy Prime Minister John Anderson, who is the Federal Leader of The Nationals, is signing up to these principles, and that is the type of attitude that leads to co-operative and collaborative results. However, there will be no further steps—and in particular there will not be a second step beyond the projects I have mentioned, namely, the icon projects and exposure of the \$150 million—unless and until we receive more co-operation from the Commonwealth at the April COAG meeting.

In the long run everyone knows that to achieve lasting environmental, social and economic results in regard to the Murray-Darling, it will take billions of dollars, not millions of dollars, and many years of collaborative effort. That will not happen unless governments continue to work together. One thing is certain: Tomorrow the meeting of the Murray-Darling Basin Commission will have the opportunity to take those first small steps, supported by substantial amounts of money—\$650 million in total—to get us along the way. The New South Wales delegation will prosecute the case for progress, and the New South Wales State Government expects the Commonwealth and the other States to join up.

GAMING MACHINE TAX

Mr IAN ARMSTRONG: My question without notice is directed to the Minister for Tourism and Sport and Recreation. Will she replace the funding shortfalls to the North Coast Academy of Sport created by her Government's mean-spirited clubs tax, given that the academy has already had at least six sports sponsorship proposals declined by North Coast clubs due to insufficient funds?

Ms SANDRA NORI: I restate some facts that have been aired in this Chamber on a number of occasions. They are worth repeating. There are approximately 1,400 clubs in New South Wales. Under the

proposal, one-third of them will pay no State tax, one-third will pay less State tax, and, yes, one-third will pay more State tax. Clubs have poker machine revenue of approximately \$2.5 billion after State tax. By 2011, clubs will have poker machine revenue of approximately \$3 billion after the new State taxes.

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

Ms SANDRA NORI: Club gaming revenues have increased by 88 per cent over the past nine years. Out of every \$100 that the wealthiest 490 clubs take from poker machines, they give back in the form of community contributions just 80¢.

Mr SPEAKER: Order! The Leader of The Nationals will come to order.

Ms SANDRA NORI: The salaries of the top 60 club executives would be sufficient to employ 347 first-year nurses. This Government will not allow clubs to cut back their support for community groups. Specifically in relation to sports, I want to say that in regard to clubs' funding of non-professional sport, they can claim a rebate of up to 0.75 per cent of gaming revenue when over \$1 million is spent on non-professional sport, including coaching, uniforms and equipment.

MACARTHUR HEALTH SERVICE REVIEW

Mr GEOFF CORRIGAN: My question without notice is addressed to the Minister for Health. What is the latest information on the implementation of the Barraclough expert review findings into the Macarthur health service?

Mr MORRIS IEMMA: I thank the honourable member for Camden for his question and I welcome the opportunity to inform the House of progress that has been made in improving the delivery of health care services in the Macarthur area. I recently received a report from Associate Professor Picone, who is the acting chief executive officer [CEO] of the South Western Area Health Service. Associate Professor Picone has provided me with a progress report on the steps that have been taken to implement changes required, particularly recommendations of the Barraclough review team which was sent to Macarthur approximately two months ago. A key recommendation of the Barraclough review was the urgent need for the planning and development of an areawide clinical strategy. I am able to report that in the important area of intensive care, the process is well advanced.

Dr Jill Bishop, who is the director of intensive care at Liverpool Hospital, has developed a strategy to ensure that the Campbelltown Hospital will have expert clinical 24-hour coverage for its intensive care unit by as early as next month. That was one of the major recommendations of the Barraclough review team. This important initiative will be achieved by implementing a rotation system of senior registrars between the Liverpool Hospital and the Campbelltown Hospital, and, importantly, by the recruitment of additional senior nursing staff. Dr Bishop will add the responsibility of director of intensive care at the Campbelltown Hospital to the position she holds at Liverpool Hospital, ensuring a level of consistent, quality care across south-west Sydney.

A similar strategy is being developed for emergency department care. Once again, the sharing of clinical resources across the area will be a central plank of this process. I will have more to say about that in the not-too-distant future. I also inform the House that a number of significant senior staff appointments have already been made. A new acting general manager has been appointed to the Macarthur health service. Jo-Anne Fisher commenced duties on Monday 3 November. She moved to Macarthur from her former role as the executive director of the Greater Metropolitan Transitional Task Force, a position she held from August 2002.

In that role she helped to oversee the establishment of a number of statewide network programs in critical areas of care, such as spinal cord injury services, severe burns services, major trauma services and neurosciences. Jo-Anne Fisher brings to Macarthur a wealth of experience in her new role. I inform the House also that Jenny Becker, the Director of Nursing at the Central Coast Area Health Service, will assume the role of Acting Director of Nursing at Campbelltown and Camden hospitals from next Monday. Jenny will work with Adjunct Professor Cathy Baker, a member of the clinical support group and the Area Director of Nursing for Northern Sydney. The task there will be to take immediate steps to identify the need for additional staff in key areas, and to begin the recruitment process immediately.

The process of the recruitment of a clinical nurse consultant in critical care has already begun—yet another key recommendation of the Barraclough review team—with an appointment to be made as soon as

possible. The addition of those vastly experienced health care professionals to south-western Sydney is essential to the process of instilling a culture of excellence in clinical care in Macarthur. I am pleased to report that that process is also well under way. Aside from the measures that have already been put in place, planning for the long-term future of health care in the Macarthur region is also progressing well. The expert clinical support team appointed to assist Professor Picone has already met and is working together to make sure that the best hospital services are available to the people of Macarthur.

Professor Barraclough has already held discussions with the Dean of Medicine at the University of New South Wales, Professor Bruce Dowton. The Opposition might want to reflect on what I now have to say: Professor Barraclough has secured an agreement that recruitment of senior academic staff will commence at Campbelltown Hospital next year. This will deliver to the Macarthur area a level of teaching expertise and research capacity that has never before existed, and will build on the work of Professor Brad Frankham, of Campbelltown, and his team. The new leadership team is insistent on implementing an open, transparent culture for staff.

Mr SPEAKER: Order! I call the Leader of the Opposition to order.

Mr MORRIS IEMMA: In line with the Barraclough team recommendations, Professor Picone has initiated an urgent review of Macarthur's human resources policies, with particular focus on complaints handling mechanisms and grievance processes. Professor Picone has also advised that she met with each of the original nurse complainants on 29 October.

Mr SPEAKER: Order! I call the Deputy Leader of the Opposition to order.

Mr MORRIS IEMMA: The independent mediator, Mr Vern Dalton, also attended that meeting. I am advised that meetings are scheduled to pursue a process of working with the nurses to determine for them a just outcome. Associate Professor Picone stated that she has had a significant number of meetings with staff in the Macarthur Area Health Service and is delighted to report the level of enthusiasm among the senior medical staff towards the prospect for changes in Macarthur. In particular she praised the willing senior medical staff and others in coming forward with suggestions and strategies for the continued improvement of clinical health services in Macarthur and south-western Sydney. I am pleased to give his progress report, and more will follow.

FORMER MACARTHUR HEALTH SERVICE CHIEF EXECUTIVE OFFICER MS JENNIFER COLLINS

Mr MALCOLM KERR: My question without notice is directed to the Minister for Infrastructure and Planning. Does the Minister deny that at a meeting with whistleblower nurses he slammed his fist on the table and threatened the nurses, saying "You could be sued, and lose your home and your careers" because they raised allegations about his close friend Jennifer Collins?

Mr CRAIG KNOWLES: Yes, I do.

GOLDMINING INDUSTRY

Mr GERARD MARTIN: My question without notice is directed to the Minister for Mineral Resources. How is the Government promoting goldmining in the Central West?

Mr KERRY HICKEY: I thank the honourable member for Bathurst for his continued interest in the mining industry. The Carr Government is working hard to sustain our mineral wealth. The key to maintaining this wealth is to nurture exploration and development. This Government has invested \$30 million into the Exploration NSW program. The Government's commitment is paying rich dividends. The booming gold sector is our latest success story. New South Wales has now overtaken Queensland as Australia's second-largest gold producer. Our twenty-first century gold rush means jobs for families and income for local businesses in rural areas. I am sure that members opposite would be interested in more jobs for rural areas. Much of this wealth is generated in the Central West.

The Cadia Hill gold deposit was discovered near Orange in 1992. Since then, Newcrest Mining has invested close to \$1 billion in the district. Cadia Valley Operations now employs 300 people and has generated hundreds of other jobs in construction and associated services. When the Premier opened the Ridgeway mine in April last year, Newcrest Chairman, Mr Ian Johnson, in a statement to the Australian Stock Exchange, praised the Carr Labor Government for its ongoing support of Newcrest's mining operations.

Mr Ian Armstrong: Point of order: Will the Minister for Mineral Resources tell us when his Government put the gold there, for them to discover?

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

[Interruption]

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

Mr KERRY HICKEY: That support extends right across the Central West. As new mines come on stream our gold industry will continue to grow and thrive. In June I signed a mining lease for Barrack Gold's \$340 million Cowal Gold project near West Wyalong, which I know the honourable member for Lachlan keenly supports. Barrack is one of the world's largest gold producers. Its entry into New South Wales demonstrates long-term industry confidence in our goldfields. The outlook for junior companies has also improved. Therefore, I am pleased to announce that I have recently granted a new mining lease to Hill End Gold Ltd.

Mr SPEAKER: Order! I call the Leader of The Nationals to order for the second time..

Mr KERRY HICKEY: The Hill End Gold project, about 60 kilometres north-west of Bathurst, comprises a new mining lease of 279 hectares, several other existing leases and three exploration licences. Hill End Gold will reopen and rehabilitate old underground workings at Hawkins Hill, south of Hill End. Operations are planned to start next week with gold production expected in March 2004. Hill End Gold expects to find more high-grade gold zones at Hawkins Hill and at the Reward area, some 400 metres north of the Hawkins Hill deposit. I am sure all members opposite would support goldmining throughout the Central West.

Mr John Brogden: You have lost your place.

Mr KERRY HICKEY: No, I have not. When operational, Hill End Gold will employ about six people from the local community.

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

Mr KERRY HICKEY: The Hill End Gold project might not be in the same league as the Cadia or Cowal goldmines, but it is important to the 80 people who are living in Hill End. I say to the Leader of The Nationals that this mine might employ only six people but it is important to and will greatly benefit the Hill End community. I hope all honourable members support this project.

CHILD SEXUAL ASSAULT SENTENCES

Mr CARR: In answer to a question asked by the Leader of the Opposition at the beginning of question time the House will recall that I pointed to widespread support for the independence of the Director of Public Prosecutions [DPP]. Unfortunately, I did not accurately indicate how widespread that support was. I have been supplied with a transcript from 2UE dated 15 February 2001. On that day the Government announced that a management board would be established in the DPP's office to oversight financial and general management—not prosecutorial decisions but financial and general management. There was an interesting reaction from someone who described himself as the shadow Attorney General—the honourable member for Gosford, who said that it was clearly a move to stifle the independence of the DPP. He went one step further. Speaking in stern, Churchillian tones, he said:

This is clearly an attack on the integrity and independence of the whole judicial system and it was tried in Victoria by Jeff Kennett and he came a cropper. Bob Carr will come the same if he continues with a plan like this.

This was only about an advisory board on managerial and financial issues; it was not a standing committee of members of Parliament to look over the shoulder of the DPP and tell him who should or should not be prosecuted. I did not realise how widespread was the support for the independence of the DPP. What a pity, though, that the honourable member for Gosford did not alert his leader to the fact that he had made those comments. I thank honourable members for their attention. I now have to go to Condobolin to vote for Shannon Noll.

Questions without notice concluded.

BANK HAPOALIM SYDNEY OFFICE**Ministerial Statement**

Mr DAVID CAMPBELL (Keira—Minister for Regional Development, Minister for the Illawarra, and Minister for Small Business) [3.31 p.m.]: Israel's largest bank, Bank Hapoalim, is opening an office in Sydney. That great news for New South Wales reflects Sydney's growing importance as a regional financial centre for Australia and the Asia-Pacific region.

Mr SPEAKER: Order! The Minister will be heard in silence.

Mr DAVID CAMPBELL: The Tel Aviv-based financial institution joins the more than 40 international and Australian banks and financial institutions operating from New South Wales. Bank Hapoalim will serve the more than 35,000 members of the Sydney Jewish community who have friends and families in Israel. It will also serve Australian business and tourists travelling between the two countries. Israel is a significant export market for New South Wales, buying \$81 billion worth of goods last financial year.

Mr SPEAKER: Order! There is too much conversation on the Government benches. Government members will resume their seats.

Mr DAVID CAMPBELL: In the same year New South Wales imported goods worth \$255 million from Israel. Bank Hapoalim is the second Israeli bank to establish a presence in Australia.

Mr SPEAKER: Order! I call the honourable member for Murray-Darling to order.

Mr DAVID CAMPBELL: Bank Leumi was the first bank to establish a presence in Melbourne, Australia, in 1982. Bank Hapoalim was established in 1921 and has more than \$US54 billion in assets. It is the only Israeli bank listed on both the London and Tel Aviv stock exchanges. In 2002 it was selected best bank in Israel by global financiers and it accounts for about one-third of the banking activity in that country. Worldwide, Bank Hapoalim has 39 branches.

