

LEGISLATIVE ASSEMBLY

Tuesday, 14th December, 1993

Mr Speaker (The Hon. Kevin Richard Rozzoli) took the chair at 9.30 a.m.

Mr Speaker offered the Prayer.

BUSINESS OF THE HOUSE

Precedence of Business

Mr WEST: I seek leave of the House to suspend so much of the sessional and standing orders as would preclude Government business taking precedence over all other business until 2.15 p.m.

Leave not granted.

Ministerial Statement

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [9.31]: I wish to make a ministerial statement. I remind honourable members of the very late hour of the last sitting of the House. The majority of members of this Chamber decided that this House should not adjourn until a decision was made to allow further consideration of the HomeFund restructure package. The Government undertook to do that, and for that purpose the House has been recalled today. The restructure package, and a number of reports, were released during last week. Those documents have been the subject of intensive negotiations and discussions between all interested parties, including members of the Australian Labor Party and Independent members. I endeavoured to ensure that all members received the details of the legislation.

At a meeting yesterday morning honourable members were able to ask further questions and seek further information about the draft bill, which had been available for the weekend. After that meeting the Government made further amendments to the bill and last night a further draft bill was issued and made available to the relevant parties. I am advised that the bill that is now available for tabling in this House differs in a minor way - in one clause - from the bill that was distributed last evening. I propose that this morning the Minister for Consumer Affairs introduce the HomeFund Restructuring Bill and present her second reading speech, and the House then adjourn for the ringing of one long bell at about 12 noon, which will allow members to consider further the second reading speech. At 2.15 p.m. the House will, of course, take question time and other routine business.

The first of the motions I intend to move is to seek leave to provide for question time to be taken at 2.15 p.m. Usually, if the House is sitting at a time such as this, questions are taken at 9.30 a.m. As I understand it, it was agreed that question time be held at 2.15 p.m., and for that reason I shall seek leave to take the routine of Government business at 2.15 p.m. It is my desire now to seek the leave of the House to allow the Minister to introduce her bill and have it proceed through all stages today, except for the interruption of the routine of business. I acknowledge that honourable members should have time to consider the Minister's second reading speech. That is why I propose that the House adjourn after the second reading speech until 12 noon. This proposition has been discussed with members opposite. I have given the Parliament a clear indication of the course I intend to take. The Parliament has resumed today - as I made clear when I spoke on the last sitting

evening - to deal only with the HomeFund package. That is the intention of the Government, and that is the course that should be pursued by this Parliament.

Mr WHELAN (Ashfield) [9.35]: I recall clearly why members were here at 5 a.m. on the occasion that this House last sat - it was because of the deviousness of the Government. The Government parked the HomeFund legislation in the upper House and sought to have it remain there. It sought to deal with the Legal Profession Reform Bill (No. 2) and the Crimes (Domestic Violence) Amendment Bill in a similar fashion, or has the Government forgotten that. The Government kept the Parliament here for an unprecedented, historic session - until 5 a.m. Now the Government is crying crocodile tears, telling what are basically lies about a deal done to bring the Parliament back on 14th December. There was no deal; there was a commitment by the Government.

Mr West: There was a shotgun at the head, that is all.

Mr WHELAN: The Minister has suggested that a shotgun was held to his head. The shotgun was at his head because of the dishonesty of the Government, of which he is a Cabinet Minister, and for no other reason. The tricks that the Government tried to play in the upper House led to the recall of the Parliament today. Undertakings were given. I do not object to the Minister making a second reading speech, but the Parliamentary Counsel, not the Labor Party, has said that the Minister will make a second reading speech on a bill that will be changed. There are three drafts of this bill. The first one the Government threw away. As soon as the second reading speech is made on the second draft, it will be thrown away because there will be yet a third bill to come before the Parliament. Undertakings have been given about bills.

Mr SPEAKER: Order! I call the Minister for Consumer Affairs to order.

Mr WHELAN: An undertaking was also given about a second reading speech that would be made available.

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Mr SPEAKER: Order! I call the Minister for Sport, Recreation and Racing to order.

Mr WHELAN: The first seven pages of that 20-page second reading speech arrived at the office of the honourable member for Heffron at 9.16 this morning. How is that for co-operation! Now the final draft of a second reading speech on bill number two - because the Government is to make a further change to its own bill - is forthcoming. I am advised that the changes from draft one to draft two are significant, and they have to be considered. This is important, serious legislation. Is it not sufficiently important for the Government to understand that the Parliament has been brought back for this special sitting to analyse the total package of HomeFund legislation? What the Government is doing is unprecedented in law and in parliamentary history. Honourable members should look at some of the clauses in those bills, particularly those which will take away the rights of mortgagors -

Mr West: On a point of order. The honourable member for Ashfield is clearly debating legislation that has been foreshadowed. He is not replying at all to the substance of the ministerial statement that I made.

Mr SPEAKER: Order! I uphold the point of order. The honourable member will address the ministerial statement.

Mr WHELAN: I have been challenged to say why the Minister lied on the last occasion that this House sat. I am willing to forget it but I am not willing to forgive. It is stored away. This bill differs substantially - [Time expired.]

Precedence of Business

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [9.39]: I seek the leave of the House to suspend so much of sessional and standing orders as would preclude Government business taking precedence of all other business until 2.15 p.m. of this sitting.

Leave not granted.

Mr SPEAKER: Order! Before taking questions, in fairness to all concerned and because few Ministers are present in the Chamber, I suggest that I should leave the chair for approximately a quarter of an hour, until the ringing of one long bell.

[Interruption]

Order! I should have thought that, if we proceed to question time, honourable members would like present in the Chamber Ministers to whom they can direct questions. Order! If the honourable member for Kogarah wishes to remain for the day, he will respect the Chair when the Chair is on his feet. In the interest of all parties, that amount of notice should be given. I shall now leave the chair for approximately 15 minutes.

[Mr Speaker left the chair at 9.40 a.m. The House resumed at 10 a.m.]

QUESTIONS WITHOUT NOTICE

STATE RAIL AUTHORITY CORRUPTION ALLEGATIONS

Mr CARR: My question without notice is directed to the Minister for Transport.

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

Mr CARR: Did the Minister tell the Premier and the Parliament in March 1990 that a report of a task force investigating corruption allegations in the State Rail Authority found no evidence of serious improprieties or corruption? Does this report in fact show that a former State Rail Authority employee received almost \$3 million in contracts approved by one single SRA officer? Why did the Minister mislead the House?

Mr BAIRD: I thank the Leader of the Opposition for his question. Obviously the matter he has raised is a serious issue. I am happy to report back to the Parliament.

VIOLENCE AGAINST WOMEN AND CHILDREN

Dr KERNOHAN: My question without notice is directed to the Minister for Industrial Relations and Employment and Minister for the Status of Women. What response has the Government received following the announcement last week of plans to reduce the level of violence against women and children in New South Wales?

Mrs CHIKAROVSKI: I thank the honourable member for Camden for her commitment to the women of New South Wales. All members on this side of the House are supportive of the statement released last week by the Premier and me, together with community groups and representatives of the media and the Parliament.

Mr SPEAKER: Order! There is far too much audible conversation in the Chamber. I call the Minister for Agriculture and Fisheries to order.

Mrs CHIKAROVSKI: The "Working for Women" statement launched last week is the most

comprehensive policy statement ever issued in this State by any government to work towards improving the status of women. The statement contains more than 200 specific initiatives across every portfolio, all of which are working together to improve the status of women in New South Wales. The statement represents a whole-of-government approach affecting a number of important issues for women - women at home, women as carers, women in the paid work force, and women in senior positions in both the public sector and the private sector.

The statement was the result of many months of consultation conducted by me and the ministry with women across New South Wales. It represents the

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unshakeable commitment of the Fahey Government to the women of New South Wales. Unlike statements from the Labor Party, this statement is fully funded, practical and is entirely achievable: it is not about pie in the sky rhetoric. That is the difference between the Fahey Government and the Opposition. This Government will deliver for the women of New South Wales, not just talk about it.

There are many initiatives and commitments in the statement directed towards improving the safety of women. To identify a few, one concerns the relationship of violence against women. The Police Service has identified the need to conduct a community safety audit to identify locations believed to create opportunities for crime and fear, especially against women and children; the State Rail Authority will evaluate the effectiveness of on-board telephones on late night services to ensure that women have access to taxi booking services; and a conference on women and safety will be organised to increase public awareness of urban planning to ensure a safer environment for women.

The response from the community in relation to the statement has been outstanding and media response has been extremely encouraging, which also shows commitment by the media to ensure that they work to improve the status of women in this State. The statement has been complimented by representatives from all sorts of groups, including the Council of Social Service, the Women's Electoral Lobby, the Advertising Federation, domestic violence groups and well-known independent commentators such as Eva Cox, who described the statement to the media as excellent.

The interest in the statement has resulted in insufficient copies being available. More copies are being printed as a matter of urgency and the ministry will ensure that the statement is distributed as widely as possible. It would not surprise members on this side of the House that the only complaints about the statement have been from the whingeing members opposite, the New South Wales Labor Party, which once again shows it has failed the women of this State. The opinion polls show how little interest the women of New South Wales take in the Labor Party. The women of New South Wales will vote for the Fahey Government because it delivers its promises to women.

After all, it is the government in Australia with the most female Ministers in the Cabinet. It has four female Ministers in the Cabinet, which is more than any other Cabinet in Australia. The New South Wales Labor Party has failed the women of New South Wales. That is the assessment of officials within the Labor Party itself. Two of those officials were reported today in the *Daily Telegraph Mirror* as saying that the party had failed to get enough women into public office. They said:

Looking at the representation of women in parliaments, there is a clear discrepancy between the ALP's rhetoric on promotion of women and the outcome.

I repeat: there is a discrepancy between the rhetoric and the outcome. In this Parliament we have a clear example of the shameful difference between the rhetoric and the outcome. Despite all his promises, despite much of the talk around the countryside -

Mr SPEAKER: Order! I call the honourable member for Smithfield to order. I call the honourable member for St Marys to order.

Mrs CHIKAROVSKI: - the Leader of the Opposition has failed to deliver to the women within the Parliament. The Leader of the Opposition has failed to act and has shown that he is not truly a man of leadership and is not committed to women.

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

Mrs CHIKAROVSKI: I challenge the Leader of the Opposition. He is about to reshuffle his shadow ministry; he should show us what he can do.

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

Mrs CHIKAROVSKI: Let us see how many women -

Mr SPEAKER: Order! There is far too much audible conversation in the Chamber. As we could be in for a long and difficult day, I suggest that all members co-operate by allowing question time to proceed smoothly and without too much disturbance so that all members will be still present at the end of question time.

Mrs CHIKAROVSKI: The Opposition is about to have a reshuffle. Let us see if it puts its money where its mouth is. What about the members sitting quietly on the backbench?

Mr SPEAKER: Order! I call the Minister for the Environment to order.

Mrs CHIKAROVSKI: What about showing the women who are on the backbench -

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

[*Interruption*]

Mr SPEAKER: Order! Having just given a sincere and solemn warning to all members, the Chair might have expected much more co-operation than was obviously evident a moment ago. I was serious when I made my earlier statement about maintaining order during question time. I am serious also when I say that if members wish to remain in the Chamber for the remainder of the proceedings today, they will have to comply with my request for co-operation. I can do no more than advise and warn members of the consequences of disorderly behaviour. If necessary, I will take advantage of those sanctions that are available to me in order to preserve order.

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Mrs CHIKAROVSKI: Let us see if the Leader of the Opposition -

Mr Whelan: On a point of order. My point of order relates to a ruling and statement in the House which appear in the *Votes and Proceedings* of Tuesday 9th November, when you, Mr Speaker, advised the House of a request for the continuation of filming of proceedings of the Legislative Assembly of question time and after question time. It is clear that we are now in question time and Parliament is not being filmed. I therefore seek your assurance that this will be done as quickly as possible and that the Government will comply with the standing orders.

Mr West: On the point of order. As I attempted to convey in a ministerial statement I made to the House earlier today, I believed there was an understanding, at the very least, that question time would be at 2.15 this afternoon. The standing orders specifically provide that at all sittings question time will be at 2.15 p.m. Therefore, the camera man was advised to be here at that time. When, earlier, leave was denied to suspend question time until 2.15 p.m., contact was made with the camera man. He is doing other chores, as is his contractual right, and will not be available to be present in this House until 11 o'clock.

Mr Whelan: Further to the point of order. The Parliament could have considered 35 matters today other than question time. That information was obviously known to the Leader of the House. Prior to the contract being entered into by you, Mr Speaker, on behalf of the Parliament, the television stations had offered to provide a separate camera person for the purpose of filming question time. I understand that that person is available, and that is what should be done. Question time is now taking place contrary to the standing orders, and contrary to the spirit of the standing orders, of this House. Question time is not being televised. It is on the Government's head that it chose to have question time now and not at 2.15 p.m.

Mr SPEAKER: Order! This matter does not fall strictly within the compass of a point of order, because it does not strictly relate to the procedural matters that are dealt with by the standing orders. However, I am cognisant of the point made by the honourable member for Ashfield and of the reply of the Minister for Energy and Minister for Local Government and Co-operatives. Parliament entered into a contractual arrangement to televise proceedings between 2.15 p.m. and 6.15 p.m.. If, for any reason other than the particular reason that applies today, question time does not fall within that time span, the same arrangements apply, and question time is not televised.

The proceedings of this House will be filmed from 2.15 p.m. to 6.15 p.m. today, as has been contractually arranged between the Parliament and the camera man, and between the camera man and the television stations that distribute the film. Whether it is appropriate for question time to be conducted now is not relevant; 2.15 p.m. is the normal time for questions under the sessional and standing orders, but it is for the House to re-order its business as it wishes. The matter raised is not a point of order; it has absolutely nothing to do with the Chair. The House is the master of its own business. The House decided - because of the way members reacted to the particular circumstances - to call on questions as the first item of business, and the Chair has no intention of altering those arrangements.

Dr Refshauge: On a point of order. Today has been set down as the sitting day for this week. In one sense, if one looks at the standing orders it could be seen as the last sitting day for this week. That means that question time should be at 2.15 p.m. In his ministerial statement the Minister suggested that he intended to seek leave -

Mr SPEAKER: Order! The Deputy Leader of the Opposition knows that his point of order is spurious. This is the first sitting day of the week. The House may sit tomorrow; it may sit on Thursday. Thursday is generally regarded as the last sitting day of the week; and today, Tuesday, is always the first sitting day of the week.

Mrs CHIKAROVSKI: As I was saying, I challenge the Leader of the Opposition to put his money where his mouth is, to take some action, to speak to the backbenchers, and to not give in to the faceless - and they are faceless - men who control the factions on that side of the House.

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

Mrs CHIKAROVSKI: I challenge him to show some courage and to promote women in the Labor Party; to match the Premier by putting women on the frontbench. The Premier is taking the initiative and promoting women. The Premier of New South Wales can take great pride in what he is doing for the women of this State. I challenge the Leader of the Opposition not to give in to all those other people.

STATE RAIL AUTHORITY CORRUPTION ALLEGATIONS

Mr LANGTON: My question without notice is addressed to the Minister for Transport. Why did he allow the State Rail Authority to spend \$84,000 over four years to block a freedom of information request on part of a task force report which shows extensive corruption and malpractice in the SRA? Why is he covering up corruption in the State Rail Authority?

Mr BAIRD: Though I thank the honourable member for Kogarah for the question, his comments are totally inappropriate. It was this Government that established the Independent Commission Against Corruption and referred to it many matters occurring in State Rail. The ICAC has undertaken extensive investigations, and the Government has made substantial changes to the operation of State Rail in accordance with the findings of the ICAC.

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GOVERNMENT CLEANING SERVICE PRIVATISATION

Mr RICHARDSON: I address my question without notice to the Chief Secretary and Minister for Administrative Services. Will the Minister inform the House what will happen now that contracts have been exchanged for the sale of the Government Cleaning Service? How will New South Wales benefit from this decision?

Mr SPEAKER: Order! I call the Minister for Multicultural and Ethnic Affairs to order.

Mrs COHEN: I commend the honourable member for The Hills for his interest in this matter, which has been resolved in favour of the taxpayers and the school cleaners of New South Wales. This matter above all demonstrates the wonderful financial acumen of the Opposition! Last week the Government exchanged contracts for the sale of the Government Cleaning Service. At last the Government will be able to provide clear proof of what it has said from the very beginning: that large savings could be achieved, and that they could be achieved at the same time as the interests of the 7,500 cleaners in New South Wales were safeguarded. Let me put on record what the savings and safeguards will be. The sale of the Government Cleaning Service will save the State about \$250 million over a five-year period and will provide continued employment for all regular cleaners and regional staff of the Government Cleaning Service. The three winning tenderers have even given contractual undertakings that there will be no forced redundancies during the entire five-year period of the contracts.

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

Mrs COHEN: It was with great interest that I read recent claims by the Miscellaneous Workers Union that it had secured a victory for cleaners in this State. The cleaners did indeed gain some outstanding provisions regarding their future employment, but those provisions certainly were not secured by the union. The only role played by the union in this process was to bombard cleaners with total misinformation, leading them to be absolutely terrified about their futures.

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

Mrs COHEN: It was the Government of New South Wales that secured for the cleaners long-term employment with their new private sector employers - and that was certainly with no help from the union.

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

Mrs COHEN: If we want to talk about hypocrisy and obstruction, let us look at the Opposition.

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

Mrs COHEN: This whole process provides the classic example of how the Government is in the business of making sensible reforms for the benefit of the State while the Opposition is in the business of jumping on any bandwagon that comes along. From day one of my announcement of the sale of the Government Cleaning Service, the prophet of doom, Bob Carr, was claiming that widows and people in trouble

would lose their jobs.

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

Mrs COHEN: He said also that the savings would be illusory. I have a wonderful statement from the Leader of the Opposition.

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

Mrs COHEN: The *Northern Daily Leader* of 15th September reported:

Opposition Leader Bob Carr told a news conference yesterday that blocking the sale would leave "no hole in the State Budget at all".

The newspaper reported also:

"The figures the Government utilised on this were a joke," he said.

"There weren't going to be savings (to the Government).

When asked whether the Opposition would push for efficiency improvements within the Government Cleaning Service, Mr Carr said - and listen to this definitive statement:

I think we'd insist on it.

He thinks they would insist on it. After Mr Carr had his say, it was passed over to Mr Ernie Page to jump on the union bandwagon. Mr Page even got to attend a meeting at the Town Hall. He must have thought all his Christmases had come at once. Labor members of Parliament from around the State followed in their leader's footsteps.

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

Mrs COHEN: They made unfounded claims across the State and talked only about suffering and despair.

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

Mrs COHEN: After that we saw the introduction of the Government Cleaning Service Retention Bill - a fine piece of legislation that was! Fortunately the upper House blocked that bill. Meanwhile, the Government was getting on with the job. It knew there were substantial savings to be made and it knew it was going to ensure the continued employment of the cleaners, and that is exactly what has happened. The savings achieved by contracting

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highlight the wisdom of the Government's decision to get out of the cleaning business. But employee conditions are very satisfactory. Contrary to Opposition and union claims, it was always the Government's clearly stated and often stated intention to safeguard the welfare of its employees while undertaking this very sensible business divestment. Many Government Cleaning Service staff are likely to find that there is more opportunity in the private sector and they all know their jobs are assured for the five years of the contract.

The sale provides some of the strongest employment protections ever developed for a New South Wales public sector privatisation. A particularly pleasing outcome for the staff and the Government is the commitment from the purchasers that there will be no forced redundancies for the life of the contract, for either regular cleaners or regional staff. Other employment protections include the provision of a similar number of hours until 30th June, 1995, as a minimum; the provision of work in a similar geographic location; recognition

of former public sector service for sick leave, long service leave and redundancy entitlement purposes; agreement to grant staff a period of leave without pay in their first 12 months of employment equal to periods of leave by the Government Cleaning Service to staff on termination; payment of nine weeks' paid maternity leave to staff who give birth within 40 weeks of transfer to the new employer; and the establishment of a standard set of procedures for the management of grievances and disputes, which closely mirror the public service model.

In addition the Government will establish a sick leave safety net for staff who do not have enough sick leave to cover a major illness with the new employer. The entitlement will be available on a case-by-case basis to top up transferred sick leave entitlements to the level of Government Cleaning Service accrued sick leave entitlements at the time of transfer. Staff will be kept informed of the progress of the sale and will receive offers of employment from the purchasers in mid-January 1994. This will coincide with advice from the Commercial Services Group of the likely completion of the sale, which would be their last day of service with the Government Cleaning Service. There will be no break in continuity of employment for Government Cleaning Service staff.

There will be little, if any, change in cleaners' shifts or locations in the transition period. The successful tenderers have undertaken to consult with employees and clients where changes are proposed. It is expected that the new employers will tailor working arrangements to best meet the needs of employees and clients and to provide the necessary operational flexibility to deliver the significant cost savings under the contract. All staff in regional offices will be offered continuity of employment for the life of the contract, subject to satisfactory performance and conduct. This has been a major sale. It has been difficult because the Opposition and the union did their best to continually terrify the cleaners of the State. We have the savings and we have the jobs, as we said we would.

EGYPTIAN CONSUL-GENERAL FUNCTION

Dr REFSHAUGE: My question without notice is directed to the Minister for Multicultural and Ethnic Affairs. Did the Minister host an ethnic affairs cocktail party at Parliament House on 13th October at which the guest of honour was Neville Shalhoub, an influential Liberal known to be involved in illegal gambling? Was this ethnic affairs function also attended by a Liberal Party councillor from Randwick, Margaret Martin?

Mr PHOTIOS: First, the Ethnic Affairs Commission and I hosted no such cocktail party, nor did we pay for any such cocktail party on the morning of 13th October, on the afternoon of 13th October or in the evening of 13th October. So the Deputy Leader of the Opposition is wrong on every count. Second, the Ethnic Affairs Commission and the Minister for Multicultural and Ethnic Affairs hosted on no other day in 1993 a cocktail party such as that described. So the information of the Deputy Leader of the Opposition is not only faulty, it is false and misleading. It is an amateur production from an Opposition that is sitting on a 27 per cent opinion poll rating - its worst rating in 5½ years.

Dr Refshaug: On a point of order. To assist the Minister to recall what he was doing, he might like to be reminded that -

Mr SPEAKER: Order! The Deputy Leader of the Opposition knows that is not a point of order.

Mr PHOTIOS: The fact is that the Opposition, in a desperate attempt on this one last day of questions -

Mr J. H. Murray: On a point of order. The Minister is obviously wishing not to answer the question, using the word "host" as an excuse. I ask that you draw his attention to whether he was present at the function and was he -

Mr SPEAKER: Order! The honourable member for Drummoyne well knows that the Chair has no power to direct how a Minister answers a question. No point of order is involved.

Mr PHOTIOS: It is a fact that the Opposition is floundering. Not only is Mark Coultan of the *Sydney*

Morning Herald saying the Opposition is floundering but the people of New South Wales are saying the Opposition is floundering. It is at its worst level of popularity in 5½ years.

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

Mr PHOTIOS: Have honourable members ever heard of an Opposition that thinks of itself as an alternative government with only 27 per cent of the vote?

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

Mr PHOTIOS: Mark Coultan said that the New South Wales Opposition continues to flounder in Page 6040 a deep electoral trough, with the Government attracting twice as many voters. He said that the poll shows that the Government would be returned with a landslide majority. Of course, these figures were replicated in the South Australian election on Saturday.

Mr SPEAKER: Order! Though this Chamber has always had a reputation for robustness, I suggest honourable members contain their enthusiasm and conserve their energies to give them more staying power in the short term.

Mr PHOTIOS: These results are simply phenomenal. They warm my heart and the hearts of members on this side of the House. This 29 per cent gap between the parties contrasts with the Government's 10 per cent lead in the Saulwick poll the previous month, so the Government has trebled its lead.

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

Mr PHOTIOS: Mr Carr sits on a rump vote in New South Wales. You are finished, Bob; you are a has-been.

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

Mr PHOTIOS: To come back to the question asked by the Deputy Leader of the Opposition - which was a damned good question, and I do not mind saying so - on 13th October a reception was hosted in this building, not by the Ethnic Affairs Commission, and not by the Minister for Multicultural and Ethnic Affairs, but by a Liberal Party branch, with the Egyptian Consul-General as its guest of honour. I attended that function, and so did a large number of other people.

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

Mr PHOTIOS: The fact is that the function was not hosted by the Ethnic Affairs Commission.

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

Mr PHOTIOS: It was not hosted by me. Neville Shalhoub was not the guest of honour. He was not a guest of honour in any way, shape or form.

Mr SPEAKER: Order! I call the honourable member for Riverstone to order for the third time.

Mr PHOTIOS: The guest of honour was the Consul-General from Egypt.

Mr SPEAKER: Order! I call the Minister for Health to order.

Mr PHOTIOS: The Opposition could do a lot better. Of all the questions the Opposition could ask, it only asks about a function - and it gets it wrong. The Opposition gets it wrong on every count.

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

Mr PHOTIOS: It is little wonder that the women in New South Wales in particular reject the Opposition. The Labor Party has 22 per cent of the female vote. No political party in Australia's history has received such a shocking response as the party led by Bob Carr - a man whose rhetoric on women is not matched by reality, whose response to the many women on the Government side only highlights the many faceless men and one woman on the Opposition frontbench. The Opposition's polling results are so shocking that its single frontbencher from the female ranks of the Australian Labor Party, the honourable member for Heffron, is likely to lose her seat.

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

Mr PHOTIOS: Polling by the Liberal Party in the electorate of Heffron shows that the Labor Party is trailing by 4½ per cent.

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

Mr PHOTIOS: The honourable member is gone. She will need an affirmative action program to remain in her seat.

Mr Beckroge: On a point of order. I am loath to raise a point of order because I know you are a tolerant man, Mr Speaker, but for approximately four minutes honourable members have listened to the Minister speak of irrelevant matters. The Minister was asked a specific question, and he has answered the question. You should ask him to resume his seat.

Mr SPEAKER: Order! I take the point about relevance and I note that the Minister for Multicultural and Ethnic Affairs has drifted somewhat away from the subject of the question. He should either return to the question before the House or resume his seat.

Mr PHOTIOS: In much the same way the people of New South Wales are drifting away from Labor today. In conclusion I reiterate that I did not host a function on behalf of the Ethnic Affairs Commission on 13th October or on any other day. There is a fairly standard approach in this Parliament to functions to which members of Parliament are invited. No one vets the list of guests invited to any or every function held in Parliament House. The question was puerile and nonsensical. It demonstrates the desperation of an Opposition sitting on 27 per cent of the vote.

PACIFIC POWER BULK SUPPLY TARIFF

Mr TURNER: My question without notice is addressed to the Minister for Energy and Minister for Local Government and Co-operatives. How will industry and commerce benefit from the latest fall in the bulk supply tariff for electricity from Pacific Power?

Mr WEST: The honourable member's question shows that honourable members on this side of the House are prepared to show their concern for the

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things that really matter in this State. It also shows that the Government can provide the important things - and one that is probably uppermost in the minds of most people as we approach the Christmas period is the creation of more jobs. Honourable members would acknowledge that to approach Christmas without a job or without a job prospect is one of the most horrific things that anyone could face. The restructure of Pacific Power and its changes to electricity pricing have allowed the Government in a very meaningful and positive way to increase job opportunities in this State by reducing electricity tariffs to business and commercial users.

The question asked by the honourable member for Myall Lakes is timely because this morning, after question time, the Premier will table a report from the Government Pricing Tribunal that recommends a further 3 per cent reduction in the bulk supply tariff of Pacific Power. That may come as no surprise to some honourable members. Over the weekend the Premier said that he had received a report from the Government Pricing Tribunal recommending a 3 per cent reduction - the second in just eight months - in bulk supply tariff for commercial and industrial customers in New South Wales. That reduction, which the Government will pass on, cannot be surpassed by any other government in Australia.

The Government has been able to achieve greater efficiency in government trading enterprises and pass on the benefits, not just to consumers but to all the people of New South Wales. The Government will spend the increased dividends on roads, schools and hospitals. It is also able to pass on in a direct form a reduction in prices to the commercial and business sectors - the wealth and job creators of this State and this nation. The proposed reduction in electricity tariffs flows from a submission Pacific Power made to the Government Pricing Tribunal. The work that has been done and the greater efficiencies achieved have allowed Pacific Power to revalue its assets and give the Government a windfall that it can pass on to consumers. The consumers will receive that benefit.

The tariff reduction will take place from February of next year and will be worth \$85 million in a full year to businesses in New South Wales. I know there are some who might ask why the Government is not giving domestic consumers some access to the reduction. It is significant that domestic consumers in this State already enjoy the lowest prices of any domestic consumers in Australia. In New South Wales domestic consumers pay 7.47¢ a kilowatt hour, compared with 9.5¢ in Victoria, 7.93¢ in Queensland, 9.44¢ in South Australia, 10.96¢ in Western Australia and 9.74¢ in Tasmania. That indicates clearly that domestic consumers in New South Wales are well ahead.

As New South Wales moves into a national competitive electricity market the Government wants to make businesses in this State competitive not only in Australia but on the international market as well. In many cases electricity comprises approximately 5 per cent of business overheads. This news is good news. The Premier, as the leader of this State and Minister for Economic Development, pointed out that in November the unemployment rate in New South Wales fell by 0.5 per cent. Australian Bureau of Statistics figures show that 85,700 new full-time and part-time jobs were created in New South Wales in the past year - 56 per cent of all new jobs created throughout Australia. It is a record of which New South Wales and the Government can be proud. In spite of events in Canberra, it means that the New South Wales economy is improving and that the Government is providing the jobs that people so desperately need. Throughout this period of reform and as a result of the work that has been done New South Wales has retained its triple-A rating. That is a recognition of the Government's management of the State and of its government trading enterprises, and the benefits are flowing directly back to the people of this State.

It is important to note also that the Premier's recent announcement was welcomed by the Metal Trades Industry Association and by the Chamber of Mines, Metals and Extractive Industries - two significant investor groups in this State that have investments on the boil and want to provide new job opportunities. The reduction in electricity tariffs will help them to achieve that. That is in sharp contrast to the policies and non-policies of the other side. The Opposition is in an absolute shambles. It is totally leaderless and unable to get its act into gear. When the House sat late recently the Leader of the Opposition did not handle the negotiations. He did not handle today's negotiations. The Government wonders who controls the Opposition. It is not the Leader of the Opposition.

STATE RAIL AUTHORITY CORRUPTION ALLEGATIONS

Mr SCULLY: My question without notice is directed to the Minister for Transport. Did the Minister tell the Premier and this Parliament in March 1990 that a task force investigating corruption allegations in the State Rail Authority found "no evidence of serious improprieties or corruption"? Does the report of the task force show that a former State Rail Authority employee received almost \$3 million in contracts approved by one

SRA officer? Why did the Minister mislead the House?

Mr O'Doherty: On a point of order. That same question was asked earlier.

Mr SPEAKER: Order! The point of order is raised that the question now asked is substantially the same as a previous question. It is the rule that the same question cannot be asked twice in the same session. On the basis that the question canvasses the same grounds as the earlier question, I rule it out of order.

DEPARTMENT OF HEALTH COMPLAINTS UNIT

Mr GLACHAN: Is the Minister for Health aware of the concerns that have been expressed about the conduct of an inquiry by the Ombudsman into the complaints unit of the Department of Health? Will he advise the House about this matter?

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Mr PHILLIPS: I thank the honourable member for Albury for this important question. I thank also the Opposition for guaranteeing our return to Parliament this day, ensuring that the Government finishes the year right on top. What an absolute shambles! What an absolute mess!

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

Mr PHILLIPS: Where are all the Opposition members for question time? Where are they? Great strategy! Two identical questions were asked upfront. If people were really prepared -

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

Mr PHILLIPS: Two questions were asked in identical terms. What a great strategy! The Government looks forward to the rest of today's sittings. Is it any wonder that the Labor Party is right at the bottom of the polls, given that such people are in charge of strategy. What are they doing about it? Great strategy all along the line! Absolutely fantastic!

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

Mr PHILLIPS: On a much more serious note, later today a report from the Ombudsman entitled "Report on Investigation into Unnecessary and Excessive Delays in the Handling of Complaints by the Complaints Unit of the Department of Health" will be tabled in the Parliament.

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

Mr PHILLIPS: Apart from the fact that the report is quite weak and unconstructive -

Mr SPEAKER: Order! I call the honourable member for Londonderry to order for the third time.

Mr PHILLIPS: - as it has been leaked and reported in the media, it is basically irrelevant to current circumstances.

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

Mr PHILLIPS: The recommendations, as honourable members will see, are quite weak. A much more serious issue has evolved. The report has been released, even though the Ombudsman was aware that the conduct and the production of the report has been referred by the Independent Commission Against Corruption to the Committee on the Office of the Ombudsman. A letter from the ICAC dated 13th December reads, "This

letter is by way of referral pursuant to s.53 of the Independent Commission Against Corruption Act 1988". The most salient points of this most serious letter continue:

On the basis that the electronic mail messages are genuine, which we do not know but assume to be the case, then there is room for the view that the author of the draft report, or alternatively a person centrally involved in the investigation which led to the draft report, conducted herself in a manner which demonstrated bias adverse to a public official.

Later the letter states:

I have decided that the central concerns relate to the management of and morale within the Office of the Ombudsman, and the standing of the report. The entire matter is accordingly referred for examination by your Committee, pursuant to s.31B of the Ombudsman Act 1974. Questions which arise include:

1. Whether the report, upon dispassionate review, should be allowed to stand in its terms or at all?
2. Whether any, and if so what, changes in office procedure or instructions or both are called for?
3. What, if any, disciplinary action is called for?

The letter later states, "The Commission requests that the matter be the subject of a full report to it when all necessary and appropriate action has been taken". Finally it states, "This referral is made after discussion this afternoon with Mr Landa". This is quite a remarkable and unprecedented event. In spite of the fact that the Ombudsman knew of the original referral to the ICAC from the department, and then knew of the referral of this serious matter from the ICAC to a committee of the Parliament, he has decided to proceed with the public release of that report. In spite of the fact that all I have attempted to do in this process is to ensure that the right procedures have been followed, the Ombudsman has sent me a most remarkable and arrogant letter. I, for one, look forward to the results of the report by the Committee on the Office of the Ombudsman into these allegations and into the operations of the Office of the Ombudsman.

Later,

Mr PHILLIPS: During the important question and answer on the report from the Ombudsman and the ICAC inquiry I omitted to table the letters. I seek leave to table the letters.

Leave granted.

CHRISTMAS PERIOD HOSPITAL SERVICES

Dr REFSHAUGE: Can the Minister for Health confirm that all elective surgery at St Vincent's Hospital was stopped last week until February 1994 as part of the Government's annual Christmas shutdown? How many other hospitals will adopt the strategy of closing hospital operating theatres for almost one-tenth of the year? By how much will this policy blow out the State's queue for hospital beds?

Mr PHILLIPS: This is the annual Christmas bed closure question by one of the potential leaders of the Opposition.

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

Mr PHILLIPS: The honourable member has the opportunity to ask this question on 14th December because of the recall of the Parliament. It is no secret. Such a strategy has been adopted by hospitals

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for years. It occurred when the Labor Party was in government. It occurs under Liberal governments. Surprise! Surprise! In the period leading up to Christmas and after Christmas, doctors, nurses and other staff

like to take a Christmas break, and elective surgery patients do not like to go into hospital over the Christmas period. Each hospital determines the most appropriate way to manage its activities.

Once again the Opposition is concentrating on beds. Though the Opposition argues constantly about bed numbers - which anyone involved in health knows are irrelevant - the real issue is whether more operations were performed this year than were performed last year, the year before and the year before that. Last year approximately 1,070,000 operations were performed, an increase of approximately 30,000 to 40,000 operations over the number performed last year. The Government expects that this year the number will increase by a similar margin in spite of the fact that doctors and nurses like to go on holidays over Christmas and that patients seeking elective surgery prefer to go into hospital at a more convenient time and have their holidays over Christmas, just like everyone else.

INNER WEST HOSPITAL SERVICES

Mr MOSS: Will the Minister for Health inform the House whether the President of the Australian Medical Association has written to him in protest against his decision to down-grade the original plans for the new inner west hospital? Will that new hospital have no general medical or general surgical beds?

Mr PHILLIPS: I thank the honourable member for Canterbury for his question. The new inner west hospital has evolved from a \$1.3 billion redevelopment of Sydney's inner west hospitals - the greatest redevelopment of hospital networking ever undertaken in any city in this nation. It takes into account the bringing on board of the absolutely fantastic state-of-the-art Concord hospital, the old repatriation hospital which gave great service to the veterans of this State and local residents, and which will now give tremendous service to many more people of this State. From the roof of Concord hospital it is possible to see 10 other hospitals in the near vicinity.

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

Mr PHILLIPS: In the past 100 years a range of hospitals had been built to service the inner west of Sydney and it was now time to reconstruct and re-network. The Government is amalgamating Lidcombe and Bankstown hospitals, which are literally minutes from each other, on the Bankstown site.

Mr SPEAKER: Order! There is too much audible conversation in the Chamber.

Mr PHILLIPS: Canterbury and Western Suburbs hospitals are a mere eight minutes travelling time apart in peak hour. I am sure that most people would love to be four or eight minutes travelling distance from a hospital. Those two hospitals are also within 15 minutes travelling distance from Concord, St George and Royal Prince Alfred hospitals. That was the previous network. A six-month consultation process involving the medical professions, the Labor Council, the unions, the Federal Labor Government, the Federal Opposition and the community took place. The only group that did not want to participate in the consultation process was the State Opposition. All that Opposition members want to do is to harp, nag and undermine.

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

Mr PHILLIPS: The honourable member for Canterbury is quite good at scaremongering, telling his constituents that this will be the end of health as we know it in the electorate of Canterbury. That is all he is concerned with.

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

Mr PHILLIPS: Opposition members work on the principle that the only good health system is to have a hospital in every electorate of the State, and possibly more than one hospital in each electorate, or more than one hospital in each Labor electorate. That is nonsense. The Government is re-networking the hospitals in

Sydney, and it will continue to do that. With regard to the amalgamation of the Canterbury and Western Suburbs hospitals, the honourable member for Canterbury should read the final report that was issued after the community consultation process took place. That amalgamated hospital will have all of those services and, as part of the important network of hospitals around it, will provide an excellent service to the people of the inner west.

INNER WEST HOSPITAL SERVICES

Mr MOSS: I ask the Minister a supplementary question. In view of his answer, is the new inner west hospital to have a level 3 accident and emergency unit? Does that mean that doctors will not be in attendance at the unit 24-hours a day?

Mr Photios: On a point of order. This question has little to do with the initial question. The first question from the honourable member for Canterbury suggested there was no hospital. He is now asking if the hospital will have certain inclusions. The question is clearly not supplementary.

Mr SPEAKER: Order! Honourable members appear to have great difficulty in determining what is and what is not a supplementary question. I have previously ruled that a supplementary question must relate to the answer to the initial question. In response to the initial question asked by the honourable member for Canterbury, the Minister said that, irrespective of the doubts of the member, certain excellent services - to paraphrase the Minister's answer - would be available. The honourable member for Canterbury is now seeking specific advice as to one of the services mentioned by the Minister, and therefore the question is in order.

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Mr PHILLIPS: On one fringe of the electorate of Canterbury almost \$200 million is being invested in St George Hospital, which services that area. On the other fringe is Royal Prince Alfred Hospital, one of the leading teaching hospitals in the world.

Mr J. H. Murray: It is an hour's drive away.

Mr PHILLIPS: That remark is indicative of the Opposition's policy when it was in office. For 11 years the former Labor Government left the people in the west without sufficient health services.

Mr SPEAKER: Order! I call the honourable member for Drummoyne to order for the third time.

Mr PHILLIPS: The people had to travel for an hour to reach a hospital. This Government is building the Nepean and Liverpool hospitals, and a \$300 million children's hospital out in the west. It is a nonsense to say that Royal Prince Alfred Hospital is a one-hour drive from Canterbury. Also on the perimeter of the Canterbury electorate, literally within 10 to 15 minutes drive, is Concord hospital. On the western perimeter \$70 million is being invested in Bankstown hospital. As well, in the centre of all that the Government intends to build another \$50 million or \$60 million state-of-the-art district hospital, which will provide all services, including accident and emergency services. The honourable member for Canterbury should stop trying to undermine the document. It is in the document and the document stands. The honourable member should stop lying to his electorate.

STATE RAIL AUTHORITY CORRUPTION ALLEGATIONS

Mr BAIRD: Earlier today the honourable member for Kogarah, the Leader of the Opposition and the honourable member for Smithfield asked questions relating to an unspecified task force report on corruption in the State Rail Authority that I referred to in March 1990. The report to which I believe honourable members are referring was conducted by an independent consultant and an accountant from Price Waterhouse, and is

known as the McLachlan report. The report found evidence of mismanagement in project management practices in the signalling area of the State Rail Authority. However, I am advised it did not find substantive evidence of corruption. The report identified one instance between 1984 and 1989 where in excess of \$3 million in contracts were approved by an officer without delegation. However, I am advised that the report did not find evidence of corruption in that particular action. The report was made available to the Auditor-General and the Independent Commission Against Corruption.

The Auditor-General examined the report and also found that there was no substantive evidence of corruption. However, the Auditor-General agreed that management practices were poor in this area. The second question related to the SRA's handling of a freedom of information request for this report. In accordance with normal practice, I am advised by the SRA that it sought legal advice on the FOI request, which concluded that the report should not be released. The SRA followed this advice. The FOI request was subsequently referred to the Ombudsman, who disagreed with the legal advice, and accordingly the report was released.

AUDITOR-GENERAL'S REPORT

State Rail Authority

Pursuant to the Public Finance and Audit Act, the Clerk announced receipt of the report of a special audit of the State Rail Authority of New South Wales: CountryLink, a review of costs, fare levels, concession fares and CSO arrangements, dated 10th December, 1993.

PUBLIC ACCOUNTS COMMITTEE

Discussion Paper: Financing of Infrastructure Projects

Pursuant to section 57(1) of the Public Finance and Audit Act, the Clerk announced receipt of the Public Accounts Committee discussion paper: Financing of Infrastructure Projects, dated November 1993.

PETITIONS

Sexual Assault Counselling Services

Petition praying that more financial resources be made available to provide counselling, supported accommodation services and community education for adult and child sexual assault victims, received from **Mr Fraser**.

Mount Victoria Interurban Train Termination

Petition praying that the House prevent the termination of interurban trains at Mount Victoria, received from **Mr Clough**.

F6 Freeway Emergency Telephones

Petition praying that the House will consider the installation of emergency telephones on the F6 Freeway from Yallah to the north of Wollongong, received from **Mr Rumble**.

Serious Traffic Offence Penalties

Petition praying that laws relating to road accident fatality or injury be re-evaluated, received from **Mr Newman**.

Pier 8 Pymont Heliport

Petition praying that the House reject the Simpson report on the proposed Pier 8 Pymont heliport, received from **Ms Nori**.

Ettrema-Budawang Wilderness Area

Petition praying that the House reject the Ettrema-Budawang Wilderness Area proposal, received from **Mr Hatton**.

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Pymont Interim Park

Petition praying that the House support the retention of the interim park on the corner of Herbert and Point streets, Pymont, received from **Ms Nori**.

Shellharbour Public Hospital Children's Ward

Petition praying that the children's ward of Shellharbour Public Hospital be reopened, received from **Mr Rumble**.

Berkeley Police Station

Petition praying that Berkeley Police Station be manned on a 24-hour basis and foot patrols be introduced, received from **Mr Rumble**.

Warilla Police Station

Petition praying that more police be allocated to Warilla Police Station, received from **Mr Rumble**.

Ingleburn and Macquarie Fields Police Stations

Petition praying that the House provide, as a matter of urgency, a permanent police station at Ingleburn and upgrade the existing police station at Macquarie Fields, received from **Mr Knowles**.

Concord Area Police Station

Petition praying that the Government establish a police station to service the Concord-Rhodes-Cabarita-Mortlake area, received from **Mr J. H. Murray**.

Home and Community Care Program

Petitions praying that the Home and Community Care program be allocated growth funding in the 1993-94 period consistent with increasing community need, received from **Mr Langton, Mr Moss and Mr Rozzoli**.

Deua River National Park Vehicular Access

Petition praying that private vehicles retain their right of access to Deua River National Park, received from **Mr Cochran**.

BUSINESS OF THE HOUSE

Unanswered Question upon Notice

Mr SPEAKER: In accordance with the sessional order I draw the attention of the House to the following unanswered question upon notice: No. 1757, standing in the name of the Premier and Minister for Economic Development.

Mr FAHEY: I understand that the answer was tabled with the Clerk on 25th November last.

COMMITTEE ON THE OFFICE OF THE OMBUDSMAN

Report - Evidence

Mr FRASER (Coffs Harbour) [11.7]: I bring up and lay upon the table of the House the report of the Committee on the Office of the Ombudsman on its general meeting with the Ombudsman.

Ordered to be printed.

Mr FRASER: I also lay upon the table of the House the minutes of evidence taken before the committee.

Debate adjourned.

ASSENT TO BILLS

Royal assent to the following bills reported:

Anti-Discrimination (Age Discrimination) Amendment Bill
Anti-Discrimination (Homosexual Vilification) Amendment Bill
Bail (Domestic Violence) Amendment Bill
Bookmakers (Taxation) (Bet Back) Amendment Bill
Bush Fires (Amendment) Bill
Choice of Law (Limitation Periods) Bill
Commonwealth Powers (Poultry Processing) Bill
Coroners (Amendment) Bill
Courts Legislation (Amendment) Bill
Crimes (Domestic Violence) Amendment Bill
Dairy Industry (Amendment) Bill
Election Funding (Amendment) Bill
Environmental Planning and Assessment (Part 5) Amendment Bill
Fire Brigades (Amendment) Bill
Fire Brigades (Hazardous Materials) Amendment Bill
Gaming and Betting (Amendment) Bill
Health Care Complaints Bill
Home Purchase Assistance Authority (Amendment) Bill
Industrial Relations (Public Vehicles and Carriers) Amendment Bill
Justices (Courtesy Letters) Amendment Bill
Land Acquisition (Just Terms Compensation) Amendment Bill
Legal Profession Reform Bill (No. 2)
Letona Co-Operative (Financial Assistance) Bill
Limitation (Amendment) Bill

Limitation of Actions (Recovery of Imposts) Amendment Bill
Maintenance and Champerty Abolition Bill (No. 2)
National Parks and Wildlife (Emu Licence) Amendment Bill
Parliamentary Committees Enabling Bill
Prisons (Amendment) Bill (No. 2)
Public Finance and Audit (Budget) Amendment Bill
Rural Adjustment Scheme Agreement Bill
Sentencing (Amendment) Bill (No. 2)
Statute Law (Miscellaneous Provisions) Bill (No. 2)
Summary Offences (Amendment) Bill
Superannuation Legislation (Further Amendment) Bill
Vocational Education and Training Accreditation (Amendment) Bill
Wagga Wagga Racecourse Bill (No. 2)

OFFICE OF THE OMBUDSMAN

Report: Department of Health Complaints Unit

Mr Speaker, pursuant to section 31 of the Ombudsman Act, laid upon the table the report on Investigation into Unnecessary and Excessive Delays in the Handling of Complaints by the Complaints Unit of the Department of Health, dated 13th December, 1993.

Ordered to be printed.

Report: Police Service Act Amendment

Mr Speaker, pursuant to section 170 of the Police Service Act, laid upon the table the special report to Parliament by the Office of the New South Wales Ombudsman concerning urgent amendment to the Police Service Act.

Ordered to be printed.

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JOINT SELECT COMMITTEE UPON THE SYDNEY WATER BOARD

Motion by Mr West, by leave, agreed to:

That the reporting date for the Joint Select Committee upon the Sydney Water Board be extended until 17th March, 1994.

Message

Message sent to the Legislative Council advising it of the resolution and inviting it to agree to a similar resolution.

HOMEFUND RESTRUCTURING BILL

Suspension of Standing and Sessional Orders

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [11.9],
by leave: I move:

That so much of the standing and sessional orders be suspended as would preclude the HomeFund Restructuring Bill being brought in and passed through all stages at this sitting.

I indicate briefly to the House that, by arrangement, the Minister will proceed with the introduction of the bill and her second reading speech. I will then seek the indulgence of the House to adjourn the House until the ringing of one long bell at 2.15 p.m., at which time the House will resume to commence the second reading debate. That will give honourable members time to consider further changes that have been made to the bill as a result of meetings that occurred yesterday. I believe that this will help to facilitate the smooth passage of this important measure.

Mr HATTON (South Coast) [11.10]: I ask the Leader of the House whether the Government is willing to have the House sit tomorrow. If the bill were to pass through this House and there was protracted debate in the upper House, would it not be better for the House to adjourn tonight rather than have a late night? The matter could be considered at a new sitting tomorrow. If there were another day of sitting, would the Government propose that it be a continuation of today's sitting or would the standing orders apply and would there be question time?

Mr WHELAN (Ashfield) [11.11]: The Opposition agrees with part of the recommendation made by the Minister for Energy, namely, that the second reading speech of the Minister for Consumer Affairs be concluded and the matter suspended until the ringing of one long bell at approximately 2.15 p.m. The honourable member for South Coast has raised an interesting issue in relation to the conclusion of the legislation and the dependency of this Chamber upon any further amendments that might ensue, with or without Government consent, in the upper House. Will the Minister for Energy indicate now whether the Government intends to proceed with this course? If the House is still sitting tomorrow, will the normal routine of business take place, with question time at 2.15 p.m? If that is not the case, I intend to move an amendment that the House adjourn at 11.30 this evening and resume at 2.15 tomorrow afternoon.

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [11.13]: In reply to the honourable member for South Coast and the honourable member for Ashfield, I have no idea how long the debate on the bill will continue. If it is required that the House sit tomorrow, the House will sit tomorrow; if it is required that the House sit on Thursday, the House will sit on Thursday. It will sit until we have dealt with this measure. I gave that undertaking when the House last adjourned and also earlier this morning. This House is here to deal with the bill. Clearly, if we come back on other days, the routine of business must go on, unless suspension of standing orders is agreed to. As honourable members know, there can be a suspension only if the whole House agrees - one person can object. I do not intend to strike out question time. I cannot give a commitment on whether the House will sit tomorrow until I know how the debate proceeds in this House and when the bill goes to the upper House. That is all I can say at this time.

Mr Whelan: So the House will sit all night if necessary?

Mr WEST: Again, I cannot signal whether the House will sit all night. During the last sitting I was asked to give an indication of the sitting program and I said that we would probably sit from 9 to 5. The House adjourned at 5 a.m. Some of my colleagues politely reminded me that I forgot to tell them whether I meant 5 p.m. or 5 a.m. I cannot predict what will happen, because how long members want to speak is in their own hands. I am not talking only about the second reading debate but also about the Committee stage. I cannot tell honourable members anything more than that, other than to say that, if necessary, this House will sit as long as it takes to resolve this issue and to have it passed through the Parliament.

Mr SPEAKER: Order! I was incorrect in giving the honourable member for Ashfield the call because the sessional orders precluded his speaking to the motion. In any event, I am unaware that the honourable member for Ashfield moved a motion. I gather that the Minister for Energy and Minister for Local Government and Co-operatives gave his assurances and repeated them in his reply.

Mr Whelan: Mr Speaker, I move an amendment as a result of the Minister failing to give an

undertaking.

Mr SPEAKER: No amendment was handed up in writing.

Mr Whelan: I have it here.

Mr SPEAKER: Nothing was handed to the Clerks or to me. I conclude that there was no amendment, and I have to rule that way.

Mr Whelan: Mr Speaker, I stood up and said quite clearly -

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Mr SPEAKER: The honourable member has been in this House long enough to know that if he wishes to move an amendment, the procedure is for him to put the amendment in writing and pass a copy of it to the Clerk so that it is then before the House. The honourable member did not do that. I heard him say quite clearly that he may move an amendment, but I was not cognisant of what the exact amendment was. Unless an amendment is handed to the Clerks in writing, there is no amendment before the House.

Motion for suspension of sessional and standing orders agreed to.

Bill introduced and read a first time.

Second Reading

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [11.15]: I move:

That this bill be now read a second time.

I am glad that I finally have the chance to introduce this bill. Before referring to the detail of the bill, I express some surprise and dismay at what happened this morning. The Government has attempted since the HomeFund Commissioner's report was released last week - and before that - to provide information to all members of this House on a complex process that has changed daily.

Mr Whelan: Absolute rubbish.

Ms MACHIN: The honourable member for Ashfield was not at any of those meetings. He knows that when he said this morning that the bill was different he was incorrect. We have spoken with Parliamentary Counsel since then, as I presume the honourable member has. For the record, the Labor Party was given the first draft of the bill on Friday, as were Government members. On Monday, after various consultations and discussions, the Labor Party was given a copy of the bill, as amended. Today the bill has a cosmetic change, but it does not change the substance of the bill. The honourable member for Ashfield said that the Government intended to amend the bill before the House. That is simply not true. Let the record show that the honourable member for Ashfield has once again played with the truth in this House. The only amendments likely to be made to the bill are those that the Opposition or the Independents will make.

This delay, nonsense and political machismo is indicative of the attitude of the Australian Labor Party. It shows that the Labor Party is not fair dinkum about getting on with the real issues of HomeFund. That has been reflected in the polls. The ALP is not striking any blows there. Why delay this bill? What was achieved, other than having question time this morning? The Government appreciated that and thanks the Opposition for the free kicks. Based on this morning's experience, the Government is happy to do that any day the Labor Party likes.

Is the Labor Party seeking to delay the bill because the honourable member for Campbelltown is still circling in the sky on his way back from Atlanta? Is it because its amendments are not ready, as they were not ready yesterday? The Labor Party is trying to buy time while it gets itself organised. The Government is prepared to go. It has done everything possible to make the speech that was written overnight available to members of the Labor Party. It was prepared to give it to those members first thing this morning.

Mrs Grusovin: Tell the real story.

Ms MACHIN: Honourable members opposite could have had an incomplete speech. There was no point in giving them a speech that would have been changed. The Government was prepared to introduce the bill and to adjourn the House for two hours after my second reading speech. I should have thought that would have given honourable members enough time to read the speech, but that was not good enough for the Opposition. This is political game playing. I wonder how fair dinkum the Opposition is.

Honourable members would recall that the HomeFund Commissioner Act commenced operation on 10th May this year. Mr Andrew Rogers, Q.C., a former Chief Judge of the Commercial Division of the Supreme Court, was appointed HomeFund Commissioner to investigate and deal with complaints from HomeFund borrowers. The fundamental philosophy behind the HomeFund Commissioner scheme was to focus attention on the borrowers and to resolve legitimate complaints in a manner that was accessible, quick, efficient, relatively inexpensive, fair and determinative.

Parliament wished to avoid the need for borrowers to become involved with the formality, expense and delay of the traditional adversarial court system or the more specialised tribunals set up to deal with consumer disputes. According to the basic facts document published by the commissioner on 27th October this year, between 1986-87 and 1992-93 a total of 57,441 HomeFund loans were settled. All former and existing HomeFund borrowers were notified by the commissioner of their right to make a complaint to him. To meet the needs of the potentially large number of complainants, the commissioner had to devise a dispute resolution process which would deliver a fair result to all parties as efficiently as possible and with minimal cost to borrowers. Initially it was expected that the focus of complaints would be on the marketing and origination of loans.

However, through his public discussions, the commissioner identified a number of flaws in the HomeFund scheme in the current economic circumstances and the complexity of many of the legal issues surrounding these flaws. As his work proceeded, it became clear to the commissioner that these flaws could lead to endless legal debate about liability and the appropriate legal remedies of borrowers. For example, he said in his report there were three arguable claims: first, against the designers

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and promoters of HomeFund products, either in respect of loans during the whole of the period of the existence of the scheme, or alternatively since 1991; second, for repayment of moneys arising from ambiguity in the language of the mortgage documents dealing with the capitalisation of interest on a monthly basis - the commissioner foreshadowed possible High Court proceedings to resolve this issue; and, third, by a number of borrowers who entered into low start loans believing that their liability for periodic repayments would be restricted to 27 per cent of their income, whatever that may be from time to time. This realisation, and amendments proposed by the Government, the Opposition and the Independents to the legislation under which the commissioner operates, prompted him to make a special report to me on 3rd December this year. At page 52 of that report Mr Rogers made his position clear. He said:

From the time of my appointment, I made it clear to the Government, the Opposition and the two Independents who saw me, that it was essential that the whole Scheme be reconsidered in the light of changes in the economy which imposed major hardships on borrowers, many of whom are now committed to mortgage repayments exceeding 40% of their incomes (often comprised solely of Social Security payments). I explained my concern that any lump sum compensation that may be awarded may be insufficient to restore the borrower's position and that absent some fundamental reappraisal, borrowers may be in difficulty again in a few years time. As well, I had concerns as to the consequences of some of the remedies. For example, if the conclusion were that some of the loans should never have been made, should the transaction be voided from its inception, and in that case, where would the borrowers be housed and what

would happen to their houses?

The commissioner concluded that in its present form the HomeFund scheme is inappropriate for the market and in many respects it is unclear in its legal operations and is financially unsound. Elsewhere in his report he makes the point that the scheme had a major social objective - to house people - and that in a large number of cases it was successful in achieving that objective. At page 1 of his report, the commissioner said:

It has become clear that affording a remedy to borrowers who intend to continue in the HomeFund Scheme by way of determination by the Commissioner will be more than usually speculative in the result it delivers. Although the legal system is accustomed to giving remedies on a once and for all basis, notwithstanding unknown future events, the economic situation of the borrowers and the country as a whole is so fraught with unpredictability that there could well be an injustice done to one side or the other.

The Government accepts his view that it would be economically wasteful, administratively inefficient and would entail great delay to continue to try to resolve complaints under the current scheme. The commissioner's report makes it clear that since the time of his appointment he has advocated a restructuring of the scheme because he regards restructuring as the best overall remedy. The commissioner, in his report, observed that, even where a legal solution might be delivered, it will not necessarily result in home ownership being achieved by the borrower in a reasonable time frame, if at all. He gives various examples. Accordingly, the Government is, in essence, asking borrowers to trade their legal rights, whatever they prove ultimately to be, in return for financial relief now.

The Government recognises the significance of the steps it is taking in relation to the legal rights of borrowers. However, members should look again at Commissioner Rogers' report for the reasons for this. The Government does not want to further delay financial relief to those thousands of borrowers still seeking it. It should be remembered that the Government's \$340 million package is for all remaining borrowers, not just those who have complained to the commissioner or who will retain some access to the courts. To do otherwise will not deliver speedy relief to those thousands who need it now. Commissioner Rogers clearly identified this in his report, and for this reason he said a restructure was the best global remedy and it should be legislated. On page 54 of his report he said:

Borrowers should not be left to choose between their current HomeFund mortgage and a restructured scheme. The new scheme will necessarily proceed on a number of assumptions. The very fact that the evolution and examination of a restructuring scheme has taken seven months, demonstrates the magnitude of the task. Individual borrowers are not in a position to examine for themselves, whether their particular circumstances would make it more advantageous for them to avail themselves of the provisions of the restructured scheme, or whether they should attempt to remain in the present scheme by relying on their present contractual rights and/or claim some remedy . . .

For these reasons the Parliament is being asked to legislate a restructuring of the HomeFund scheme. I turn now to the substance of the bill. The HomeFund Restructuring Bill provides for the restructure of HomeFund in accordance with the proposal of the Home Purchase Assistance Authority as set out in the authority's report to the Minister for Housing dated 6th December, 1993. Under the restructure, all existing HomeFund borrowers will fall into one of six categories. Category A: those borrowers, of whom there are approximately 8,000, who have the capacity to repay a loan on normal commercial terms. Borrowers in this category will have the choice of remaining within HomeFund under current terms or refinancing without interest penalty. They may also be eligible for stamp duty relief.

Category B: those borrowers, of whom there are approximately 13,000, who do not have the capacity to repay a loan on normal commercial terms but could do so with a reasonable level of government assistance. They will receive the offer of an interest subsidy, subject to regular income review. This will give them the opportunity to achieve home ownership within 25 years. Category C: borrowers, of whom there are approximately 4,000, who do not have the capacity to repay a loan on normal commercial terms, even with substantial government assistance. These borrowers will be offered the opportunity to have their excess debt above the value of the house forgiven, while retaining occupation of the property for five years.

Category D: those borrowers, of whom there are approximately 1,000, who are in default of their obligations even after being given time to rectify current arrears. Foreclosure procedures will be taken against them. However, at the discretion of the

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authority they will be entitled to continue renting the house for a further 15 months while paying either market-based rents or subsidised rents, whichever is appropriate. Borrowers experiencing genuine hardship who enter into an agreement to make up their arrears over time will be offered the same rental offer up to five years as for category C borrowers.

Category E: all existing aged person home update borrowers will be offered a subsidy to reduce their interest rate to the standard variable rate charged by banks on home loans - currently 8.75 per cent per annum. This variable rate will apply from the date of loan inception and will be capped at the rate specified in the borrower's original mortgage. Category F: under the rent-buy and State partnership product the borrower buys a share of the home and rents the remaining share, which is owned by an investor. The authority will apply the same principles to rent-buy borrowers as are proposed for other HomeFund borrowers. However, certain features of the rental component pose special difficulties from the point of view of borrowers. For these reasons, further consideration will be given to possible specific relief measures. This will involve further discussion with the equity investor, Australian Mutual Provident Society.

Borrowers in categories A, B and C may also choose to remain with their existing mortgages. Existing Home Purchase Assistance Authority safety nets will be available, where appropriate, to those borrowers. These include mortgage assistance, reduced loan repayments, government interest subsidies, loan rescheduling, temporary resetting of repayments, and assistance in seeking alternative housing. For borrowers in category B, the restructure overcomes the need to resolve difficult legal questions and these are acknowledged problems of the current scheme. The first is fixed interest rates locking borrowers into higher costs. The restructuring will be based on generous interest rate subsidies. The second is automatically escalating repayments increasing beyond borrowers' capacity to repay. Repayments will now escalate in line with individual borrower's capacity to pay. The third is increasing loan balances. Interest will no longer be capitalised so borrowers will not suffer from increasing loan balances. By increasing repayments in line with individual borrowers' capacity to pay, the restructuring will enhance borrowers' prospects of having serviceable loans and will ensure that government assistance is properly targeted to those who need it. Borrowers who accept restructured home offers in category B will be eligible for subsidies that will enable the loan to be repaid over time.

For affordable loan borrowers, the subsidies available will be greater than at present where necessary to avoid debt ballooning and to permit reduction of principal. Similarly, low start borrowers who have not been subsidised in the past will receive interest subsidies necessary to enable the loan balance to be paid down as occurs with the standard credit foncier bank loan. For borrowers in category C, and some in category D, the restructure offers an opportunity to be free of a loan repayment commitment unlikely to be met and to be guaranteed accommodation for up to the next five years at a reasonable cost. Borrowers in category C who are concerned regarding their ability to secure appropriate housing at the end of the five-year rental period may apply for public housing at the commencement of the tenancy. Based on present waiting lists and trends it is generally expected that public housing accommodation is likely to become available during the five-year period for most of those who meet public housing eligibility criteria.

An additional protection will exist where a borrower has applied for public housing within six months of accepting a medium term rental offer and, though remaining eligible, has not received an offer of public housing at the end of the five-year period. In this case the authority will have the discretion to extend the lease term beyond five years until public housing becomes available to the borrower or the borrower is no longer eligible for public housing. As a result of this provision no category C borrower in genuine need will become homeless. Under the restructuring scheme category D borrowers will face foreclosure. The Government believes that this is an appropriate policy for borrowers who, despite other options being available, simply refuse to make their loan repayments. This approach is fully consistent with that followed in public housing, where tenants who do not comply with their obligations to make payments face eviction action. In these

circumstances those borrowers remaining in category D will not have access to the benefits offered in category C.

This commercial approach will not cause any borrowers in genuine hardship to become homeless. As mentioned above, any category D borrower who clears the arrears within the three-month notice period becomes eligible for relief offers in categories B and C. If, through genuine hardship, a borrower is unable to clear those arrears within the three months, the borrower may obtain a category C offer by agreeing to clear those arrears over time. The cost of the proposal has been estimated to be in the range of \$300 million to \$400 million in present value terms. This includes the expected income shortfalls in the FANMAC trusts as well as other costs of implementing the restructure. While cost estimates are dependent on particular assumptions and are inevitably subject to a margin of uncertainty, subsidy costs will be strictly monitored and, as borrowers' needs decrease, subsidies will be reduced to ensure efficient targeting of assistance.

The funds needed to implement the restructure will be drawn from the Housing Reserve Fund, that is, the accumulated surplus funds of the Rental Bond Board, the Real Estate Services Council and the Building Services Corporation, together with the existing resources of the Home Purchase Assistance Fund. These funds are expected to be sufficient to support the restructuring. In the absence of those surplus funds, any attempt to finance the HomeFund restructuring from within the housing portfolio would have required a major cutback in the provision of

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public housing. By applying the resources of the Housing Reserve Fund to the funding of the restructure the Government will be able to avoid using Commonwealth-State Housing Agreement funds to meet the additional operating costs incurred by the restructure and thereby minimise the impact of the restructure on the provision of public housing.

The commissioner specifically recommended in his recent report that legislation be introduced to extinguish all claims by borrowers other than claims arising from the administrative mishandling of a loan. With this recommendation in mind, the bill introduces the following measures: first, all legal remedies against the Crown, and including co-operatives, FANMAC and the FANMAC trustee, are extinguished. Second, the commissioner will still be able to make determinations in relation to administrative errors which have been suffered by borrowers. These matters are spelled out in schedule 2 and may be expanded by regulation if necessary. These determinations will be binding on the Crown, FANMAC, the FANMAC trustee and the co-operatives. Third, in relation to borrowers who have left the HomeFund scheme other than through refinancing their mortgages, the commissioner will also be empowered to make determinations where he finds there has been a legal wrong suffered.

In recent days the Government's proposed bill has been the subject of discussions with the Opposition, the Independents, the Australian Democrats, the HomeFund Commissioner and other interested parties. In these discussions one of the principal concerns raised related to the proposed limitation of borrowers' rights. To the extent that this aspect of the restructuring scheme has been criticised, it would appear that no regard has been had to the potential cost to this State if some degree of certainty is not introduced into the handling of this matter. The Government wishes to make it clear, as indicated earlier, that in funding the HomeFund restructuring scheme it is not prepared to expend any Commonwealth-State public housing capital funds. Because of the recession and other factors there are thousands of people in this State who are experiencing financial hardship in repaying their housing loans.