Mr ANDREW STONER (Oxley—Leader of The Nationals) [3.33 p.m.]: The Opposition welcomes the establishment of Bank Hapoalim in Sydney and acknowledges the confidence that the bank and the Jewish community have in the New South Wales economy, which is a product of the whole State. The rural sector, which has come through one of the worst droughts in history and is in good shape, continues to contribute substantially to the overall strength of the New South Wales economy. We look forward to the continuing move of international organisations, including banks, to New South Wales.

ANSWERS TO QUESTIONS ON NOTICE**Privilege**

Mr ANDREW STONER: I take the opportunity today to raise a matter of privilege. My matter of privilege concerns the fundamental right of members to receive accurate and truthful answers from Ministers to questions on notice. I draw the attention of the House to the answer I received on 28 May this year from the Minister for Roads, the Hon. Carl Scully, to question No. 288. The question that was asked was: In relation to speed cameras on the Pacific Highway on the mid North Coast, what is the dollar value of fines issued in 2001-02?

Mr Carl Scully: Point of order: This is a clear breach and abuse of the standing orders of this House. In the past members have raised genuine points of privilege. The Leader of The Nationals, who is trashing the standing orders, ought to be told to sit down.

Mr Barry O'Farrell: To the point of order: Without being disrespectful, Mr Speaker, I put it to you that you have to hear further from the Leader of The Nationals because you were deep in conversation with the Clerk at the time that the Leader of The Nationals was speaking.

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

[Interruption]

Mr SPEAKER: Order! I call the honourable member for Bathurst to order for the second time. I have heard enough on the point of privilege taken by the Leader of The Nationals. I have also heard sufficient on the point of order taken by the Leader of the House. I advise the Deputy Leader of the Opposition that I was conferring with the Clerks in relation to whether the Leader of The Nationals had raised a genuine point of privilege. In the past I have ruled that the Chair cannot direct a Minister how to answer a question, whether it be a question on notice or a question without notice. A number of my predecessors have ruled in the same way. The Leader of The Nationals now claims that his privilege has been breached because a Minister has responded to a question in a certain way. Clearly, there is no point of privilege.

Mr Andrew Stoner: In relation to your ruling—

Mr SPEAKER: Order! The Leader of The Nationals will not canvass the rulings of the Chair. He will resume his seat. The Leader of the House has the call.

Mr Andrew Stoner: Point of order—

Mr SPEAKER: Order! There is nothing before the Chair on which the Leader of The Nationals can take a point of order.

Mr Andrew Stoner: Point of order—

Mr SPEAKER: Order! The Leader of The Nationals will resume his seat. There is nothing before the House on which he can take a point of order. The Leader of the House has the call.

BUSINESS OF THE HOUSE

Routine of Business: Suspension of Standing and Sessional Orders

Mr CARL SCULLY (Smithfield—Minister for Roads, and Minister for Housing) [3.38 p.m.]: I move:

That standing and sessional orders be suspended to provide:

- (1) At this sitting:
 - (a) the routine of business is varied to not call upon motions for urgent consideration, matters of public importance and private members' statements
 - (b) for the introduction and progress up to and including the Minister's second reading speech of the Civil Liability Amendment Bill;
- (2) At this or any subsequent sitting for the following bills to pass through all stages:
 - Motor Accidents Legislation Amendment Bill
 - Superannuation Legislation Amendment (Family Law) Bill
 - City Tattersall's Club Amendment Bill
 - State Revenue Legislation Further Amendment Bill
 - Workers Compensation Amendment (Insurance Reform) Bill
 - Statute Law Miscellaneous Provisions Bill (No 2)
 - Environmental Planning and Assessment Amendment (Quality of Construction) Bill
 - Natural Resources Commission Bill and cognate bills
 - Police Legislation Amendment (Civil Liabilities) Bill
 - Registered Clubs Amendment Bill
 - Duties Amendment (Land Rich) Bill
 - Civil Liability Amendment Bill

In speaking to the motion—

Mr Chris Hartcher: Point of order: According to page 433 of yesterday's *Votes and Proceedings*, this matter has already been determined by the House. The Leader of the House moved a suspension of standing and sessional orders at 7.30 p.m. yesterday when four of the bills to which he has referred were declared urgent. The Motor Accidents Legislation Amendment Bill, the Superannuation Legislation Amendment (Family Law) Bill, the Evidence (Audio and Audio Visual Links) Amendment Bill—which was finally passed by the House this morning—and the Workers Compensation Amendment (Insurance Reform) Bill are covered by a previous decision of the House. Accordingly, I submit that the motion of the Leader of the House is out of order at least as far as those bills are concerned.

Mr SPEAKER: Order! I will seek advice from the Clerk on that matter.

Mr CARL SCULLY: To the point of order: The honourable member for Gosford is being cute. The motion moved last night referred to this sitting, whereas the current motion refers to this and subsequent sittings.

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

Mr CARL SCULLY: As I have made plain when speaking to other motions before the House, Opposition members supported a motion in the upper House that trampled the rights of the Legislative Assembly to engage in proper debate.

Mr Barry O'Farrell: That's not true.

Mr CARL SCULLY: It is. The Hon. Michael Gallacher, or whoever is running Opposition business in the upper House, engaged the tactics decided in the party room—

Mr SPEAKER: Order! The honourable member for Epping will come to order.

Mr CARL SCULLY: He said, "Let's give the Legislative Assembly a cut-off date—

Mr Chris Hartcher: Point of order: The standing orders do not allow reflections to be made upon a member of either House except by way of substantive motion. The comments of the Leader of the House about the Leader of the Opposition in the upper House trampling upon democracy constitute a serious allegation that should be made only by way of substantive motion. The Leader of the House is grossly out of order.

Mr SPEAKER: Order! The honourable member for Gosford has been a member of this House for a long time. I would have expected him to be a little less sensitive than that.

Mr CARL SCULLY: The honourable member for Epping will soon get to his feet and put on a performance—those opposite are in the Chamber to see him. He will say, "Shock, horror, how dare this Government come in here, truncate debate and expedite the passage of legislation". But it is the Opposition's fault. Opposition members should not dare complain about what we have done because they are responsible. When they go home they should look in the mirror and admit that they did it. The honourable member for Epping cannot claim honestly that the Leader of the House is the cause of this truncated legislative process.

I do this with a heavy heart. I have been forced to act by the Opposition. It has nominated the Legislative Council as the primary Chamber in this Parliament and it has told the Legislative Assembly that we must submit to the will of the Legislative Council. Therefore, Opposition members should not complain when I am forced to suspend standing and sessional orders in order to get all the legislation through this place. It is their fault. When they employ the same tactic in May of next year, I will react in the same way. I will do it again in October-November next year, in the following May and in the following November. I will do it until Opposition members get the message through their thick heads: If they want proper debate they should not support these sorts of motions in the upper House.

Mr JOHN BROGDEN (Pittwater—Leader of the Opposition) [3.43 p.m.]: I never thought I would say, "Paul Whelan, come back, all is forgiven", but the present Leader of the House makes Paul Whelan look good.

Mr Gerard Martin: He was great.

Mr JOHN BROGDEN: Shut up, Frostie! The honourable member's Commonwealth Parliamentary Association trip is coming up and he is upset about the story in the *Daily Telegraph*, but if he keeps his mouth shut they will look after him. The Government is shutting down the House. It is denying us the opportunity to debate its urgent motion and that of the Opposition because it has managed the business of the House badly and, most importantly, because it knows that the Premier is embarrassed. During his 8½ years in the job the Premier has attacked the Director of Public Prosecutions [DPP] time and again. The Premier has a record of destroying the reputation of the DPP in public. However, when the Opposition makes a constructive suggestion to create a parliamentary committee to oversight the work of the DPP, the Government runs and hides. The Premier's laziness and indolence was revealed in question time today when he said that no other jurisdiction has an oversight body for the DPP. He is wrong. There is a place called the United Kingdom.

Mr Kevin Greene: Point of order: It is well known that I am extremely humble and easygoing and will accept most things that people say without challenge. However, the Leader of the Opposition has deliberately misquoted the Premier, who clearly referred to the Australian jurisdiction.

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

Mr JOHN BROGDEN: The Government does not want to debate this urgent motion today because it will not apply to the DPP the same standard of scrutiny that Parliament applies to the ICAC commissioner, the Police Integrity Commissioner and the Ombudsman. We ask this Government to give the Parliament of New South Wales, on behalf of the people of New South Wales, the opportunity not to direct the DPP but to scrutinise the DPP's decisions in the same manner as occurs in the Home Affairs Committee of the United Kingdom Parliament—the mother Parliament of the Commonwealth. Let us consider what that gross hypocrite Premier Carr says about the DPP when it suits him. On 14 June 2003 he said Mr Cowdery, the Director of Public Prosecutions, should "lift his game". The Premier also said:

... the DPP is not immune from criticism and when the DPP makes a decision which the Government thinks is inappropriate, or is out of tune with community thinking, it will not hesitate to say so.

Why not give the people of New South Wales the capacity for genuine scrutiny of the DPP?

Mr Steve Whan: Point of order: My point of order goes to relevance. The Leader of the Opposition is debating an issue other than the suspension of standing orders. Mr Speaker, I ask you to draw him back to the matter before the House.

Mr SPEAKER: Order! There is no point of order. Clearly there are—

Mr JOHN BROGDEN: But we take some—

Mr SPEAKER: Order! I have not finished my ruling.

Mr JOHN BROGDEN: We take some sympathy—

Mr SPEAKER: Order! I call the Leader of the Opposition to order.

Mr JOHN BROGDEN: We sympathise with the honourable member for Monaro because he will be in this place for only one term so he should speak every chance he gets. He will not be here long so he should make as many speeches as he can. This Government is closing down debate in the House because it is concerned about this issue. [*Time expired.*]

Question—That the motion be agreed to—put.

The House divided.

Ayes, 50

Ms Allan	Ms Hay	Mrs Paluzzano
Mr Amery	Mr Hickey	Mr Pearce
Ms Andrews	Mr Hunter	Mrs Perry
Mr Bartlett	Mr Iemma	Mr Price
Ms Beamer	Ms Judge	Dr Refshauge
Mr Black	Ms Keneally	Ms Saliba
Mr Brown	Mr Knowles	Mr Sartor
Ms Burney	Mr Lynch	Mr Scully
Miss Burton	Mr McBride	Mr Shearan
Mr Campbell	Mr McLeay	Mr Stewart
Mr Collier	Ms Meagher	Mr Tripodi
Mr Corrigan	Ms Megarrity	Mr Watkins
Mr Crittenden	Mr Mills	Mr Whan
Ms D'Amore	Mr Morris	Mr Yeadon
Mr Gaudry	Mr Newell	<i>Tellers,</i>
Mr Gibson	Ms Nori	Mr Ashton
Mr Greene	Mr Orkopoulos	Mr Martin

Noes, 35

Mr Aplin	Mr Hazzard	Mr Roberts
Mr Armstrong	Ms Hodgkinson	Ms Seaton
Mr Barr	Mrs Hopwood	Mr Slack-Smith
Ms Berejikian	Mr Kerr	Mr Souris
Mr Brogden	Mr McGrane	Mr Stoner
Mr Cansdell	Mr Merton	Mr Tink
Mr Constance	Ms Moore	Mr Torbay
Mr Debnam	Mr O'Farrell	Mr J. H. Turner
Mr Draper	Mr Page	Mr R. W. Turner
Mr Fraser	Mr Piccoli	<i>Tellers,</i>
Mrs Hancock	Mr Pringle	Mr George
Mr Hartcher	Mr Richardson	Mr Maguire

Pairs

Mr Debus	Mr Humpherson
Ms Gadiel	Mrs Skinner

Question resolved in the affirmative.

Motion agreed to.

CIVIL LIABILITY AMENDMENT BILL

Bill introduced and read a first time.

Second Reading

Mr MORRIS IEMMA (Lakemba—Minister for Health) [3.59 p.m.]: I move:

That this bill be now read a second time.

The main purpose of the Civil Liability Amendment Bill is to amend the Civil Liability Act 2002 to address issues arising from two recent court cases that caused considerable community concern. The bill also makes some minor amendments to the existing proportionate liability provisions in the interests of national consistency. The first case that the bill seeks to address is known as the Presland case. Kevin Presland, a mentally ill patient, killed his brother's fiancée after he was discharged from James Fletcher Hospital. Mr Presland was found not guilty of the woman's murder by reason of insanity. He sued the hospital for negligently discharging him, and was awarded \$225,000 damages for the pain and suffering he experienced as a result of killing the woman plus \$85,000 for lost earnings during his three years of detention as a forensic patient.

The community rightly was outraged about the court decision because it allowed Kevin Presland to benefit, even though he had caused the death of his brother's fiancée. NSW Health is currently appealing that decision. But it raises important issues that deserve to be put beyond doubt in legislation. Existing provisions of the Civil Liability Act concerning the liability of public authorities may have prevented the court from making this decision. However, the case was not determined according to that Act because the proceedings were commenced before the reforms applied. The Government has, however, decided to take further steps to ensure that there will not be a repeat of the kind of decision made in the Presland case. In addition, we are making changes to the Civil Liability Act to clarify the treatment of other situations where mentally ill people may benefit from actions that would otherwise be considered a crime.