As Mr Rogers said in his report, in common with the position applying to all other mortgages, HomeFund did not provide a guarantee against illness, unemployment, family break-up or death. The question of equity which arises in this context is the extent to which HomeFund borrowers should be advantaged over other members of the community who are also experiencing difficulties with their financial circumstances. The commissioner's report also recognised the importance of equity in the treatment of HomeFund borrowers when it recommended that the scheme should be restructured having regard to the general principle that HomeFund borrowers should not be in a substantially better position than other people experiencing housing related difficulties.

A principal purpose behind the bill is to do whatever is reasonably possible to assist HomeFund borrowers, whilst at the same time ensuring some certainty as to the potential cost to be borne by the taxpayers of New South Wales. Similarly, it is proposed that certainty be given to HomeFund borrowers in relation to the adjustment of their existing rights and obligations. In return for receiving benefits from the restructuring - which I again state will cost the Government up to \$400 million - borrowers are being asked to give up their usual legal rights. This again follows the recommendations in the HomeFund Commissioner's report and is essential if the State is to afford the cost of restructuring. To the extent that borrowers believe that they have suffered through administrative errors and wish to pursue claims in this regard, they will remain free to do so.

The Government is firmly of the view that the restructuring proposal has achieved an equitable balance between the need for relief to HomeFund borrowers in the current economic environment and the cost to the broader community of providing assistance to borrowers. The restructured scheme is designed to maximise, within the constraints of an affordable cost, home ownership opportunities for HomeFund borrowers - an objective which has always been fundamental to the Government's home purchase assistance policy for low and moderate income families in New South Wales. I should point out that if the scheme proceeds, more than 50,000 people will achieve home ownership.

The bill is divided into four parts and has four schedules. In tabling a detailed explanation of its provisions I should also particularly mention some of the amendments proposed in schedule 3. It is proposed to retain the services of the HomeFund advisory panel to deal with appeals in respect of the categorisation of HomeFund borrowers. It is envisaged that the panel's operations will continue beyond the expiration of the HomeFund Commissioner Act, and for this reason the panel's operations will now be guided by the Home Purchase Assistance Authority Act 1993. To assist the HomeFund Commissioner to determine remaining complaints it is proposed to introduce amendments the substance of which was recently considered by this House. In addition, proposed new section 37A of the HomeFund Commissioner Act will enable the commissioner, in appropriate cases, to prevent adverse credit reports on HomeFund borrowers. Proposed section 42A prohibits a person charging a fee when assisting in the preparation of a complaint to the commissioner, or sharing any of the proceeds of a successful complaint in that regard. I hope that this bill will be dealt with on its merits and that at the end of the day the quest for a speedy solution for borrowers will remain uppermost. I commend the bill to the House.

[Mr Speaker left the chair at 11.39 a.m. The House resumed at 2.15 p.m.]

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Mrs GRUSOVIN (Heffron) [2.15]: I lead on behalf of the Opposition on the HomeFund Restructuring Bill. At present we are in the festive season. This will be the third consecutive festive season in which Opposition members have been on their feet to speak about the problems of the HomeFund program. One hopes that in another 12 months we will not still be talking about the disasters of a program that was pushed in such a foolhardy manner by this Government. Let me be clear at the outset that this bill is based upon the report to the Minister for Housing by the Home Purchase Assistance Authority which clearly stated the objective that the Government would be pursuing upfront. The objective was to contain the costs and financial risks to the Government, including the cost of funding, the cost of subsidies to borrowers and the pressures for compensation for borrowers from other sources. It is interesting to note the fourth item of the report, which is related to strategy. The item is frank:

That all borrowers who can refinance commercially be encouraged to do so, subject to not taking measures that could reasonably disaffect the bondholders on the grounds of detrimental government interference with pre-payment rates.

The reality is that this Government is prepared to seek the Parliament's concurrence in legislating away the legal rights of HomeFund borrowers, in an attempt to meet its objectives and to ensure that the weakest group involved in this matter - the borrowers themselves, who have already carried these burdens for a long time and have suffered a great deal of trauma in the process - is the one who, in the Government's view, should carry the

can. It is all a bit tough to take on the top end of town, the financial end of town. We have always known, and the Auditor-General acknowledged, that a restructure would cost one party. It would cost the Government, it would cost the bondholders, or it would cost the borrowers.

What the Government is attempting to do here is to ignore the question of whether or not the borrowers were deceptively misled into this HomeFund program to meet the objective of the Government. The Government's objective was not just about providing people with housing. It was a question of propping up the home building industry in this State, making New South Wales look a lot better than the other States at a time when the country was in recession. The Government attempted in a foolhardy way to continue to promote the scheme and to place families in jeopardy, to further its ideological ends, without having any regard for the consequences that would flow. To me the intolerable part of this matter has been that for so long the Government has claimed that there was nothing wrong with HomeFund, that everything was fine, and that the Opposition was attempting by a political strategy to undermine and destabilise the scheme.

Mr Fraser: You were destabilising it.

Mrs GRUSOVIN: I know a lot of things have been said in the course of the past two years or more on the question of HomeFund and my role in the matter. If the issue was not of such critical importance I suppose one could say that one's ego could have been considerably boosted by the claims of the Government that somehow the Opposition - with Grusovin the member for Heffron somehow having responsibility - brought all this about. Let us make no mistake. This was a Government program which was ill thought out and pushed beyond belief, against all responsible economic advice, in an attempt to further the Government's ends.

I would like first and foremost to get one question upfront. Why does this bill not provide for the rights of the bondholders to be retrospectively forfeited without their consent? What honourable members are being asked to do is to retrospectively forfeit the rights of the borrowers. After all, the financially disadvantaged and emotionally devastated HomeFund borrowers - the other half of the HomeFund equation - are to have their legal and contractual rights extinguished with the force of a size 14 workboot on a beetle.

The answer is so transparently obvious that I am afraid blind Freddy could see through the scandalous intentions of the Government. The bondholders have the financial muscle to fight the Government and would never accept abolition of their perceived rights. But, of course, the weakest become easy prey for a very deceptive and deceitful Government, which now seeks to legislate into oblivion its very real liability for the HomeFund debacle and loads the consequences of its gross maladministration on to the backs of the low income earners of New South Wales. I would like to draw attention to the conclusion of the HomeFund Commissioner in his recent special report to the Minister for Consumer Affairs:

After careful consideration, I have come to the conclusion that the only satisfactory method for resolution of complaints is a legislative restructuring of the Scheme which would establish the entitlements of all complainants with but minimal exceptions where complaints would be required to be dealt with differently.

The operative words in that conclusion by Commissioner Rogers are "would establish the entitlements of all complainants" - not some complainants but all complainants. I can only conclude that the Government has managed to do a good con job on Commissioner Rogers for I am aware that the commissioner has been continuously apprised of the content of the intended restructuring package. So conning seems to be the name of the game. The group of people being conned in all of this - and who have been conned for a long time - are the HomeFund families of this State. The bill does not establish the entitlement of all complainants, and therefore the Parliament is not following the conclusive recommendation of HomeFund Commissioner, Mr Andrew Rogers, Q.C.

The HomeFund issue has been before this House since 1991 and is without doubt a very complex problem for this Parliament to solve in such a short space of time. I wish to allude to some of the happenings of this morning. Before doing so, however, I might say that but for the combined forces

of the Opposition and the Independents this House would not be in session today considering this legislation. It was the Government's intention to evacuate and exit this Parliament and not return until 1st March, 1994. If it had not been for the Opposition and the Independents standing firm in the early hours of that Saturday morning last sitting week, we would not be here debating this matter today. But the Government finally had to back down and agree that the House would resume to discuss this matter on 14th December.

The House is now faced with a ludicrous situation. A very complex piece of legislation is being rushed through. This morning, at about 9.20, 10 minutes before this House was due to sit, the Minister who has carriage of this matter in this House was not able to supply me with the contents of the second reading speech. The best that Minister could do was to supply seven pages of the speech and indicate that the rest was coming. Yet members were expected to debate this matter 10 minutes later, at 9.30 this morning.

Mr O'Doherty: We were going to adjourn until midday. The honourable member is wrong again.

Mrs GRUSOVIN: That was the Government's proposal. It was the Government's wish to have the House sit at 9.30.

Mr ACTING-SPEAKER (Mr Hazzard): Order! The member for Heffron will return to the substance of the debate.

Mrs GRUSOVIN: The Government intended to debate the matter at 9.30 this morning. It was not worried that the Opposition did not see the second draft of the bill until late yesterday evening. In that time substantial changes were made. The bill is one of the most complex pieces of legislation to be introduced into the House for a very long time. If the holiday aspirations of Government members result in the legislation being rammed through without proper consideration, it will be defective in one way or another, and the HomeFund problem will remain a smelly albatross around the neck of the Parliament for years to come.

The Opposition has obtained legal opinion about some of the constitutional aspects that flow from the proposed legislation. Though there has been a second draft of the bill and some changes have been made, the intent of the original draft remains, that is, to extinguish the legal rights of borrowers. The legal opinion provided by Malcolm Broun, Q.C., indicates that it is highly unusual for State legislation to purport to extinguish existing or accrued rights, though it is within the constitutional power of a State Parliament to do so. He suggested that some parts of the legislation would contravene section 109 of the Australian Constitution, which provides:

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

The Government is attempting to extinguish the rights of HomeFund borrowers, whereas in virtually every case the HomeFund mortgagee, as a corporation, would be affected by the Commonwealth Trade Practices Act. Accordingly, it would seem that the HomeFund Restructuring Bill purports to take away rights granted by Commonwealth legislation.

Mr Fraser: What rights?

Mrs GRUSOVIN: Just normal legal rights. Section 109 of the Constitution prohibits that. The legal opinion is that the section of the bill would either be invalid or would have to be read down to exclude only rights under State legislation. The legislation could have the effect of forcing the litigant to go to the Federal Court. It could produce a degree of chaos if some litigants proceeded to litigate their claims in the Federal jurisdiction. Of course, the Opposition has come to expect the unusual from the Government. It is not surprising that the Government is still attempting to evade its responsibility because it has not come to terms with the problems caused by its management of the scheme.

Other problems with the legislation have come to my attention from a number of quarters. The lawyers'

feast the Government so often expounds will be the consequence of allowing disadvantaged HomeFund borrowers access to justice will surely come to fruition by the passage of defective legislation. The bill was delivered to my office at 7.30 last night. I presume that a number of honourable members have not seen the legislation or been able to read it thoroughly. The present conduct in this place indicates that the House is run along the lines of a chook yard.

It is incomprehensible to me how any responsible member of this House could digest the contents of this bill in the time available, form a proper opinion of its validity and appropriateness and vote on it today. The Opposition is totally opposed to the abolition of legal and contractual rights of past and present HomeFund borrowers. The bill seeks to achieve a restructure for HomeFund families at the expense of the abolition by legislation of their legal and equitable rights. The honourable member for Coffs Harbour thinks this is a laughing matter. He ought to know better because he was a member of the parliamentary committee of inquiry that extensively investigated this matter. He should be more aware than other honourable members of the disasters faced by many thousands of borrowers in this State.

The most abhorrent aspect of the legislation is that all HomeFund families, past and present, will retrospectively forfeit their rights without their consent. The bill seeks to take away rights after the HomeFund Commissioner has flagged the fact that such rights exist for up to 57,000 HomeFund families. The contractual rights of a disadvantaged class of citizen will be extinguished, together with their legal rights, for misleading and deceptive conduct on the part of the Government and other HomeFund scheme participants.

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The Opposition believes that all existing HomeFund families should have one of three options: to remain where they are with their present mortgage conditions; to refinance of their own volition; or, by default, to obtain the benefit, if any, of the proposed restructuring package. Under any of those options HomeFund borrowers should not lose any legal or contractual entitlement to pursue a further remedy by way of compensation or variation of their existing mortgage with either the HomeFund Commissioner or a court. In view of the immense confusion caused by the uncertainty to date of events surrounding the operations of the HomeFund Commissioner, the period for the lodgment of complaints with the HomeFund Commissioner should be extended from 31st December to 31st March, 1994.

For the same reason the time period for the expiration of a borrower's claim under the Limitation Act, the Contracts Review Act, the Fair Trading Act and the Consumer Claims Tribunal Act should not include the period from the date of commencement of the HomeFund Commissioner up to one month after the making of a determination by the commissioner. In the event that a HomeFund borrower decides to pursue further redress from the HomeFund Commissioner or any court, the commissioner or court must, in making a determination, take into account any benefit that the HomeFund borrower has derived from the restructuring package. That will put an end to the arguments the Government has put forward about the prospects of double dipping. There will be no double dipping under the Opposition's proposals.

All HomeFund borrowers who have left the scheme or parted with possession of their home for any reason should retain the right to pursue a resolution of any complaint with the HomeFund Commissioner or a court. All existing HomeFund borrowers should be eligible for the restructuring package and, accordingly, will at law be mitigating their losses. The HomeFund Commissioner or a court, if the borrower applies for additional relief, will then be able to consider whether any further relief is justified and determine the extent thereof. Most HomeFund borrowers did not receive proper, independent financial and legal advice before entering into their mortgages.

It is improper for such advice, by way of a help line or any other means, to be given to borrowers by the Home Purchase Assistance Authority or existing scheme participants. The failure to provide proper and independent advice with regard to restructuring may have the residual effect of establishing HomeFund mark II several years hence. There is no doubt that independent advice, both financial and legal, should be provided by accredited members of the Financial Counsellors Association of New South Wales and solicitors employed by

community legal centres. They should also be funded to provide an adequate level of such services. These centres are the most cost-effective means of providing professional advice and, most importantly, are able to do so in a caring and supportive atmosphere.

The Government responds to Opposition initiatives by calling for a detailed costing, knowing full well that the vast resources of the Government, including paid consultancies such as the Macquarie Bank, are not available to the Opposition. Advice provided to me indicates that a relatively small number of borrowers will seek to pursue their claims before the HomeFund Commissioner or a court. I understand that between 1,000 and 2,000 borrowers have lodged completed complaint guides with the HomeFund Commissioner; though in fact about 10,000 or more borrowers initially notified a complaint to the commissioner. Given their complexity and the length of the documentation, it is not surprising that all those complaint guides have not been returned to the commissioner. The Opposition still holds to the position that basically the methodology that was used by the HomeFund Commissioner to obtain information from borrowers was significantly flawed.

On a previous occasion I provided to this House information received from such internationally renowned experts as David Sless, Executive Director of the Communications Research Institute of Australia, whose centre is regarded as the leading international centre for research in forms design. Mr Sless has provided advice to the Australian Bureau of Statistics. The centre advised that any failure to understand the questionnaire was the result of the poor design of the form. Mr Sless said that, unfortunately, the form fell far short of the standards of the ABS and had not been sufficiently well developed to be ready for testing, that is, the guide which at that stage comprised more than 150 pages. The Opposition was able to have the size of the document reduced to 100-odd pages. Considerable concern was expressed by Mr Sless and Professor Peter Bycroft from Corporate Diagnostics Pty Limited, who is also an acknowledged expert in this area.

It is clear that the coalition Government has shown little concern for HomeFund borrowers. The Council for Civil Liberties registered its concern about the way in which this matter was being approached by the HomeFund Commissioner. Even if the HomeFund Commissioner accepted the claims of all those who have lodged claim forms, and given that the maximum would be awarded in each case, the maximum payout would be \$60 million. I remind honourable members that any such award would mitigate against the benefits of restructuring: such amounts would have to be used to offset any debt outstanding on loans.

The Home Purchase Assistance Authority acknowledges that its estimate of the cost of this whole restructure is based solely on information provided by FANMAC. The financial estimates of the costs of the Government's own restructuring package appeared to be very rubbery indeed. Honourable members have seen other examples of this Government's failure to attend to economics. I instance the Government's best estimates with regard to Eastern Creek and the various estimates, over time, with regard to HomeFund. They were very far off

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the track indeed. The Government has suggested that thousands of borrowers will come forward to pursue legal actions before the commissioner or before the courts. The Government does not seem to understand that relatively few HomeFund borrowers are prepared to come forward to take further legal action. The Government has no idea how the trauma of HomeFund has affected some families, how intimidated they have been made to feel by what has occurred. They are intimidated by the thought of further legal process; they do not believe that at the end of all this they will win too much, because the nature of their lives has been that they have not had too many wins in the past. Many cannot cope with the thought of taking further legal action. It is important to take account of that fact.

The Government has placed borrowers into a number of categories. Honourable members should bear in mind that these figures are based on information provided by FANMAC. The computer estimate of about 8,000 borrowers in category A ignores the reality of the present inadequate credit history that needs to be available for commercial refinancing; the inadequate other debt levels that would preclude commercial refinancing; the non-acceptance by commercial lenders of second incomes, overtime, et cetera; and the fact that the value of many HomeFund properties within concentrated areas has fallen. This is evidenced by the fact that losses on the disposal of properties of defaulting borrowers in the past average \$20,000 a home. For these

reasons many category A borrowers will fall into category B or category C and thus severely impact upon the cost estimates submitted to this House.

The number of borrowers in category B approximates 13,000. The Opposition believes that this fails to recognise that many ageing borrowers will simply be unable to meet the credit foncier repayments for the full term of the projected 25-year term; the reliance upon second incomes, spouse incomes, overtime et cetera which may be currently available to meet loan repayments but will not continue for the next 25 years; and the supposedly high incidence of affordable borrowers in this category. In view of affordable borrowers having guaranteed repayment levels of 27 per cent of income, it is improbable to assume that all such borrowers will accept the restructure package.

Again, no field survey was undertaken to provide a reliable basis for projecting a take-up rate for this category of borrower. I could spend considerable time identifying the many deficiencies in categories C and D and the likely impact upon the cost estimates the Government has provided. The Government is presenting a computer model that does not reflect the final cost of the proposed restructure package. I hope that it is not as unreliable as the Government's Home Purchase Assistance Fund computer model, which seems to have been a major contributor to the current blowout of HomeFund liabilities.

The Government hopes that with the extinguishing of borrowers' rights will disappear the continual reminder that this financial nightmare arose solely as a result of its gross maladministration and, more particularly, the negligence and incompetence of its two principal managers - the former Premier of this State, Mr Greiner, and the then Minister for Housing, Mr Schipp. One cannot say that Minister Schipp did not understand the problems of negative amortisation. In November 1987 he warned borrowers who were taking up affordable home loans that they should check their loan commitments before entering into borrowing agreements because if their incomes did not continue to rise they could get into trouble.

After the coalition retaining government and Mr Schipp retaining the Ministry for Housing, a different Mr Schipp emerged. Perhaps for ideological reasons or political kudos he converted the Morris Minor that he had inherited from a previous government - a small scheme with safety nets in place - into a big Mack truck and proceeded to drive it at breakneck speed into the eye of an economic hurricane. In Commissioner Rogers' terminology, "the accelerator was pressed to the floor". Good on you, Joe! If that was not enough, in press releases in December 1990 and January 1991 he made the following further statements:

The State Government's HomeFund home loan program is on target to deliver a record \$1.5 billion in home loans to an estimated 17,000 borrowers in 1990/91. This is a clear indication that despite the present uncertainty in the housing market, there is still strong demand for the many benefits of a HomeFund loan.

HomeFund borrowers therefore remain in a strong position during difficult economic times.

There was an appreciation that we were in difficult economic times. He continued:

While existing house prices have moved below the new home market in some areas this situation will only last until home-seekers take advantage of that situation and force the prices up again through demand exceeding supply.

The then Minister obviously believed that his ministerial charter was to stimulate the ailing economy of New South Wales with a previously undiscovered macroeconomic tool - the disadvantaged HomeFund family. What gross incompetence! In February 1991 in this House the former Minister said:

It would not have escaped the notice of members opposite that the HomeFund scheme in its former mishmash of schemes, which people could not understand, started in 1986. This Government has remodelled it, refined it and given it a great deal more impetus.

The loans are achieving success and the system is now considered to be the leading government loan system not only throughout Australia but throughout the world.

Minister Schipp was the pyramid home loan salesman extraordinaire; he kept pulling in the suckers in ever-increasing numbers to prevent the collapse of that pyramid. I was further concerned in June 1993 when Mr Schipp stated before the select committee of inquiry into HomeFund:

As a matter of fact, I believe, if we are talking about cost to government, as of July 1992, which I guess is the last adequacy review of the program, it still had capacity to run a further program of up to \$1.1 billion.

The people in this State owe a debt of gratitude to the Opposition for pursuing this matter. If it had not been pursued, the evidence is that had Mr Schipp still

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been the Minister in July 1992 - only last year in the runup to the Budget - he again would have been proposing to the Government a further lending program of \$1.1 billion. That is fine for the bondholders and for the Government in the pursuance of its other objectives, but it is not much fun for the human fodder that was being dragged in to feed the HomeFund machine. After adverse media coverage, which extended over 15 months, adverse reports from the Trade Practices Commission and John McMurtrie, and after the Government conceded the need for a HomeFund commissioner, the previous Minister, Joe Schipp, still believed that another \$1.1 billion in low start loans could be advanced. Commissioner Rogers, in his recent report, put into perspective the competence of the then housing Minister, Joe Schipp, when he said:

It is useful to point out that the confusion which has surrounded the HomeFund scheme since its inception permeated the Minister's thinking as well.

The previous Premier and Treasurer, Mr Greiner, the self-proclaimed guru of finance, had a simple philosophy: take all the credit for the marvellous financial success of the HomeFund scheme and continue to exploit the myth of sensible, good financial management on behalf of the Government. But, in reality when it came to his responsibility as Treasurer of this State, he treated that responsibility in a contemptuous manner. The HomeFund booklet records in its history the financial responsibility of the then Premier and Treasurer for all to see:

The Minister says to expand the FANMAC program meant asking Premier Greiner to approve huge increases in borrowings . . . The Premier and I used to do this by just verbal conversations and tell Treasury later. I think they were irate about this.

I suppose this would be rather amusing if it had not caused such suffering to so many thousands of families in this State - low income families who should have received a far better deal. The booklet further records that the Minister said that when there was even more demand for loans, more conversations with the Premier followed until the lending was stretched to just under \$1 billion. The former Minister said, "Each time he saw me he'd say, 'You're not here again for money, are you?'" In March 1992 the then Premier advised the House:

If we had not had FANMAC and HomeFund operating, and operating successfully as they have, we would have a considerably worse problem so far as home building in New South Wales is concerned.

Never mind about the welfare of the people who were being fed into the scheme! It appears that the then Premier also discovered the wonderful macroeconomic tool - the HomeFund family - to use as a means of manipulating the economy of New South Wales with little thought for the human tragedy that ensued. The unfortunate reality is that the HomeFund pyramid of Joe Schipp and Nick Greiner eventually collapsed under the weight of negligence and incompetence, and the Government now expects the financially disadvantaged and emotionally devastated HomeFund families to pay for the negligence and incompetence of those two sand castle builders. In my opinion it is simply a gross miscarriage of justice for this Parliament to abolish the rights of one of the most disadvantaged groups of people in the community in an attempt to resile from its responsibility to address the excesses of incompetence of this Government. The passing of such retrospective legislation will set an ugly precedent that this Parliament will live to regret. I note that the Minister, in her second reading speech delivered earlier today, made no bones about the fact that "due to the recession and other factors there are thousands of people in this State who are experiencing financial hardship in repaying their housing loans". She continued:

As Mr Rogers said in his report, in common with the position applying to all other mortgages, HomeFund did not provide a guarantee against illness, unemployment, families break-up or death. The question of equity which arises in this context is the extent to which HomeFund borrowers should be advantaged over other members of the community who are also experiencing difficulties with their financial circumstances.

A question needs to be asked. Borrowers who obtained loans from other financial institutions were not disadvantaged as HomeFund borrowers were, who were falsely misled into obtaining home loans that they believed were safe because they were loans from the New South Wales Government - which they never were. Those HomeFund borrowers have been defrauded by this Government, which has only one concern. That concern was referred to by the Minister in her second reading speech when she said:

To the extent that this aspect of the restructuring scheme -

That is, the proposed limitation of borrowers' rights:

- has been criticised it would appear that no regard has been had to the potential cost to this State if some degree of certainty is not introduced into the handling of this matter.

The Government is still not prepared to admit that it was the architect of this disaster, which it has allowed to continue. It has taken a long battle over many months to get the Government to finally take responsibility for its actions and acknowledge that there is a problem. The Minister said in her second reading speech that HomeFund borrowers need to be given some certainty. The Government's proposals undoubtedly give them some certainty. The Minister said that in return for receiving benefits from the restructuring - and honourable members should remember that not all borrowers will receive benefits - borrowers will be asked to give up their legal rights. I never thought I would see the day when members of Parliament would be arguing about retrospective legislation to take away the rights of an extremely disadvantaged group of people in our community.

I invite honourable members to view the matter from another perspective. Consider this House agreeing to the legislative abolition of the rights of members to superannuation on the basis that the State could not afford it! Honourable members should make no mistake that Commissioner Rogers has stated that he believes that HomeFund families have arguable

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claims in relation to a range of matters. It is simply inconceivable to me that in the face of such statements the Government seeks by legislation to dismiss the legal rights of borrowers. One might ask: if a murderer escapes detection, the next time around who in this State will be next? The Government's proposal relegates my superannuation analogy to the little league.

If the legislation is carried in its present form, it will destroy the fabric of life of many HomeFund borrowers. A number of amendments will be proposed by the Opposition to ensure that borrowers maintain their legal rights. The Opposition is most concerned, for example, about what the Government proposes to do in relation to the aged persons home update loan and the rent-buy scheme. The aged persons update loan, which is an interesting product, and the rent-buy scheme in particular were among matters I raised in this House as far back as 1991, when I called on the then Minister for Consumer Affairs to have some inquiries made about that product because I believe it breached the New South Wales Fair Trading Act. But, of course, nothing happened. If honourable members do not want to listen to me, they should listen to what the HomeFund Commissioner has said about that product. He said:

Not only was the loan structure quite different from the other HomeFund products, but also, at the time of its introduction, this sort of loan product was very new to Australia.

The HomeFund Commissioner continued:

In my opinion the information supplied to borrowers by the Department of Housing was not only deficient in its explanation of the pitfalls of these loans, but also misleading. For example, the explanation offered to borrowers regarding *"repayment of the loan"* stated:

"Because your repayments are less than the interest due, the unpaid interest is added to your loan balance each year. While this increases your debt, the value of the house also grows. The loan must be fully repaid if you sell your home or on the death of the last surviving applicant."

The commissioner went on to say:

Borrowers could not be but ill informed about the true operation of the loans, and could reasonably be lulled into a false sense of security by assurances that house prices will not only increase, but will increase at an ongoing rate.

The commissioner also said:

As these loans have had a maximum currency of only four years, many elderly borrowers will remain unaware of the full and likely consequences of their predicament. This product should not be available in the restructure in its present form and I will be consulting further with the Home Purchase Assistance Authority as to an appropriate overall remedy for its deleterious effects from the outset.

The Opposition believes that the aged persons home update loan has no place in the restructure. The Opposition is cognisant of what the Government says in relation to the rent-buy scheme - it has finally acknowledged that there are problems there and has said that it will have a further look at it. Commissioner Rogers also said:

I have already stated that these products -

That is, the aged persons home update loan and rent-buy products:

- and their marketing were defective to such an extent that they should not be included in the restructure in their present forms.

The Opposition believes that there is no place for either of those products in the restructure and intends to move a number of amendments to that effect in Committee. When I first raised matters relating to HomeFund in this House in 1990-91, I never believed that at the end of 1993 honourable members would still be trying to resolve problems being experienced by the many families who have had to cope with the difficulties of HomeFund. I never thought that in this day and age one would have to battle for so long and so hard to ensure that justice was provided for a group of people who were used by the Government to further its own ends. No consideration was given to what this group of people would be asked to endure if things went wrong. I never thought that today I would be arguing with a Government Minister about her attempts to do something immoral and scandalous that I vehemently oppose. I refer to the sordid and callous provision in the bill which will, if the legislation is carried without amendment, deprive a disadvantaged group of people in this State of their legal entitlements. As I have said, the Opposition will attempt in Committee to substantially amend sections of the legislation.

Mr O'DOHERTY (Ku-ring-gai) [3.10]: The honourable member for Heffron began by telling us how many times she has dealt with this matter in the House and for how many years she has been pursuing rights and remedies for HomeFund borrowers. Yet I am sure there is not an honourable member in this House who does not agree that we should deal with this matter today and get it finished and over and done with. However, as her main point she said that the Opposition will suggest that legal remedies should be available for all concerned in HomeFund. Opposition members are the only ones who believe that a legal remedy is appropriate in dealing with this matter now, swiftly and expeditiously. I draw the attention of the House to statements from the mouths of Opposition members that contradict what they have said. Who was it who said this:

Mediation will provide a cheap and effective form of resolving many of these problems. The Opposition has always sought to achieve that.

Mr Kinross: Who said that?

Mr O'DOHERTY: It was the honourable member for Heffron who said there should be mediation rather than recourse to the courts. Who was it who said this:

As has been indicated by the shadow minister, the honourable member for Heffron, a number of people who are in difficulties with HomeFund loans are not experienced in dealing with the legal system, and are not experienced in dealing with the bureaucracy.

Who was it who said that? It was the honourable member for Campbelltown, who also spoke in that same debate. The honourable member was drawing

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the attention of the House to the fact that lawyers will have a picnic if we allow full legal recourse to be included in the bill, as proposed by the Opposition. If the Opposition believed it then, why does it not believe it now? The answer is that Opposition members are only about playing politics with this question for yet another year, if they can drag it out that long, and for two years if they possibly can. They would love to go to March 1995 with this unresolved. It is the Australian Labor Party that is trying to continue to allow HomeFund borrowers who are in strife to not have a remedy, a recourse, an end to their problems.

Let us consider what the Minister is providing. The honourable member for Heffron spoke long and hard about the things the Minister wants to take away. She spoke about legal remedies and so on, but we heard virtually nothing from her about what it is that will be delivered to HomeFund borrowers by this bill and by the restructuring package. The bill will provide for HomeFund borrowers who are still in the scheme an end to their substantive troubles. For most of the HomeFund borrowers still in the scheme, the restructuring provides the possibility for home ownership. They went into the scheme in the first place because they wanted to own their own homes. The restructuring scheme provides for most of those borrowers - not some, not a small amount as implied by the honourable member for Heffron, but for most - the opportunity of home ownership. That should be, and that is, the Government's primary purpose. It should be the Parliament's primary purpose.

The proposal applies to all except 5,000 of the 26,000 who are still in the scheme. All but 5,000 of those who are still in the scheme will have home ownership guaranteed to them by this restructuring package. Of the 5,000, most of them will still have the chance to make it, though some of them will not. It is a sad fact of life that not everyone in Australia today has the opportunity to pursue home ownership. That has been so throughout Australia's history, but it is particularly so at this stage of our history. We cannot walk away from that fact, though the Opposition seeks to walk away from it. The honourable member for Heffron wants everyone to believe that it is the natural right of every person in Australia to own a home, even if economic circumstances do not allow it.

The honourable member said she is concerned about people, but I say to her that it is irresponsible for her to continue to say to some people that they should pursue home ownership as the most important thing in their lives. By doing so she is leading them down the path to bankruptcy. She is getting their families into further trouble and she will have on her own head the results of the impact of that on those families. It will be her fault if at this time in Australia's history she continues to try to propagate the myth that everyone in Australia can responsibly and economically commit his or her family to home ownership.

I would like to believe - as I am sure all honourable members would like to believe - that all Australians should be able to pursue that dream at some stage, but I want them to do so in a way that is economically responsible. I do not want families to commit themselves to a dream that they have not thought through in the cold light of day. It is not responsible for us to let them go on to think that. But the honourable member for Heffron thinks that it is responsible, and I fear that her reason for doing so is that she sees political advantage in continuing to propagate this home ownership myth, especially among HomeFund borrowers. She must admit that there are some people in respect of whom it is much better now to forgive the debt, as this restructuring package does, and to allow them to continue to rent their homes. That is the category of Homefund borrowers, the 5,000 of the 26,000, about whom she says she is most concerned.

For most of those 5,000 people the restructuring package will forgive the amount of the debt owed above the value of the home. That alone will lift a substantial weight from the shoulders of those families. It is that issue that is causing families stress and turmoil and worry about whether they will be able to hold themselves together, feed themselves, and so on. They are concerned that they have a huge debt hanging over their heads. For most of them the restructuring package forgives that debt. I believe that is the best and most forgiving thing we could do for them as a Parliament. For the honourable member for Heffron to say that is not the case is completely wrong. She mentioned none of those matters in her lengthy comments about the restructuring package. Nor did she mention the very substantial number of people who have benefited from the HomeFund scheme over the years since its inception - by a Labor Government, incidentally.

I do not want to dwell on the fact that it was the Labor Government in 1986, under Frank Walker, that began the HomeFund scheme. I will not dwell on it in the way that the honourable member for Heffron did, or in the way that other members opposite will. I will not dwell on the fact that the honourable member for Heffron and other members opposite would have us believe that the present Government invented the scheme. She even said so. Well, that is nonsense; she knows it is not true. It must have been a slip of the tongue, because she knows it is not correct. She was a member of the Cabinet that implemented it. Frank Walker was the Minister, and it was the Labor Government that did it in 1986. It designed a scheme with many inherent flaws in place, one being the lack of accountability and auditing in that scheme. There were no such mechanisms at all. Those mechanisms were introduced by this Government, by former Premier Greiner and former Minister Joe Schipp.