Currently the Civil Liability Act prevents a criminal from recovering damages for injuries where the criminal sustained the injury while committing a serious offence. It is not clear that a mentally ill person who is injured while acting unlawfully but who cannot be convicted of a crime because of his or her mental illness would be precluded from recovering damages under the existing provisions. For example, a burglar who is injured while breaking and entering is prevented from suing the home owner. However, if the burglar cannot be convicted of breaking and entering because of mental illness he or she could still sue the home owner for injuries sustained while unlawfully on the home owner's premises.

Proposed section 54A restricts the damages that can be awarded to people who are injured while committing what would otherwise be a serious offence but who cannot be found criminally responsible because they are mentally ill. The bill prevents such people from recovering damages for non-economic loss, such as pain and suffering, and for loss of earnings. They will still be able to recover damages for medical and future care needs. People acting in self-defence need to be confident that they will be protected by the existing law against having to pay damages to their attackers, regardless of the mental condition of the attacker. Currently the Civil Liability Act protects a person who injures another while acting in self-defence. The amendment to section 52 clarifies that this protection applies to a person who injures a mentally ill person while acting in self-defence.

The Presland case has highlighted also the difficulties faced by people who have statutory decision-making powers—such as doctors or psychiatrists. On the one hand, the law gives them a broad discretion to exercise their decision-making powers. However, despite those people having a broad discretion, negligence laws can constrain the exercise of those powers. This was highlighted in the Presland case, where a doctor was found to be negligent for the way he exercised the discretion given to him under the Mental Health Act to detain a mentally ill patient. In exercising that discretion a doctor has to balance a whole range of factors, including the safety of the community on the one hand and the right of the patient to be free on the other. These are very difficult decisions and doctors—as well as other decision-makers—must be able to use their statutory discretion without the fear of litigation hanging over them.

We are all aware of the extraordinary pressures doctors are facing at this time. The last thing we want the courts to be doing is adding to those pressures. In the mental health context, the Presland case has created the risk that doctors will behave too conservatively, detaining patients unnecessarily, out of fear that they can be sued by the patient for anything he or she does if not detained. Other decision-makers may be similarly constrained when trying to decide how to exercise their powers in the public interest. Therefore, the bill inserts a new section 43A that applies to the exercise of, or failure to exercise, a "special statutory power". This will apply to powers that persons generally could only exercise with specific statutory authority, such as the power of a medical officer to detain a person under the Mental Health Act.

In a case involving a special statutory power, a public authority will be liable only if its decision is so unreasonable that no public authority having such a power could consider it to be reasonable. It will not affect the exercise of "operational" functions of agencies, for example, where they are given general functions to provide particular services. The bill makes it clear that this principle covers public authorities as well as individuals, such as psychiatrists in hospitals, who have public official functions. These amendments will apply to proceedings that have already commenced in order to ensure that the precedent set by the Presland case will not be followed. The Government recognises that affecting cases that are already before the courts should be done in only the most exceptional circumstances. The bill will not affect the appeal in the Presland case. It will, however, apply to existing cases. This is not being done lightly. As the strength of the community's reaction demonstrates, these are exceptional circumstances, and there are at least two cases comparable to that of Presland currently on foot. The bill will apply to them.

Mr Andrew Tink: But not to Presland's?

Mr MORRIS IEMMA: It does not affect the appeal in the Presland case, which is currently being determined. But there are two other cases on foot. The final problem highlighted by the Presland case is that health professionals exercising their powers under the Mental Health Act in good faith are open to being sued personally for their decisions. This adds significant pressure to what is already a very difficult job. There is certainly a risk that the fear of personal liability may influence the way important decisions are made, and that is not in the public interest. The Mental Health Act already protects police, magistrates and Mental Health Review Tribunal members from personal liability for the exercise in good faith of their functions under the Act. It is appropriate that this protection is extended to health care professionals where they are exercising functions under the Mental Health Act.

The second case that the bill seeks to address is the High Court case of *Cattanach v Melchior*. This related to a Queensland case of wrongful birth. In that case the High Court decided for the first time that, where a healthy child is born following a failed sterilisation the child's parents can recover damages for the costs of raising the child. Prior to this decision Australian courts had refused to award damages for the birth of a healthy child. There is a strong moral objection to such damages because they classify the birth and existence of a child as an "injury" to the child's parents. This moral objection was voiced by the community, which expressed serious concerns about the High Court decision. A further concern is that such damages almost inevitably will be awarded against doctors, adding to the crisis in medical indemnity insurance. In effect, the negligent doctor—

or his or her insurer—is made financially responsible for raising the child. Although the damages sought in the High Court in this case were quite low, at \$105,000, the court recognised that they could be much higher in other cases. They could, for example, include the cost of expensive education, overseas holidays and the like.

Damages for the costs of raising a child would not be means tested. On the contrary, the more expensive the lifestyle of the family the higher the damages are likely to be. The Government has responded to the community's concern over this decision. The bill will not allow the birth of a child to be treated as an injury to its parents. Therefore, the bill excludes the right to recover any damages for the costs of rearing and maintaining a healthy child. It is important to clarify that this will not preclude the recovery of additional costs associated with raising a child born with a disability. These damages were available before the High Court decision, and the Government does not seek to displace them. The bill also excludes damages for any loss of earnings suffered by the parents while rearing or maintaining the child, for example, if a parent gives up work or refuses promotion to look after the child.

When a pregnancy is the result of somebody's negligence the mother will still be able to recover damages for the pregnancy and the birth, but not for the costs of raising the child. In addition to addressing these two recent cases, the bill makes some minor amendments to the proportionate liability provisions in the Civil Liability Act which are designed to ensure that people are held responsible for the consequences of their actions but not for the consequences of other people's actions. When two or more people cause another person to suffer economic loss or property damage the court can look at the role each person plays in causing that loss and apportion the damages between each of them. Last year the Government introduced proportionate liability. Since then the Commonwealth and other States and Territories have decided to adopt the New South Wales model with some minor variations.

In the interests of national consistency the bill makes some small changes to the proportionate liability provisions to adopt the changes discussed with other jurisdictions. In particular, the new provisions will place a duty on the defendant to help identify other potential defendants who may have contributed to the loss. This will ensure that plaintiffs are not disadvantaged by defendants who fail to identify other potential wrongdoers early in the proceedings. Finally, the bill clarifies that the exclusions from liability in the Civil Liability Act extend to exclude vicarious liability as well as principal liability. The bill continues the Government's commitment to ensuring that the tort system operates in a fair and balanced manner. I commend the bill to the House.

Debate adjourned on motion by Mr Andrew Tink.

TRANSPORT LEGISLATION AMENDMENT (SAFETY AND RELIABILITY) BILL

Second Reading

Debate resumed from an earlier hour.

Mr PETER DEBNAM (Vaucluse) [4.13 p.m.]: Earlier I referred to the recent history of public transport safety and stated that it was a year ago today that I addressed the House on the Rail Safety Bill. I referred to comments I made on that occasion and reflected that ministerial accountability was the key issue not only last year but also this year, as it will be in the bill. I reminded the House that on 31 May 1995 the Hon. Carl Scully, the former Minister for Transport, made his first speech on the first bill of the new Government in which he said:

An integral part of our reform agenda is the reintroduction of ministerial responsibility and accountability.

I then noted that early this year after the State election the Hon. Michael Costa, who has taken over as Minister for Transport Services, inherited a rail safety crisis, a State Transit cash crisis, and an organisational disaster in public transport from the former Minister for Transport, Carl Scully. Unfortunately, we see in Michael Costa, the new Minister, the same characteristics we saw in Minister Scully—bluster, and smoke and mirrors. In the past couple of years we saw those same characteristics in Michael Costa when he was Minister for Police. It was lights, camera, action— anything to attract the media and anything to avoid scrutiny. One of the key issues in public transport safety is scrutiny. Another key issue in New South Wales is lack of ministerial accountability. Although the Coalition will obviously assist the Government to move this bill quickly through both Houses, we believe the independent agency should report to Parliament not the Minister. Time and again we have seen that Carr Government Ministers simply cannot be trusted to act in the community interest. The long title reads:

An Act to amend the *Transport Administration Act 1988* to constitute the Independent Transport Safety and Reliability Regulator and to establish the Independent Transport Safety and Reliability Advisory Board, to amend other Acts with respect to their functions and to make other provisions with respect to the safety and reliability of public transport services and investigation of public transport accidents; and for other purposes.

The bill was debated extensively in the upper House and the Government accepted a number of amendments. The 88-page bill we are debating today—which deals with the charter of the new regulator, accountability and transparency, and whether they will be effective—is the second print. The Carr Government has real form on avoidance of scrutiny and accountability. We will move extensive amendments relating to transparency and accountability and we will ask the Government to consider them. Ultimately, all honourable members are concerned with ensuring public safety. It would be of tremendous benefit if the Government were to embrace the amendments. In June last year the Coalition was so concerned about public transport and the culture of cover-up that I moved a motion of no confidence in the former Minister for Transport, Carl Scully. On 26 June I said:

I move:

That the Hon. Patrick Carl Scully, Minister for Transport, and Minister for Roads, no longer possesses the confidence of this House in relation to the management and safety of the rail network and services for the people of New South Wales.

I must state at the outset that the Minister for Transport, and Minister for Roads has failed the people of New South Wales. However, I must express concern about the way in which the Government has handled this debate. This is a serious motion of no confidence in a major player in the Carr Labor Government, and as such it deserved appropriate attention from the Government and the House. Instead the Leader of the House moved a motion to suspend standing orders and allow the mover of the motion and the Minister to speak for only 20 minutes each. We had to accept that motion, as it was our only opportunity to air the issue. However, I put on the record that this again demonstrates the Carr Government's contempt for the people of New South Wales, specifically rail commuters.

We then had an extraordinary series of accidents in the rail system, which was under Minister Scully's stewardship.

Mr Joseph Tripodi: What did the inquiry say?

Mr PETER DEBNAM: The Waterfall inquiry is yet to report. I would not be surprised if the Government were to rush members of Parliament out of this House before we see the interim report from Justice McInerney. We will not see the final report until next year. We know what the report will say: it will damn the Government and the previous transport Minister. The former Minister for Transport made an arrogant speech to the House on the motion of no confidence and concluded his contribution with these words, "I ask the House to treat that man with contempt." He meant me, the member for Vacluse. He went on to state, "I have confidence in my administration."

Let me examine what happened from that point, 26 June 2002, onwards. The motion of no confidence was moved because for approximately a month a debate had raged about the extensive cracking of the railheads across the network. Approximately 14 days after that speech was made by the former Minister for Transport, on 12 July 2002, the Hexham crash occurred. It was just a matter of luck that nobody was killed. A number of Coalition members who rushed up to Hexham were simply astounded that no-one had been killed in the train crash. On 1 August 2002 the Matakana derailment occurred near Parkes and another derailment and crash occurred at Bargo. On 15 August 2002 the second derailment at Bargo occurred. On 13 October 2002 the Galong derailment occurred. On 9 November 2002 the Cockle Creek derailment occurred. A number of incidents also occurred that did not receive the major publicity that the ones I have mentioned received. On 31 January 2003 the Waterfall tragedy occurred, and seven people died.

The point made by the Coalition to the Minister in June 2002 was that there was a major problem with rail safety and with the administration of public transport in this State. We made the point again throughout July, August, September, October, November and December 2002. In August last year the Coalition also called for the reinstatement of Justice McInerney. Regrettably, Justice McInerney was not reappointed until 31 January 2002, after seven people had died at Waterfall. If he had been appointed in August, the Waterfall crash and many of the other problems that had been evident for months may have been avoided. After the Hexham crash it was discovered that there were other problems besides the immediate causes of the Hexham crash. Minister Carl Scully had to admit that he had not implemented the Glenbrook inquiry's recommendations. The legislation before the House today is yet another attempt to do so. Despite all the problems this Government has with public transport safety, people representing the Government still claim that we may be assured that the system is safe. In May 2000, three years ago, the former Minister for Transport, Carl Scully, stated:

Safety is absolutely of paramount importance to this Government and the State's railways... I can say that this Government treats safety is an issue of absolute importance.

That is simply not true. In June 2000, Minister Carl Scully stated:

I have directed the rail agencies to develop an implementation strategy as a matter of priority.

He was referring to implementation of the Glenbrook recommendations, yet more than three years later we are still trying to achieve that. In November 2000 Minister Carl Scully stated:

I assure the House that the Government intends to act promptly.

A similar statement was made in relation to the Glenbrook recommendations, yet three years later we are still trying to make it a reality. In June 2002, a spokesman for the Government's rail system stated:

We're of the view that the network is now as safe it has been in 100 years.

On 6 June, Michael Gleeson said, on behalf of Minister Scully:

... I can assure all your listeners that the rail system is as safe or safer than it has ever been at any stage in the last hundred years.

On the same day Michael Gleeson also stated:

... and by close of business today the track in metropolitan Sydney and the greater metropolitan area will be as good as gold.

The Bargo derailment and crash involved a cover-up. State Rail Authority representatives and the Government were basically saying that it was not a problem. Michael Gleeson stated:

This is about as minor as rail incidents get.

On 2 August 2002, a CityRail spokeswoman stated:

The passenger train scraped the side of the other vehicle.

On 2 August 2002 the same spokeswoman advised a media outlet that the passenger train had been travelling "at walking speed" before the collision. Nothing could have been further from the truth.

Ms Peta Seaton: A cover-up!

Mr PETER DEBNAM: The honourable member for Southern Highlands will no doubt discuss that in more detail later. The issue is the culture of cover-up, which is a major problem. It was a major problem a year ago and it is still a major problem today. On 17 January 2003 the Coalition issued a press release headed, "Coalition to appoint independent rail safety ombudsman". A number of points were made in that press release to the effect that public transport safety had to be moved beyond politics. The Coalition suggested to the Government that it should work in the interests of the community and take a little risk politically, but the Government has refused to do that. The Coalition circulated its policy in the community and made its position plain. The Leader of the Opposition stated:

Unlike Labor I believe the rail safety watchdogs should not report to the Government of the day, but directly to the public by tabling its reports in Parliament.

That is the issue currently in contention, and that is the purpose of the Coalition's amendments. The Leader of the Opposition went on to state:

We must put rail safety beyond politics.

I added the comments:

... rail agencies had to be honest with the public about safety incidents.

It was only in the aftermath of the Hexham crash in July that the public discovered trains still don't have compatible radio systems.

The Hexham accident came one month after a StateRail spokesman declared... "We're of the view that the network is now as safe as it has been in 100 years."

Rail safety should be taken out of the hands of spin doctors and the Coalition will make sure this happens.

That press release was used to launch the Coalition's rail safety policy and indicated that the Coalition would introduce true independence to the issue of safety in public transport. That standard has not been reached by the Carr Government yet, and this bill does not address that issue. Two weeks after the Coalition launched that policy, the Waterfall train tragedy occurred and seven people were killed. One of them was a friend of mine—Mark Hudson, someone I had known for a considerable period. I attended his funeral on 7 February 2003. As I stated earlier, members of the Coalition are waiting to see the report of the Waterfall inquiry. It has been delayed repeatedly. I am sure that Justice McInerney will deliver a full report in due course, but I would not be surprised if this Parliament rises before the interim report is released. We want to see it because we are all aware of the problems that have been evident in the rail system, and we are aware of the culture of cover-up that this Government has cultivated over eight and a half years.

In his speech during the second reading debate on the bill the Leader of the Opposition in the other place made a number of points to demonstrate the need for independence. I will not traverse those issues again because they are already recorded in *Hansard*. The debate in the upper House dealt extensively with the need for independence, and a number of members of the Legislative Council contributed to that debate. Two amendments moved by the Opposition were accepted by the Government, which is pleasing. However, other amendments relating to the regulator reporting to Parliament, not to the Minister, were not accepted.

For that reason I foreshadow that at the Committee stage, the Opposition will move amendments. As I indicated earlier, a number of my colleagues will address a number of different aspects that I have not covered. At the Committee stage the Coalition will attempt to persuade the Government to accept the Coalition's amendments in the spirit of making rail safety, especially public transport safety, a major issue in New South Wales and placing it beyond politics by establishing a truly independent channel for communication between the regulators and the Parliament.

Ms PETA SEATON (Southern Highlands) [4.28 p.m.]: The Transport Legislation Amendment (Safety and Reliability) Bill is proof that the Carr Government cannot help itself and simply does not get it about rail safety. The Government simply does not realise that the people of New South Wales demand transparency in the way the Government deals with the important matter of rail safety—and there is nothing more important than rail safety. Under the stewardship of this Government there have been two major, tragic rail accidents in which many people lost their lives. It is terrible to have to stand in this Chamber and say that, but it is the truth. The Government still has not come to grips with what people want and demand of it in terms of transparency, openness and honesty in government.

Today I bring to the attention of honourable members something that deserves a much wider audience, because it is proof of exactly what my colleague the honourable member for Vaucluse, I and others have been saying. The Government is still gripped by a culture of cover-up in rail safety, and that culture extends institutionally and structurally into organisations such as the office of the Transport Safety and Rail Safety Regulator. On 1 September Mr Kent Donaldson, the Executive Director, Transport Safety and Rail Safety Regulator, Ministry of Transport, wrote to the Leader of the Opposition. Let us remember that the Coalition's policy is to have a rail safety regulator who is truly answerable to Parliament—not to a Minister but to Parliament. The Government's Transport Safety and Rail Safety Regulator, Mr Kent Donaldson, answers to the Minister. His political master is a member of the Australian Labor Party, the Minister for Transport Services. Mr Donaldson wrote:

It has been brought to my attention that on a number of occasions recently, members of the Opposition have trespassed on railway land. The State Rail Authority and the Rail Infrastructure Corporation (RIC) have raised this issue with me, and I am obliged to bring this matter to your attention.

The Rail Safety Regulator had not come to the view independently that he needed to raise something with members of the Opposition. Instead, he was proving that other people were pulling his strings. He admitted in writing to the Leader of the Opposition that the State Rail Authority and the Rail Infrastructure Corporation [RIC] had raised the issue with him so he was obliged to bring that matter to the attention of the Leader of the Opposition. In that paragraph we have proof that the Rail Safety Regulator is not independent, but is being told what to do by the Rail Infrastructure Corporation and the State Rail Authority, which, of course, answer to the Minister. Mr Donaldson further wrote:

... I have reviewed an article published on 22 August 2003 in the Daily Telegraph showing Mr Gallacher and Ms Peta Seaton MP on rail track near Picton removing dog spikes without authorisation of RIC ...

Such acts may also have put in danger the safety of other persons on, or being conveyed on, the railway and therefore may also be regarded as criminal offences under section 212 of the *Crimes Act*.

Under the direction of the Minister or the RIC, the Rail Safety Regulator is threatening members of the Opposition who are doing their job, representing their communities, and trying to keep the Government transparent and accountable on rail safety. The Rail Safety Regulator is threatening the Opposition with retribution under the Crimes Act from the Government. The regulator further wrote:

The importance of behaving safely and responsibly on and around rail infrastructure cannot be overstated and I can only assume that your members were unaware of the implications of their actions.

The actions referred to the Leader of the Opposition in the other place and myself going to Picton railway station as a result of concerns from local people in the Southern Highlands and other communities along the southern line. We went to some areas of track near Picton station with an expert to see for ourselves the state of the track. The implications of our actions were that on Friday 22 August the *Daily Telegraph* covered the story of what we found that day. Thank goodness it did that, because we were able to show the *Daily Telegraph* that 10 out of 30 dog spikes were loose on the track, there were stretches of track where dog spikes were found to be missing or loose, and areas where the rail track was simply not attached to the sleepers.

The *Daily Telegraph* considered that to be so important that it featured the story in its paper on 22 August. I make no apology whatsoever for raising issues of rail safety in my community, in the media, at community meetings, or in whatever forum I can to make sure that we improve rail safety in my area. There was another implication of our action on that day. The next weekend there was a flurry of activity in and around Picton station. Rail maintenance workers were there, attending to the very problems that we had pointed out. That was proof that the problems needed fixing, and proof that we were there within the law. We were there to make a significant difference to rail safety in my area. The Rail Safety Regulator also wrote:

Any further alleged breaches of the regulations by your members will be fully investigated by the Transport Safety and Rail Safety Regulator and may result in proceedings being commenced.

The so-called independent Rail Safety Regulator, at the request of the State Rail Authority and the RIC, wrote to members of the Opposition threatening them with proceedings under the Crimes Act for doing nothing more than being vigilant, representing their communities, and looking after the interests of travellers on that track. I thoroughly reject the Government's idea of a Rail Safety Regulator. The position is not independent and it should be independent. The Leader of the Opposition replied to the Rail Safety Regulator by letter. He wrote:

Dear Mr Donaldson

... I note at the outset that the State Rail Authority and the Rail Infrastructure Corporation have asked you to write to me about the Coalition's work exposing poor infrastructure maintenance in our rail system.

At the last election, the Coalition's policy was that the Rail Safety Regulator, accountable to a politically partisan Minister, be replaced with a position that was independent, part of the Ombudsman's office and directly accountable to the Parliament. Your letter confirms to me that was the right policy.

I make no apology for my colleagues exposing inadequate rail maintenance.

The problem with our rail network is the culture of cover-up that tries to silence critics and sweep problems under the carpet. Your letter trying to silence Members of the Opposition confirms his culture of cover-up at State Rail and RIC has not changed...

- Mr Gallacher and Ms Seaton were accompanied by a rail safety expert during their inspection near Picton. Ms Seaton and Mr Gallacher deny removing spikes; and
- Ms Seaton has also completed a Track Safety Awareness course by a recognised training company and is offended by your claim that she removed spikes.

I would like to know who put up the Rail Safety Regulator to writing this threatening letter to two members of this House. I want to know who in the State Rail Authority and the RIC or the Minister's office—or whether it was the Minister himself—picked up the phone to the Rail Safety Regulator and told him what to do. A system like that has no independence whatsoever. The proof of that is contained in proposed section 42G, which states:

Reports to Minister on performance

- (1) The ITSRR must report to the Minister each year on the performance of transport authorities and owners.

The bill also provides that the Minister is the person to whom the safety regulator will report. It is simply not acceptable to have the person who is in charge of overseeing something as important as rail safety accountable to a Minister of the Crown, in this case a member of the Australian Labor Party, who, we know, operates a culture of intimidation within a culture of cover-up. I make no apology whatsoever for each and every

inspection of railway track I have made on behalf of members of my community. I will do that at any time and in any place where I believe inadequacies and rail safety issues need to be inspected, highlighted and brought to the attention of authorities. On the two occasions I have undertaken that sort of work, within the law, I have found, at any given place I have looked, breaches of acceptable safety standards.

I suggest that if I, or the honourable member for Burrinjuck, or the honourable member for Vacluse, or any other member who is interested in the southern line, were to go to any place on the southern line they would find breaches of safety standards and regulations. I make no apology for my behaviour or that of Leader of the Opposition in another place in highlighting those problems. Any rail safety regulator needs to be truly independent. That is Liberal Party policy. It will continue to be Liberal Party policy and I will continue to advocate it.

Mr STEVEN PRINGLE (Hawkesbury) [4.40 p.m.]: I support the amendments foreshadowed earlier by the honourable member for Vacluse—amendments that are fundamental to the role of this House. The Opposition's foreshadowed amendments, which are about openness, accountability and transparency, will simply seek to have the Independent Transport Safety and Reliability Regulator [ITSRR] accountable to this Parliament, which is not much to ask. Those provisions are already in place in other areas, for example, for the Ombudsman, the Independent Commission Against Corruption, the Police Integrity Commission and the Health Care Complaints Commission. Those provisions ensure accountability to the public via the Parliament rather than the government of the day. Surely that is what democracy is all about.

I note that the Government has already accepted two of the three sensible amendments that were moved in the Legislative Council. Those amendments will ensure that persons acting as deputies for the ITSRR Advisory Board have the same experience as the substantive members they are representing. Those two significant amendments will also ensure that the report of the bill's first 12 months of operations is tabled in Parliament within months rather than 12. It is now time for the Government to accept the third of the Opposition's amendments that will ensure the regulator is responsible to this Parliament. I hope that this bill is a precursor to the Government getting its act together in relation to rail in New South Wales.

My constituents continue to be concerned about the safety of the Richmond railway line. They are concerned, in particular, about many aspects, including the state of the bridges, parking and the fact that some railway stations are not even staffed during the basic commuter hours of 6.00 a.m. to 6.00 p.m. They want to know what this Government is doing about the north-west rail link. We have seen continuing procrastination from this Government and a lack of any decisions. The corridor has been set aside. It is now time for the Government to get its act together and to make some commitments in relation to that vitally needed north-west rail line. The new development at Mungerie Park should not go ahead without that basic infrastructure in place. I call on the Government to accept these foreshadowed amendments, which will make the regulator responsible to this Parliament. I call on the Government to get its act together and to provide safe rail services in New South Wales.

Ms KATRINA HODGKINSON (Burrinjuck) [4.42 p.m.]: I speak in debate on the Transport Legislation Amendment (Safety and Reliability) Bill. The Opposition wants to ensure that rail transport in this State is as safe as possible. In recent years there have been several major accidents, for example, the accident at Menangle and most recently the horrific accident at Waterfall. A short time ago I caught the train down the great southern line and travelled slowly over the Menangle bridge. At the moment all trains travel slowly over the Menangle bridge. We must ensure that all the rail lines in this State are as safe as they possibly can be.

Honourable members would be aware that a train crashed into the platform at Galong. Rail disasters are occurring all over this State. We must ensure that rail travel is safe also in country New South Wales. I have tabled in this Parliament petitions from more than 3,600 people who want to save the CountryLink services. Many community groups across this State have been actively trying to ensure that rail transport is as safe and reliable as possible. I will support the amendments foreshadowed earlier by the shadow Minister for Transport and look forward to the passage of this bill through the Parliament.