Let us not have any of this nonsense about who originated the scheme. Let us have an end to the politics on this question because it is the politics of it that will keep us here until 3 a.m. or 4 a.m. tomorrow. Who knows how long Opposition

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members will speak to the amendments? It is the politics of this question that will continually raise false hopes for the people of New South Wales who just want to get out of the scheme with their families intact. This package provides the way for them to do that. I say to the honourable member for Heffron and other members opposite that enough is enough. Let us have an end to the politics on this scheme. Let us as a Parliament call it quits today. Let us just acknowledge that this restructuring package is welcomed by Mr Rogers and by many others in the community. It has been recommended by the Home Purchase Assistance Authority and it provides an equitable solution for those in the scheme. The package has many balances against the competing views as to whether HomeFund borrowers should be treated differently from everyone else, and I will come to that question in a moment.

Let us deal with this matter today as a Parliament and have an end to the politics now. The only people who can end the politics on the question and get something done for the people of New South Wales are the members opposite. The members of the Australian Labor Party must do that, because they are the only ones left who are playing politics on this matter. Government members will not dwell on the fact that the Labor Party started the scheme. The Government wants to get this matter over and done with, to have it finalised today. The Government wants a solution to the HomeFund problem, and it has worked towards that end this year by way of the various measures brought to this Parliament to try to solve the problems.

Let me go back to some of the benefits of the scheme that I mentioned earlier. There were 57,441 borrowers, and since 1986 approximately 28,000 of those have achieved home ownership. That represents more than 28,000 people; 28,000 families, one could say, have achieved home ownership through the scheme. Because of the nature of the scheme, because it is and was a social lending program, many of those people would not have achieved home ownership in any other way. If it is the great Australian dream to own one's own home, and there is no doubt that it is part of our culture and psyche, 28,000 families have benefited from the scheme. By the end of this restructuring package, approximately 50,000 families will have achieved home ownership through the HomeFund scheme.

The honourable member for Heffron talked about the people involved with HomeFund as being - what was

the phrase she used - "the worst dealt with people in New South Wales". She talked about them being trampled by the size 14 boot of the Government; she talked about them being on the breadline, all of them; she talked about them losing their families, their homes and their possessions. Certainly some have; a few have. One would have to say that home ownership is a risky strategy, and many people who pursued home loans through private commercial organisations have also been dealt a savage blow by the recession, which was created by a deliberate act of policy by the Federal Labor Government.

It is not only HomeFund borrowers who have faced difficult times in the past few years; it is not only HomeFund borrowers who have lost their homes because interest rates went up to an unsustainable level when there was a downturn in the property market as a result of the recession and the value of homes dropped accordingly; it is not only HomeFund borrowers who have had trouble and have been evicted from their homes. Yet every time the honourable member for Heffron speaks about this matter one would think that all HomeFund borrowers had been evicted and have suffered hardship, and that they are the only ones who have suffered hardship. Neither of those things is true. I will refer honourable members to the figures again. There have been 57,441 borrowers since 1986, and by the end of the restructure 50,000 will have achieved home ownership. *[Extension of time agreed to.]*

The bill will implement the restructuring proposals put to the Minister for Housing by the Home Purchase Assistance Authority following advice to it from the Macquarie Bank. And, importantly, despite what the honourable member for Heffron has said, it meets the criteria established by the HomeFund Commissioner, former Justice Rogers. When this House dealt with the HomeFund Commissioner Bill in those heady days earlier this year the honourable member for Heffron, the honourable member for Campbelltown and other members opposite said he was the greatest person and would help solve all the problems. But today he stands pilloried by the honourable member for Heffron because he said things that she does not like.

What will the restructuring achieve? What are the key objectives that Mr Rogers has set, having looked broadly at all of the outstanding HomeFund loans? Some of them are these: that no borrower should be made homeless; that where possible borrowers should be allowed to remain in their present dwellings, if necessary as tenants; and that borrowers should not be in a substantially better off position than other people experiencing housing related difficulties. Those are three key criteria set by Mr Rogers. This restructuring package will achieve all of those, with the possible exception of the last, that HomeFund borrowers should not be substantially better off than other borrowers.

The political reality is that HomeFund borrowers are better off than other borrowers. Without wishing to go into the politics of it, it is very clear to me - from evidence given before the HomeFund select committee - that there is a direct correlation between the time that the Opposition began its political campaign against HomeFund and many of the broad problems of the HomeFund scheme, in particular the number of people who are defaulting on their loans. In March 1992, when the campaign first began, a substantial number of people said, "Hang on a minute. The New South Wales Opposition says that maybe there is something wrong with the HomeFund scheme. It seems to be suggesting that the Government is going to bail us all out, so perhaps I will not make this month's payment. I might go and spend that money elsewhere".

[Interruption]

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If they did not have it to pay, it was not imperative upon them to try to live up to those obligations, or to face the reality that they would have to go to the bank or to HomeFund and say, "I think I may need to get out of this scheme". Why? Because the Australian Labor Party was saying to them between the lines, "Just wait a bit because we will see if we can get the Government to bail you out". Who else did the Government bail out? Did it bail out any Westpac borrowers? Did it bail out any borrowers from the Advance Bank? Did it bail out borrowers from the St. George Bank? Did it bail out anyone else? No, of course it did not. Did the honourable member for Heffron ask for the Government to bail those people out? Of course she did not. The reason she did not was because she could not make political capital out of that. It was a politically inspired attack on

HomeFund which has left HomeFund borrowers in a different position from other borrowers. That is the one respect in which Mr Rogers' key criteria are not met. Because the honourable member for Heffron did not mention it, I will mention something else that former Justice Rogers said in his report to the Minister for Consumer Affairs. He said:

Legislation should extinguish any claims (other than claims arising from administrative mishandling of the loan) by borrowers who have voluntarily exited the Scheme by refinancing or borrowers who now take the opportunity to exit by refinancing.

He also said:

For borrowers who enter the new Scheme, -

That is the restructured scheme:

- stripped of its inappropriate features, legislation should extinguish all claims arising from existing loans except for those concerning administrative mishandling of loans.

Mr Rogers, Q.C., said that the legislation should take away the right to sue the Government over HomeFund loan mortgages - and other players in the field. By this bill the Government will implement what Mr Rogers has recommended. That is not something that one would think a former justice of New South Wales would lightly recommend; nor is it something that the Government of New South Wales would lightly implement. It is a big step to take away the legal rights of people in this manner. However, it is not as if they get nothing in return. Mr Rogers has said that in return they will get: an end to their HomeFund problems; a restructuring; home ownership at the end of the track or, if they are not amongst those who can afford home ownership, rental assistance to rent their own homes. There are substantial subsidies and substantial Government assistance in the process, including the waiver of stamp duty. A whole range of measures is provided in this restructuring program that will allow those people to get justice, in the sense that their problems with HomeFund will be over. That is what we are here to achieve as a Parliament.

Weighing all that, the recommendation of Andrew Rogers was that, despite the importance of the law and legal remedy, it is far better to give people an answer now than to make them go to the Supreme Court and other places to fight to get an answer that there is no guarantee they will get, and involve them in further costs, strife, stress and trouble. That is what Mr Rogers recommended, and the Government will implement that by this bill. Parliament should not be hoodwinked into running the political agenda of the ALP on this question. We are here for the remaining HomeFund borrowers to solve the problems of a scheme that was started by the ALP and extended by the current Government, which has enabled many tens of thousands of New South Wales citizens to achieve home ownership; a scheme that had some inherent problems from the beginning and had other problems which resulted from the downturn in the economy - and it was not alone in that.

For those who are left in the scheme, which has been politically killed off by the ALP, what we are about today as a Parliament is solving their problems. We will solve their problems by enacting this bill. We will not solve their problems by leaving open legal questions that will involve them in further stress and merely further the political objectives of the ALP. I say again: Enough is enough. Today is the day to end the politics on this question. This is the bill which will do it. The Opposition will not like that because it will deny the Opposition an issue to run with, but the people of New South Wales, especially HomeFund borrowers, demand it. It is our duty as legislators to protect them first, before we worry about the ALP's political agenda. I urge the Parliament to enact this bill and to end the problems of HomeFund borrowers today.

Mr AMERY (Mount Druitt) [3.30]: I am pleased to support the position taken by the honourable member for Heffron on behalf of the Opposition. I should like to commence by responding to a few comments by the honourable member for Ku-ring-gai. Obviously not too many HomeFund borrowers live in Ku-ring-gai, and it is apparent that the report of Commissioner Rogers has not been studied too closely by the honourable member. It is incredible how in his contribution to the debate he could gloss over the hardship of many HomeFund borrowers. He made misleading comments to the House, for example that 28,000 people have

achieved home ownership under HomeFund. That comment has to be questioned because HomeFund has only been in existence since 1987. Not many of those borrowers have achieved home ownership. What they have is a home mortgage.

According to the repayment program of the HomeFund scheme, after 20 years of repaying their loan some of those people, if they are able to keep up the mortgage repayments, will be paying something like \$2,000 to \$2,500 per month in mortgage repayments. The honourable member for Ku-ring-gai is a little out of touch. Those people have not achieved home ownership; they have a mortgage, the repayments for which will be very difficult to maintain over the next 20 years. That is not home ownership. Perhaps the honourable member for Ku-ring-gai is a little out of touch because he has not been briefed by the borrowers. When he spoke about

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the great efforts of the Government he gave me the impression that he wanted the Government to be given some credit for dragging people out of the river after it threw them into the river in the first place. Little more should be said about his comments.

I should like to think that this is the end of the HomeFund debacle, as mentioned by the honourable member for Ku-ring-gai. However, we all know that this is not the end of the HomeFund saga. It is not the end of the saga for borrowers, who were led to believe that home ownership, because of the HomeFund scheme, was achievable. Their dreams have been shattered and the bitter taste of this issue will stay with them for life. This issue is not over for borrowers. They and their families will be talking about it for many years. This issue is nowhere near over for the taxpayers of New South Wales, who will be lucky to get out of this mess for the amount of \$200 million, \$300 million or \$400 million that has been floated in public in recent weeks. This issue should not end here. The Fahey Government, and the Greiner Government before it, should be held responsible for this mess, not only right up until the next election but in any historical record of this period and of the financial mismanagement of any government in this country during this period.

The Fahey Government should consider itself lucky in the way it has been treated by the community and the media on this subject. The Victorian Government was thrown out of office over the Tricontinental debacle, the Western Australian Government was defeated over the Western Australian Inc. issue, and the South Australian Labor Government was crushed only last week, a year or so after the then Premier John Bannon resigned over the collapse of the State Bank of South Australia. However, on a scandal of equal magnitude, the New South Wales Government's HomeFund scheme, the Fahey Government is seen only as a poor manager or ignorant or uncaring towards low income earners.

The reason for that is that the issue of HomeFund has gradually come to light over a few years and was gradually elevated by the honourable member for Heffron, whose campaign started to ring the alarm bells. As she said in the House today, if it had not been for the Opposition - or for the honourable member for Heffron - raising this matter over the past couple of years, New South Wales would have a monumental debt that it could never finance its way out of, and it would be screaming to the Federal Government for a bail-out. As the honourable member for Heffron said this afternoon, the previous Minister for Housing was boasting about extending the HomeFund scheme by another \$1.1 billion. The Government should not criticise the Opposition. It was the honourable member for Heffron who brought this matter to public attention and caused the Government to put the brakes on this scheme. All this comes from a government that puts at the bottom of its letters the slogan, "Putting people first by managing better". Heaven help us. The Government is cheeky to put that slogan on any speech regarding the HomeFund scheme.

Turning to the debate and the bill, the Minister referred at length to the report of the HomeFund Commissioner, who, by and large, has done a fairly good job in preparing this report. The report contains a number of references about which I should like to make comment and seek a response from the Minister, if she cares to respond to all of the debate that will take place this afternoon. The commissioner made a number of references to the false and misleading promotion of the scheme. Although the bill hopes to restructure the scheme and assist most, if not all, of the borrowers, I should like to know who is to be held responsible for the wrecking of the lives of so many borrowers. Who was responsible for the misleading advertising of the scheme?

If a trader in this State falsely advertises a product or misrepresents the quality, size or country of origin of that product, the Minister for Consumer Affairs and the Commissioner for Consumer Affairs, who was in the precincts of this Chamber a little while ago, would issue public warnings against buying the product because it was being falsely advertised. Prosecutions would be taken under the Fair Trading Act or some other Act under the control of the Minister for Consumer Affairs. I do not ask honourable members to take my word that false advertising occurred under the scheme; they should refer to the report of Commissioner Rogers, which was commissioned by this Government. At pages 38 and 39 of his report the commissioner spoke of how borrowers were unaware of the difference between the various loans that were available through HomeFund. I refer to item 2 on page 38 of the report, where the commissioner said:

Material existed which described the features of HomeFund loans in generic terms.

For example a brochure titled "When you see these symbols working together . . . (HomeFund logo, Real Estate Institute logo, combined logo) you know you will own your own home even sooner!" dated 12 December 1990, contained the following:

"What will my payments be?"

The repayments for HomeFund loans are tied to your income - between 27% and 30% of gross household income, depending on the size of your deposit."

There is no indication in the brochure that the income tied repayments only apply to Affordable loans. The size of the deposit only affected initial repayments for Low Start loans.

On the basis of this type of material a borrower might assume that this feature applies to all HomeFund loans. A borrower entitled to an Affordable loan could apply for and receive a Low Start loan in the absence of advice as to the difference between the products and the advantages of the Affordable loan.

This is clearly a reference to false and or misleading advertising campaigns. If such a campaign were conducted by a furniture manufacturer or a car sales company, it would result in public condemnation and probable prosecution. But what happened in this case? What was the result of the misleading HomeFund advertising? There was protection by way of the previous Minister's answers and the continual cover-up of the HomeFund scheme. The

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misrepresentation about repayments being pegged to 27 per cent of income was probably the most attractive incentive in conning people into the HomeFund system. Many people honestly believed that they could pay off their loan with repayments set at between 27 per cent and 30 per cent of income. Commissioner Rogers identified this con. A particular comment by Commissioner Rogers flabbergasted me when I read it, and I refer honourable members to the bottom of page 17 and the top of page 18 of his report where he said:

One remedy which a court might have given in the third case, were the factual complaints established, might have been to vary the loan to give the borrowers the loan they claimed they thought they were getting. This would involve including a term in the mortgage that the borrowers do not have to pay more than 27% of their income as repayments. I was concerned that such a provision could have a serious effect on the borrowers' loan balance. I asked the Home Purchase Assistance Authority to prepare calculations showing the effect on the borrowers' loan balance of making repayments restricted to 27% of their income, with a range of incomes to be considered.

He was trying to find out how long it would take to pay off the loan if borrowers actually believed they were only going to pay 27 per cent or 30 per cent of their income for the loan. Commissioner Rogers calculated:

Those calculations showed that, at the end of 25 years, the borrowers' loan balance would have increased to between \$1,000,000 and \$6,000,000, depending on the amount of the borrowers' income in that period.

The brochures issued by this Government and the strongly marketed HomeFund campaign put these loans forward as loans that could be repaid at 27 per cent or 30 per cent of borrowers' incomes. [*Extension of time*

agreed to.]

These borrowers thought they were obtaining loans to be repaid at the rate of 27 per cent of their incomes. Could any of them have expected, after making such repayments on their homes for 25 years - and we are talking about modest homes worth about \$100,000 or \$120,000 - they would owe between \$1 million and \$6 million? Those are not my figures; they are the figures quoted by Commissioner Rogers in his report of 3rd December which was tabled in this Parliament. This is the type of fraud that was perpetrated on HomeFund borrowers of New South Wales. Surely the perpetrators of that fraud should be brought to account. The Government recognised that its advertising was in breach of the Fair Trading Act, that it was misleading. If the Government were a private company or a private bank, it would be prosecuted. That is acknowledged in the drafting of the Government's bill.

[Interruption]

Many of my constituents are HomeFund borrowers. They now know the campaign that conned them. I refer honourable members to part 3 of the bill where the Government now recognises that HomeFund, FANMAC, the Department of Housing and the Government were vulnerable to prosecution, because those entities have been protected in this bill. Part 3, clause 14(1), which was referred to by the honourable member for Heffron, reads:

Claims against the Crown and others extinguished. The Crown, FANMAC, the FANMAC trustee and a co-operative housing society, including any persons acting on their behalf, are not subject to any action, liability, claim or demand (and a determination may not be made) in respect of:

- (a) any HomeFund mortgage; or
- (b) any transaction relating to, preliminary to or arising from any HomeFund mortgage; or
- (c) the promotion, origination or management of any HomeFund mortgage or HomeFund scheme.

In this bill the Government recognised that it is vulnerable to prosecutions for breaches of the Fair Trading Act. Commissioner Rogers quoted in his report a statement from the Law Society of New South Wales that refuted the Crown Solicitor's advice that the Crown is immune from the Fair Trading Act, and referred to it as a nonsense. There is a lot of covering up going on in this bill. It will not end here, as the honourable member for Ku-ring-gai hoped that it would. I could detail a number of case studies of constituents who have concerns about and problems with their HomeFund loans. My electorate office has had many.

Mr Hartcher: Name them.

Mr AMERY: I will name some. I have four pages of them. One of the schemes proposed by this bill would take away legal rights and so on. That suggests some alternative method of assisting HomeFund borrowers in pursuing their claims or complaints or assisting them with refinancing outside the legal system. In my view there should be a substantial increase in funding for alternative services, for example, financial counselling services. I note honourable members opposite are frowning. Have honourable members ever heard of a community legal centre?

Mr Kinross: How will that give them their home?

Mr AMERY: The honourable member should obtain a briefing from a financial counsellor. Credit Line and financial counsellors have been assisting HomeFund borrowers for years. The point I am trying to make is that if this bill is passed many inquiries will be made, substantial assistance will be sought and, as lawyers will be precluded from operation of the scheme, a lot of pressure will be put on financial counsellors. New South Wales has an appalling record when it comes to funding financial counselling services. I hope that, in addition to this proposal going through the House, there will be a substantial increase in funding for financial

counsellors. To support my argument, I quote from Mr Cavanagh's report on maximum interest rates in which he made some reference to financial counselling in New South Wales. At page 149 of his report he said:

The total funds available for financial counselling in NSW in 1991/92 were \$565,000. This included the one-off grant . . . Victoria, which again has a smaller population than NSW (approximately 4.5 million) provides about four times the level of funding as the NSW government does for financial counselling.

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Only last week I issued a press release condemning the Government for ending funding under the recession package of the Department of Youth and Community Services for financial counselling services. Last night the New South Wales Treasury temporarily restored that funding. Even with that top-up funding announced yesterday, only two places in Australia have a worse record on financial counselling than that of New South Wales. They are Queensland, until it brought in the poker machine tax to top up financial counselling, and the Northern Territory. So the largest State has the poorest record per capita on financial counselling.

Many HomeFund cases have been brought to my notice. I refer honourable members to the well documented case of Mr and Mrs Isaacs, who should be given great credit for their assistance to HomeFund borrowers. Mr Isaacs received a loan from the Merrylands Co-operative but lost his job, suffered a heart attack, and was unable to maintain repayments of \$900 per month. The original mortgage of \$107,000 in 1990 rose to \$115,000 by 1991. Mrs V from Mount Druitt obtained a HomeFund loan of \$105,000 through the City Central Housing Co-operative. Again, this was a job loss situation, and she was unable to meet her repayments. The debt increased to \$117,000 in only a short time. [*Time expired.*]

Mr McBRIDE (The Entrance) [3.50]: Finally, the sorry saga of HomeFund is coming to its logical conclusion, with an attempt to bring some justice to those young Australians who were duped by this Government and its agents into financial disaster. It is well over time that the Government, the Premier, previous Ministers for Housing and the present Minister for Housing congratulated the honourable member for Heffron, the shadow minister for housing, for her untiring efforts on behalf of those people caught in the HomeFund fiasco. On many occasions I have witnessed Ministers and Government backbenchers pouring scorn on the efforts of the honourable member for Heffron on behalf of the victims and denigrating her advocacy of the dispossessed and financially trapped.

[*Interruption*]

I am quite amused by the interjections of the Minister for the Environment. Recently, when I was discussing a difficult legal contract with a constituent of mine, he told me that he had sought advice from the Minister as a solicitor. My constituent said to me that Mr Hartcher was a fair and just man because he had said how outrageous this contract was. That legal advice was given by the Minister. I am sure that, in the case of HomeFund, the Minister would agree that it is an outrageous contract. I am sure that the Minister for the Environment would be interested to hear about some constituents of mine - they may even be constituents of his - on the Central Coast. On many occasions Ministers and Government backbenchers have denigrated the shadow minister for housing, the honourable member for Heffron, on this issue, but two years later we see that she has been a champion for HomeFund borrowers.

The Government is now responding to the issues raised by the honourable member for Heffron. It is a credit to her that for two years she maintained the momentum and maintained her efforts on behalf of those people. The honourable member for Heffron deserves the congratulations and respect of this House and the people of New South Wales for her determined action on behalf of those borrowers abandoned by this Government. This lady is one fierce opponent when it comes to issues of social justice, government irresponsibility, mismanagement and ineptitude. This bill is a humiliating acknowledgment that the honourable member for Heffron was, to paraphrase another outstanding future Minister and leader, right, right, right. The Government and the Premier were wrong, wrong, wrong.

The Premier still has it wrong, wrong, wrong because his hidden agenda has always been to protect lenders rather than borrowers, that is, the victims. Even worse, the Premier has shown an indifferent and callous attitude to the victims that has astounded me, given his background and experience as a suburban solicitor. The Premier, who was a suburban solicitor in the developing southwest corridor of Sydney, must have had more experience than anyone in this Parliament of the vulnerability and gullibility of first home buyers. The Premier, more than anyone, would have had firsthand experience of how the desire to obtain one's own home clouds a purchaser's judgment and reasoning ability.

It would have been the job of the Premier, as a suburban solicitor, to advise home seekers of the pitfalls associated with dealing with high pressure sales staff and other areas associated with the acquisition of a home. What was his attitude to the 26,000 people still trapped in the scheme? To whom should he have made his comments - to the victims, to those advocating for the victims or to those trying to rescue the victims? He made his comments to people attending a \$100-a-head Liberal Party fundraising breakfast. The *Sydney Morning Herald* of 5th November has this report:

Earlier, after a \$100-a-head Liberal Party fundraising breakfast, Mr Fahey said: "First and foremost, if you borrow money - whether it's under a HomeFund scheme or any other scheme - the first obligation is to pay it back."

The article reports Mr Fahey as stating:

It's not so long ago we had laws in this country that actually put people in jail for not paying money back.

The Premier is then reported as saying:

Until liability had been determined there is nothing for the Government to acknowledge.

That is where we are at now. That sums up the agenda of this Government on the HomeFund fiasco; that is, to blame the victims and to deny any responsibility.

Ms Machin: Where have we blamed the victims? Give us an example.

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Mr McBRIDE: I will give the Minister some examples in a few moments. For the benefit of the Minister, who obviously was not listening, I will repeat what the Premier said:

First and foremost, if you borrow money - whether it's under a HomeFund scheme or any other scheme - the first obligation is to pay it back. It's not so long ago we had laws in this country that actually put people in jail for not paying money back.

Ms Machin: Is that unreasonable?

Mr McBRIDE: It is unreasonable. In a few moments I will give the Minister some examples of why it is unreasonable. But the Minister will have to wait her turn. She can speak when she is given an opportunity. I repeat that this sums up the attitude of the Government on this issue. It blames the victims and denies any responsibility.

[*Interruption*]

If there were no injustice we would not be having debate on this legislation today. We are having this debate because all those Government members who supported the Premier and who did nothing for months are guilty. This issue has been around for two years, yet Government members denied that it existed. Every time the honourable member for Heffron raised the issue Government members poured scorn on her. But today they will have to sit in this Chamber and wear it. They have to wear it because they are guilty.

If the Premier felt the pulse of the community, if he were prepared to accept his responsibility as Premier, and if he had listened to the Opposition, the community, the victims and their supporters, this issue would have been dealt with one and a half years ago rather than being rushed through this Parliament to minimise the political fallout that has resulted from the Premier's callous indifference to the suffering victims. HomeFund has been a nightmare for 26,000 purchasers. They deserve to be compensated, just like anyone else who is a victim of the Government's actions. I now wish to make some comments on behalf of the victims. My first example, which comes from within my family, exemplifies the comments made by Commissioner Andrew Rogers - a man who we all know was hand-picked by the Government - who said:

HomeFund borrowers were enticed with misleading literature and trapped into ballooning repayments.

The real lure, the real enticement in this scheme, was the belief that the Government was underwriting the whole scheme. That was the lure that worked on one of my siblings. The story goes like this. My mother sought my comments on a home loan scheme which one of my siblings was examining. Conversations were conducted over the phone; I never saw any documents. This member of my family was desperate for an opportunity to obtain a home and the bait that was offered was too good to refuse: a low interest loan, low interest repayments, a low deposit, help with initial repayments, and assistance with legal and other upfront fees - all underwritten by the State Government. There is nothing more comforting to a person from a low income family background than the protection and assurance of the Government. For that same reason I always insured with the GIO prior to its privatisation. I believed that, as the GIO was underwritten by the State Government, it would always pay up when the chips were down. That is the reason why I chose also to bank Commonwealth.

[Interruption]

The honourable member for Coffs Harbour will be able to contribute later, if he so wishes. I do not think he will.

Ms Machin: He will.

Mr McBRIDE: I will not be here to listen to him, thank God.

Ms Machin: You are really fair dinkum, aren't you?

Mr McBRIDE: The honourable member for Coffs Harbour has never been fair dinkum. If the Minister believes anything he says, that reflects poorly on her. When my mother told me that these HomeFund loans were underwritten by the Government I was less critical of them. I thought: fair enough, if the Government is underwriting the loans, I can trust it. It might be a Liberal Government, but I can trust it. I remember thinking that the arrangements were too good to believe and that the interest structure was somewhat screwed. However, my mother kept reminding me that the Government was involved and that it would not be promoting the scheme if it did not believe it was secure and in the best interests of low income earners. She reminded me that other acquaintances of my sibling who were on lower incomes had taken out loans and that this was possibly a one-off chance.

The Government targeted this scheme at low income earners - people who, in ordinary circumstances, would not have been given a loan if they had gone to a bank or to any of the regular lending institutions. Banks and institutions would have recognised that low income earners would not have had the capacity to refinance or, in difficult times, would not have been able to make repayments. The Government's assurance conned people and sucked them in, which is what happened in the case of my family. I will give examples later of what has happened in other cases. I concluded that Government backing for the scheme, which was targeted at low income earners, meant that if there were problems in the future people could expect to be protected. I was not going to stand in the way of a dream; I was not going to be accused of spiking a good idea; I was not going to condemn something that was actively being promoted by the Government to low income earners. The dream of the honourable member for Cronulla has been spiked. He will never be a Minister.

How has this worked out for my sibling? Luckily, with the help of other family members, she has had the opportunity to refinance her loan.

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Without that assistance she would have been down the tube; she would have lost \$30,000 - gone for ever. That is why we are debating this bill today. People have been taken in. There is no more single telling factor than the Government's public involvement in the marketing of these loans. That is the issue. Once the momentum gathered and people throughout the process started making windfall profits - other honourable members will elaborate on that - the Government chose to ignore the independent advice of its auditors. The system snowballed. Now the Government is left to patch up the lives of victims.

The Government created this monster, people have been damaged and there are victims all over the place. According to the Government's own figures, it has affected 26,000 people. We are here today because there are victims. There is no use the Minister for Consumer Affairs pretending that there are no victims. If there were not, why was this bill introduced? It is an acknowledgment of the fact that the scheme went wrong. The Government sat around for two years and did nothing. Now we have to do something. That is why we are back here today. [*Extension of time agreed to.*]

I believe the Government to be even more culpable because HomeFund was used as an instrument of policy. It was part of the Greiner economic rationalism that dominated Cabinet. HomeFund was seen as a way of abrogating the Government's responsibility to public housing for the financially disadvantaged in society. That is where the Government got lost. It was obsessed with shedding the Government's responsibilities to community services and other related activities. HomeFund fitted that purpose. It pushed low income earners off the public housing waiting lists into self-funded housing. That fitted in with the dry economic rationalism formula. The people needed public housing but the Government decided that the people could pay for the housing themselves. It all went hopelessly wrong. People who could never afford to finance a home loan were lured by a dream that quickly turned into a nightmare.

Ms Machin: How many?

Mr McBRIDE: If the Government had not introduced and marketed this scheme these people would never have taken out their loans, because normal banking and loan institutions would never have loaned them the money. It was a con. That is the problem. The Government created the problem and now it has to fix it. The HomeFund catastrophe has had an enormous impact on borrowers on the Central Coast. When I first entered Parliament almost two years ago one of my first constituent interviews was with a HomeFund victim. I will refer to some of the cases I am aware of.

I refer to the type of case we are all familiar with - the case involving the 27 per cent safety net. HomeFund borrowers were told that they would not have to pay more than 27 per cent of their incomes; if their income dropped for whatever reason - because of unfortunate circumstances, loss of income, et cetera - there would be a safety net; they would not be thrown out of their homes and they would be carried through the difficult period. I refer to the case of a carpenter who was earning \$800 a week before he had an industrial accident. His income dropped because he could not go back to work -

Ms Machin: So that is our fault?

Mr McBRIDE: No, not that he had an accident, but there was supposed to be protection in the contract: it provided for repayments at 27 per cent of income. He applied for the 27 per cent, but they would not implement the clause. In another case involving the 27 per cent provision, the loan was taken out on 25th April, 1989, and the borrower met all repayments. However, because of a change of job his salary dropped from \$35,000 to \$22,000. His application to activate the 27 per cent clause for repayments was rejected. Given the domestic traumas following the HomeFund problem, he now just wants out. If he sells the house, after \$34,000 in repayments, he will owe approximately \$15,000 to HomeFund. He just wants to walk away, but he cannot - he is trapped. Is there anything we can do to assist him? I have an example of another of the rorts. A letter from one of my constituents states:

Approximately 18 months ago we took out a housing loan with HomeFund, in the early part of this time our payments were taken from our bank account on the 20th of the month but did not appear on our home loan statement until the 30th this was changed later due largely to complaints and media exposure.

That rort was exposed and there were changes. The letter continues:

HomeFund did not offer to pay any interest to us for the missing 10 days after our payment was made, nor have we ever kept them waiting for said payment but do not hesitate to make us pay them.

Ms Machin: Isn't it tough when people have to pay off their loans!

Mr McBRIDE: If the Minister lived in a seat with constituents on low incomes, like I do -

Ms Machin: Have a look at the profile of my seat.

Mr McBRIDE: The Minister is lucky to represent a privileged seat, because she does not have these sorts of problems.

Ms Machin: It is the seventh poorest seat in Australia.

Mr McBRIDE: Then the Minister should be concerned. She should get them a public hospital. If there are that many poor people in the Minister's electorate, why is there not a public hospital for them? Why is there a private hospital?

Mr Fraser: On a point of order. The honourable member for The Entrance is talking about private hospitals and hospitals in Port Macquarie. We are talking about HomeFund. I ask you to draw the honourable member back to the bill.

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Mr ACTING-SPEAKER (Mr Rixon): Order! I am sure the honourable member for The Entrance was making only a passing reference and will now return to the substance of the bill.

Mr McBRIDE: Of course, Mr Acting-Speaker. I refer to another case in which people wrote to the HomeFund group and said that their income had dropped. HomeFund wrote back and said:

The Society refers to your request for a reduction in your mortgage payments and advises that your repayments have been adjusted as follows:

\$519.54 per month for six months

Period covered May 1992 to October 1992.

Your monthly repayments have been reset to 27 per cent of your total gross income which includes where applicable family allowance . . .

In May 1992 the letter said that they were covered for six months. On 14th September they got a letter which stated:

The Society hereby confirms its arrangements with you in relation to the outstanding arrears on your account of . . . as at . . .

The letter says that the borrowers are now in arrears. They received an agreement from HomeFund which referred to 27 per cent. Within that six-month period they got a bill saying, "Hang on, you have to pay those

arrears". They were not arrears. As a result of representations, those arrears were wiped. I refer to another example of HomeFund rejecting the 27 per cent clause. I have to give credit to the then Minister for Housing. This goes back to 24th August, 1992. The letter to me states:

I refer to your personal representations on behalf of . . . relating to the difficulties she is experiencing in maintaining repayments on her HomeFund loan.

In October 1991 . . . applied to the Central Coast Co-operative Housing Society for a reduction in repayments as she had suffered a reduction in income. As current loan repayments exceed 30% of her income, a reduction to 30% of that income was approved for six months with a further review to be carried out at the end of that period.

In line with present policy . . . loan account has again been reviewed and repayments have now been reset at 27% of gross income, retrospective from November 1991.

That is, for a year these people were not paying at this rate. The letter continues:

This has resulted in the clearing of some of the arrears on . . . account. Furthermore, I am advised that . . . has been allowed twelve months to clear the remaining arrears by an additional payment of approximately \$160 per month.

That is only one of many cases on the Central Coast. [*Time expired.*]

Mr FRASER (Coffs Harbour) [4.10]: I appreciate the opportunity to speak in this debate. The HomeFund scheme was introduced in New South Wales in 1986 by a Labor Government to enable low income earners to obtain home purchase loans that were not available from banks and other lenders. Finance was made available to a sector of the community that otherwise would not have been able to obtain it. The highest rate of interest under the scheme was a fixed rate of 15.9 per cent with a 6 per cent increment, based on inflation and the current market interest rates of between 18 and 22 per cent. We stated that the number of borrowers under the scheme was 55,000; Deirdre Grusovin has stated that the number was 57,000. Let us say that is 56,000 for the sake of coming up with a figure. The scheme was running beautifully but the Federal Treasurer, now the Prime Minister, decided -

Mr Kerr: Name him.