Mr CHRIS HARTCHER (Gosford) [4.44 p.m.]: At the 2003 election the New South Wales Coalition pledged, as part of its policy, an independent rail Ombudsman to monitor rail safety. That Ombudsman was to be accountable to the Parliament. The provision in the bill that will enable the appointment of an Independent Transport Safety and Reliability Regulator [ITSRR] is certainly supported by the Coalition. However, the Coalition believes that the regulator will have phoney and not genuine independence. Proposed section 42P (1) provides that the ITSRR is to be subject to the direction and control of the Minister. We were promised that the

regulator would be independent. Accordingly, the Coalition rejects that part of the bill. Proposed section 42P (1) states:

The ITSRR is subject to the direction and control of the Minister, except as provided by subsection (2).

There is a general statement that the Minister has the power to direct and control the regulator. Legislation governing the Ombudsman, the ICAC commissioner and the commissioner of the Police Integrity Commission does not require those people to be subject to the direction and control of the Minister. Proposed section 42P (2) refers to six exceptions. It states:

(a) the exercise of a function relating to the accreditation—

It is significant that the regulator will control accreditation. It continues:

(b) any decision to take or not to take enforcement action under any Act.

(c) the exercise of a function relating to a rail safety inquiry...

(d) the outcome of any monitoring or auditing of the safety or reliability of a transport service...

(e) The contents of any report or recommendation of the ITSRR.

(f) or the exercise of a function under section 42I (except as provided by section 42I (5)).

The regulation of safety is subject to the Minister's control. There are five minor exceptions that the Government rules out for itself. The New South Wales Coalition regards this bill, quite rightly, as a phoney bill introduced by a Minister in the other House whose sensitivity and thin skin are the most remarkable of all Government Ministers. He spent the past six months blaming his predecessor for every problem that is currently being faced by State Rail. We have had eight years of Labor Government but all those problems have been placed by the Hon. Michael Costa on the shoulders of the well-loved and much respected Minister for Roads, and Minister for Housing. A few Opposition members feel a hurt when the Hon. Carl Scully is attacked by the Hon. Michael Costa. Night after night on television the Hon. Michael Costa has a go at him.

Mr Joseph Tripodi: Point of order—

Mr ACTING-SPEAKER (Mr Paul Lynch): Order! The honourable member for Gosford will resume his seat.

[Interruption]

Mr ACTING-SPEAKER (Mr Paul Lynch): Order! I call the honourable member for Gosford to order. He will resume his seat.

Mr Joseph Tripodi: The level of deception in the House is astronomical. The honourable member for Gosford is misleading the House and straying from the scope of the bill. He should be asked to withdraw his comments about these alleged—

[Interruption]

No statements have been made criticising any members of this Government because no member of this Government deserves criticism.

Mr ACTING-SPEAKER (Mr Paul Lynch): Order! That is a debating point rather than a point of order. I am sure that the honourable member for Gosford will keep his comments relevant to the legislation.

Mr CHRIS HARTCHER: They are. It is tragic to see a Minister attacked in that way. I hope that the Hon. Michael Costa will refrain from this ongoing attack on the reputation of the Minister for Roads, and Minister for Housing. I also hope that the Hon. Michael Costa realises that he has given us a regulator who is emasculated. Proposed section 42P (1) states quite clearly that the regulator is subject to the direction and control of the Minister. Nothing could be clearer than that. This legislation is unlike the legislation governing the Ombudsman, the PIC, the ICAC or the Auditor-General. None of those bodies operates under ministerial direction. This stooge commissioner will be beholden to his Minister. Accordingly, I foreshadow that in

Committee I will move an amendment to page 3, schedule 1, line 5 and elsewhere in the bill to omit the word "independent". We will have a regulator but we will not have an independent regulator. It is a travesty to pretend that the regulator will be independent. His correct title should be the Transport Safety and Reliability Regulator. There is absolutely no basis for calling him the Independent Transport Safety and Reliability Regulator.

Various Coalition spokesmen and other Opposition members in the Legislative Council clearly rejected the notion that this bill conferred independence upon the regulator. The appointment of an independent rail safety regulator has been Coalition policy for some time. In speaking to the no confidence motion that was moved—with justification—in June 2002, the honourable member for Vacluse pledged to the House and the people of New South Wales that a Coalition government would appoint an independent rail safety regulator. On 13 November 2002 the honourable member for Vacluse presciently—

Mr Barry O'Farrell: He is a visionary, with foresight and skill.

Mr CHRIS HARTCHER: The Deputy Leader of the Opposition seems to have swallowed his thesaurus. A year ago the honourable member for Vacluse pledged in debate to appoint an independent rail safety regulator. That independence has been denied in this legislation. What is the Government frightened of? Why is it not prepared to give the regulator the appropriate independence to maintain rail safety standards in New South Wales? There are about 30 million rail trips in this State every year. Hundreds of thousands of people depend for their livelihood and their lives on a safe rail system. The tragedies at Glenbrook and Waterfall occurred under this Government, yet it has failed in this bill to guarantee rail safety to the people of this State through the appointment of an independent rail safety regulator. As a consequence, I shall move my foreshadowed amendment in Committee.

Mr BARRY O'FARRELL (Ku-ring-gai—Deputy Leader of the Opposition) [4.51 p.m.]: I cannot believe that after two accidents involving fatalities this Government has still not got the message about rail safety. I cannot believe that after seven deaths at Glenbrook and another seven deaths at Waterfall—all of which occurred on the watch of the honourable member for Smithfield as Minister for Transport—this Government is still quibbling about establishing an independent rail safety regulator, who, as Justice McInerney recommended following the first seven deaths at Glenbrook, will report unfettered to Parliament.

It is an indication of how little this Government cares about passenger safety on our rail network that it is trampling on the graves of 14 victims of incompetence and ineptitude in the State rail system and ignoring the first inquiry undertaken by Justice McInerney into the first seven deaths. I predict with some foresight that Justice McInerney will return to this matter when he delivers his report later this year on the seven deaths that occurred in the Waterfall rail accident. Justice McInerney will reinforce his original recommendation that an independent rail regulator should be appointed who—as Justice McInerney said in 2000—will report to Parliament, unfettered and free from ministerial control.

Why should the regulator be free from the control of the Minister's office? We learned after the State election why transport Ministers cannot be trusted to put safety ahead of political interest. No issue is more important than rail safety for members, such as the honourable member for Gosford, whose constituents travel long distances on the electrified rail network every day; and the honourable member for Cronulla, whose electorate is situated in a shire that strongly supports rail services. The House must guarantee the safe rail services that the people of this State expect. The Premier promised them those safe rail services following Justice McInerney's inquiry into the seven deaths at Glenbrook.

In answer to a question in this place—the Government did not want to make a ministerial statement to which the then shadow transport Minister could respond—the Premier rose to his feet and said that every one of Justice McInerney's recommendations as a result of those horrendous seven deaths would be implemented. But they had not been implemented by the time of the Waterfall accident, in which another seven people died—also on the watch of the disgraced former transport Minister, the honourable member for Smithfield. The Government failed to implement the recommendation regarding the installation of black boxes in trains. That also happened on the watch of the discredited former transport Minister, the honourable member for Smithfield. Fourteen people died on his watch yet, four years later, the Government is still not implementing Justice McInerney's primary recommendation from the Glenbrook inquiry.

I cannot believe the honourable member for Fairfield—the bloke who still wants the guy responsible for those deaths to be Premier of this State—would stand in this place and quibble with Opposition members when we say, "Give it a rest, Joe. Accept McInerney's first report—and probably his second report—and

establish an independent regulatory tribunal. For a change, Joseph, put public interest and passenger safety ahead of your political interests and those of that failed transport Minister and ensure that we leave this place at the end of this Parliament having significantly advanced passenger safety." We cannot do that if we pass this bill in its current form, because it does not offer any independence to the regulatory tribunal. It does not implement Justice McInerney's recommendation. This bill provides the capacity to cover up rail safety problems. I remind the House of the performance of the honourable member for Smithfield over the past four years. No more lives can be sacrificed to his political ambitions.

Mr JOHN TURNER (Myall Lakes) [4.56 p.m.]: This bill calls, inter alia, for the establishment of a body to consider performance standards and the safe operation of transport services, and refers particularly to trains, buses and ferries. I will direct my remarks to trains and buses. The Parry inquiry recommended that XPT services be cut and replaced with bus services. This year there has been a record number of deaths on the Pacific Highway, which runs through my electorate. A recent rally at Taree railway station was attended by about 300 people, protesting against proposed cuts to the rail service and provision of replacement buses. They made it clear that they do not want more buses on the Pacific Highway.

If XPT services are cut there will be the equivalent of six more buses on the highway. The bill states that the regulatory body will report to and advise the Minister as to the safety and reliability of public train and bus services. I have seen CountryLink buses hurtling down the highway and along the back roads of Gloucester. I do not believe they are the way to go. If this legislation is passed—and I suspect it will be—I hope that the Independent Transport Safety and Reliability Regulator will consider carefully the Parry recommendations regarding replacement bus services in country and regional New South Wales. They will cause significant safety problems.

The bill states that the regulator will report to and advise the Minister about the reliability of transport services. If the Minister and his departmental officers were doing their jobs they would not need such a report because transport services would be reliable. The current rail services are not reliable so people do not use them. If they were reliable more people would travel by train and this Government would not contemplate axing rail services in rural and regional New South Wales. I would like the regulator, upon his appointment, to examine the condition of XPT carriages. Most of the carriages are in a deplorable state and will have to be replaced in the next 10 years.

I suspect that one reason the Government has latched on to the Parry recommendations is the high cost of replacing those carriages over the next 10 years, vis-a-vis, the use of buses, and in particular the disaster with the Millennium trains. If a regulator is appointed I hope that he looks first at the Parry recommendations and rules against allowing more buses to compete with highway traffic and instead implements the safest method of travel preferred by the majority of people in my electorate—that is, rail.

Mr MALCOLM KERR (Cronulla) [5.00 p.m.]: This legislation is extremely disappointing, as the honourable member for Gosford and other members of the Opposition have pointed out. I am particularly interested in this matter because many rail commuters in my electorate use the Illawarra line, which does not provide the sort of service to which they are entitled. One does not have to take my word or the word of Michael Costa for that: the facts speak for themselves.

Mr Chris Hartcher: Waterfall.

Mr MALCOLM KERR: The Waterfall event occurred on the Illawarra line, as the honourable member for Gosford said. This legislation falls short in relation to independence and safeguarding the public interest. Long ago the Government promised necessary infrastructure for the duplication of the Illawarra line. We have heard about feasibility studies, but nothing has happened—plenty of spin but no substance. Yesterday in the House I referred to a dangerous overhanging building at Caringbah railway station. I once again call on the Government to provide an engineer's report in relation to the safety of that building. This legislation is terribly disappointing as it falls short of what is required. The Deputy Leader of the Opposition spoke at length about deaths that have occurred, yet those deaths have not motivated this Government to take strong action. This is not the first inquiry undertaken by Justice McInerney as a result of tragedy. Despite that history, this Government still fails to provide safeguards for rail commuters of New South Wales.

Mr BRAD HAZZARD (Wakehurst) [5.02 p.m.]: This extremely important legislation should have been addressed in a bipartisan manner. There can be nothing more fundamental than ensuring that people on their way to and from work have confidence in public transport services. Without question the role of the

Government is to make sure that the safest possible environment is provided for commuters. The Government, with this legislation, has taken its time to address some of the issues that Justice McInerney asked it to address. We should reflect for a moment on the events of 13 November 2003 because it has taken the Government almost four years since that horrible day when people lost their lives in what has become known as the Glenbrook accident.

It has taken four years for this Government to finally do something which, even now, will not address the concerns of Justice McInerney. I can recollect Justice McInerney making various recommendations, including the installation of a black box in trains. I can remember seeing his face on television after he was asked to hold the second inquiry. I saw his anger when he realised that his earlier recommendations had been ignored by this Government. The Government has exercised that sort of cynicism in regard to transport safety, and we are now considering this bill. The Liberal Party and The Nationals have raised the essential question of how we ensure that the Independent Transport Safety and Reliability Regulator truly presents an independent report to this House. At the end of the day the final promise to the people of New South Wales is that this House has an oversighting role. In reality, under this legislation we will see a filtered report.

Mr Joseph Tripodi: You know that's not true!

Mr BRAD HAZZARD: Sadly, I know it is true. As shadow Minister for about 13 portfolios in the past nine years I have found, time and again, that reports that are presented to this Parliament are heavily doctored by the Ministers who get their grubby little paws all over them long before they are presented in Parliament.

[Interruption]

As the Deputy Leader of the Opposition has just reminded me, certainly in the areas in which I previously served as shadow Minister for Community Services—

Mr Barry O'Farrell: You did a good job.

Mr BRAD HAZZARD: Thank you. A report did not hit this place that had not been heavily doctored and filtered by the Minister of the day. The problem was that in those cases children continued to die. In this case, passengers may continue to die if the sorts of reports that come from the independent regulator are so doctored, filtered and managed that we do not know what the independent regulator really thinks about our transport system. I note that the Legislation Review Committee extensively reviewed this bill and raised quite a number of issues, in particular, self-incrimination, which particularly interests me. The committee digest states:

Proposed s 46U deprives a person of the right to refuse to comply with requirements under the PTA on the grounds that it may incriminate him or her.

The committee then recounts a number of common law principles and in paragraph 46 states:

The common law of Australia jealously protects the privilege against self-incrimination. It applies both in the pre-trial and trial phase.

On the one hand the Opposition at the very least wants to see us get to the bottom of whatever is going wrong in our transport system. On the other hand we also want to know how the Government is addressing the protection of those fundamental common law rights that have been with us for a long while. I ask the Parliamentary Secretary to think about this analogy. The Independent Commission Against Corruption Act, which is not one of my favourites, requires answers to be given to questions but does allow a person giving evidence to raise an objection to the answer that they will thereafter give so that they are not incriminated.

In other words, the process in place, whatever its strengths and weaknesses, has some basic protection of the consequences of self-incrimination. I do not see that in this bill. I ask the Government in reply to address whether there is any such analogous provision contained in this legislation or how it will work to ensure that individuals cannot incriminate themselves. I point out that it is very important that individuals should not feel they are incriminating themselves because at the end of the day the purpose of any review or investigation to do with rail safety is to provide a safe transport environment. If people who are required to answer questions in relation to safety matters feel they may in some way be compromised by or bear adverse consequences from their answers, they may provide inappropriate responses to the committee. That would be an undesirable outcome. I would like to hear from the Government precisely what it is doing to address that fundamental issue also.

Mr JOSEPH TRIPODI (Fairfield—Parliamentary Secretary) [5.10 p.m.], in reply: The proposal to create a joint committee to monitor and review the exercise of the functions of the regulator is at best unnecessary and at worst would dissipate accountability and responsibility for the safety of public transport services. The bill provides clear provision for the independence of the regulator through limitations on the Minister's control and direction over it. Remarks made in this debate implying that a section of the bill gives ministerial control were misleading and wrong because those remarks made no reference to the extensive restrictions provided for in the subsequent provision. This was a matter referred to in the second reading speech, which emphasised that the Minister will have no control or power of direction in relation to decisions regarding accreditation. One Opposition member thought that did not mean a great deal. However, accreditation is extremely important, particular with regard to the processes involved in accreditation, to ensure that the standards applied are of a very high level.

Reference was made to decisions to prosecute. The Minister is excluded from being involved in any decision to prosecute, investigate or audit, or the conduct of any investigation or audit, or the contents of any report or recommendation. All of those measures are guaranteed in the bill. Those provisions exclude the Minister from having any influence in those matters and guarantee the independence of the regulator in all relevant matters. They are certainly sufficient to create trust in those who travel on trains that their safety will be protected. In the Government's view, the creation of a joint parliamentary committee to monitor and review the functions of the regular would blur any accountability of the safety regulator and dissipate it to the Minister and the joint committee. The amendments seem to imply that safety issues should be dealt with by committee.

The regulator, Kent Donaldson, has made it clear that he needs to be able to move quickly to put in place safety measures arising from reports. Having the regulator managed by committee does not seem to be in the interests of swift and effective responses on safety issues. We have seen, from recent accidents, how important it is that the investigator, or regulator, be able to move quickly—not hamstrung by interventions from politicians trying to make political points, and stopping the experts from doing their job and reporting as quickly as possible to the Minister and subsequently to the Parliament. In short, the amendments appear to provide an opportunity for a parliamentary committee to meddle in safety issues while accepting little accountability for the outcomes. That is a great disappointment. We have seen it time and again from parliamentary committees. That is why the Government is absolutely opposed to any kind of political intervention by any oversighting parliamentary committee.

As the Minister in the other place pointed out when these amendments were put, but subsequently rejected, the amendments allow for the review of decisions of the regulator with regard to accrediting or removing accreditation of a rail operator. That is an extraordinary power. These amendments have the potential to make a decision not to accredit an operator the subject of lobbying of individual members of the committee to have the decision overturned. The Government does not support parliamentary committees making decisions about how organisations should be regulated. These decisions should, rightly, be left to the safety experts. In what can only be described as a political stunt, the Opposition also will seek to amend the bill by removing the word "Independent". That amendment has less substance than any amendment moved so far this year. No attempt whatsoever is made to change the substance of the bill. The amendment would only remove the word "Independent". That shows the shallowness of the analysis by the Opposition of this bill. It is extremely shallow—much like the honourable member who proposes the amendment. His actions insult the people he represents. I think they would expect far more hard work than that done by the honourable member in proposing this cheap and insubstantial amendment.

The bill, as currently drafted, imposes limitations on the ability of the Minister to give directions to, or control the content of the work of, the regulator. Those limitations are, sadly, missing in the committee structure proposed by the Opposition. The bill ensures that the Minister, while accountable for transport safety regulation, cannot direct or control the organisation in relation to its key functions. Such limitations do not apply to any transport regulator in this country. This bill therefore goes further—and quite rightly so—than that in any other jurisdiction in Australia to ensure the independence of transport safety regulation. The honourable member for Wakehurst asked a question about self-incrimination. The protections from self-incrimination are identical to those passed in the Rail Safety Bill 2002. I am advised that those provisions have existed in the Rail Safety Act since 1993. So those are provisions enacted by a Coalition government. The provisions of the bill are consistent with similar provisions under the Occupational Health and Safety Act—a great piece of legislation protecting the workers of this State. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee**Clauses 1 to 4 agreed to.**

Mr CHRIS HARTCHER (Gosford) [5.24 p.m.]: I move:

Page 3, schedule 1. Line 5 and elsewhere in the bill. Omit the word "Independent".

I thank the Clerks for assisting me with the drafting of this amendment because it relates to the word "Independent" not just in schedule 1 at line 5 on page 3, but throughout the bill. The regulator is not independent. In fact, the regulator operates under ministerial direction, as section 42P makes clear. I represent an electorate on the Central Coast—the largest commuter area in Australia. Some 30,000 people from that area go by rail each day to Sydney or Newcastle. The people of the Central Coast are entitled to safe travel. They are entitled to be assured that their safety is oversights by an independent rail safety regulator. That is what they were promised by the Coalition. That is what they were promised by the Government. That is not what they get under this bill.

It is important that all Central Coast and other rail travellers in this State know that the regulator—who is supposedly established to protect their interests—is not an independent regulator, but a regulator subject to the direction of the Minister. Other community regulators have been charged with protecting our interests. A regulator—the Police Integrity Commission—oversights the police. I take this opportunity to welcome to the gallery a director of WorkCover, Mr Jon Blackwell, from the electorate of Gosford. It is always a pleasure to see him in Parliament. Very soon we will be debating a bill of some interest and relevance to him. The people of the Central Coast and other parts of New South Wales are entitled to have an independent person charged with their safety and protection. Such independence means that person must be responsible to the Parliament and report to the Parliament, not report to the Minister and be subject to the direction of the Minister.

The police are oversights by the Police Integrity Commission, which reports to the Parliament. Those who wish to complain about bureaucracy do so to the Ombudsman, who reports to the Parliament. Corruption in our Government, public offices or bureaucracy is oversights by the Commissioner of the Independent Commission Against Corruption, who reports to the Parliament. The Electoral Commissioner reports to the Parliament. Various statutory officers charged with the protection of the wider community and not acting to implement the Government's will are independent of the Government and accountable to the Parliament. The Auditor-General of the State appointed for a seven-year term is accountable and reports to the Parliament. But the regulator, appointed under the bill, will be accountable to the Minister under proposed section 42. Although we do not oppose the bill—we think half a loaf is better than no loaf—we will not accord to the office of regulator the title "independent". We will insist that the office be labelled for what it is: a regulator subject to the direction and control of the Minister. As Government members seem to be ignorant about the content of proposed section 42P (1), I will read it out for them:

The ITSRR is subject to the direction and control of the Minister, except as provided by subsection (2).

Subsection (2) has five innocuous areas of exemption, one of which is the contents of any report on recommendation. Obviously, when the regulator is making a report to the Minister the Minister cannot tell him what to write. How would there be a report if that were so?

Mr Milton Orkopoulos: What are you talking about? You are making it up as you go along.

Mr CHRIS HARTCHER: The honourable member for Swansea is very interesting. He claims to represent the people of the Central Coast, yet he regards as a joke the idea that the regulator should be independent. We take it seriously. The regulator should be independent. Proposed section 42 should be omitted altogether. Why is there any need for proposed section 42P (2)? The regulator is not independent. By having the title "Independent", the regulator is accorded a status that is not appropriate or correct. It is all about spin rather than substance. I commend the amendment.

Question—That the word stand—put.

The Committee divided.

Ayes, 53

Ms Allan	Ms Hay	Mrs Paluzzano
Ms Andrews	Mr Hickey	Mr Pearce
Mr Barr	Mr Hunter	Mrs Perry
Mr Bartlett	Mr Iemma	Mr Price
Ms Beamer	Ms Judge	Dr Refshauge
Mr Black	Ms Keneally	Ms Saliba
Mr Brown	Mr Knowles	Mr Sartor
Ms Burney	Mr Lynch	Mr Shearan
Miss Burton	Mr McBride	Mr Stewart
Mr Campbell	Mr McGrane	Mr Torbay
Mr Collier	Mr McLeay	Mr Tripodi
Mr Corrigan	Ms Meagher	Mr Watkins
Mr Crittenden	Ms Megarrity	Mr West
Ms D'Amore	Ms Moore	Mr Whan
Mr Draper	Mr Morris	Mr Yeadon
Mr Gaudry	Mr Newell	<i>Tellers,</i>
Mr Gibson	Ms Nori	Mr Ashton
Mr Greene	Mr Orkopoulos	Mr Martin

Noes, 30

Mr Aplin	Mrs Hopwood	Mr Slack-Smith
Mr Armstrong	Mr Kerr	Mr Souris
Ms Berejiklian	Mr Merton	Mr Stoner
Mr Cansdell	Mr O'Farrell	Mr Tink
Mr Constance	Mr Page	Mr J. H. Turner
Mr Debnam	Mr Piccoli	Mr R. W. Turner
Mr Fraser	Mr Pringle	
Mrs Hancock	Mr Richardson	
Mr Hartcher	Mr Roberts	<i>Tellers,</i>
Mr Hazzard	Ms Seaton	Mr George
Ms Hodgkinson	Mrs Skinner	Mr Maguire

Pairs

Mr Carr	Mr Brogden
Ms Gadiel	Mr Humpherson

Question resolved in the affirmative.

Amendment negatived.

Mr PETER DEBNAM (Vaucluse) [5.33 p.m.], by leave: I move Opposition amendments Nos 1, 3 and 5 to 13 in globo:

No. 1 Page 5, schedule 1 [10]. Insert after line 2:

Joint Committee means the Transport Safety and Reliability Committee established under section 42Z.

No. 3 Page 17, schedule 1 [10]. Insert after line 9:

Division 7 Parliamentary accountability

42X Annual reports

- (1) The ITSRR must, as soon as practicable after 30 June in each year, prepare a report of the ITSRR's work and activities and the work and activities of the Board, for the preceding 12 months and furnish the report to the Presiding Officer of each House of Parliament.
- (2) The *Annual Reports (Statutory Bodies) Act 1984* is, in its application to the annual reports of the ITSRR, modified as follows:
 - (a) letters of submission under that Act are to be made to the Presiding Officer of each House of Parliament and not to the appropriate Minister,

- (b) the annual report is to be submitted to the Presiding Officer of each House of Parliament and not to the appropriate Minister,
- (c) provisions of that Act relating to the presentation of annual reports to the appropriate Minister and to the public availability of annual reports do not apply to the ITSRR or the Board.

42Y Special report to Parliament

- (1) The ITSRR may, at any time, make a special report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report on any matter arising in respect of the discharge of the ITSRR's functions.
- (2) The ITSRR may include in a report under subsection (1) a recommendation that the report be made public forthwith.

42Z Constitution of Joint Committee

- (1) As soon as practicable after the commencement of this Division and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Transport Safety and Reliability Committee, is to be appointed.
- (2) The Joint Committee has and may exercise the functions conferred or imposed on it by or under this or any other Act.

42ZA Functions of Joint Committee

- (1) The functions of the Joint Committee are as follows:
 - (a) to monitor and to review the exercise by the ITSRR of the functions of the ITSRR under this or any other Act,
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the ITSRR or connected with the exercise of the functions of the ITSRR to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
 - (c) to examine each annual and other report made by the ITSRR and the Board, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
 - (d) to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the ITSRR, the Board or the Chairperson of the Board,
 - (e) to inquire into any question in connection with the Joint Committee's functions that is referred to it by both Houses of Parliament, and to report to both Houses on that question.
- (2) Nothing in this Division authorises the Joint Committee:
 - (a) to reconsider a decision to hold, or not to hold, a rail safety inquiry or a transport safety inquiry, or
 - (b) to reconsider the findings, recommendations or determinations of a person conducting a rail safety inquiry or a transport safety inquiry or of the ITSRR or the Chairperson of the Board in relation to a transport accident or incident.

42ZB Membership

- (1) The Joint Committee is to consist of 7 members, of whom:
 - (a) 3 are to be members of, and appointed by, the Legislative Council, and
 - (b) 4 are to be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

42ZC Vacancies

- (1) A member of the Joint Committee ceases to hold office:
 - (a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or

- (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or
 - (c) if a member ceases to be a member of the Legislative Council or Legislative Assembly, or
 - (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or
 - (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
 - (f) if the member is discharged from office by the House of Parliament to which the member belongs.
- (2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.