Mr FRASER: Keating, a pig farmer from the Hunter Valley. He decided that the economy was overheating. The economy was too good so he choked the economy. Interest rates were reduced. Interest rates on home loans at the moment are as low as 5.75 per cent. So people who signed mortgage agreements at an interest rate of 15.9 per cent with a 6 per cent increment in line with inflation were disadvantaged by the actions of the Federal Labor Government. So the good scheme introduced by a State Labor Government, which made loans available to between 55,000 and 57,000 applicants, was cruelled because of the economics of the Federal Labor Government. This caused many people hardship. Many people were hurting. We admit that. All people were hurting. Small businessmen, farmers, and the normal Joe Blow in the community who had borrowed money on overdraft or on fixed interest rates for any other purpose were hurting: they had signed up for loans at 17 or 18 per cent interest when current rates are from 15 to 9 per cent on commercial loans and down to 5.75 per cent for housing.

Which government in Australia is helping those people? Has the Labor Party said to us that we should be helping small businessmen so that they can continue in business and employ people, keep them off the scrap-heap and enable them to keep their homes and businesses and keep food on the table? No. The morally defunct Labor Party could not give two hoots about the productive people in the community. There was a scream from City Central Co-operative Building Society, from Mr Peter O'Keeffe and Ms Kennedy, because they were sacked. They had responsibilities under the scheme to the borrowers, the community and the Government to ensure that HomeFund loans were within structured Department of Housing guidelines and or FANMAC guidelines. But they did not carry out their responsibilities. About 100 loans from City Central were audited and I think 99 of them were improperly originated for various reasons. Guess who improperly

originated them? Guess who signed off on them? Mr O'Keeffe. He decided that he would protect his own backside. He ran to Deirdre Grusovin and fed her a line. She thought there was good politics in this issue and that the Opposition could kick the Government.

Mr Amery: Is that all this issue is?

Mr FRASER: That is all it is. This is how it started. It started with politics, with two people protecting their backsides. Deirdre Grusovin ran with it. I was there when she came to Coffs Harbour. Saturday's *Advocate* contained an article headed
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"Putting punch into a HomeFund fight", which refers to the case of a Mr Robert Reid. He told me at a meeting in Coffs Harbour that he was too busy fighting the Government, out of the office of Deirdre Grusovin, on the HomeFund issue to get a job. He said his wife has now walked out and left him with his young child. He blames HomeFund. The article states that bad health, a broken marriage, a bank account sucked dry but an unbowed spirit are the balance of Bob Reid's four year fight against HomeFund. He took the loan out in 1989. When the first repayment came up he said, "Hang on. I can get out of this. I will be able to pay only 27 per cent of my income". Who fed him that line? Deirdre Grusovin. She should apologise to that man and his family for the nonsense and the rot that she fed him. This man would not get a job because he thought the Government and the scheme would pay the bill.

The Opposition does not give two hoots about what goes on in the private sector or with the normal citizen who has a job, mouths to feed, a mortgage to pay and a car to pay off. Such people are struggling. They probably do not have butter on their bread thanks to the Federal Labor Government, which has ruined the economy. Are Opposition members doing anything about that? No. Deirdre Grusovin stated in the House today that the Government was trying to protect the bondholders. She should come clean. The *Hansard* record shows the questions she asked on the select committee inquiring into the HomeFund scheme. She was asking the committee and the Government to provide \$330 million to the bondholders. She is a hypocrite. She is running anywhere she can to get a political headline on this issue. She could not give two hoots for people who are suffering.

They are not suffering because of the HomeFund loan; they are suffering because of a poorly managed economy. If interest rates and inflation had stayed high, HomeFund borrowers would be laughing with their fixed term loans at 15.9 per cent with a 6 per cent increment when the current rate was 22 per cent. Deirdre Grusovin fed people rot and nonsense and got media hype behind the issue. There are 27,000 loans still under the scheme, and about 30,000 borrowers have got out of the scheme. Those people would not have had a home had it not been for HomeFund. The Opposition is ignoring those people and concentrating on the 2,000 to 5,000 people mentioned by the honourable member for Mount Druitt. Because of the line they have been fed by Deirdre Grusovin quite a few of those people are holding back. After this legislation is passed and after Mr Rogers has heard the matters it will be interesting to see whether those people sat on the money and whether they had a genuine gripe.

A woman who came to my office last Friday said that it was a good scheme and that without it she would never have got a loan. She and her husband have a lovely home in Coffs Harbour. Most people are thankful for what HomeFund and this Government have done for them. No one denies that there are faults in the scheme. The economy has dropped and the fixed interest rates of HomeFund loans are now too high. This legislation addresses the problems. It will give borrowers the opportunity to refinance so that they can afford to keep paying off their homes. However, we cannot give them their homes. We cannot afford that. The restructuring package involves about \$400 million, which will be provided under the built-in safety net for the scheme and with some money from quangos.

An amount of about \$200 million sitting in the Home Purchase Assistance Fund was meant to subsidise the scheme. The HomeFund scheme was always a subsidised scheme, but when Mr Walker set it up he took away the audit facility vested in the Minister for Local Government and Co-operatives and gave it to the housing portfolio, which I believe did not have the facilities or the knowledge to audit. FANMAC then put in a scheme

that supposedly had an audit facility, but thought the Government was doing that, so no one audited it.

The O'Keeffes and Kennedys of this world got away with highway robbery and placed a lot of people in a situation they should never have been placed in. Mr O'Keeffe is the man who wrote the speeches given by all Opposition members today and has been beaver away in the office of the honourable member for Heffron. The honourable member for Mount Druitt said that financial counsellors are needed. Every question time in this House the Opposition claims that the Government is wasting money on consultants and counsellors. However, the honourable member wants the Government to spend another great wad of money - for nothing. The proposal will give borrowers an opportunity to restructure their loans. Perhaps the honourable member's idea about counsellors should be adopted by the Australian Labor Party down at Sussex Street.

Mr Amery: Read what Commissioner Rogers said about financial counsellors. Read the report.

Mr FRASER: The honourable member for Mount Druitt and the Opposition suggested that borrowers should be given access to counselling: borrowers will still go broke and lose their houses, but they will feel a little better.

Mr Schultz: It is a job creation scheme.

Mr FRASER: It probably is, and the honourable member probably has already picked the consultants. The honourable member for Heffron said that complex legislation has been thrust on members today. The reason members are back in this House today is that the Government has put forward this legislation. The rescue package, restructuring package or refinancing package - whatever name one might choose to call it - has been addressed and assessed by the Macquarie Bank. At lunch today I spoke to a gentleman who has been part and parcel of that package. He said it was a good package. I believe it is a good package and one that will work. [*Extension of time agreed to.*]

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The package will give an opportunity to borrowers. The Opposition has been aware of the package. Why is it against it? Why is it procrastinating? The reason is that the Opposition has not finished its run with the politics of this issue. The Opposition is not interested in the 2,000 to 5,000 borrowers involved, at worst estimate, of a total of 57,000. Any bank would be happy to have that record. I believe those 2,000 to 5,000 borrowers have been misled in many areas by Mr O'Keeffe and Ms Kennedy. Under the proposed legislation those people will have the opportunity to take their cases to the commissioner, who will look at their cases and recommend assistance if it is needed. This measure is the act of a responsible Government and one about which the Opposition knew full well. But the Opposition wants to play on in this House to get a few more headlines.

Once the proposed legislation is passed, once borrowers have access to their required package and are in their homes for this Christmas - and many Christmases to come - the Opposition will then bray that the package is available and works. But the Opposition does not have any feeling for the borrowers; it is concerned only about the politics of the issue. The Opposition suggests that the Government, in addition to offering the restructuring package, should give borrowers access to legal aid just in case they need to take further legal action. That would be double dipping. The honourable member for Mount Druitt mentioned a cost of \$200 million to \$400 million. The cost of such double dipping would run out to possibly \$1 billion - and the taxpaying public of New South Wales would have to pay.

Members opposite forget that whatever this State pays out in compensation, whether for financial counselling or restructuring, must come from somewhere. The taxpayer, the person out in the community working and paying tax, is the one who pays. Such compensation payments will go straight into the pockets of a lot of people who probably should not have had a loan in the first place. The borrowers I am referring to are those who were given loans by City Central outside the guidelines set down by HomeFund, the Department of Housing and FANMAC. On the North Coast, only one loan of about 790 has fallen over. Every other

borrower has either refinanced, is still in a loan, or has got out of it satisfactorily. Federal Government economic policies caused this scheme to fall over.

The honourable member for Heffron spoke about Mr Sless, but did not mention his history. Mr Sless made assumptions, statements and noises, and fed rubbish to the honourable member for Heffron. But he did not tell anyone that he refused to meet and will not meet the HomeFund Commissioner. He has not come forward, nor will he discuss anything. He is hitting from the sidelines. Yet the honourable member for Heffron had the audacity to quote him as a guru in this matter. The honourable member spoke about trauma to the borrowers. She will stand condemned as the member of the New South Wales Parliament who gave false hope to people. She went out and said, "Go away and strike" - I am paraphrasing her words. I cannot say she actually said that, but the information coming back to me is that the effect of what she said was for borrowers to go out and have a repayment strike and the Government would pick up the tab. Those who believed her now have loans that are in default. But do those borrowers still have the cash? I would say no, and that the cash has been spent elsewhere. Those people will come back to the honourable member and say, "You told us that the Government would pick up the tab". The Government is not going to pick up the tab. Those people will suffer trauma. History will show that the honourable member for Heffron stands condemned by borrowers for her attitude.

In this matter the Opposition cried wolf because it had lost the plot. The former Labor Government acclaimed HomeFund as a great social scheme. The scheme worked well. Through the advice of Mr O'Keefe, past manager of the City Central Co-operative, and of his offside, Ms Kennedy, to the shadow minister, the Labor Party decided to get in and run it. But the scheme got too big for Labor, which could not handle it and did not know where to go with it. HomeFund was an old Labor scheme that worked well and would have continued to work well but for the politics and mishandling of the economy by the Federal Labor Government. The Opposition is now crying wolf.

Case studies were mentioned. I congratulate the honourable member for Mount Druitt for bringing to attention probably the first case raised in this House. Every time the honourable member for Heffron brought a case to the attention of the Minister, the Minister asked for details but no details were forthcoming. It was an absolute nonsense. This scheme has always had a safety net. Funding in the scheme to provide a safety net is now to be used to restructure the scheme. The honourable member for The Entrance spoke about victims. But the real victims in this country, under the Federal Labor Government that caused this scheme to fall over, are all Australians.

The fact remains that 57,000 people used this scheme to get into homes that they otherwise would never have been able to get into. Between 2,000 and 3,000 people are now in difficulties because of the lies told by the Labor Party. The people in difficulty are receiving subsidies and under this legislation will continue to be assisted by this Government. For the Labor Party to continue to cry wolf, to tell people that this scheme is no good, that the restructuring is no good, is politics of the worst kind. I call upon all members of this House, including the Independents, to support this Government in a restructure of the scheme which will assist the borrowers.

Mr DAVOREN (Lakemba) [4.30]: This is a very important piece of legislation. Its aim is to protect the people who were conned into taking the HomeFund loans - low start and all the other names

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dreamt up by this Government. Borrowers believed the advertising that they would never have to make repayments that were more than 27 per cent of their income even if their income was reduced. Borrowers believed that their loans were government guaranteed; they believed the Government.

Ms Machin: All of them?

Mr DAVOREN: No. Certainly the loans were not government guaranteed. I can give instances of that. Borrowers were deceived by false advertising. If HomeFund had been a private company, the Department of Consumer Affairs certainly would have taken action. Over a lengthy period in this House the honourable

member for Heffron asked the former Minister questions about HomeFund. The Minister gave the impression that HomeFund was alive and well, that it was working marvellously and was a better thing than sliced bread. The former Minister said that when he walked down the street people greeted him with the salutation, "Good on you, Joe. I am in a house that I could not have otherwise afforded". The then Minister denigrated the honourable member for Heffron for having the temerity to suggest that something may have been wrong with HomeFund. It has since been found that there certainly were a lot of things wrong with HomeFund.

Government members have said that HomeFund was dreamt up by the previous Labor Government and, ipso facto, whatever happened was that Government's fault. During the Labor Government's regime the total indebtedness of HomeFund was approximately \$150 million; and the scheme was not pushed to the same extent that it was from 1988 onwards. The indebtedness of HomeFund is probably now billions of dollars. At the inquiry into HomeFund, former Minister Schipp indicated that had he still been Minister, he had plans for another \$1.1 billion to \$1.2 billion in HomeFund loans. Imagine what would have happened. The current Minister for Housing was very quick to send out the report from the Macquarie Bank together with his press release extolling the virtues of this legislation. The only time that the Rogers report was available to members of the Opposition was when it was delivered to their offices at Parliament House last evening. If the Minister was so eager to send out the report from the Macquarie Bank, at the very least -

Ms Machin: On a point of order. It is not true to suggest that the HomeFund Commissioner's report was not available until last night. The report was made available within half a working day of my receiving it.

Mr Amery: On the point of order. That is a debating point and not a procedural matter.

Mr ACTING-SPEAKER (Mr Rixon): Order! It is a matter for debate. There is no point of order.

Mr DAVOREN: Regardless of what the Minister for Consumer Affairs says, I have it on good authority that the report was delivered to my office at Parliament House last evening and pushed under the door of that office. This bill removes the right of people to take whatever legal action should or could be available to them. I recall the great debate in this House when the Council of the City of Sydney was sacked by the then Government. Members of the present Government, who were members of the Opposition at that time, waxed lyrical about legislation that would prevent any legal action being taken by members of the council. Yet Government members are now supporting legislation to extinguish the right of HomeFund borrowers to take whatever legal action should or could be available to them, and that legislation is to be retrospective. That shows their hypocrisy on this issue.

Some Government members have spoken about Government backing. Co-operatives in this State started operations a long time ago; in fact the enabling Act was in 1923. Co-operative housing societies always had government backing; loans were always government guaranteed. That is what made them attractive to people who could not afford loans from the usual financial institutions. I built my house through a loan from a co-operative housing society. I am grateful I could do that through a co-operative housing society that had Government backing. Some time ago when FANMAC was controlling HomeFund borrowings - loans let out through co-operative housing societies - it decided that there may or may not be a government guarantee. If there was a shortfall on the mortgage, the co-operative housing society could be called upon to take up that shortfall. At the behest of FANMAC that shortfall was to be picked up.

No society could afford to pick up shortfalls that were running into millions of dollars. Therefore, a new scheme was developed whereby all co-operative housing authorities, on the basis of a percentage of their management income, would provide a fund to pick up any shortfall. That scheme was promulgated by the director, Mrs Gabrielle Kibble, but it came to a sticky end. I do not know what happened to it. It disappeared and there was not much talk about it. This Government has been fiddling around with HomeFund in trying to solve the problem - a problem that my colleagues have said ranks equally with financial problems that have occurred in Victoria, Western Australia, and South Australia. Depending upon whatever figures one accepts, the HomeFund indebtedness runs between \$400 million and \$1 billion. One could write one's own figure because the results are not in as yet. HomeFund loans were granted to people who really could not afford - and

should never have been given - a HomeFund loan. Some HomeFund borrowers should never have been given a housing loan because they did not have the ability to repay. The House has heard of examples of people whose sole income was social security being given a HomeFund loan.

What was the reason for HomeFund? What was the driving influence behind getting HomeFund up and running and lending all this money? Obviously, HomeFund was designed to solve a problem that had

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arisen because public housing was not being provided to deserving people. Everyone deserves somewhere to live. That is what government is all about; governments should be able to afford to provide homes for deserving people. HomeFund was pushed as an opportunity to try to reduce the dearth of public housing that had resulted from the Government's reducing the amount of money being spent on public housing.

Let me give some examples of people involved with HomeFund. Mr and Mrs W of Mount Druitt purchased a home valued at \$112,000 through the Montgomery housing co-operative, which is the co-operative society of the St George Bank. Incidentally the St George Bank is one of the FANMAC bondholders, so it was lending money through its housing co-operative that it had put in through FANMAC. Mr and Mrs W borrowed \$107,300. There was not much fat there in case things went wrong. The house was valued at \$112,000 and they were permitted to borrow \$107,300. Their income was reduced because of a cutback in working hours and they sought to refinance the loan. When they asked for a payout figure from the co-operative society, they discovered that after two years of payments they owed \$114,000. I hope they got out of it at that stage, because honourable members can imagine how much they would have owed had the loan run any longer. In 1989 Mrs D, also of Mount Druitt, obtained a HomeFund loan through the City Central housing co-operative of \$110,000. She lost her job and was unable to maintain repayments. After four years the principal had increased to \$117,000. She sought refinancing and was advised to contact the hotline to obtain information in that regard. So it goes on. [*Extension of time agreed to.*]

People borrowed on the premise that their repayments would never be greater than 27 per cent of their income. Government members have claimed that HomeFund is not a free ride and one has to pay, but at no time were borrowers told that if they did not pay the full amount of their repayments the principal would increase to a princely sum that they could not repay under any circumstances. The important point is that the Government was not completely honest. People were not given the full details of their commitments then or of their commitments further down the track. The Government now hopes to remedy the HomeFund debacle. It hopes to wriggle out of the mess it has got itself into. On a quick examination of the bill I notice that clause 14 exempts the Crown, FANMAC, the FANMAC trustee and co-operative housing societies, and any persons acting on their behalf, from any action.

I understand why the Crown wants to wriggle out of HomeFund and to support the housing co-operatives, which were merely HomeFund agents, but why exempt FANMAC and the FANMAC trustee? They set the rules and, indeed, had the right to examine any mortgage document. FANMAC insisted that when a loan appeared to be going into arrears and default was possible, it was to be advised - and it accepted responsibility for it. The usual answer received by the housing co-operatives was, "You are in a better position to assess how it will go". FANMAC then opted out and had the gall to suggest that if there was a shortfall when the borrower eventually handed in the keys and the house was sold by the mortgagee in possession - the housing co-operative - that shortfall would not be picked up by FANMAC but should be picked up by the co-operative.

The bill has certain problems. As I have already said, clause 14 exempts the Crown, but clause 16 reads, "This Act binds the Crown". What does it bind the Crown to do? It is not spelled out. I read clause 14 to mean that the Crown is not bound, yet clause 16 binds the Crown. It is as simple and as baldfaced as that. What does the bill bind the Crown to? Is the Crown bound to sell up properties of HomeFund borrowers who can no longer afford the loans they have taken out? Is the Crown bound to look after these people or will it merely walk away from them, as the Opposition suspects it will? Many things are unsaid in this bill. The bill is obviously a ploy by the Government to wriggle out of its obligations.

I have read the bill with some interest and it does not mention the bondholders. Obviously the

Government does not want to upset them; they will be protected. The Government will do whatever it likes to people who have taken out loans. The Government is asking them to make whatever sacrifice it believes is necessary, but the bondholders are sacrosanct. The Government will not do anything to them. They will cruise along and collect their interest until such time as the bonds are due. No wonder the restructuring of HomeFund will cost the Government a great deal of money. Why not share the load and the pain? That is the obvious answer. The Opposition does not totally oppose a restructure of HomeFund; in fact, that is what it seeks. It has problems with some clauses of the bill, and those problems will emerge during the Committee stage. The Opposition seeks to maintain the right of borrowers to make legal claims when they believe they have a basis for doing so.

Mr KINROSS (Gordon) [4.49]: In addressing this momentous legislation, the HomeFund Restructuring Bill, honourable members should bear in mind the undeniable fact that through HomeFund many people in New South Wales have benefited who otherwise would have stayed on Department of Housing waiting lists. The fact is - and the honourable member for Mount Druitt ought to bear this in mind - that 30,000 people are no longer in the scheme because they no longer need its benefits. They are people who have homes. As the honourable member for Ku-ring-gai said earlier today, that is in addition to the estimated 21,000 borrowers in categories A and B who are either receiving some form of assistance or who may seek to refinance.

The Government has assisted an enormous number of people in connection with home ownership who otherwise would not have had any chance of owning their own homes. I repeat, because there

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seems to be some confusion among Opposition members and deliberate lies being peddled by them, that if the 30,000 people, that is, the 57,000 who originally took out some form of loan minus the 27,000 who currently remain in the scheme and those who fall within categories A and B - it may even be more if borrowers in categories C and D are included, though they are people who in large measure have become part of the honourable member for Heffron's political repayment strike - seek some indulgence from the authority in relation to the restructuring, the authority will consider waiving or extending any terms which may be appropriate in individual circumstances.

I shall deal first with the main feature of this bill that is of concern to a number of Independents and Opposition members, and that is clause 14. There has been considerable brouhaha about clause 14 removing some rights and extinguishing others. The Opposition should bear in mind who the person was who looked at all the issues in relation to this scheme. That person, maligned by elements of the Labor Party at the time - whenever the Opposition realises that it is losing the debate it suits it to shoot the messenger - was Commissioner Rogers. Had honourable members bothered to read his report, they would have found that Commissioner Rogers recommended that there be an extinguishment of legal rights. On page 3 at point 7 under the heading "Legislation" he said:

Legislation should extinguish any claims . . . by borrowers who have voluntarily exited the Scheme by refinancing or borrowers who now take the opportunity to exit by refinancing.

At point 8 he said:

For borrowers who enter the new Scheme, stripped of its inappropriate features, legislation should extinguish all claims arising from existing loans except for those concerning administrative mishandling of loans.

The second qualification, relating to the administrative mishandling of loans, is preserved in schedule 2 to the bill, whereby complaints can still be made to the commissioner by those who have been part of the restructuring in relation to those 15 elements listed on page 10. I listened with fascination to members of the Labor Party bucketing the legal profession and legal rights during debate on the Government's reforms of the legal profession in the Legal Profession Reform Bill (No. 2). The Labor Party came in boots and all saying that lawyers have had a field day; that their rights, and indeed the rights of those they represent, should be removed. Some Independent members should look closely at the hypocritical stance taken by the Opposition in relation to that bill and its stance with regard to clause 14. In his letter of 3rd December to the Minister for Consumer

Affairs - which appears at the front of the report - Commissioner Rogers stated in part:

From the outset, Parliament recognised that the unique and very difficult task of resolving the problems faced by HomeFund borrowers required an approach which stood outside the traditional adversarial system.

We are not talking about a system presided over by an arbiter; we want a scheme, a new system in place, that will be outside any adversarial or legal scheme. Commissioner Rogers went on to say:

The needs of the large number of complainants required that I structure a dispute resolution process which would deliver a fair result to all parties as efficiently as possible and with minimal cost to borrowers.

In the last paragraph Commissioner Rogers stated:

Simply put, I am endeavouring to bring about the delivery of remedy to borrowers under the HomeFund Scheme in the most expeditious and economical manner possible.

That is what this bill will attempt to do, independently of lawyers and of any involvement by the parties - other than their making an appropriate claim under clause 15(d) of the bill. The Government is trying to follow the commissioner's wishes and come up with an economically responsible restructured package at a maximum cost of \$400 million - not to mention, of course, that that is offset by the subsidy. It is absolute rubbish for the honourable member for Mount Druitt to talk about Tricontinental, WA Inc. and the South Australia bank. Clearly those examples are quite irrelevant. In this instance there is some equity: a house.

I am disappointed in Mr Sean Fewings of Radio 2GB who broadcast on a news bulletin this afternoon the comments of the honourable member for Mount Druitt and the honourable member for Heffron that this was a scheme of Tricontinental proportions. What an absolute disgrace. What absolute irresponsibility. Are Mr Fewings and other media personalities going to broadcast the financial calculations that show that this scheme is nowhere near what has traditionally been called the rust bucket stakes? It is simply the injection of money into a restructuring package from departmental funds that have earned interest and are sufficient to meet the purpose.

No analogy can be drawn between those entities and this package. Tricontinental, WA Inc. and the South Australia bank actually incurred losses - that is, money that was irrecoverable. Here the Government's injection into the scheme is at least met by equity, that is, the security that the various departments or entities have in the borrowers' homes. The same situation applies with any loan. Any lender is entitled to have security over the mortgagor's assets, and that was done in this case. Whilst we are talking of the assets of mortgagors we should not forget the evidence that is fairly clear - indeed from some of the analysts of the HomeFund scheme, including McMurtrie, Brett and, inferentially, through the Department of Housing restructure, Mant - that some of the borrowers have falsified their records. Let us not forget that. The parliamentary committee of which I am a member heard evidence of that. Members should not come to this place and suggest that we should look just at the borrowers. There are other entities involved in the scheme as well.

With regard to the interest of borrowers, quite apart from HomeFund borrowers, many other members of the community should be considered, such as farmers and borrowers of Westpac and other foreign currency loans. I should have thought the honourable member for Bathurst might have an

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interest in seeing that farmers in his community obtained a package similar to this. What other sector of the community could expect assistance similar to that given to HomeFund borrowers? Very few. This package is unprecedented. It has been designed in an economically responsible and non-adversarial manner, as the commissioner recommended, to try to achieve that aim. Given that clause 14 is the sticking point of most people, I should have thought that at least the honourable member for Drummoyne, a director of City Central Co-operative, would be as happy as Larry to obtain relief.

Mr McMurtrie in his report found that City Central Co-operative originated poorly 80 per cent of its loans. John Murray, a member of this House, is a director of that body. Where is the media coverage on that? If that

co-op went bankrupt, why should not the honourable member for Drummoyne be sued? Under section 13A of the Constitution he would be out on his ear automatically, because he would be made a bankrupt. He is one of the directors responsible for many wrongly originated loans in this scheme. Opposition members should not come into this House with a holier than thou attitude about this measure when it seems one of their friends would have an interest in seeking some protection from the scheme. The honourable member for Heffron spoke about bondholders in relation to the Home Purchase Assistance Authority. She is confused, and in fact has deliberately misled the House. At point 4 of page 7 of the Home Purchase Assistance Authority discussion paper there appears some discussion about recommending a restructured scheme, subject to taking account of measures that would not reasonably disaffect bondholders. There is no reference in this bill to bondholders. Indeed, the only reference I direct honourable members to is clause 18, which in part reads:

The FANMAC trustee is not required to obtain the consent of the beneficiaries of any trust of which it is trustee, or any FANMAC bondholders or unit holders, to the doing of any act, matter or thing in connection with the restructuring scheme.

The Government is not favouring bondholders. Opposition members must be quite thick, to put it politely, if they cannot see that this package does not require any involvement by bondholders. It is clear - on advice from people like Bain and Company - that bondholders will lose out if there is an early repayment or an earlier than usual exit from the scheme. It is incorrect to say that this Government is doing things irrespective of bondholders. They will suffer as a result of any early repayments. Bondholders are not particularly happy but they realise they must pull their weight and give their approval to the package. That is why that consent is not required. The honourable member for Lakemba ought to bear that in mind when he speaks about bondholders. The Labor Party and, indeed, some of the Independents, should bear in mind also that there must be some finality brought to this issue. The Labor Party is trying to score a few points over this issue. [*Time expired.*]

Mr HUNTER (Lake Macquarie) [5.4]: The HomeFund Restructuring Bill is a despicable attempt by the Government to remove the legal rights of HomeFund scheme participants to compensation for losses they have incurred because of the maladministration of the HomeFund scheme by the Greiner and Fahey governments. The bill seeks to divide existing HomeFund borrowers into six categories. Those categories were outlined by the Minister in her speech as:

Category A: those borrowers, of whom there are approximately 8,000, who have the capacity to repay a loan on normal commercial terms;

Category B: those borrowers, of whom there are approximately 13,000, who do not have the capacity to repay a loan on normal commercial terms but could do so with a reasonable level of Government assistance;

Category C: those borrowers, of whom there are approximately 4,000, who do not have the capacity to repay a loan on normal commercial terms even with substantial government assistance;

Category D: those borrowers, of whom there are approximately 1,000, who are in default of their obligations;

Category E: all existing aged person home update borrowers; and

Category F: rent buy and State partnership borrowers.

The bill will attempt to provide to these people relief ranging from nothing to short-term rental of their HomeFund homes to restructuring of their loans on a credit foncier, bank-type loan over a 25-year term. This questionable benefit the bill seeks to achieve for the HomeFund families comes at the expense of the abolition by this legislation of their legal and equitable rights. It is a disgrace. The Government should be ashamed that it has taken the action proposed in the legislation to remove the legal and equitable rights of HomeFund borrowers. All HomeFund families, past and present, will retrospectively forfeit their rights without their consent. The Minister in her speech claims that, "in return for receiving benefits from the restructuring, borrowers are being asked to give up their usual legal rights". They are not being asked; they are being forced. This certainly is the most revolting aspect of the legislation, because it seeks to take away rights after the

HomeFund Commissioner flagged that such rights exist for up to 57,000 HomeFund families. Contractual rights of a disadvantaged class of citizens will be extinguished, together with their legal rights, because of misleading and deceptive conduct on the part of the Government and other HomeFund scheme participants. Again, these disadvantaged people will have -

Ms Machin: On a point of order. I have listened with interest to the honourable member for Lake Macquarie, whose comments bear a distinct similarity to those of other members of the Opposition. He appears to be reading from a typed, prepared speech, and that is against the standing orders of this House for the good reason that other people outside the Chamber could have a voice in this place if they were to prepare speeches in such a manner. I ask the honourable member for Lake Macquarie to refrain from reading his notes verbatim and to debate the legislation as other members have done.

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Mr Hunter: On the point of order. The Minister read her speech from notes. I have copious notes and I certainly will refer to them.

Ms Machin: Further to the point of order. The honourable member should know that given the nature and often complexity of second reading speeches, it is quite in order for Ministers to read them, and it is usual for shadow ministers to reply in the same way. I suggest the honourable member familiarise himself with the standing orders and conventions of the House.

Mr ACTING-SPEAKER (Mr Rixon): Order! The Minister for Consumer Affairs is correct: it is the practice to permit Ministers to read prepared second reading speeches. Subsequent speakers should use only copious notes. I trust that the honourable member for Lake Macquarie will refer to his copious notes, but will not read them.

Mr HUNTER: As I said, Government members should hang their heads in shame for proposing removal of the rights of the HomeFund borrowers. The Government seeks to legislate away its liability for the HomeFund scheme. It will pass the dire consequences of its maladministration on to the poor and disadvantaged people of the State. The bill will also substantially remove the powers of the HomeFund Commissioner. It will legalise a solicitor or similar adviser acting to assist a HomeFund family with respect to a complaint. The Government created HomeFund and massively expanded it - to a point where more than a billion dollars a year of loan funds are being distributed throughout New South Wales. Many believe that the Government misled borrowers with its false and deceptive advertising, attracting those people into a scheme which has brought financial ruin on many and dire hardship on many others. The Government seeks to take away the rights of HomeFund borrowers to seek compensation for the Government's maladministration of the scheme.

Many other provisions of the bill relate to the above matters. The Opposition believes that those provisions require deletion or substantial amendment. We will move amendments during the Committee stage. The rights of borrowers are most important. The Opposition believes that all existing HomeFund families should have one of three options: first, by default, to obtain the benefit, if any, of the proposed restructuring package; second, to refinance of their own volition; and, third, to stay the way they are with their present mortgage conditions. The Opposition believes that under any of these options the HomeFund borrower should not lose any legal or contractual entitlement to pursue a further remedy by way of compensation or variation of their existing mortgage with either the HomeFund Commissioner or a court.

The period for lodgment of complaints with the HomeFund Commissioner should be extended from 31st December, 1993, to 31st March, 1994. This is in view of the immense confusion that has been caused by the uncertainty to date of events surrounding the operations of the HomeFund Commissioner. For the same reason, the Opposition is of the view that the time period for the expiration of the borrowers' claim under the Limitation Act, the Contracts Review Act, the Fair Trading Act and the Consumer Claims Tribunals Act should not include the period from the date of appointment of the HomeFund Commissioner up to one month after the making of a

determination by the Commissioner.

Some Government members have claimed that double dipping could occur. To prevent double dipping, where a HomeFund borrower decides to pursue further redress through the HomeFund Commissioner or any court, the commissioner or court must, in making a determination, take into account any benefit the HomeFund borrower has derived from the restructuring package. In that way double dipping will be prevented. All HomeFund borrowers who have left the scheme or parted with possession of their homes for any reason should retain the right to pursue a resolution of any complaint with the HomeFund Commissioner or a court.

All existing HomeFund borrowers will be eligible for the restructuring package. Accordingly, at law they will be mitigating their losses. If the borrower applies for additional relief, the HomeFund Commissioner or a court will be able to consider whether any further relief is justified and determine the extent thereof. Most HomeFund borrowers did not receive proper and independent financial legal advice before entering into their mortgages. It is improper for such advice, by way of helpline or any other means, to be given to borrowers by the Home Purchase Assistance Authority or existing scheme participants.

Failure to provide proper and independent advice with regard to restructuring may only have the residual effect of establishing a HomeFund mark II several years down the track. As stated by the honourable member for Heffron earlier, the Opposition believes that independent legal and financial advice should be provided by accredited members of the Financial Counsellors Association of New South Wales and solicitors employed by the community legal centres. They should be funded to provide an adequate level of such service. These centres are the most cost effective means of providing professional advice. Most importantly, they are able to do so in the atmosphere of a caring and supportive environment. Earlier the honourable member for Ku-ring-gai and the honourable member for Coffs Harbour blamed the former Labor Government for the HomeFund debacle.

Mr SPEAKER: Order! It being 5.15 p.m., pursuant to sessional orders the debate is interrupted.