42ZD Chairperson and Vice-Chairperson

- (1) There is to be a Chairperson and a Vice-Chairperson of the Joint Committee, who are to be elected by and from the members of the Joint Committee.
- (2) A member of the Joint Committee ceases to hold office as Chairperson or Vice-Chairperson of the Joint Committee if:
- (a) the member ceases to be a member of the Committee, or
 - (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
 - (c) the member is discharged from office by the Committee.
- (3) At any time when the Chairperson is absent from New South Wales or is, for any reason, unable to perform the duties of Chairperson or there is a vacancy in that office, the Vice-Chairperson may exercise the functions of the Chairperson under this Act or under the *Parliamentary Evidence Act 1901*.

42ZE Procedure

- (1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.
- (2) The Clerk of the Legislative Assembly is to call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) At a meeting of the Joint Committee, 4 members constitute a quorum, but the Committee must meet as a joint committee at all times.
- (4) The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson (or, in the absence of both the Chairperson and the Vice-Chairperson, a member of the Joint Committee elected to chair the meeting by the members present) is to preside at a meeting of the Joint Committee.
- (5) The Vice-Chairperson or other member presiding at a meeting of the Joint Committee has, in relation to the meeting, all the functions of the Chairperson.
- (6) The Chairperson, Vice-Chairperson or other member presiding at a meeting of the Joint Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) A question arising at a meeting of the Joint Committee is to be determined by a majority of the votes of the members present and voting.
- (8) The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.
- (9) The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

42ZF Reporting when Parliament not in session

- (1) If a House of Parliament is not sitting when the Joint Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.
- (2) The report:
- (a) on presentation and for all purposes is taken to have been laid before the House, and

- (b) may be printed by authority of the Clerk, and
- (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
- (d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

42ZG Evidence

- (1) The Joint Committee has power to send for persons, papers and records.
- (2) Subject to section 42ZH, the Joint Committee must take all evidence in public.
- (3) If the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.
- (4) The production of documents to the Joint Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

42ZH Confidentiality

- (1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or the person producing the document must:
 - (a) take the evidence in private, or
 - (b) direct that the document, or the part of the document, be treated as confidential.
- (2) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to a decision, finding, recommendation or determination referred to in section 42ZA (2), the Committee may (if it considers it appropriate in the particular case):
 - (a) take the evidence in private, or
 - (b) direct that the document, or the part of the document, be treated as confidential.
- (3) Despite any other provision of this section except subsection (7), the Joint Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (2) applies.
Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (4) If a direction under subsection (1) applies to a document or part of a document produced to the Joint Committee:
 - (a) the contents of the document or part are, for the purposes of this section, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private, and
 - (b) the person producing the document or part is, for the purposes of this section, to be regarded as a witness.
- (5) If, at the request of a witness, evidence is taken by the Joint Committee in private:
 - (a) the Committee must not, without the consent in writing of the witness, and
 - (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subsection (7), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (6) If evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subsection (7), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (7) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chairperson, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (5).
- (8) Nothing in this section prohibits:
 - (a) the disclosure or publication of evidence that has already been lawfully published, or
 - (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Joint Committee.
- (9) This section has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.
- (10) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section:
 - (a) sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act, and
 - (b) Division 5 of Part 3 of, and schedule 2 to, the *Defamation Act 1974* apply to and in relation to that evidence as if it were taken by the Committee in public.

47ZI Application of certain Acts

For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes:

- (a) the Joint Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the Joint Committee is to be regarded as having originated in the Legislative Assembly.

47ZJ Validity of certain acts or proceedings

Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee, or
- (b) any defect in the appointment, or any disqualification, of a member of the Committee, as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

47ZK Provisions relating to reports

- (1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Division is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (2) In the case of a report of the Commission, the Commission may include in it a recommendation that the report be made public forthwith. In the case of a report of the Inspector, the Inspector may include in it a recommendation that the report be made public forthwith.
- (3) If a report includes a recommendation that the report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.
- (4) If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (5) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

No. 5 Page 44, schedule 3 [18], line 29. Omit "Minister". Insert instead "Presiding Officer of each House of Parliament".

No. 6 Page 45, schedule 3 [18], line 1. Omit "Minister". Insert instead "Presiding Officer of each House of Parliament".

No. 7 Page 46, schedule 3 [18], lines 17–22. Omit all words on those lines, insert instead:

- (1) The ITSRR or the Chairperson must make a report to the Presiding Officer of each House of Parliament on a transport safety inquiry carried out by the ITSRR or Chairperson under section 46B and must also provide the Minister with a copy of the report.

- (2) A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this section must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.
- (3) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made or furnished in accordance with this Act.

No. 8 Page 46, schedule 3 [18], line 24. Omit "presentation". Insert instead "being provided to the Presiding Officer".

No. 9 Page 73, schedule 4 [72], line 20. Insert "must provide to the Minister" after "panels".

No. 10 Page 73, schedule 4 [72], line 21. Insert "must provide to the Presiding Officer of each House of Parliament" after "Chairperson".

No. 11 Page 73, schedule 4 [73], line 23. Insert "to inquire into and report to the Minister" after "panel".

No. 12 Page 73, schedule 4 [74], line 27. Insert "to inquire into and provide to the Presiding Officer of each House of Parliament" after "Chairperson".

No. 13 Page 74, schedule 4. Insert after line 18:

[78] Section 68

Omit section 68. Insert instead:

68 Tabling of reports

- (1) The ITSRR or the Chairperson must make a report to the Presiding Officer of each House of Parliament on a rail safety inquiry carried out by the ITSRR or Chairperson under section 67 and must also provide the Minister with a copy of the report.
- (2) A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this section must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.
- (3) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made or furnished in accordance with this Act.
- (4) The report:
 - (a) is, on being provided to the Presiding Officer and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly, on the first sitting day of the House after receipt of the report by the Clerk.

These amendments relate to accountability. The Opposition is endeavouring to ensure that there is a channel of communication between the rail safety regulator and the Parliament. As the Opposition has said on a number of occasions, we simply do not trust the arrangement whereby the public transport safety regulator reports to the Minister. I commend the amendments to the Committee. If members were voting on behalf of their communities they would support these amendments.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 35

Mr Aplin
Mr Armstrong
Mr Barr
Ms Berejiklian
Mr Cansdell
Mr Constance
Mr Debnam
Mr Draper
Mr Fraser
Mrs Hancock
Mr Hartcher
Mr Hazzard

Ms Hodgkinson
Mrs Hopwood
Mr Kerr
Mr McGrane
Mr Merton
Ms Moore
Mr O'Farrell
Mr Page
Mr Piccoli
Mr Pringle
Mr Richardson
Mr Roberts

Ms Seaton
Mrs Skinner
Mr Slack-Smith
Mr Souris
Mr Stoner
Mr Tink
Mr Torbay
Mr J. H. Turner
Mr R. W. Turner
Tellers,
Mr George
Mr Maguire

Noes, 48

Mr Amery
Ms Andrews
Mr Bartlett
Ms Beamer
Mr Black
Mr Brown
Ms Burney
Miss Burton
Mr Campbell
Mr Collier
Mr Corrigan
Mr Crittenden
Ms D'Amore
Mr Gaudry
Mr Gibson
Mr Greene
Ms Hay

Mr Hickey
Mr Hunter
Mr Iemma
Ms Judge
Ms Keneally
Mr Knowles
Mr Lynch
Mr McBride
Mr McLeay
Ms Meagher
Ms Megarrity
Mr Morris
Mr Newell
Ms Nori
Mr Orkopoulos
Mrs Paluzzano
Mr Pearce

Mrs Perry
Mr Price
Dr Refshauge
Ms Saliba
Mr Sartor
Mr Shearan
Mr Stewart
Mr Tripodi
Mr Watkins
Mr West
Mr Whan
Mr Yeadon

Tellers,
Mr Ashton
Mr Martin

Pairs

Mr Brogden
Mr Humpherson

Mr Carr
Ms Gadiel

Question resolved in the negative.

Amendments negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Schedules 3 and 4 agreed to.

Schedules 5 to 9 agreed to.

Bill reported from Committee without amendment and passed through remaining stages.

WORKERS COMPENSATION AMENDMENT (INSURANCE REFORM) BILL

Second Reading

Debate resumed from 12 November.

Mr CHRIS HARTCHER (Gosford) [5.44 p.m.]: According to the Government, the Workers Compensation Amendment (Insurance Reform) Bill is a major change to workers compensation law, as it

provides a new insurance framework for workers compensation arrangements. Notice of the bill was given to the House on Tuesday by the Minister for Roads, representing the Special Minister of State. On Wednesday night, standing and sessional orders were suspended to allow for the introduction of the bill and for its debate. The House and the Opposition then received the bill and the Minister's second reading speech. Now, less than 24 hours after the introduction of the bill, the Government proposes that it be put through all stages.

Standing and sessional orders have been suspended twice—once last night to bring on the bill and again this afternoon to force the bill through all stages—to deal with what is claimed to be major legislation. It does little for the credit of the Minister, the Government, or the Government's advisers that they have been unable to put together a bill, get it out for public consultation, and put it before the House for proper debate. On behalf of the Opposition, I indicate that we will not allow the bill to be simply rammed through this House. I give notice that in the Legislative Council, where the Government does not have the majority to override the appropriate forms of parliamentary debate and push the bill through, the Opposition will develop and maintain its position.

I give notice that the Opposition has not had an opportunity to consider the bill or to be briefed on it. No invitation was extended to the Opposition or crossbench members to consider the bill. Prior to last Tuesday the Government had ample opportunity to advise us of the bill, the changes to law, and the reforms. It did not bother to consult, but simply suspended standing and sessional orders—not once but twice—to push the bill through the House. Does the Government expect co-operation in the Legislative Council, where it lacks a majority? Having treated this House, the public and the community in that way, does it expect the bill to simply pass through the upper House? I do not imagine that any reasonable person would have that expectation. What is the Opposition's position on this bill? I simply cannot state it. We have had no opportunity to consult, to consider, to put it to our party room or shadow cabinet.

Let us look at the parlous situation of WorkCover in New South Wales. The WorkCover Fund is in deficit to the tune of \$2.9 billion. Report after report is churned out as to what should be done with WorkCover, but there has been no inquiry into WorkCover itself. The last investigation into WorkCover was conducted in 1994. WorkCover is about to be investigated again by a Legislative Council general purpose standing committee. I am reasonably confident the motion will pass. That committee will then examine WorkCover to determine what it is doing. WorkCover is administering a fund that is in deficit to the tune of \$2.9 billion. According to the PricewaterhouseCoopers report, WorkCover is administering a fund that has an overall annual income of \$7 billion, yet its operations have never been examined. The time has come for WorkCover to be examined. We have had report after report. For example, the recommendations of the Grellman report in 1997-98 were never implemented. The only thing that the Grellman report achieved was the establishment of the advisory council. Legislative proposals to privatise WorkCover were never implemented. They were deferred and then removed from the legislation. We also had the McKinsey report, among others.

There is no government money in WorkCover, only employers' money. Employers have not been consulted about or given an opportunity to comment on this bill. This bill will transfer funds from licensed insurers to a new body created by the legislation called the Nominal Insurer—an extraordinary title. He will have responsibility for the operation of those funds, the employers' contributions through their premiums. The Nominal Insurer has probably been given that name because workers compensation is not insurance. Sooner or later, everybody will realise that even though the scheme is called the workers compensation insurance scheme, there is really no such thing.

Employers do not pay premiums for workers compensation in the same way as they pay premiums for fire or burglary insurance in the knowledge that if there is a fire or a burglary they are covered. Employers are not covered under the workers compensation insurance scheme. Workers compensation premiums will only be readjusted if there is a claim. As one employer who has 200 employees put it to me only this morning, he cannot sleep when he goes to bed at night. If there were a catastrophic accident in the workplace he could be wiped out by the reassessed premiums. If there were a fire and a number of people were severely burned his entire business would be wiped out by the readjusted premiums. This is not insurance, and it has not been for a considerable time.

The new officer who is to be called the Nominal Insurer is not an insurer at all; he is a fund manager. At least the Government has been honest as it called the fund that covers government employees the Treasury Managed Fund. It does not pretend to call the workers compensation scheme for government employees an insurance scheme. The Treasury Managed Fund also covers all sorts of other issues. The real thrust of the bill is to be found in proposed section 154B (5), which I will read out for the benefit of honourable members as it is a gem. Proposed section 154B, which deals with the functions of the Nominal Insurer, states:

- (1) The Nominal Insurer is taken to be a licensed insurer as if it were the holder of a licence in force under Division 3...
- (2) The Nominal Insurer has such functions as may be necessary or convenient... to function and operate... as a licensed insurer.
- (3) ... the Nominal Insurer may issue directions to any employer with respect to the insurance arrangements of the employer.
- (4) The Nominal Insurer has such other functions as make be conferred or imposed on the Nominal Insurer by or under this or any other Act or law or by the regulations.

Under the regulations his powers can be enhanced and made greater by the Government. The Nominal Insurer can have greater powers than those that are spelled out in the Act. Proposed section 154B subsection (4) states:

The Nominal Insurer has such other functions as may be conferred or imposed on the Nominal Insurer by or under this or any other Act or law or by the regulations.