PRIVATE MEMBERS' STATEMENTS

DEPARTMENT OF COMMUNITY SERVICES CHILD ABUSE INVESTIGATION

Mr GIBSON (Londonderry) [5.15]: I rise to speak to a very delicate and sensitive matter concerning the Department of Community Services. As we know, the department normally does a wonderful job, but every now and then something

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raises its ugly head and must be brought to the attention of the authorities. Normally the department protects the interests of children where they should be protected. Usually I would not even question the decisions made by this department; however, in this particular instance I must. I bring to the attention of the House the case of Mr and Mrs A. To protect the identity of these people, I will not refer to their names, but I will provide their names to the Minister at a later stage.

Mr and Mrs A are a middle-aged couple who found it medically impossible to have children of their own. Over the last 10 years they have fostered between 150 and 200 children in Sydney's west, mostly State wards. This couple has fostered children that no one else would take, for example, those who are uncontrollable, sick, et cetera. Over the last 10 years this couple has given these kids a home and a taste of family life that they otherwise would not have had. Mr and Mrs A were mum and dad to these kids. They have devoted their lives to these kids over that period. They provided some tender loving care where it was needed.

Mr and Mrs A also adopted two of these children nine years ago. Seven months ago their lives changed.

The 13-year-old adopted daughter alleged that Mr A had sexually interfered with her. Before you could say Jack Robinson the department had Mr A before the court. The court ruled that the daughter be taken out of the care of the foster parents and be placed as a State ward. The court also decided that this couple would never again be foster parents. It is absolutely unbelievable that this could happen. If the allegation is true, the department has made a wise decision. If it is not true, the department has caused a terrible injustice to two people who have served these kids and the community well for a long time.

In this case the department has been judge, jury and executioner. The court made the decision with the help of the department. It is unbelievable that the department has never interviewed Mr A; it has never spoken two words to him on this subject. The police have never interviewed Mr A; they told me as late as last week that there will be no charges against Mr A simply because they do not believe that there is a case to be answered. If he wants to, Mr A can go down to a police station any time he likes to make a statement.

Mr A has, through these events, had his good name and reputation shattered. A few months ago he tried, almost successfully, to commit suicide. Today Mr A is a broken man. The community and the kids have lost these foster parents. Almost 200 children have worshipped this couple and have been grateful to them. Almost 200 children have gone through the care of Mr and Mrs A. Never before has anyone made an accusation against either of them. It is unbelievable. This 13-year-old girl made allegations not only against Mr A but also against the teachers at school, doctors, boyfriends, et cetera. Every other statement she has made has been proved to be false.

I cannot believe that the department has acted so quickly. It has been judge, jury and executioner and has not given the person involved the right to an interview. He has not been interviewed. I ask the Minister to investigate the matter urgently. I believe a great injustice has been done to the couple. We probably should be giving them medals; instead, the reputation of the man has been shattered without just cause having been shown. If he is guilty, the department has made a wise decision, but there is about a 99 per cent chance that the department has made a terrible mistake. This man should be consulted by the Minister and the authorities and protected. [*Time expired.*]

Mrs CHIKAROVSKI (Lane Cove - Minister for Industrial Relations and Employment, and Minister for the Status of Women) [5.20]: I acknowledge the very serious concerns about this matter raised by the honourable member for Londonderry. I will ensure that the matters he has raised in the House tonight are passed on to the Minister as a matter of urgency.

BALLS HEAD, WAVERTON, DEVELOPMENT

Mr SMILES (North Shore) [5.21]: I raise this evening a matter of considerable concern to constituents who live in the Waverton area of my electorate, which is already fairly densely populated with a mixture of single dwelling houses, small flat - as we used to call it - developments and significant home unit development. The number of people living in the Waverton area in coming years will increase because of future residential development. Four large tracts of land, including the former AGL site at Balls Head-Waverton, have been designated suitable for rezoning and development into residential housing in a report recently prepared for the New South Wales Property Services Group. One mooted construction, which I understand may already have been partly approved, would involve 345 units in an 800 bedroom apartment complex. At the end of this development the increase in the number of accommodation units could be in the order of 1,000 new bedrooms.

I have every confidence that the Government, in conjunction with North Sydney council, will handle and consider developments with sensitivity and that any developments will be appropriate and useful in housing people appropriately near opportunities for employment in areas where services such as police and schooling are readily available. However, the increase in the number of people living in the Waverton area will make transport an important issue. A proposal discussed by local residents and by me with the mayor and councillors is the expansion of the State Transit Authority ferry service which currently operates on the Parramatta River to include a wharf at Waverton. Such a wharf would be extremely useful in servicing the large tract of land I have

referred to which will be developed in the next few years.

The ferry service should cater to the needs of the current and expanding community. Provision of such a ferry service would not unduly increase non-community and commuter traffic in the area. There

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are opportunities for bus and pedestrian travel also. I raise this issue in the hope that the Minister for Transport and Minister for Roads will ask statutory authorities such as the State Transit Authority and the State Rail Authority to jointly and thoroughly investigate the logistical implications of this land development, keeping firmly in mind the challenges of providing transportation. It is important in order to maximise the full potential of the proposed land release, both financially to the Government and in terms of services to the community, that such a development be carefully and appropriately planned. Incorporated in such planning must be detailed consideration of the opportunities available for the construction of a new ferry wharf and the consequent introduction of a new ferry service.

Mrs CHIKAROVSKI (Lane Cove - Minister for Industrial Relations and Employment, and Minister for the Status of Women) [5.25]: As a member whose electorate is not as well serviced at all times by ferries as some of my constituents would like, I understand the concern of the honourable member for North Shore and his desire to promote ferry services in his electorate. I can assure him that I will pass on his suggestion to the Minister. At the same time I might pass on my own.

SEXUAL OFFENCES ALLEGATION AND Mr JOHN BRYSON

Mr WHELAN (Ashfield) [5.27]: I wish to raise a matter of grave concern to me and to the people who have asked me to raise it in the Parliament, namely, the activities of a former Sydney barrister, John Bryson, formerly of Mosman and now of apartment 100, 3645 Main Beach Parade, Main Beach, near Southport in Queensland. Mr Bryson was formerly a member of the New South Wales bar and now operates, I understand, as a barrister out of Southport chambers in Queensland. Mr Bryson was engaged in teaching legal studies to students of three schools - Monte Sant' Angelo Mercy College, Loreto Convent, and Mosman High School. From information provided to me - and I now understand available to police - Mr Bryson clearly has abused his trusted position and openly coerced a number of young people to engage in sexual activities with him over a number of years and has caused untold harm to his female victims. He caused one to have an abortion. He transmitted sexual diseases to one and one has attempted suicide.

This molester from Mosman with a diseased libido has cut a sexual swathe through innocent young school girls on Sydney's lower North Shore with impunity. He has committed the most heinous crimes on young girls whom he has clearly stalked and preyed upon. Included in the allegations that I understand the police have is substantial evidence of sexual assault upon his own children. One of the main allegations is that this monster - there is no other way to refer to this person - whilst in his chambers coerced a number of students from the three schools to visit him on and off. I quote from a statement which indicates exactly the diseased mind of this person. A young lady stated, "When I entered the office" - that is, the barrister's chambers - "of Mr Bryson John told me I looked cute in my uniform and that he was horny. John had an erection and suggested that we have sex on the floor in his office under the desk so we did". Mr Speaker, I am talking of young women under the age of 16 years. The statement continues, "John liked the fact that we had sex with me in my school uniform. He said it is naughty and that is what makes it exciting. John suggested several times during the first six months of our relationship that we have sex with me wearing my school uniform because it made him feel horny".

There are many instances in the three or four statements that have been provided that show what a sick individual this barrister currently practising in Queensland is. The person who made the statement said that she received two sexually transmitted diseases. She was having sex only with Bryson at the time. The barrister took her to the doctor's - I will not name him - for an operation under general anaesthetic to get rid of the virus. This was paid for by Bryson. There are a whole host of examples. A young person of 16 years of age was forced to have an abortion which Bryson paid for. I raise this in the Parliament because of the great concern we

would all have in relation to this matter as members of Parliament and parents. It is clear that Bryson has decamped to Queensland to escape New South Wales authorities and New South Wales law. He has taken with him another young lady, now aged 16 years, a lady that he had a sexual relationship with when she was 15 years of age.

I am concerned that this animal, through his innate knowledge of the law, especially criminal law, is treating the people of this State and these young women in particular with impunity. I ask the Minister for Police and Minister for Emergency Services to take what action is possible to ensure that person is extradited to New South Wales to face trial for the criminal offences that clearly he has committed. I ask the Minister also to join with me in writing to the Federal Minister for Immigration to ensure that under no circumstances will the young lady - whom I will not name, but whose details I will provide to the Minister - be permitted exit from Australia. I believe this man, with his diseased mind, would do anything to escape the processes of law in New South Wales.

Mr GRIFFITHS (Georges River - Minister for Police, and Minister for Emergency Services) [5.32]: I thank the honourable member for Ashfield for bringing this very serious matter to my attention and to the attention of the House. All members would recall that the honourable member for Ashfield asked a question on this case on 19th November last. He asked whether I would arrange for the alleged offender to be extradited and the young girl returned to her parents. Mr Speaker, you would remember that occasion as it was an occasion when you were required to eject the member from this Chamber. My subsequent reply to the member indicated that I had been advised that, on the basis of the material then

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available and the reluctance of the alleged victim to co-operate, there was insufficient evidence to commence criminal proceedings.

I also asked the honourable member for Ashfield to use whatever influence he had with the alleged victims and their families to ensure that all the evidence was available to the police. Following that request, my office arranged for the parents of the alleged victims to be reinterviewed by the child mistreatment unit at Chatswood. The family's solicitor was present at that interview. A number of statutory declarations were provided to the police on 8th December last. Those declarations contained a number of very serious allegations concerning a variety of victims. Those declarations disclose evidence which needs careful and thorough investigation and the reinterview of many witnesses.

That process, unfortunately, does take and will take some time. However, I am advised that, because of fears that the alleged offender may flee overseas, police will endeavour to investigate one of the complaints with a view to taking out warrants for the extradition of the alleged offender. The honourable member for Ashfield has seen fit today to name the alleged offender. I can appreciate the strong feelings that this sort of allegation generates in all responsible members of this House. We all share his disgust. However, the ultimate aim is to bring offenders to justice and make our children safe from sexual abuse. Perhaps this is a case of the honourable member letting his heart rule his head. [*Time expired.*]

SPIKE INSECTICIDE CATTLE EAR TAGS

Mr BECK (Murwillumbah) [5.34]: I wish to raise concerns that have been brought to my attention by beef producers and dairy cattle farmers in the Murwillumbah electorate and also the northern part of New South Wales. I am pleased that the Minister for Agriculture is present to receive my request for information about the status of Ciba-Geigy spike insecticide cattle ear tags registration in New South Wales. The Queensland Government granted interim registration to trial this product over the past 12 months. The Commonwealth body, the National Registration Authority, has power to register this product. On 8th December, 1992, Ciba-Geigy applied to the NRA for registration of the spike ear tag. The product was reviewed and approved by many agencies and has been forwarded to the Commonwealth Government.

A letter I have received from Ciba-Geigy containing that information is available to the Minister to assist

him in establishing the status of registration of this product. Farmers in northern New South Wales have not been able legally to use these ear tags to control buffalo fly. Buffalo fly, which is very prevalent in the Murwillumbah electorate, causes loss of weight, anxiety and hide deterioration in cattle. The interim Queensland registration permit expires on 31st December, 1993. I have been advised by the Queensland Department of Primary Industry that its registration will not be reviewed unless the product is approved by the NRA, which in effect is the Federal Government. If this product is not approved, registration in Queensland will cease.

The Keating Government once again is not doing the right thing by Australian farmers and small business. This is a typical example of a great domestic and export industry not being looked after by the Federal Government. I ask the Minister for Agriculture to expedite this matter. During the recent mild winter buffalo fly breeding did not ease off. Normally, in cold weather buffalo fly breeding slackens off, but in the summer from about January or February cattle farmers have to look after their herds. However, throughout winter this year buffalo flies have been prevalent on cattle. As a producer of beef cattle, I know how expensive it is to have to spray cattle every seven to 10 days. These ear tags have a life expectancy of about 12 months.

The Federal Government, through its National Registration Authority, has not registered a product that has been trialed for 12 months in Queensland. If Queensland, where there are millions of cattle, does not make this product available to its beef producers, buffalo fly will continue to advance further south. The New South Wales cattle herd of about 5,500,000 head could be in jeopardy through weight loss and hide damage. Fine dairy and beef products are essential for both the domestic market and earning export dollars. It is most important that the NRA consider registration of this product before 31st December this year, or sooner, so that Queensland can continue interim registration or obtain permanent registration for it, and so that New South Wales can seek its registration. I ask the Minister for Agriculture to urge his Federal Government counterpart to expedite this matter as soon as possible.

Mr CAUSLEY (Clarence - Minister for Agriculture and Fisheries, and Minister for Mines) [5.38]: I thank the honourable member for Murwillumbah for raising this important issue. As he rightly said, registration of farm chemicals is a matter for the Federal Government. Honourable members representing North Coast electorates are especially aware of problems associated with buffalo fly. Cattle bitten by buffalo fly itch such that they rub against trees, posts, or anything they can. A terrible bleeding sore develops, with distressing effect on the animal, loss of condition and deterioration of the hide itself.

Good animal husbandry requires that buffalo fly be controlled in the best way possible. The usual method at present is by spraying at regular intervals. That method is time consuming and requires rounding up of cattle, which is quite an onerous task for producers. The spike insecticide cattle ear tag, which has been on trial for some time in Queensland, seems to be a good alternative. I note that one of the reasons it was not approved while under trial was concern about buffalo fly developing resistance to the product. That is an interesting reason because resistance usually develops in such instances, whether it be in buffalo fly, tick or other insects. I am at a loss to understand why that is one reason the ear tag

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has not been registered at present. Other reasons include the contamination of beef with some residues and that would be the more important factor so far as export markets are concerned. That would also be the more important factor with regard to domestic markets - that is really the only issue that should be addressed. However, it does distress me to think that these types of things occur for so long in a very important area. I will expedite the reply - *[Time expired.]*

DRUMMOYNE ELECTORATE SCHOOLS AIRCRAFT NOISE INSULATION

Mr J. H. MURRAY (Drummoyne) [5.40]: Two schools in my electorate, Drummoyne Primary School and St Marks Primary School, will suffer if a Department of School Education policy is implemented. These schools will be disadvantaged in terms of compensation to schools affected by aircraft noise. For the edification of members, I inform them that the Federal Airports Corporation has determined a list of schools

affected by aircraft noise, but, unfortunately, both the schools I have mentioned have been excluded. I believe that the FAC has made a mistake in excluding both these schools, because they will not be considered for noise insulation in classrooms and other buildings. The FAC has changed the determining standards, which are known as 2010 ANEF.

I note that an exception has been made to include St Pius' school, Marrickville. Although lying outside the 2010 ANEF contour, that school has been included because it sits between the arms of the north-south and third parallel runways. Also, the school has been included because of its particular and peculiar circumstances. I have brought into the House a diagram that shows the footprint for those schools and hospitals which are included. Honourable members will see from the diagram that this footprint goes right across the Iron Cove Bridge and stops one street short of Drummoyne Primary School and St Marks Catholic School. That is the point I draw to the attention of the House.

The situation is that two large primary schools have been excluded from the list of schools affected by aircraft noise, although they are near to but not within the footprint. St Pius' school is in a similar position but it has been included. I have had personal experience with the difficulties that many students face as a consequence of being located directly underneath a flight path, the north-south flight path. With the implementation of the third runway the majority of aircraft will not be coming in to land over these schools; they will be taking off, and as a consequence the noise impact will be even greater. Honourable members would be aware that in recent times I have campaigned against the third runway. As part of that campaign I have attempted to hold a public meeting using the assembly hall at Drummoyne Primary School. On a Sunday morning when that assembly hall was used meetings had to cease every five or 10 minutes because the speakers, whether they were using a microphone or were speaking within the body of the hall, could not be heard because of the impact of the noise from landing aircraft.

Currently aircraft do not always stay within the footprint. Last weekend I received four or five telephone calls at home from disturbed constituents who made complaints about aircraft deviating from the footprint that the FAC has set. Aircraft do that for a number of reasons, the main one being the wind direction. Another factor that has not been taken into account is the impact of cloud cover. It is obvious that when there is a reasonably low cloud cover the aircraft landing at Sydney (Kingsford-Smith) Airport take a lower trajectory over the Drummoyne area. This deviation results in a reverberation of noise, which hits the clouds and comes back again. The cloud cover acts as an insulator. As a consequence, on days when there is a cloud cover, schoolchildren have great difficulty in adequately undertaking their lessons.

Across the water, 100 metres away, Rozelle Hospital has been included. Rozelle Hospital is not being used as a hospital but as a facility for the headquarters of the Ambulance Service of New South Wales. Yet the Rozelle Hospital site has been included as being within an area that will enable it to obtain compensation for glassing and double glazing within that facility. However, two major primary schools are missing out on compensation. I ask the Minister to reassess this matter. There is an option. The Minister should take on board the troubles facing schools in the Drummoyne electorate. [*Time expired.*]

RIVERINA PERIODIC DETENTION FACILITY

Mr GLACHAN (Albury) [5.45]: I am sure there are many honourable members who, like me, are often frustrated and concerned about sentences imposed by the courts that they perceive to be far too lenient. Honourable members often consider that the sentences imposed do not fit the crime. Recently in the Wagga Wagga District Court, His Honour Judge Madgwick said he believed that there was a need for a facility within the Riverina for periodic detention. He referred to a particular case where a man had set a fire in Albury that caused \$71,000 damage. His Honour said that periodic detention was the appropriate custody into which the offender should have been placed. However, because such a facility was not available in the Riverina, the judge imposed a sentence of community service. He said the sentence was not appropriate but he was obliged to impose the lesser sentence.

The lack of that facility creates a difficulty. Defence lawyers in cases such as this know that such a facility is not available and therefore suggest to judges that periodic detention might be an appropriate sentence to impose. They know full well the judge will always impose the lesser sentence when periodic detention is not available. People play on this fact. Quite often in my electorate inappropriate sentences are imposed on people who should really be serving

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periodic detention. I realise that it costs money to provide these centres. In Bathurst such a facility was not being used to its full extent by the judiciary presiding in that area. Because it was not being fully utilised and was costing a lot of money, the facility was closed and thereby lost to the district.

I appreciate that these expensive facilities have to be used to their full extent. In the Riverina that would certainly be the case because there are a number of areas with a large population. The District Court sits at Wagga Wagga, Albury, Griffith and Deniliquin. Such a facility would provide judges with the opportunity to impose sentences of periodic detention. When we read in the press that someone has been apprehended, sent to trial, convicted of a dreadful crime, we often feel frustrated and upset when we consider the sentence is inappropriate. But what about the position of the victims of crime and the way they must feel when, after all the suffering they have gone through, they find that the person who has perpetrated the crime against them gets off with a very light sentence.

The people whose property was burnt in this particular fire lost irreplaceable personal family possessions. The health of the wife of the owner of the property has been so badly affected that her life will never again be the same. These people had to endure the trauma of dealing with insurance companies to try to get proper compensation for their losses and of seeing the perpetrator of the crime taken to court, convicted, and given a community service order. From the family's point of view the whole matter was totally unsatisfactory. From the community's point of view this situation also is totally unsatisfactory. The community wants justice.

As I have said, a centre such as this would be of great value to the Riverina. I know that the Attorney General favours this option, and he plans to investigate various areas of the State and, if necessary, provide places for periodic detention throughout New South Wales country areas. I urge the Attorney General to look at the Riverina area as quickly as possible, assess the situation there, and then, for the sake of justice, make a place of periodic detention available to the Riverina.

Mr HARTCHER (Gosford - Minister for the Environment) [5.50]: The honourable member for Albury is an excellent member of this House who raises many issues of concern to his constituents and follows them through with great diligence. For some time he has been convincingly arguing the case for a periodic detention centre in the Riverina area. I am pleased to announce that within the past five years the Government has constructed a number of new periodic detention centres at Malabar, Silverwater, South Windsor, Grafton, Wollongong, Muswellbrook and Campbelltown - effectively doubling the number of periodic detention centres that were operational in 1988.

In response to strong representations by the honourable member for Albury, the Government is currently engaged in the development of a long-term capital works strategic plan that will incorporate the further expansion of the periodic detention program. As part of this strategic plan, the construction of a periodic detention centre within the Riverina region is being considered and prioritised according to established needs. I acknowledge the interest of the honourable member for Albury. The Government will keep him informed of the progress of the development of the plan. I am sure his constituents will continue to be ably represented by him for many years.

KINGSGROVE NORTH HIGH SCHOOL PRINCIPAL APPOINTMENT

Mr IEMMA (Hurstville) [5.51]: I wish to raise a matter that has created a deal of controversy at a local school in my electorate - Kingsgrove North High School - and has led to a crisis among the teaching staff, the parents and the student body at that school. The Department of School Education has decided to suspend the

merit selection system for that school in choosing a new principal. Rather than maintaining the established merit selection system when the outgoing principal, Mr Hearnden, retired, the department stepped in and appointed one of the cluster directors whose contract had been terminated some weeks ago.

When Mr Hearnden retired the school was asked to commence setting up the merit selection panel. Those instructions were carried out and the school commenced the process of merit selection. The merit selection committee includes a representative of the parents and the teaching staff. Within a few days of carrying out the department's instructions the school was notified that the merit selection system was suspended until further notice, that the department would make the decision regarding the replacement for Mr Hearnden and had decided to appoint one of the cluster directors.

The reaction of the parents, students and teachers has been quite strong. Approximately 80 parents, teachers and students at a special meeting on Friday night unanimously moved a motion calling on the Minister and the department to reinstate the former merit selection system and to fill the vacancy left by Mr Hearnden in the manner the school had become used to over the past years. Previous executive positions at Kingsgrove North High School were filled through the merit selection. The system was working well. The parents, teachers and students are asking for a fair go from the Minister.

One wonders what kind of management the cluster director of the Canterbury cluster is engaging in by making this decision on behalf of the department. The incoming principal has been placed in an invidious position because by not having been appointed through a merit selection, that principal is entering a school where 60 of the teaching staff have signed a petition expressing no confidence in the person appointed or the manner in which that person was appointed. More than 20 teachers were present at the extraordinary meeting on Friday night. The

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parents have unanimously supported the teachers, as have the representatives of the student body, by expressing their want of confidence in what has happened.

If nothing else, the Minister should consider the environment that the new principal is entering. The teachers, the parents, and I are not here to argue the merits of the individuals - whether the former cluster director can or cannot do the job. The system at Kingsgrove North High School had gained the confidence of all parties - the parents, the teachers and the students. The school has worked tirelessly over the past few years to regain the confidence of the local community and without any consultation or warning the department has stepped in with its heavy handed approach to the replacement for Mr Hearnden. As a result, there is now a crisis at Kingsgrove North High School. The very least the Minister can do is reverse the ham-fisted decision and reinstate the merit selection system. If the proposed new principal is the best person for the job, the person with the best qualifications, the merit selection system will appoint that person as the new principal. The teachers, parents and students at Kingsgrove North High School should be given the opportunity to have their say.

KEVIN MINERS' MEMORIAL ENDURANCE RIDE

Mr COCHRAN (Monaro) [5.56]: I speak on behalf of the residents of Adaminaby and particularly the committee that conducts the annual Kevin Miners memorial endurance ride. The ride has been conducted in Adaminaby for the past 19 years on the second weekend in December in conjunction with fund raising activities for charities. The 77-kilometre horse ride perpetuates the memory of Kevin Miners who, along with his family, was renowned as a stockman and high country cattleman in the Adaminaby area. He died tragically some years ago. The ride is also a popular sport because horse endurance riding is now acknowledged as an Australian heritage sport. Young families are encouraged to leave the cities, particularly the Sydney area, the pinball parlours, the drugs and the booze, to engage in the healthy lifestyle of the country areas.

This type of activity should be encouraged by the Government and the community to provide for family unity and all values acknowledged by the coming International Year of the Family. I compliment the

committee on its activities, particularly its charitable fund raising. Local charities receive 30 per cent of the profits of each ride. But this year it is a little different. A day and a half prior to the commencement of the ride the National Parks and Wildlife Service announced that there would be a \$5 levy imposed on each rider. Regrettably, only 25 riders were involved this year. The total collection for the day for the National Parks and Wildlife Service would have been \$125. One questions the reason the National Parks and Wildlife Service imposes a levy on a ride that raises funds for local charities.

Many of the roads used in the ride were maintained and constructed by local families in the area as well as fire trails that were used as stock routes for 150 years. Why would the National Parks and Wildlife Service impose a levy on people whose properties have been subjected to its tyranny in addition to the dingoes destroying their sheep for the past 30 years? Why would the National Parks and Wildlife Service impose a levy on these people? I am not surprised that the Minister smirks because he conducts a department that is recognised as having the most irresponsible money managers in the New South Wales Government. The National Parks and Wildlife Service is identified not only by landholders of New South Wales but also surrounding neighbours as being irresponsible in its management and the management of the Government's money.

The Minister may think it is funny now, but he will not think it is funny for much longer. Each year firefighters combat blazes in the Kosciusko National Park on behalf of the National Parks and Wildlife Service, the holders of land surrounding the park and the people of New South Wales. They do so because they care for the country, because they believe that the land is worth saving, and because it has ecological, historic and heritage values to the people of New South Wales. The staff of the National Parks and Wildlife Service who run the Kosciusko National Park are not good money managers. During the 12 months leading up to the next election I intend to expose to the general public what I believe to be the poor management of the funds of the National Parks and Wildlife Service in that area. The service asks the users of national parks to pay fees. I ask the Minister how often the holders of land surrounding the Kosciusko National Park have to pay. I call on the Minister to withdraw the \$5 levy. It is outrageous and scurrilous. It is infringing on the rights of horse riders from the surrounding area to enter the Kosciusko National Park. I call on those who imposed the levy to apologise to the Kevin Miners Memorial Endurance Ride Committee. Unless they do that in the near future, the relationship between neighbours of the Kosciusko National Park and the National Parks and Wildlife Service will deteriorate substantially.

Mr HARTCHER (Gosford - Minister for the Environment) [6.1]: I thank the honourable member for Monaro for bringing this matter to my attention. I acknowledge his ongoing interest in national parks and their management. The National Parks and Wildlife (Land Management) Regulation 1987 provides in section 11(1):

11(1) A person shall not, unless with the prior consent of the authority and in accordance with such conditions and after payment of such charges as the authority may from time to time impose: . . .

(t) conduct or take part in any sporting activity that forms part of an organised competition or tournament;

That regulation has now been in force for about six years. The honourable member acknowledged that the organisers were advised before the event took place that each participant would be charged a fee of
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\$5. They were asked if they had any problems with that; no problems were forthcoming. The National Parks and Wildlife Service has, and always has had, a responsibility to recoup as many fees as possible from users of the park. In this instance it charged only the levy laid down by the regulation; it did not charge the participants the park entrance fee.

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

Mr HARTCHER: Although the Government acknowledges the charitable nature of the event, it is bound by the regulations. I would submit that in this particular case the regulations have been enforced in a fair manner, as the park entry fee was not charged. All users of the park are liable to pay. If people wish to go

skiing, they have to pay the park entry fee. If people wish to go horse riding, they are liable to be stopped at the gates and charged. People who wish to cycle are also liable to be charged.

Mr SPEAKER: Order! I call the honourable member for Monaro to order for the second time. He has had an opportunity to participate in the debate.

Mr HARTCHER: Where possible, users of park facilities are liable to pay the relevant fee.

GLENWOOD PARK ESTATE LANDCOM SALE

Mr J. J. AQUILINA (Riverstone) [6.3]: For most of the day Parliament has been debating the way in which people have been severely disadvantaged by the actions of the Department of Housing under the HomeFund scheme. Regrettably, I wish to raise the dealings of Landcom, an arm of the Department of Housing, which is indulging in shady dealings. It is selling land in my electorate under conditions which, in medieval times, would have been regarded as barbaric, and which could hardly be regarded as espousing sound twentieth century business principles. In the suburb of Parklea, which is in the heart of my electorate next to Parklea Markets, Landcom has been widely advertising the sale of blocks of land referred to as Glenwood Park, Parklea. Saturday, 11th December, was designated as builders day; blocks of land were set aside for sale to various builders. A number of builders turned up as early as 1 a.m. on Saturday in the hope of obtaining prime blocks of land they had sought. They had been told that the office would not be open until 10 a.m. Indeed, a number of builders, eight in all, including Mr Ray Dunn from Blacktown, who is the proprietor of a company known as Caftro Pty Limited, lined up from 1 a.m. until 10 a.m. to obtain their prime blocks.

When the sales office was finally opened at 10 a.m., the builders were told that five of the prime blocks on the crest of the hill had been withdrawn from sale some time earlier. No indication was given as to why those blocks of land were withdrawn from sale or, indeed, to whom they had been allocated. That was despite the fact that assurances had been given by Landcom that no blocks of land would be available for sale prior to the opening of the sales office at 10 a.m. It is barbaric to expect people to wait from 1 a.m. for nine hours until 10 a.m. for the sales office to open and then to be told that despite previous assurances, somehow or other the five prime blocks of land that these builders were after had been withdrawn from sale. That information could have been conveyed to the builders some time earlier. It could have been clearly shown that those blocks were not part of the parcel of land which was advertised for sale. To this day - and it is now 14th December, a clear three days after the sale - there has been no public indication as to who secured the five blocks of land or whether they have been reserved. Terry Davis, the General Sales Manager of Landcom at Parramatta told the prospective builders that he could not advise them as to why these blocks were withdrawn from sale. He was able to advise them only that the order had come from the top. I do not know what "from the top" means, whether the order came from the director or the Minister or whoever.

Neil Bryson, a salesman at Glenwood Park Estate, has indicated in no uncertain terms that he has many irate people on his hands - people who had every right to expect that these blocks of land would be made available to the builders. One of the builders had come all the way from Newcastle and wanted to buy five blocks. He was told that he could buy only one, and that was one of the remaining blocks down in the hollow, one of the also-ran type blocks, because the prime lots had been either withdrawn from sale or had already been negotiated for sale to some other unknown builder. That is not the way for any government department to do business or to inspire confidence. The previous Saturday, 4th December, was set aside for domestic purchases. A similar thing happened. People had lined up from Wednesday, 1st December until 10 a.m. on Saturday, 4th December, once again in barbaric conditions. They did not even have a Portaloo available or any place to obtain a drink of water. The prospect of people lining up for something like three days and three nights to purchase blocks of land is outrageous. I ask the Government to reconsider the way in which these blocks of land are being made available and to take into consideration the public at large. [*Time expired.*]

STRICKLAND HOUSE ADVISORY COMMITTEE

Mr YABSLEY (Vaucluse) [6.8]: I place on the record my thanks to the Strickland House Advisory Committee. That committee was established at the behest of the Minister for Planning to try to resolve the impasse that has existed for many years in relation to the future of Strickland House and the surrounding Carrara Estate, which must be described as 12 acres of the most impressive foreshore land on Sydney Harbour. The committee has been chaired by Howard Tanner, who, coincidentally, is also the chairman of the Heritage Council, and a distinguished heritage architect. The committee has included representatives of Woollahra Council, the National Parks and Wildlife Service, the Department of Planning - with the expert participation of people such as Ms Sue Holliday - the

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Property Services Group, the Woollahra History and Heritage Society and the Strickland House Action Group. By any standard that is a very broad-based and representative group.

As the local member I have been a member of the Strickland House Advisory Committee, a broad-based group set up, as I said at the outset, to try to resolve the impasse in relation to the future of Strickland House and the Carrara Estate. In the past couple of weeks the harbour walkway has been opened from Neilsen Park through the Hermitage Reserve and around a significant part of the foreshore in the Vaucluse electorate. I am delighted to say that the walkway was officially opened by the Minister for the Environment, who is at the table this evening. It was a wonderful occasion because it was the realisation of a dream for many, brought about by the very generous support of the Fairfax family and the National Parks and Wildlife Foundation.

As was pointed out by Mr Michael Bray, in the absence of Mr Michael Crouch, the President of the National Parks and Wildlife Foundation, that organisation is not an arm of the National Parks and Wildlife Service, despite the similarity of the names. It is a purely private sector based organisation set up to support national parks in New South Wales. It does a wonderful job, having raised an extraordinary amount of money - of the order of \$6 million - over the years. I mention that in passing because the walkway passes in front of Strickland House. When one does that walk one cannot help but be struck by the irony that to this day a welded mesh fence separates the foreshore walk from the Carrara Estate. On the Vaucluse Road frontage there is an equally unattractive fence with large gates and a heavy duty chain and padlock.

This land is public land in name only. It must be opened up and made available to all the people of New South Wales, so that they can enjoy this absolutely magnificent 12.5 acres of harbour foreshore land. The point must be made that there has been much huff and puff by many who have falsely claimed that this land has been public. These people like to pretend that it is public land when in fact it has been the de facto private backyard of only those people who know where the hole in the fence is, or how to get around the fence in some other way. It is time to resolve the impasse, to get rid of the locks and chains, to pull down the fences and to make sure this land is integrated into the Sydney Harbour National Park and Neilsen Park on the other side of the Carrara Estate.

I place on record my absolute determination to see the matter resolved. As a result of considering some 20 expressions of interest made after the committee called for them, the recommendations of the Strickland House Advisory Committee have gone forward to the Minister for Planning. We need to take a lesson from what has been done in the United Kingdom and many parts of Europe where heritage buildings have been maintained by being put to practical use. It is not cheap. A cash flow must be established for the use of these buildings in my electorate. I am sure that in this way that magnificent estate will be opened to the public. *[Time expired.]*

Mr HARTCHER (Gosford - Minister for the Environment) [6.13]: I acknowledge the interest of the honourable member for Vaucluse in this matter and, indeed, in his entire electorate. I was privileged to participate in the opening of the Hermitage Walk trail some weeks ago and to acknowledge the very generous assistance of Lady Fairfax and her family, as well as the Sydney committee of the National Parks and Wildlife Foundation, and the work done by employees of the National Parks and Wildlife Service who physically constructed the walkway. Certainly, the service has made a submission that the land around the house is suitable for addition to the Sydney Harbour National Park. Of course, the future of Strickland House is a

decision for the Minister for Planning in another place, but it would be pleasing if he were disposed to add the land to Sydney Harbour National Park.

The broader question raised by the honourable member is significant. One cannot maintain heritage buildings without a cash flow allocated towards maintenance. That is applicable right across New South Wales. In recent times in this State quite a number of old and magnificent convents have become surplus to requirements. However, the only way they could be maintained for the heritage of the people of this State would be to have been turned into restaurants or guest houses or put to some other use. The same situation applies to Strickland House. Unless there is some appropriate use to which it can be devoted, it will become a drain on taxpayers, or will not be adequately maintained. I commend the honourable member for Vacluse, who assisted me in the walkway's opening ceremony. I express the hope on behalf of the National Parks and Wildlife Service that there will be a satisfactory resolution of this matter.

Private members' statements noted.

JOINT SELECT COMMITTEE UPON THE SYDNEY WATER BOARD

Message

Mr Speaker reported receipt of a message from the Legislative Council advising that the Council agreed that the reporting date for the committee be extended until 17th March, 1994.

[Mr Deputy-Speaker left the chair at 6.16 p.m. The House resumed at 7.30 p.m.]

HOMEFUND RESTRUCTURING BILL

Second Reading

Debate resumed from an earlier hour.

Mr HUNTER (Lake Macquarie) [7.30]: In their speeches earlier the honourable member for Ku-ring-gai and the honourable member for Coffs Harbour blamed the Labor Government for the HomeFund debacle but I remind those recently elected honourable members that it was the Greiner Government which named the scheme HomeFund. I am a member of the select committee inquiring into

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the operations of HomeFund and FANMAC, together with the honourable member for Ku-ring-gai and the honourable member for Coffs Harbour. They know as well as I that a home scheme was started by the former Labor Government. It was a small scheme and was growing very slowly. It was the subsequent conservative Government which expanded it massively, called it HomeFund, promoted it widely - and, as most people have said, promoted it by using false and misleading advertising.

Former Minister Schipp, the honourable member for Wagga Wagga, wanted to continue HomeFund and expand it further. He would have liked to have seen more than \$1 billion lent in the year after the scheme ceased to operate. I remind the honourable member for Ku-ring-gai and the honourable member for Coffs Harbour that the Liberal Government dismissed the former Department of Housing head who knew the intricacies of the original scheme. The Liberal Government rejected David Brett's recommendations for a position in the Department of Housing, a senior position, to cover HomeFund. He even wrote a job description for that position which was ignored by both Minister Schipp and Mr Greiner. *[Extension of time agreed to.]*

David Brett recommended that a yearly independent check of the scheme be undertaken - "independent critique" I think were the words he gave at the inquiry of which I am a member. That also was ignored by the Government. That is what went wrong. That is why Mr Greiner, the honourable member for Wagga Wagga

and Premier Fahey blew it. They did not take advice or heed the warnings given to them at the time. That is why we are in this situation today. The Minister in her reply might say what action the Government proposes to take to restore faith in the co-operative movement. The Government has mismanaged the HomeFund scheme and the co-operatives have copped a lot of unwarranted criticism. Traditionally, the co-operatives have been out in the market-place to help those in the lower income bracket. What does the Government propose to do to restore loss of faith due to its maladministration of the scheme?

I shall recapitulate some of the points that emerged before the inquiry into HomeFund and are relevant to this bill. First, the HomeFund inquiry heard from former Ministers Debus and Walker as to the origination not of HomeFund but of a scheme similar to HomeFund and introduced by the Labor Government. The committee heard from the former head of the Department of Housing, Mr Evers, of his offer to the incoming Greiner Government to stay on and brief the new head of the department on HomeFund and other operations of the Department of Housing which, again, was rejected by the incoming Government. That was another fatal mistake and that is why we are here today debating this bill. The new head of the Department of Housing, Mr Dransfield, spoke of the Greiner Government's intention to follow the Margaret Thatcher route and privatise public housing stock.

The committee heard from the honourable member for Wagga Wagga who said there was nothing wrong with HomeFund, it was a fantastic scheme and should still be running. It heard from Mr Greiner who blamed the borrowers - it was not the fault of the Government but all the fault of the borrowers. The last witness for the HomeFund inquiry was Mr David Brett who brought forward the very interesting information that he had actually written a job description for a senior position in the department for someone to monitor and have control over HomeFund. That was rejected. Later in the year he recommended a yearly independent check of the financial side of HomeFund. Of course, that was also rejected by the Government. The Government stuck its head in the sand when the honourable member for Heffron raised the concerns of many HomeFund borrowers. The Government blames the honourable member for Heffron for the problems with HomeFund; unfortunately, it does not blame itself - because it is at fault.

As I said earlier, the bill is a despicable attempt by the Government to remove the legal rights of HomeFund scheme participants. The bill seeks to give questionable benefits to HomeFund families and comes at the expense of the abolition by this legislation of their legal and equitable rights. Those HomeFund borrowers will forfeit their rights to compensation if this legislation is passed. The Opposition will move amendments in the committee stage. If those amendments are successful HomeFund borrowers will be in a much better position. However, if the Government succeeds in having the bill passed unamended the Opposition believes it will be unconstitutional, as was outlined earlier by the honourable member for Heffron. It would then be open to challenge in the courts.

We totally oppose the abolition of the legal and contractual rights of both past and present HomeFund borrowers. The Opposition believes that the functions of the Office of the HomeFund Commissioner should continue as they exist at present with certain of the enhancements contained in the HomeFund Commissioner (Miscellaneous Amendments) Bill that has been through the Legislative Assembly and is presently before the upper House. As I said earlier, the Government - that is, every Government member of Parliament - seeks to legislate away its liability for the HomeFund scheme. Honourable members opposite do not wish to take responsibility for the financial mess they have created, for the financial hardship that they have placed HomeFund borrowers in. They are not prepared to stand up and pay for their mistakes.

The Government seeks to legislate away its liability for the HomeFund scheme and place the dire consequences of its maladministration on the backs of the poor and disadvantaged of this State, those people who can ill afford to bear the burden of the Government's maladministration of this scheme. The Government misled borrowers with false and deceptive advertising, leading people into a scheme that has brought financial ruin to many and dire

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hardship to many others. There has been family turmoil and marital breakdowns. How does the Government intend to compensate families for the hardships they have suffered? The Government seeks to take away the

rights of HomeFund borrowers to seek compensation for the Government's maladministration of the scheme. The Opposition will move amendments in the Committee stage and, hopefully with the support of the Independents, will greatly improve the bill.

Mr A. S. AQUILINA (St Marys) [7.38]: It will come as no surprise to you, Mr Deputy-Speaker, or to honourable members opposite that I also stand, very much so, in opposition to the most important part of the proposed restructured finance scheme - that is, clause 14 which exempts the Crown, FANMAC, the FANMAC trustee and co-operative housing societies, including any persons acting on their behalf, from any action, liability, claim or demand and provides that a determination may not be made in respect of any HomeFund mortgage or any transaction relating to, preliminary to or arising from any HomeFund mortgage or HomeFund scheme.

I will not continue to read the whole of that explanation, but it is clear from what previous speakers have said that the Opposition is gravely concerned that common law rights will be taken away from working-class people, people who have worked hard to pay for their homes, people who have worked hard to obtain a home for their family and people who now may not be able to have a home and may not have any legal recourse. This all started when two people - Peter O'Keeffe and Suzanne Kennedy - risked their jobs. They believed it was most important, on a moral basis, that they provide some leadership and assistance to those who were not being considered by HomeFund. The honourable member for Heffron, as the shadow minister for housing, brought forward the problems of HomeFund. With the assistance of Peter O'Keeffe and Suzanne Kennedy she has fought a hard fight for two years to ensure that this wrong that the Government has allowed to occur, this scandalous disaster, could be made right.

In 1991 the Opposition attempted to point out to the Government the problems of the scheme. If the Government and the Minister - Joe Schipp - had listened at that time and if the Minister had been prepared to evaluate the questions being asked, a great deal of pain, suffering and considerable trauma could have been avoided. The sad thing is that innocent, helpless and at times very poor people have been hurt and, in some cases, their lives have been ruined. I could give many examples of people in my electorate who have been badly treated by HomeFund. They are still trying to overcome the trauma they had to go through, particularly the trauma of losing their homes. What will the people do who have already lost their houses? They have no chance to seek recourse.

Mr Richardson: Would they not have got the house, anyway?

Mr A. S. AQUILINA: I feel that members of the Labor Party would care for the needy. From the very first day this Government has not provided adequate public housing. The lack of public housing is an indication of the Government's ideology, because that is what it is really about. It is the ideology of the Liberal Party-National Party saying, "We do not want public housing. We will encourage people to get into private accommodation". When the Labor Party was in control less money was expended on the HomeFund scheme. Since this Government has been in office HomeFund expenditure has increased greatly and public housing expenditure has decreased. That suited the ideology of the Government and of Mr Greiner, and it certainly suits the ideology of Mr Fahey. The Government's advertising campaign encouraged people to join the HomeFund scheme and to take out loans guaranteed by the New South Wales Government. People in my electorate have said, "We did not think there was a problem because we did not think the Government would do this to us. We thought the Government would look after us".

Mr Fraser: They signed a mortgage document.

Mr A. S. AQUILINA: The honourable member opposite said that they signed a mortgage document, but some people in this State may not be able to consider their legal rights as well as we can, and it may well be that some people, particularly people in my electorate, believed that the Government could be trusted. That is the big mistake they made. I was not there to say to them, "Do not sign on the dotted line because you cannot trust this Government". That is the major problem in the debacle. The advertising the State Government employed suggested that the government guarantee was for loans, and I believe it misled consumers. They had a false

sense of security because it was a government loan. I could talk about many of my constituents who have had difficulties with HomeFund. Some have had to sell their homes and some are attempting to obtain some form of mortgage relief.

The Opposition is certainly pleased that the scheme is to be restructured. It is at least a positive step. At the appropriate time in Committee the Opposition will comment on aspects of the bill with which it is not happy. However, who does one thank for the restructuring? I do not believe it is this Government or the HomeFund Commissioner. If the Opposition had not fought tooth and nail for the restructuring of HomeFund and some improvement for those badly affected by the scheme, I do not believe the Government would have done a thing. Past comments by Mr Greiner and Mr Schipp reveal that neither believed there was a problem. Mr Schipp, of course, said that HomeFund was a great system, a great use of public funds and it was the best way of getting people into housing. Unfortunately, he forgot to spend a bit more money on public housing.

The restructuring involves the abolition by legislation of people's legal and equitable rights. All HomeFund families, past and present, will retrospectively forfeit their rights without their consent. If this legislation is passed, the Government

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will legislate to take away their choice. Borrowers will not be able to take common law action. However, I believe the legislation would contradict a Federal Government Act, and the Opposition will pursue that to see what can be done to help those people. I hope that the Government will accept the Opposition's amendments, which will enable people to maintain their legal rights. The most abhorrent aspect of the proposed legislation is that it seeks to take away borrowers' legal rights after the HomeFund Commissioner has flagged that such rights exist for 57,000 families.

Many thousands of families thought they had a right to resort to legal action and that the Government would look after them, but obviously the Government does not care. The New South Wales Fahey Liberal Party-National Party Government cares little for the residents of St Marys, Penrith and the outer suburbs of western Sydney, who are finding it hard to make ends meet and paying about \$1,000 or more a month for basic accommodation. The contractual and legal rights of disadvantaged citizens to take action against the Government and other HomeFund participants for misleading and deceptive conduct will be extinguished. The Government seeks to legislate away its liability for the HomeFund scheme and put the dire consequences of its maladministration on to the backs of the poor of this State. The bill will remove the powers of the HomeFund Commissioner. It will make it illegal for a solicitor or any similar adviser to assist a HomeFund family with a complaint. [*Extension of time agreed to.*]

Most HomeFund borrowers did not receive proper, independent financial and legal advice before entering into their mortgages. Whose fault was that? Some of my colleagues on the Government benches say that the people who signed the documents should have known better. The people who signed the documents, who were in trouble and who needed public housing assistance or reasonably priced housing, were not given the appropriate financial and legal advice by the Government before they signed their contracts with HomeFund. Accredited members of the Financial Counsellors Association and solicitors employed by community legal centres should receive funding to provide an adequate level of independent financial and legal advice. This Government has cut back those services and assistance to people who require legal aid and those with accommodation needs. Obviously this Government does not care for people who badly need accommodation and assistance at a local level to deal with their problems.

I was fortunate to attend one of the many meetings held for HomeFund borrowers. About 600 or 700 people attended the Rooty Hill meeting earlier this year. People were crying, and saying that they did not know what to do about the financial mess in which the Government had put them. Perhaps they should have known better. But what did the Government provide? What did it do to provide the support that people most needed? I should have thought that a caring Government would have provided at least for a restructuring then when the problem was at its worst, when the Opposition told the Government that people were hurting, that they could not afford to pay their mortgages and were being thrown out of their houses. That was not good enough then and it is not good enough now. It will prove the end of this Government's reign. The many thousands of families

who have been affected by the HomeFund debacle, who have been either thrown out of their homes or threatened with the loss of their homes would not be silly enough to vote for the Government again. I look forward to the next election when the Labor Party gains office and starts caring for the needs of those who really need assistance.

Mr Kerr: The Labor Party started the scheme.

Mr A. S. AQUILINA: The Labor Party started the scheme but it did not expand it and allow greater loans to be approved. When the former Labor Government was in office, though public housing was not perfect, more and better public housing was provided. I am pleased for the people of St Marys that this restructuring will take place. It is a little late, but better late than never. Some people in my electorate will be hit hard by the restructuring, because if the bill is carried in its present form they will not have recourse to any legal action. If people in the St Marys electorate are having difficulty, I imagine the people of Mount Druitt, Blacktown and many others in western Sydney, the Hunter and the Illawarra will be doing it tough also. This Government has a lot to answer for. It cannot run away from the fact that it has made a mess of HomeFund and it is now trying to fix up the problem very late in the day.

I suggest that the voters will not forgive the Fahey Government for the HomeFund debacle. I make sure that I tell the people in my electorate about what the Fahey and Greiner governments have done to HomeFund and many other issues of concern. On numerous occasions since I became a member of this Parliament I have commented on the need for greater public housing funding. The various budgets did not give the St Marys electorate sufficient funding for public housing to meet the needs of my constituents. People have been waiting five, six or seven years for appropriate accommodation, which in this day and age is not acceptable from a Government that pretends to care for people by managing better and it is not acceptable from any government by any stretch of the imagination. I would not accept it when the Labor Party was in office. I look forward to the day when the Labor Party changes the system.

Mr IRWIN (Fairfield) [7.58]: The Parliament has not been recalled out of some grave concern for the difficult situation in which so many HomeFund borrowers find themselves and it is not concern for consumers of any type that has led the Government to bring in this bill during a special sitting of the Parliament. Clearly, the bill seeks to cap the Government's liability under HomeFund. This bill, without the trimmings, will eliminate recourse to common law. It will not provide a remedy for

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HomeFund borrowers. The Government will be able to put a cap on funds. It can say that the \$400 million it raised from the hollow logs is its total liability. Honourable members are not here today because the Government is concerned about the thousands of families who, for months and years, have battled to maintain their repayments under HomeFund or to assist those who have gone bankrupt or those who have had to walk away from their homes and mortgages; the only reason they are here today is to save the skin of the Government, which will be able to eliminate access to the common law remedy and put a nicely defined \$400 million cap on its liabilities.

The history of HomeFund is a sad tale. As other speakers have pointed out, HomeFund has its parallels in other States but no scheme has sunk as low as the New South Wales scheme. This Government has acknowledged its responsibility and its liability, yet it has failed the ultimate test by restricting access to compensation, which the courts of this country regard as fair and just redress for the wrong those many people have suffered. The words used by Commissioner Rogers in his report accurately reflect the fact that the Government must be brought to book on this issue. Commissioner Rogers, in the section in his report entitled "Bankruptcy", stated:

It is of grave concern that, in some cases, the legal wrongdoing of another party, rather than the conduct of the borrower, may have been the primary cause of the borrower's downfall.

That is a clear acknowledgment that, in many ways, this Government has significantly contributed to the downfall of many HomeFund borrowers in this State. As I have said, this Government merely seeks to put a

limit on its liabilities and to say, "We have only \$400 million in the kitty. That is all we could raise from the Building Services Corporation, the Home Purchase Assistance Fund and the Rental Bond Board. We will put that in the pool and restrict the amount of compensation to \$400 million. Nothing else will be entertained". No doubt that would make Standard and Poor's and the Treasurer happy, but in no way will it adequately compensate the many victims of HomeFund in this State.

Much has been said in debate about the development of HomeFund: that it was the child of Frank Walker, as housing Minister, in the final term of the Labor Government. I had my own role to play in its development. At the time I was a director of a co-operative housing society and I was keen to see HomeFund introduced. I could see that there were many potential clients for such a scheme - borrowers seeking a type of mortgage that suited their circumstances. The scheme was new to Australia, a country that, prior to the introduction of FANMAC, did not have a secondary mortgage market. That financial market, which is well developed in other countries, was regarded as beneficial in providing additional funds for home mortgages. In the early days of the scheme's establishment the scheme was not well understood by co-operative housing societies and the Department of Housing was trying hard to develop an understanding of it. It took some time before the scheme was adopted and reached its present size.

I inform those who have indicated that HomeFund was the brainchild of the Labor Government that during the term of the Labor Government total HomeFund loans were one-tenth of present HomeFund loans. The HomeFund program, as with any program, was bound to have teething problems as it was based on unreal expectations. This Government is ideologically driven in relation to HomeFund. On a number of occasions I was closely associated with Frank Walker on the HomeFund project, but I never recall him saying to any forum, to caucus or to caucus committee meetings, that the scheme would provide cheap housing for low income earners throughout the State. The scheme was established specifically to provide housing finance; it was not some sort of panacea for the housing problems of this State. The scheme was not established to enable everyone in New South Wales to own a home; it was a way of expanding funds available for home mortgages.

The scheme had the limited objective of providing a form of housing finance, particularly for younger families who, with a low deposit, could quickly develop equity as the price of housing, inflation and wages rose. The scheme was never touted and sold across the State as something that everyone should get into. HomeFund has become a scandal. From 1988 the scheme ballooned into something much greater than was ever anticipated. It got totally out of control and was driven by its own momentum. It was bound to burst, like a bubble, as it has done. I recall the former Minister for Housing, the honourable member for Wagga Wagga, suggesting in this House in relation to HomeFund that everyone should say to him, "Good on you, Joe". On how many occasions did he say in this House that the only people who ever got into trouble with their HomeFund mortgages were those who had frittered away their money on other things and had not concentrated on paying their mortgages?

For years, when Opposition members asked questions in relation to HomeFund borrowers experiencing difficulties, the former Minister simply shrugged it off and said that it was the fault of the borrowers. That contrasts with the words of Commissioner Rogers, who said that, in some cases, the legal wrongdoing of another party, rather than the conduct of a borrower, is the cause of the borrower's downfall. That is the difference between events now and the approach taken by the former Minister for Housing. Two years ago the cracks in the HomeFund scheme were very visible. This issue was the subject of intense questioning by members of the Opposition. Yet on 5th December, 1991, the former Minister described the HomeFund scheme as marvellous - a monumental success story. Obviously, the former Minister was deluding only himself. The flaws in HomeFund were more than apparent. At that time there were warnings from Treasury and from other areas. Two years ago the then Minister was

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promoting the scheme when he knew, or should have known - if he had the capacity to know - that there were problems with HomeFund. Clearly, the former Minister did not have a clue what HomeFund was about. On 5th December, 1991, the honourable member for Camden asked the former Minister:

What provision for safeguards are there to ensure that borrowers taking out HomeFund loans are protected against unexpected

economic hardship?

He provided figures as to arrears. He then said:

The other matter I should mention is the safety nets. I might add that this program starts off at 20 per cent of income repayment, which is 3 per cent below the banks and other financial institutions, and even if you had the worst case scenario where income is rising slower than the 6 per cent increase in repayment, it would take five years before it caught up with the 30 per cent repayment factor under this type of loan. It is totally insulated against incomes which do not rise quickly enough.

[Extension of time agreed to.]

It is clear from that statement that the former Minister did not understand HomeFund or its safety provisions. He had no idea of the problems that were emerging. In fact, he was out there promoting the scheme for all it was worth. The flaws in the system should have been apparent to everyone. The HomeFund gravy train went off the rails. In 1991 every major financial institution could see the writing on the wall; they could see that inflation was falling, that wage increases were falling and that property values were falling. Many institutions got their fingers burnt, but none more so than HomeFund.

When the other financial institutions were pulling back on their lending, HomeFund was out there cornering the market. The figures for one month show that 90 per cent of home loans in New South Wales were made by one institution: HomeFund. When everyone else could see the curve ahead, Joe Schipp was up there at the controls with the throttle fully open trying to go even faster. When all the bells were ringing, the Minister was deaf. When everyone was saying, "This thing is heading for trouble", he was out there trying to sell more. The Minister did not understand the system; he led HomeFund into the disaster it ultimately became.

Time and time again the then Minister stood in this House and said that HomeFund was not the problem; the borrowers were the problem. By then HomeFund had its own momentum. The co-operative housing societies were tied up with HomeFund; they had employed staff to run it. Their incomes and everything else were geared to keeping HomeFund going and growing. FANMAC and its principal at the time, Michael Lynch, were getting a cut from the whole process. FANMAC's income was 35c for every \$100 it loaned.

Why would FANMAC want to cut back on its lending? There was no incentive for it to take heed of the economic warnings which were clearly evident to every financial institution. The assumption was that HomeFund would trundle on happily regardless of the consequences. People were experiencing difficulties. Many came to my office before December 1991 seeking advice. People were walking out of their homes because they could not afford to pay any more, but the Minister did not want to know. He said that it was their fault and their problem.

I refer to the summary by Commissioner Rogers. I relate it to many of the victims of HomeFund in the Fairfield electorate. Many of those people had poor English skills and depended upon professionals to provide them with assistance. As I have clearly demonstrated, the then Minister did not understand HomeFund. The only people who really understood HomeFund were those making a buck out of it: the solicitors, the estate agents and the developers. They had one thing in mind, that is, to flog off property as fast as they could. They got any sucker in the door, regardless of whether they had assets. They signed them up for a HomeFund loan and committed them to years of misery and penury in trying to meet the repayments. That was the only objective. The solicitors got their cut; the estate agents got their commission; the developers got their price; and the properties kept moving. The whole scheme was driven by greed.

Now that the chickens have come home to roost the New South Wales Government does not want to be around. It wants to put a cap on its responsibilities. Every report into HomeFund makes it clear that the Government was behind every move. The Government cannot pass on the blame to the co-operative housing societies because FANMAC was auditing them or the Registrar of Co-operatives was auditing them. They were being monitored by the Government. There was no Victorian Government money in the Pyramid collapse in that State, but the Government of Victoria took the responsibility because it acknowledged deficiencies in its

administration in not monitoring Pyramid.

Clearly with FANMAC and HomeFund there is a link between the Government and the institutions involved. What is happening? The Government wants to run a mile. It wants to cap its liability. It wants to invest \$400 million, and that is its last offer - take it or leave it. This debate has come down to whether we will see true justice, whether those who are responsible for the debacle of HomeFund are brought to book for the full amount or whether they will slide out from under for the paltry amount of \$400 million. The total liability of the New South Wales Government goes well beyond that amount, given the amounts of compensation it might be required to pay.

This Government wants to cap its responsibility - that is the only reason we are here today. The Government does not want to bring justice to HomeFund borrowers by Christmas; it wants to cap its liability under HomeFund by Christmas - that is, to an amount of \$400 million. It wants to say to Standard and Poor's that that is all it owes - that is the bottom line. That is not good enough. The people of New South Wales deserve more than that. The borrowers of HomeFund, who have been so badly wronged in all of this, deserve just compensation.

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Dr MACDONALD (Manly) [8.18]: I have spoken on another occasion on the HomeFund issue, when the concepts of the HomeFund Commissioner and the committee were raised. I do not intend to speak again to all the issues. I welcome the direction the Government is taking with respect to refinancing and restructuring HomeFund. It is what we have been waiting for for some time. Though there are clearly some problems with the bill, it should be said at the outset that there would be little disagreement across the House with respect to this being the direction in which we should move.

Many members were approached, in my case up to eight months ago, by a number of commercial organisations and financial people who indicated that they had various packages to offer to get HomeFund out of its mess. Bain and Company, AMP and other companies indicated at that time that that was the way to go. This direction of moving towards restructuring and refinancing has clearly been supported by Mr Justice Rogers. The report that he provided to the Parliament on 3rd December was the result of five or six months of careful examination. He is very clear in his report that we should be moving towards a restructure. At page 52 of his report he stated:

From the time of my appointment, I made it clear to the Government, the Opposition and the two Independents who saw me, that it was essential that the whole Scheme be reconsidered in the light of changes in the economy which imposed major hardships on borrowers, many of whom are now committed to mortgage repayments exceeding 40 per cent of their incomes.

He went on to say:

The Government appears to have accepted the need for a restructuring package and has embarked on an examination of Schemes proposed by various bodies for the restructuring of the Scheme. A decision on the details is essential before any final determinations can be made. Obviously, the relief to be granted to any individual borrower may be substantially affected, or indeed superseded, by the Scheme to be introduced by the Government.

This whole report is scattered with such remarks. On page 2 of the report under "The Way Forward", Mr Justice Rogers stated that the solution is the restructuring of the HomeFund scheme. At the same time, he clearly has set us on a path of extinguishing legal rights, and that issue no doubt will be the subject of fairly heated debate later this evening. Refinancing and restructuring will clearly save many of the borrowers. Indeed, no one in this place would disagree that it was an extremely bad scheme. It was conceived by the Australian Labor Party, which is now in Opposition, and was exacerbated by those who are now in Government. Clearly, it is not appropriate to seek to apportion blame; that will not get us anywhere.

All the major parties are enthusiastic that this is the way to offer people hope. The HomeFund scheme ran

out of control. Criticisms have been made in the past couple of years that the scheme was not properly managed or scrutinised, but the question of who is to blame is not a path down which I would seek to travel. I would, however, commend the honourable member for Heffron for the absolute zeal with which she has pursued this issue. It has preoccupied her for up to two years and, though she was castigated in this place for many days, she can be very proud of the role she has played to date. However, any legislation that seeks to redress an impossibly difficult situation is bound to be flawed, and will require some compromise, towards which we will have to work in the next 24 hours. The Government needs to provide for certainty, predictability and some containment of the cost. Clearly, any restructuring has to be within certain revenue boundaries. We must recognise that it cannot be open ended. We must have regard to the welfare budget. In a reported interview on Australian Broadcasting Corporation radio last week Harry Herbert, from NCOSS, said, in regard to restructuring:

You can't, I don't think, guarantee everybody to stay exactly where they are. If that's what people want then I think that the Government would have to face such a large bill that it would put in jeopardy many of the other welfare programs of the State Government.

That is something to which we must have regard. I have regard to the extensive needs of the Department of Housing, which has a limited budget. In my electorate, which is probably no different from others, people have been waiting up to eight years for public housing, and that is not acceptable. With regard to public housing my electorate is particularly poorly provided for, for many reasons. The same situation may apply to many North Shore electorates. The Department of Health and the Department of Community Services will have to consider requirements in response to the Burdekin report, which have to be funded. We must have regard to the welfare and social budget of the State. However, I do not think the Government has been entirely honest in the way it has presented some of the figures. This morning I discussed with the Minister page 15 of the HPAA report to the Minister for Housing of 6th December, which refers to the sensitivity of costs.

It has been said publicly that the restructuring will cost \$341 million, but that is not entirely true. The existing scheme, with all the subsidies that would have to be met, would cost \$270 million, to quote the Government's figures. With the additional relief that is offered in the bill, this could amount to \$341 million, but that does not allow for other variations in interest rates and income growth. Clearly, the figure of \$341 million is not the problem; it is \$70 million in addition to what would be required if nothing were done. That is certainly a lot of money, but it is not the \$5 billion that was talked about previously. Let us remember that is the starting point, and we have to have regard to that fact when we are considering whether there are any areas in relation to which the Government could make some further concession.

There have been many casualties as a result of HomeFund. Many sad stories have been recounted, many episodes and accounts of absolute disasters, of people losing everything. Already more than 2,000 borrowers have exited the scheme, have handed in their keys, have almost lost everything, and have not

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refinanced. Many of them have been thrown out of their homes and are, for all intents and purposes, on the streets. They are the casualties. The other casualties, in a sense, will be those who accept categories C and D. I realise there will be significant benefits to them in the sense of writing off certain of their debts, but they are casualties nevertheless. Their dream of owning their own homes has been shattered. We must remember that the HomeFund proposal was always about the Australian dream of home ownership. Some will never realise that dream.

It may well be that the most vulnerable and the most disadvantaged are likely to be those who have exited the scheme without any prospect of ownership. Many of them have lost their life savings. In my amendment, a copy of which I have provided to the Clerks, I ask that we focus on that particular group, those who will never get the big prize of home ownership. There may be as many as 5,000 or 6,000 such borrowers, and my amendment seeks to give them some additional relief. I have already spoken to the Ministers about it, and I ask that my proposal be considered constructively. On my calculations the costs involved will be nothing like those quoted to me. I will detail my figures when I speak to my amendment. The figure could be of the order of \$25 million, to provide a refund of deposits for those who exit the scheme.

Many people who, as an act of faith, were enticed into the scheme are the most vulnerable or disadvantaged. Most invested their life savings and will exit the scheme with no prospect of home ownership; they have lost everything. We have to reach out to them and offer them something special. Another 28,000 have exited the scheme and refinanced. They have a prospect of owning their own homes. Many will have benefited greatly from HomeFund because they entered the scheme on low interest rates and managed to exit as interest rates increased. Those in categories A and B who will remain in a scheme - whether under the restructured scheme or the existing scheme - still have some hope of home ownership.

Another question raised by the bill is whether anyone in this process should have their legal rights extinguished. The Government has proposed that all HomeFund borrowers other than those who have exited the scheme, the so-called 2,000 without refinancing, should have their legal rights extinguished. It has been put to me and to other members of Parliament that this is unconstitutional and will result in an appeal to the High Court of Australia. I seek a response from the Minister on that point. My position is that those who seek to benefit from the restructuring scheme can reasonably forfeit their rights. They should be given the option: if they benefit from the new scheme, they should forfeit their rights, other than the right to have a determination under Commissioner Rogers within the limitations of schedule 2. [*Extension of time agreed to.*]

The people likely to benefit are those in category B, category C and category D. Of course, they would receive some benefit under my amendment. Those who remain in category A and those with affordable loans who choose to remain in category C should retain their rights. That proposal has been put to the Minister. I do not believe that the Government is likely to accept that proposition, which will be the subject of an amendment. I turn finally to the very complex decision for many people of whether to accept their categorisation. The Government has agreed to establish an independent financial advice service to allow people to make an informed decision. It is not yet clear who will provide that service - perhaps it will be through the commissioner himself.

The bill was made available to members of Parliament only on Friday, four or five days ago. There has been an intense consultation process since. The Independents organised a meeting with crossbench members, the ALP, Government Ministers and interest groups yesterday morning. The Government has already made some concessions which are welcome - the extension of the five-year rental period and the remedy to the 1,800 being made clear. There also was some hope for people in category D to move back into categories B or C. Today there have been further meetings between the members of the crossbenches, Ministers and the Public Interest Advocacy Centre. Already further concessions are being talked about. The Government has come in with a good direction in terms of restructuring. It is up against difficulties in relation to total extinguishment of rights. I also have concerns about those who will become the casualties. We will debate those matters further in Committee. I ask the Minister to state in her reply that she will make representations to the Commonwealth to amend the Bankruptcy Act so that the compensation does not go to the creditors. I welcome the bill in principle, with the amendment which I have detailed.

Mr GAUDRY (Newcastle) [8.33]: This is a story of shattered dreams and exploitation. When the scheme started in the early 1980s it gave people caught in the deposit gap the chance of home ownership. As other members have said, that dream is shared by most Australian families. There was exploitation because the dream was picked up by the Government and, as with the boom and bust period of the 1980s, the desire to own a home was exploited in the high rental market. The HomeFund scheme at least doubled each year. In 1986-87 total HomeFund loans were \$150 million. In 1989-90 the figure was \$1.1 billion, \$500 million of which was on affordable HomeFund loans and \$200 million on the low start loans, a total of 11,000 loans. Between 1989 and 1992 \$2.4 billion worth of mortgages were given to many people who could not afford to stay in the scheme. The greatest period of growth occurred in 1991-92 when all the indicators were clear that the factors on which the model of HomeFund was built no longer pertained.