The Nominal Insurer has the power to take over funds that are administered by licensed insurers, he has the power to issue directions to any employer and he can have further powers conferred on him as the Government deems fit. Proposed section 154B (5) states:

The liabilities of the Nominal Insurer as insurer under a policy of insurance can only be satisfied from the Insurance Fund and are not liabilities of the State, the authority or any authority of the State.

In simple language that means that the Government will control the funds, as it controls the scheme, but it will not accept any responsibility for how those funds are handled. The Government will not accept any responsibility for ensuring that the fund operates satisfactorily and it will not accept any responsibility for the fact that employers' liabilities will be discharged by payments into the fund. The Government is saying, "We want all power but no responsibility." It is as simple as that. Those are the powers that the Act gives to the Government. It has no responsibility for the liabilities of the fund, nor does any liability attach to the State of New South Wales.

The Government has tampered with WorkCover again and again. In saying that I am not reflecting on John Blackwell, who is present in the gallery. He is but one of a long line of general managers of WorkCover. Under the Government there has been an endless succession of general managers. The Government has interfered with the operations of the WorkCover system and the workers compensation system. It took the lawyers out and trade unions demonstrated against its action. It is now taking insurance companies out and turning them into agents. That is all that this bill will do. The Government has cut WorkCover benefits. One of the first changes it made when it took office in 1996 was to cut benefits on lump sum payments by 25 per cent. That was done by the then Minister for Industrial Relations, the Hon. Jeff Shaw. The Government cut the lawyers out and it is now cutting insurers out. It constantly interferes with the WorkCover scheme but, if things do not work, it will accept no responsibility for that.

What other organisation in the world would take over a massive fund like WorkCover, with its billions of dollars, and say, "We will run it, we will control it, we will issue directions to employers, but at the end of the day we will accept no liability at all. If it goes bung employers will be left with the problem because we retain the power to levy employers not only for their future premiums but also for any past deficit." That is what is in the bill. The Government has all power and none of the responsibility. No wonder this bill has been presented to us tonight. Standing and sessional orders were suspended twice to ensure that Opposition members were not able to consult with employers. Employers simply will have no voice in this debate because the Government does not want its legislation to be challenged or to have anyone argue against it. It simply wants to ram this legislation through the House as it has rammed other workers compensation changes through this Parliament.

In 2000-01 the changes that resulted in the removal of lawyers were forced through the Parliament against the wishes of the Labor Council of New South Wales. Parliament House was besieged by trade unions that were angry and indignant about the way in which the Government was forcing those changes through the Parliament without any consultation and without attempting to ensure that all reasonable voices were heard. Has that approach worked? The Government tells us that it has saved \$1.4 billion. It would be interesting to know how that figure was arrived at. The trouble is that workers compensation figures are always astronomical and no-one really understands how they are collated and calculated. The fund is apparently taking more in premiums than it is paying in liabilities. That remains to be assessed. I have heard those claims from Minister after Minister, general manager after general manager and chairman after chairman, yet the fund remains in the red. It requires more tampering, reports and legislation, and employers still pay more and more in premiums each year.

In November last year just as Parliament was about to rise for the Christmas recess the Government introduced legislation that required wages to be aggregated from 30 June 2003 to include all benefits accruing to employees. It promised in return to cut workers compensation premiums. That has not happened: premiums have increased as the definition of wages has been expanded enormously through the inclusion of superannuation, directors' fees and other fringe benefits. We know that premiums have not decreased because employers from every electorate tell Coalition members that they are paying more. I am sure that WorkCover will trot out figures, as all government agencies do, to show that a certain percentage of employers' premiums have decreased.

I have not met one employer whose WorkCover premiums have decreased. Like this bill, that legislation was passed at the end of the parliamentary session after a motion for suspension of standing and sessional orders. No-one was consulted about the bill and employers were told, "Don't worry, it won't apply until 30 June 2003". I remind honourable members that the employer single policy aggregation will come into force on 30 June 2004. The Government does not like WorkCover. The Government is embarrassed by WorkCover and wishes that it would go away. It prefers that WorkCover operate in the dark as far away from public scrutiny as possible.

The Government is assisted in this respect by the sheer complexity of the WorkCover system. Most people experience difficulties navigating and deciphering the long actuarial reports, understanding how the system operates and how it is funded. However, the employers of this State know the simple reality of the situation: They are paying huge amounts of money, which continue to increase every year. Yet employers are not protected from assessment in the event of a claim and they are not protected from liability for the deficit that, under this Government, has increased to \$2.9 billion—or possibly \$3.2 billion.

Under this bill insurance companies—we have not had a chance to consult them in the past 12 hours—will become scheme agents. According to the Government, they will provide services to employers and workers, including the collection of premiums, the issuing of policies, asset management, funds investment and management claims. Instead of operating under licence, insurance companies will be under contract. One can only wonder what those contracts will say and how they will be structured. Will they be the same for all insurance companies? How long will they last? How will the Government renew them? How does it intend to screw—I hope honourable members will excuse me for using that colloquial term—the insurance companies? That information is unknown. It was ignored in the second reading speech and excluded from the legislation. The entire area has been left vague in order to ensure that the Government is not accountable for the operation of the bill. No reasonable person would agree that such major changes should be rammed through the House. I propose to amend the motion for the second reading in the following terms. I move:

That the motion be amended by leaving out the word "now" with a view to adding "on 3 February 2004".

Everyone in this State wants to have a workable workers compensation system. Everyone wants that system to look after and to rehabilitate injured workers. Everyone wants employers to be able to expand their businesses and the employment opportunities they offer. Yet employers across this State are burdened and penalised by the present system. Many employers who are desperate to become self-insurers are trapped in the government-run scheme by high exit fees. Employers operating in areas bordering Victoria and Queensland are taking advantage of that proximity and moving their businesses interstate. Employer after employer tells Coalition members—I am sure they are also telling Government members, if only they would listen—that the high workers compensation premiums are a disincentive to investment and job creation in New South Wales. People believe they will not get proper representation if they are injured or have the opportunity to present their claims because the lawyers have been removed from the system. But the Government has made no constructive changes: it continues to tamper with the fund and to shield itself from any liability.

The Government pretends that this legislation is a major reform yet it does not address the problems of the coalmining industry, which remains outside the workers compensation scheme. Coalminers tell me that they pay twice as much through the coalmining scheme as they would pay through the workers compensation scheme and four times as much as they would pay if they were working in Queensland. A New South Wales coalmine pays four times as much in workers compensation premiums as a Queensland coalmine. That would surely concern any reasonable person examining the operation and management of WorkCover in New South Wales. Ordinary companies operating within the New South Wales WorkCover scheme pay 50 per cent, 80 per cent, and in some cases 100 per cent, more than companies in Queensland.

After eight years of a Labor Government the system in this State has not improved; it has simply got worse. We cannot, and will not, agree to changes that do not result from appropriate consultation but are simply

rammed through without any proper consideration. We have to express our concern about the deficit in the scheme. According to the Minister he is changing the structure of the scheme to try to reduce the scheme deficit, but the Minister's own actuarial report from the PricewaterhouseCoopers executive summary, "Actuarial evaluation of outstanding claims liability for the Managed Fund as at 30 June 2002" contains a very significant statement. Under "Estimate of scheme deficit", it states, in paragraph 2.2.1:

Unaudited account figures at 30 June 2002 were provided to us by New South Wales WorkCover on 30 August 2002.

It took until 30 August for the actuaries to get the figures, and even then they were not audited. I wonder whether the figures for 30 June 2003 have been published. If so, I have not seen them. What are the figures? We must take on face value the statement that the scheme deficit has been reduced from \$3.2 billion to \$2.9 billion. Even the actuaries were given unaudited figures. One cannot express any confidence in the operation of the scheme. For that reason the Opposition believes that the general purpose standing committee should examine certain operations of WorkCover. The trade union movement and employer groups have expressed concern about the manner in which WorkCover handles industrial accidents.

Concern has also been expressed about the failure of WorkCover to follow up on the collection of fines imposed on employers who have been found negligent or in breach of occupational health and safety following an industrial accident. WorkCover has not effectively followed up those cases even though fines have been imposed by the Industrial Relations Commission. The endless legacy of incompetence by the Government and its administration needs to be laid bare. That cannot be done in a parliamentary debate, it can only be done by way of a proper parliamentary inquiry.

The Construction, Forestry, Mining and Energy Union [CFMEU] is not a friend of mine or of the Opposition, but it and the Labor Council have made a point: Why cannot the administration of WorkCover collect fines imposed on employers whose negligence led to industrial accidents causing death or injury? Why are there a number of serious accidents? For example, the CFMEU told me of a serious industrial accident at Gosford High School in 1999 which was never investigated by WorkCover. In 1999 Geoff Kennett best described the WorkCover Authority when he said:

New South Wales may have Sydney Harbour, but New South Wales has also got WorkCover and WorkCover is simply a black hole.

The Opposition intends to go into Committee with this legislation. I foreshadow further amendments, especially to the obnoxious section 154B. We will reserve our right to amend it and to take further action, as is considered appropriate, after we have had the opportunity to consult employers, insurance companies, the trade union movement and any other interested parties when this legislation comes before the Legislative Council. We place on record our concern about the operations of the fund. We want to know how the nominal insurer will administer the fund more effectively. We have been told that this is as a result of the great title "partnerships for recovery". With whom is the partnership? Who gets the benefit of this partnership other than the Government?

The Government has told us that the recommendations will provide improved claims handling and lead to better outcomes for employers and injured workers, and will improve the performance of the scheme. In what section of the bill is the performance of the scheme improved, apart from the fund being managed by the so-called nominal insurer rather than by the insurance companies? Where are there opportunities for employers? Where is there any extra assistance to injured workers? Nothing in the bill relates to employers or injured workers; it relates only to who will have control of the money, with no accountability for the money.

Once again I express the sheer disgust at major legislation such as this being pushed through by the Government moving two motions to suspend standing and sessional orders. When the Government gave notice of this bill on Tuesday it could have offered some form of briefing to the Opposition, but it did not do so. We did not know about this legislation until 8.00 p.m. last night and we saw it for the first time at 9.00 p.m. last night and now have to debate it at 6.00 p.m. on a Thursday evening! So much for accountability and transparency, and so much for the Government being prepared to face the community about its legislation. We will reserve our position. We will consult widely. We do not wish the scheme ill; we wish it to succeed. We have had years of this scheme under Labor, with endless legislative changes to WorkCover in every single sitting and session. The scheme has had an endless succession of managers and chairmen. The description given by Jeff Kennett is appropriate: it is a black hole. We are not convinced that this legislation will resolve the issue of the black hole.

Mr STEVEN PRINGLE (Hawkesbury) [6.18 p.m.]: Yet again we see a tampering with a fund that is vital to the future of this State, vital to small business and vital to our overall economic health. Yet again we see

a lack of consultation with small business. When is the Government going to get serious about this issue and provide stability and a level of affordability so desperately needed by small business in this State? Workers compensation is clearly crippling small businesses in the Hawkesbury, just as it is crippling businesses elsewhere. It is yet another de facto tax on small businesses, and, along with home warranty insurance, is the number one issue that small businesses bring to my attention.

It is yet another reason that businesses are moving to Queensland and Victoria. Every time I attend a chamber of commerce meeting, the first complaint I get is about WorkCover. At the recent Hawkesbury Chamber of Commerce business breakfast, attended by the honourable member for Gosford, there were a mass of questions about WorkCover by some very angry small business people. One of my constituents is close to bankruptcy due to the problems that he is facing with WorkCover. WorkCover premiums from 2002-03 are now nearly 3 per cent of salaries, up from just over 1.5 per cent a decade ago. Now 16 per cent of premiums collected go to the administration of the scheme. Those figures come from the House of Representatives Standing Committee on Employment and Workplace Relations.

Fraud is another major issue. Since June 2003, when the Fraud Prosecution Unit was established, 23 prosecutions have been commenced, but there have been only four successful prosecutions. In the 2002-03 financial year there were only three convictions for fraud. Of those, two were for claimant fraud and one was for employer fraud. In that same year the amount of money spent on detection of fraud was \$1.297 million. The Government now estimates that fraud or overpayment is costing \$325 million a year: that is, overpayment of \$150 million and fraud of \$175 million. It now costs almost \$400 million a year to run WorkCover: \$275 million for insurance companies and more than \$100 for WorkCover administration. At the same time, we know that injuries are costing the New South Wales economy a massive \$3.6 billion. Clearly, the scheme is not working. It needs change, but that change must be after major consultation. I fully support the amendments proposed by the honourable member for Gosford.

Debate adjourned on motion by Mr Matthew Morris.

BILLS RETURNED

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

Courts Legislation Amendment Bill

VETERINARY PRACTICE BILL

Bill received and read a first time.

Second reading ordered to stand as an order of the day.

SPECIAL ADJOURNMENT

Motion by Ms Reba Meagher agreed to:

That the House at its rising this day do adjourn until Friday 14 November 2003 at 10.00 a.m..

The House adjourned at 6.23 p.m. until Friday 14 November 2003 at 10.00 a.m.