It is interesting to reflect on those factors. Inflation continuing at a high rate would have meant that the interest rate of 15 per cent would be within the range of an acceptable market rate. It was also believed that house and land prices would continue to rise, meaning that even when the amount of debt

increased, as it necessarily would, the percentage equity of the borrower would either remain constant or rise and this would permit refinancing if that course became more advantageous by reason of movements in interest rates. The third factor was that wages would continue to rise, thus enabling borrowers to make the increased payments called for under the mortgage. It was obvious at the end of the 1980s and the beginning of the 1990s that none of those factors pertained. Yet in that situation the Government connived so that many of the very needy people in the community, who at that stage would have been on housing department lists and would have been moving slowly forward on the eligibility ladder towards a Department of Housing home, moved into the private home purchase market where the three factors mentioned no longer pertained. Those people were badly advised and seduced into taking out a HomeFund loan. Page 8 of Commissioner Rogers' report refers to the report of the Secretary to the Treasury in relation to the financial model set up. I will not quote it but it contains a lot of financial jargon about the way the model operated. The pertinent fact is that the commissioner stated:

No warning was given to any of the borrowers of the fact that the success of the loan pre-supposed a continuation during the lifetime of the loan of the conditions which prevailed in the 1980s.

You did not have to be Einstein to understand that those conditions no longer prevailed at the end of the 1980s. Listening to former Minister for Housing Mr Schipp in this House one would have thought that HomeFund was the best thing that had ever happened. He shunted more and more people off the Department of Housing lists in a period of virtually flat inflation, no wages growth and no appreciation in housing values. So more and more people were being caught in the pincer: they could not keep up housing repayments at a growth rate of 6 per cent a year when their wages were flat and they were getting further and further behind. When the houses of those people went on the market they were faced, and the Government was faced in many cases, with a sale price of \$20,000 less. More and more people were caught in that situation. I take the opportunity to relate a couple of cases. In making representation on behalf of my constituents to the Minister I wrote:

My constituent took out the loan in February 1990. The loan was for \$62,000 on a \$69,000 dwelling. There was an extra \$3,500 for establishment, legal and conveyancing costs.

The rate of interest they were paying on the loan was 14.5 per cent.

After two and a half years of repayments totalling \$13,000 [my constituent] now owes \$67,500 - \$5,500 above the initial principal.

My constituent was particularly concerned, as are most of those who went into the HomeFund scheme - and I am not speaking about people who are no-hopers or could not care. They are people who had that real dream of home ownership; they were prepared to work, but they were working in a climate in which wages were flat. There was no growth in the wages market. They had not been counselled in the first instance about how their debt would develop over the period of the loan. These people were concerned also that they could not make arrangements at that stage to increase their monthly repayments.

Another matter that worried those who entered the HomeFund scheme was that when they became aware of the financial implications of their earning capacity and the way the loan ballooned in the early years, they felt that they should not have been given the loan, as they did not have the capacity to repay it. All that they got over the period of the loan was an increase in debt and at the same time - as has been reiterated by all honourable members on this side of the House - increased family and employment stress and increased insecurity. I instance another tragic case of a constituent who, upon the death of her husband, used whatever equity she had to take out a HomeFund loan so that she and her three children would have the chance of owning a solid home. She believed, as did many people, that the repayments would only ever be 27 per cent of her income.

This constituent received a supporting parents pension and did casual work. However, she did not understand that each year the amount that she could not pay was being added to the principal and in turn to the amount of her loan. Fairly quickly she realised that she was unable to meet the repayments on the loan. Her

debt escalated and she was forced to sell. She was a responsible woman and realised that the debt would become greater and greater. She sold out and now lives in that same house, for which she pays a high rent - for the advantage of living in a house that she once owned. She has lost any equity in the home and, like many people, is far worse off than she was initially. As I said, people in Australia have an ideal of owning a family home. I recall going to a meeting one evening at the end of 1991 or the beginning of 1992 at which young couples, married or approaching marriage, were being advised on all aspects of home purchase - understanding building contracts and financing through banks. I recall clearly that on that night HomeFund representatives were aggressively marketing their product to a very unsure audience - people who, like many others I am sure, were unable to understand fully what was happening.

Another point I should make is that many of those who took out HomeFund loans suffered because they lost their position on the Housing Commission waiting list. One only has to look at that list to realise the tragedy for people who have suffered through the HomeFund arrangement and are back on the housing market. At the moment the housing department is dealing with people who, in some instances, were applicants in 1986 and 1987. Many of them have been pushed off the waiting list. I shall cite a particular case which illustrates the difficulties people faced and suggests one reason why it is important for people, whether past or present HomeFund borrowers, to retain their ability to seek justice and not to have their legal and contractual rights extinguished. For some years a person who had been living in a caravan moved to the city to seek

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work and found a stable job in a position where wages were reasonable. This occurred in the middle 1980s. [*Extension of time agreed to.*]

This person and his family were living in a rental property and paying more than \$150 a week. They were on the bottom of the Housing Commission list and faced a six-year wait. Obviously they were concerned that they were acquiring no equity in a home. They thought that HomeFund would give them the opportunity to purchase a home. However, they failed to understand that under the HomeFund arrangement they would face increasing debt and that each year interest would be accruing. Though the person was on a reasonable wage, he did not realise the impact that any downturn in the economy would have. The family was caught in that situation. After moving into the home purchased with a HomeFund loan, that worker had to move away from the city to find employment at a reasonable wage so that he could meet his repayments. His income had been severely affected by the recession. Because the value of the house was not increasing, that family did not have the ability to refinance its home loan. It was caught by continually increasing debt. That led, as it has in many cases, to increased stress and turmoil in the family.

Undoubtedly thousands of people have been caught in that position. The Government has been dragged into this House with its rescue package, as it is called. Unquestionably, that package will be of no great advantage to people who lost their homes because of the debts they incurred by taking out HomeFund loans. This legislation will extinguish their rights. The amendments that the Opposition will move at the Committee stage - which I hope will receive the support of the Independents - will strengthen the position of those people who are severely disadvantaged by the Government's approach in this bill.

Mr PRICE (Waratah) [8.48]: I wish to express my concern about certain aspects of the HomeFund Restructuring Bill and in particular about removal of the power of the commissioner and the inability of members of the legal profession to act in some cases on behalf of HomeFund borrowers. The refinancing package proposed by the Government is needed. In a number of cases in the Waratah electorate refinancing has been the only way out for some borrowers, short of virtual eviction. The electorate of Waratah has a significant number of Department of Housing homes and units. I recall attending a seminar about 2½ or three years ago conducted by the Department of Housing specifically to encourage its tenants and people on its waiting lists to undertake HomeFund loan inquiries.

The seminar was attended by officers of the department and of a number of the co-operative building societies which were involved. At that time it all seemed very bright and glitzy. It was just when things were starting to tilt; the recession was starting to bite. A number of people in the area had been retrenched. Things were not terribly bright for those people, particularly for younger people and those in their middle age who were

hoping to move into home ownership. At that stage HomeFund appeared to offer some hope to those people that they might be able to satisfy the Australian dream of home ownership.

As it has turned out following that and other seminars, the advertising used during those meetings and subsequent to them was false. In other words, people were being encouraged to make inquiries in a situation in which they would not be able to survive financially. The difficulty in part was in relation to the segment of our society selected for this exercise. The Government, in line with what appears to be its policy of attempting to reduce the level of government responsibility for public housing, was encouraging people on the waiting list and in possession of relatively low rental homes to purchase those homes under the HomeFund scheme.

A number of people in the Waratah electorate came to my office seeking advice, not only on the scheme but also on valuations, which at that time were also subject to violent fluctuations. I recall dealing with the department and getting its views, and also finding a lot of conflict between various valuers as to how much some older homes were to be valued for purposes of sale. I raise that particular aspect purely and simply because ultimately it did affect the resale value of those homes when loans failed. That was a major problem.

One interesting case, which had the potential of being tragic, was of a schoolteacher in the Waratah electorate who owned a unit. She had been purchasing it for about three years and had been unemployed for that period. She had been getting some casual work but felt uncomfortable about her financial commitments and her ability to keep paying. The department offered her a job in the Riverina. She took the position, which meant that she would have to rent accommodation in the Riverina. She approached the HomeFund authorities for permission to rent her home because she could not afford to have it stand idle while making repayments on it, which were escalating, paying rent when working elsewhere, and keeping her young son. She was unable to take the job because there was no flexibility in the scheme. She was unable to address her problem by the simple function of renting her unit without incurring an even higher interest rate.

Another interesting case is that of a woman who was divorced and looking after two early teenage children. After 18 months her repayment bill was escalating out of all proportion. She was advised by the society to sell. She had the place valued. The value had dropped by several thousand dollars on the valuation she had been given at the time of purchase. She found that, with the escalation based on recapitalisation of some only partially paid interest, had she been able to sell then - which was questionable because of the difficulty in selling houses at that time - she would have been faced with a bill after sale, after all expenses, of at least \$3,000. In

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other words, if she sold her home, she would lose the \$6,000 she had put down as deposit, she would be without accommodation and she would still owe \$3,000.

I am not sure how equity can be seen in a scheme that does that to people, particularly to those at the lower end of the socio-economic scale. Such an outcome seems grossly unfair, grossly miscalculated and extraordinarily uncaring by the Government of the day. I accept that the Government had a policy to get itself out of public housing, but what a foul way of doing it. The failure by the Government and by certain of its servants to understand the impact of low inflation and low wage increases on the community and the prospect of further high unemployment is no excuse. Excessive bulk borrowings from the private sector - figures up to \$2.4 billion have been quoted tonight - placed the scheme out of all proportion to what could reasonably be expected of those who were theoretically supposed to benefit from this scheme.

Maximum payment was to be 27 per cent, with an increase of 6 per cent per annum either straight off or after five years. An increase of 6 per cent per annum is impossible at this time, and has been impossible for the past four years. There is no good and cogent reason why those people should be further disadvantaged by the inability of the Government to accept that they may well seek a common law remedy after being subject to the requirements of the restructuring scheme as proposed. Mr Rogers, in his report to Parliament, described the HomeFund scheme as financially unsound and inappropriate for the market of low income earners to which it was promoted. For the past two years the Government continued to defend the indefensible. I refer to *Hansard* of 24th June, 1992, when the Premier was defending the HomeFund scheme. The Premier said:

When . . . people took out their loans they had very little by way of a deposit. There was an expectation that the value of their property would increase in six months, 12 months or two years. That has been the way of real estate for ever and a day, even though it may have been cyclical over a five-year term or whatever.

That was poor consolation for those who were caught in the trap when the cycle was much longer. They could not get out; they could not afford to get out. They could not stay in because they could not afford to pay the fees. They wanted to be decent people; they wanted to repay their obligation and their debt. But the system had made that intolerable. What is the result? Over the years 30,000 borrowers pulled out of the scheme, for various reasons; they either became homeless and went back on the public housing lists or were taken through the bankruptcy court. Eight thousand borrowers perhaps have an entitlement to Government subsidy, but only because they have a certain capacity to pay. Four thousand borrowers may have a legal right to keep their repayments at 27 per cent of income. One thousand people are in default on their mortgages, with the Government, through its agents, threatening to evict them. That is a poor reflection on a scheme that involved 50,000 HomeFund borrowers. Yet the bill allows a concession of perhaps another 15 or 16 months, which conveniently is just after the next election. What sort of attitude is that? Why are we being asked to debate whether legal representation is the right and entitlement of these people? It obviously is the entitlement of these people. There is no need to hide behind the pretence that we are protecting the Crown. The Crown got us into this; it must get us out.

Ms Machin: That is right; that is the taxpayer.

Mr PRICE: It may have been the taxpayers, Minister, but it is the taxpayers' Government that got the ball rolling, and the \$2.4 billion reflects poorly on the \$90 million that was raised when Labor was in government. Clause 14 of the bill exempts the Crown, FANMAC, the FANMAC trustee, the co-operative housing societies, including persons acting on their behalf, from any action, liability, claim or demand in respect of any HomeFund mortgage. That is fairly expansive. Not too many people can be pinned under that - only those who perhaps did not understand what the commitment finally meant in dollars and cents; who on limited incomes were trying to look after their families, lead decent lives and make a contribution to their community. They are now faced with the Crown being exempted from any legal action. [*Extension of time agreed to.*]

The Government has erred in its direction inasmuch as the commissioner will have his wings clipped if this legislation is passed without amendment. There is no reason for that to occur. The commissioner has done a job under the most difficult of conditions and it would appear that his recommendations by and large have been accepted, though certainly not in totality. If we are to accept the proposed bill, we must amend the power of the commissioner. The continuation of his functions should be enshrined in the legislation, not removed. There is no point in removing the commissioner at this stage, as indeed there is no point in forcing people to accept that their common law rights should be removed because we cannot guarantee that all of them will be repaired under the proposed legislation.

It is important that this portion of the bill be thoroughly debated clause by clause, and in fact repaired. The poor in our community cannot continue to be disadvantaged. Enough is enough. People who have been subjected to the indignity of being removed from their homes have had significant correspondence with the lenders and have been abused by officers of building societies. That is grossly unfair. There is no need for the legislation to proceed in its present format and I would support amendments to be moved in Committee by the honourable member for Heffron.

However, the restructuring scheme appears to be acceptable. It would seem that the proposed categories cover the vast majority of cases that require review. I believe that is satisfactory and that the scheme should be supported. If, allegedly to protect the Crown, we are to start retrospectively removing the ability of people to protect themselves under the laws of this land, we should seriously think about what we do in this Chamber at any time. I commend

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the sections of the bill that I believe to be satisfactory and look forward to the Committee debate on those

clauses where heavy review is required.

Mr HATTON (South Coast) [9.5]: This bill is about families and about the great Australian dream. I wish to make it clear that I do not speak as chairperson of the HomeFund committee. In due course that committee will report, and the report will reflect the committee's views. However, it is quite clear that there is evidence that when the Greiner Government came to office there was economic rationalism in its worst scenario. There was Thatcherism plus a great move to the right. It was the dream of Mr Greiner right from the beginning that government should shed responsibility for housing. But early in his term of office that attitude was changed because it was recognised that it was an outrageous position to take.

However, there was a way for people to not be reliant on public housing, not in an attempt to undermine the Department of Housing, but to move a large portion of public housing tenants into the private sector. I refer to the second mortgage scheme, which was originated under the former Labor Government but was rapidly escalated under the Greiner Government. The warnings were ignored and the bondholders were absolutely protected, as they continued to be protected under the Labor scheme. Vulnerable borrowers were exploited, misled, and enticed into the scheme and, in many cases, out of public housing. On many occasions caution was offered but those cautionary expressions were ignored as the Premier and the Government bragged about the escalation in the building construction industry.

As I understand it, the party room did not know precisely what was happening. It is an axiom that larger financiers who have been in the business for a long time and who are shrewd do not lock themselves into fixed interest rate contracts at the bottom of the market. That in itself should have been a clear warning. If one is to offer fixed interest rate contracts, it is likely that the market is going to slide away and that the bondholders will benefit. In fairness they were pass-through bonds and people could refinance out of the scheme at any time without penalty. It was not all bad by any means. Thousands of families in New South Wales, who could not otherwise obtain a home under the second mortgage scheme, were able to obtain a home. That was the positive side of the scheme.

Many who were shrewd entered the scheme recognising that they would save a few per cent interest and when the time was right - and in many instances they read the market correctly - thousands of them left the scheme without penalty, and so received double benefit. They took advantage of the scheme, and when the market was right they left the scheme and refinanced when interest rates were dropping. Those people should not be compensated, and I think we would all agree with that. But the Government pushed it too far. It sold the scheme to people who could not possibly afford to pay and went too far down into the market, enticing those people out of public sector housing and into private sector housing.

Co-operatives with a good record of service and experience since the 1930s were chosen to be the promoters of the scheme. This service and experience could not prevent them from making mistakes because they were into a whole new ball game with quite inadequate training. The Department of Housing's administration of the scheme was a disaster. The department's memorandums countermanded those of FANMAC. There was confusion over FANMAC guidelines and FANMAC guidelines were changed, at least once, when they were found to be inadequate. There was a failure to audit the scheme; it went on unaudited for years. The Department of Housing failed in its duty to the people of New South Wales.

The Government was too smart by half. It wanted public housing, as much as possible through the second mortgage scheme, off budget. To do that the Government escalated a scheme with FANMAC and abrogated its responsibility; FANMAC being a private enterprise, the Auditor-General was prohibited from following up the public dollar liability. The Auditor-General could not monitor what was going on, and there was not an independent sounding board or warning system to tell people of this State what was really happening. Treasury was unable to substantiate the warnings it was issuing. It was saying, "You are heading down the track in a car. The road is good, the weather is good, the car is picking up speed. For heaven's sake, we do not know what is around the corner. We have no evidence that the tyre will blow, the weather will change or the car's performance will not be so good, but we must have it". The road was good and nothing untoward was happening at that time. Those warnings were ignored.

The head of Treasury was sitting on the board of FANMAC but he was in the minority. Though he had a voice on that board, he could not represent the interests of the people who employed him - the taxpayers of New South Wales. When he did speak up on one occasion he was pulled into gear by the chairman of FANMAC and reminded, quite properly, of his responsibility. He was reminded that he was bound by corporate law, that he could not act on behalf of the people of New South Wales, and that he had to reflect the interests of the board of FANMAC. It was ludicrous that the person employed by the taxpayers of New South Wales to provide a window into what was happening had to voice an opinion in line with that of the board which represented the interests of private enterprise.

Private enterprise was absolutely 100 per cent protected, no matter what it did, provided it was legal. This bill makes the statement, "Even if it was not legal, FANMAC is protected". I, for one, will not wear that. I think that is quite disgusting. It is not proper, it is not sound legislation and it is not acceptable. I cannot say to my constituents and I cannot say to thousands of home borrowers what this bill would have me say to them, "You have had to suffer because there may have been" - and I chose my words wisely - "faults in the mortgage documents. There probably have been faults in the administration

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of the scheme. You have been wrongly advised as to what type of home loan you may have taken up, whether it be an affordable loan or a low start loan. The Minister was confused and put out confused and inaccurate press releases. The Department of Housing was confused and put out confused and inaccurate circulars. Solicitors acting on behalf of co-operatives and co-operative representatives were confused and were giving confused advice. But I am sorry, borrowers, you have no recourse. We will take all those rights off you, and will not allow any action whatsoever against the bondholders".

Where did all the money go? Money does not disappear. Honourable members in this House talk about amounts of money being lost. Money is not lost; it goes from the pocket of one person to the pocket of another. Where did all this money go? It went into the pockets of bondholders; it went into the pockets of board members of FANMAC, in one case well over \$1 million a year for Mr Lynch; it went into the pockets of builders; it went into the pockets of real estate agents; it went into the pockets of agents for co-operatives; and it went into the pockets of lawyers. But this bill provides that no action can be taken against all the people who profited from the scheme. Many of them profited quite properly, and acted with due care and regard to their clients.

The vast majority of co-operatives behaved honourably and upheld the tradition of honourable service that they have given to the housing industry in this State since the 1930s. Unfortunately, many did not. Unfortunately, there were the shysters. Unfortunately, there were people who locked borrowers into agreements that those people knew borrowers could not meet. Even some of those who acted properly, or tried to act properly, acted under ministerial and or departmental pressure to sell the product. They were told to get out there and sell it; set up the shop front; get out and market it. The guidelines were confusing. Those who administered the scheme were either incompetent, incapable or confused. A minority of solicitors, estate agents and co-operative representatives acted deviously, if not dishonestly. Yet the bill precludes any action whatsoever being taken against any of those parties. Are we living in a democracy? [*Extension of time agreed to.*]

What about the suffering and wreckage caused to many thousands of families? They suffered evictions and marriage breakdowns because of the terrible financial stresses of HomeFund. Their life savings were lost; others had substantial losses in any event. When the matter was raised in this Parliament, Minister Schipp day after day, prompted by honourable members saying, "Good on you, Joe" was telling the House, "Really things are not as bad as they are being represented to be; in fact, there is a deliberate move to undermine the scheme". I will not be involved in that political play. I say there was a hell of a lot wrong with the scheme. The Government knew there was a lot wrong and did not address the problem until it was absolutely forced to.

So there was this shooting at each other across no man's land in this Chamber. The honourable member for Bligh set about organising a meeting, trying to get both sides together with the then Minister for Consumer

Affairs, Mrs Chikarovski. That meeting took place. The honourable member for Manly also followed up and organised meetings, and I became involved. There were meetings at various times between the Government, the Opposition, HomeFund consumers, Ministers, the Public Interest Advocacy Centre, the Redfern Legal Centre, the Minister for Community Services and the Minister for Housing and their staff. There was meeting after meeting. Some of us met twice with Mr Justice Rogers, but not all of us together. We tried to understand and sort out the scheme.

As chairman of the HomeFund committee I took the view, backed by my committee, that whatever we had was available to Mr Rogers. The committee supplied Mr Rogers with evidence whenever he wanted it, with documents whenever he wanted them, and consequently for much of what he said he relied on his evaluation of the evidence that the committee supplied to him. The committee has to come to its evaluation of the evidence later on. Because of his own work and what he saw in evidence, and no doubt other things, Mr Rogers realised that he was stuck with an enormous problem. However, he found that many HomeFund borrowers had an arguable case at law. This Parliament passes laws to protect consumers. What right does it have to remove in one fell swoop the legal right to redress of citizens who have been wronged or believe they have been wronged?

Mr Kinross: He suggested it at page 3 of his report.

Mr HATTON: Page 3 clearly does not say that he recommends all rights of all borrowers in all circumstances be removed.

Mr Kinross: Read the report.

Mr HATTON: I have read it many times and in conjunction with Ministers at a meeting this afternoon. Borrowers are victims and lambs to the slaughter. In Committee and in the late morning after the HomeFund Commissioner Bill passed through this House, the Independents acted separately on some occasions and together on others to attempt to amend the bill so that if people had rights in law, they could exercise those rights; if they had reasonable access to legal aid, they could choose counsel conjointly with the Government so that they could be properly represented in court. Those and other amendments by the Opposition were not to the Government's liking.

The Government knew that the bill must pass through Parliament because of the clear signals from the Australian Democrats in the upper House and because Reverend Nile was indisposed. If anyone is to blame for putting this matter on ice, it is the Government. It would not allow Parliament to exercise its will because it was not the Government's will. The Government was quite happy to park the
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bill until 1st March, 1994. At approximately 5.30 in the morning many people were concerned about what would happen over the three-month period. I attempted to get both sides together - there was willing co-operation and agreement that we would do something.

The Government says that the Macquarie Bank has been working on a package for seven months. Neither the Opposition nor the Independents had any knowledge of that package until late last week. When I raised that matter with Ministers at our meeting they said they had no knowledge. We were looking at a HomeFund commissioner bill, talking about a restructuring package and we did not know the details of that restructuring package. When this legislation came forward for consideration last Friday it caused concern for the Opposition and the Independents in a number of fundamental ways. It appeared that 4,000 or 5,000 people would end up on the streets. After a meeting yesterday the Government said that if those people qualified for public housing, they will remain in the homes until such time as they were able to obtain a government house. There was no indication of extra money and the waiting list would grow.

It was understood that Justice Rogers could deal with all cases, but it was more clearly spelled out in the bill. This afternoon negotiations were undertaken on the question of legal rights. The proposed offer appeared reasonable: if you take the package, you must sign an agreement that you forgo your legal rights; if you wish to exercise your legal rights, you may. A compromise had been reached. Late this afternoon that proposal was

rejected. All rights have been taken away, the Government rejects all compromises and protects absolutely the bondholders even if the mortgage documents are faulty, which is something unknown to Westpac, the State Bank or any other organisation.

The Government is protected against maladministration. It is aware that part of this bill is invalid, according to the Trade Practices Act. Under that Act the Government knows that action cannot be taken against it and that time limitation and costs will restrict access. The approach to the resolution of this problem is totally cynical, dishonest and unsatisfactory despite the fact that there are many good things contained in this bill that with only a little bit of compromise - *[Time expired.]*

Ms MOORE (Bligh) [9.25]: In April my office staff organised a meeting between the Government, the Opposition, the HomeFund support coalition and various other groups with an interest in HomeFund. Since that time my staff and I have spent considerable time working on solutions to this disastrous scheme. The Government would have preferred to have swept the issue under the carpet and taken no action to assist borrowers who faced financial disaster. If we had not had a hung Parliament, HomeFund borrowers may have received nothing from the Government.

I congratulate the honourable member for Heffron for the way she has vigorously pursued this matter on behalf of the people who have suffered under this scheme. I express also appreciation for the efforts made by Minister Webster when he took over the housing portfolio from the former Minister. This bill is an indictment of former Premier Nick Greiner, who came to power saying that he was a great manager and would introduce wonderful schemes of economic rationalism to put this State on the right track. His letterhead motto was putting people first by managing better.

Joe Schipp vigorously promoted this scheme with the blessing of the former Premier. I give credit to Premier Fahey, who was one of the first people to identify problems and take action following the efforts of the honourable member for Heffron. I have worked on this issue despite the fact that I have no HomeFund borrowers in my electorate. The focus of the housing crisis is in my electorate, which has hundreds of homeless people and thousands of tenants who survive in the private rental market on extremely low incomes. There are numerous public housing tenants, many of whom are elderly.

People have a right to live with dignity, and access to affordable housing is essential. I support public housing and people being able to live in public housing with dignity. I should like to comment generally about the scheme. Obviously, the scheme should have been watched. It was expanded at the height of the property boom, when interest rates were at their peak and could only come down along with incomes. The Government promoted the scheme to public housing tenants. Many people left secure public housing in an attempt to own their own homes, and now face disaster.

People have been forced into bankruptcy and extraordinary debts by the Government's mindless pursuit of liberal ideology. I welcome the concessions that the Government has so far made. It has extended the length of the tenancy for borrowers in category C where they are unable to get public housing at the end of five years. I welcome also the provision of independent financial and legal counselling for borrowers faced with the restructuring package. I further welcome the fact that people in category D will be able to move to category C and category B.

I am faced with several alternatives to resolve this disastrous situation. Each proposal supports the restructuring package. The Parliament would not question that this package is desperately needed to assist borrowers who have been caught in this appalling scheme. The restructuring package provides subsidies for borrowers in category B, who would have difficulties paying off a commercial loan. To category C borrowers, who could not pay off a loan even with subsidies, it provides a waiver of their debt where it exceeds the value of the home and the right to rent their home from the Government for a period of five years. After negotiation with the Government, this period will be extended where a person who is entitled to public housing has not yet reached the top of the list at the end of the five-year lease so that housing will be made secure for those people who should never have been caught in this scheme.

Borrowers who are currently in arrears and are finding it difficult to repay those arrears will be able to remain in their homes as tenants, but for a shorter period. I refer to those in category B. The four alternative proposals focus on the preservation of legal rights. I believe the Opposition's proposal is the ideal position, because it provides that a person may choose to accept the restructuring package and take a complaint to the HomeFund Commissioner or take action in the courts. Borrowers are not limited in the legal rights they can assert, but their award of compensatory damages is to be discounted by the benefit they gain from the restructuring package. This proposal prevents double dipping because the benefit of the restructuring package is taken into account in calculating the compensation payout.

Many borrowers have substantial claims against the Government, the co-operatives and other bodies, and in an ideal world they would be able to exercise their legal rights and be assisted by the compensation package. Unfortunately, it is not an ideal world. This is an expensive option, and we are told by the Ministers that it is an option that the Government simply cannot afford. After our discussions this afternoon, the Ministers returned to Treasury and Cabinet advisers, and we are now told that this proposal is simply not an option. I am conscious of the argument advanced about the threat to the public housing budget. As I have said, that budget is absolutely critical to my electorate, which is facing a housing crisis.

The honourable member for South Coast has proposed that borrowers be offered a choice between accepting the restructuring package and signing away their rights of action under State law, and refusing the restructuring package and taking action in the courts or with the HomeFund Commissioner. That proposal has the advantage of waiving rights only with the agreement of the borrower and only when the borrower receives an advantage under the restructuring scheme. Borrowers who do not receive an advantage under the restructuring scheme - and there are many who will receive no benefits at all - will retain their rights of action. This proposal provides the Government with some certainty in that it clearly delineates a group of people who will never commence actions against any of the parties involved in HomeFund. It will also be substantially cheaper than the Australian Labor Party proposal, because those who choose to accept the restructure will not also receive compensation.

The third alternative put to me is that proposed by the honourable member for Manly. Borrowers who fall into categories C and D and borrowers who left the HomeFund scheme without refinancing will have their deposits refunded. This proposal is intended to target those who have not gained a home from their HomeFund loans and seeks to refund their deposits, thus making it possible for them to purchase a home at some time in the future. I understand that this proposal will provide benefits to a group of borrowers, but I am concerned that it benefits only a small number.

The fourth alternative is the Government proposal, which will remove legal rights from borrowers who remain in the scheme or who have refinanced. A small collection of minor matters, which are listed in schedule 2 to the bill, remain open to borrowers as grounds for complaint. In essence the Government proposal is that almost all borrowers will lose almost all their rights. The proposal offers the borrowers no choice as to whether they retain their legal rights. Borrowers may only choose whether they accept the restructure package. Borrowers who receive no benefit from the package will lose their rights.

The retrospective removal of rights to legal action is a serious step which is undertaken only in extreme circumstances. I believe all honourable members will agree that they are facing extreme circumstances. When we have, as we do here, a defective government scheme which was recklessly expanded in the worst possible economic climate, which was incompetently administered by Minister Schipp, and which was subjected to only the most cursory scrutiny, the circumstances could not be more serious. HomeFund consumers are among the least powerful in the community. They relied on the representation that HomeFund was a government scheme. They thought that would guarantee that they would receive fair treatment. The Government now seeks to remove their rights to make claims for breaches by the Government of consumer protection laws. I find merit in the Government's restructuring package; it is a way out of an appalling mess, a mess created by the

Government. I conclude by saying that I will find my decision on how I will vote in the Committee stage extremely difficult.

Mr WINDSOR (Tamworth) [9.35]: Unlike the honourable member for Bligh, I have about 600 HomeFund borrowers in my electorate. I have spoken about their concerns on two previous occasions. Obviously this debate is emotive. To me and to many other members in this House, the debate is also quite confusing. More importantly, it is confusing to many HomeFund borrowers who are already confused and emotional about their financial circumstances. In some instances they are hitting out in all directions as to who caused the problem and what they, the Government or the general improvement in the economy can do to rectify their individual circumstances.

One difficulty that I have in looking at a solution to this problem - and undoubtedly it is a problem - is a difficulty that is common to all people who have borrowed, irrespective of whether they be HomeFund borrowers via the Government welfare system, farmers who got into financial difficulty, small businessmen or anyone else. The common denominator is that all circumstances are different - the way in which people react in certain situations, the way in which they respond in a financial sense to the impact the economy is having on them, and the decision-making of government instrumentalities and bodies - not the least of which are political decisions that have impacted on them over a number of years. Essentially borrowers want an end to this problem that has dragged on for too long.

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There has been a great deal of political comment in this House, and some people may believe that there is a certain advantage in keeping this issue alive for another 12 months or so. However, if we are to be fair to the borrowers, in some way or other we must bring this problem to an end, hopefully tonight - if not tomorrow, at least by Sunday. I believe that many honourable members who are trying to view the problem objectively rather than politically understand that we need a solution that has equity for taxpayers and does not set a precedent that will lead to expectations by others in the community that they will be able to blame political circumstances for financial dilemmas that they may face at certain times during their lives.

As some honourable members may remember, I was privy to the HomeFund debacle before it became a political issue. Suzanne Kennedy, who was, I suppose, one of the initial whistleblowers on this issue, was a constituent of mine. She visited me in my Tamworth office and expressed concerns about the way the HomeFund scheme was going and what was likely to happen if the general economy did not improve. Subsequent to that, I met with the then Minister, Joe Schipp, who discussed some of these concerns. Over a period of time, I met also with the honourable member for Heffron and organised meetings with HomeFund borrowers in my electorate. I emphasise again that within obvious specific constraints honourable members should be most concerned about borrowers. One of the Tamworth co-operatives had been proactive in marketing HomeFund products. At that time Suzanne Kennedy was in charge of that co-operative.

On 20th April, a date that has been alluded to before, when there was a motion of no confidence in this House in relation to the then Minister, Mr Schipp, I called and said that I would support a royal commission into the operations of HomeFund. In fact, I had released a statement to the press some days earlier in response to a radio broadcast by the honourable member for Manly during which he suggested that he would consider some form of inquiry into the operations of HomeFund. I did not support the motion of no confidence in the then Minister because I believed that the House should have all the information before making a rash judgment on an individual - at that time a Minister.

After that debate a number of other things happened which eventually led to former Justice Rogers being appointed as HomeFund Commissioner. I have been supportive of what he has been attempting to do but there is still a great deal of confusion, not only in this place but also out in the broader arena. I believe some of that confusion has actually been expressed by Mr Rogers because he has tried to blanket individual circumstances into various categories. Obviously, that has created a problem and perhaps Mr Rogers would prefer that we rather than he should try to resolve that dilemma.

Listening to the debate today, the one common thing that keeps coming through to me is that there are and have been flaws in the HomeFund scheme. Who caused those flaws and whether they were deliberately caused is another issue. Given a maze of individual circumstances is involved - I have spoken to quite possibly 150 HomeFund borrowers and no two of those people are in the same circumstance in relation to their financial dilemma - whatever we do in this House will not be perfect. We are going to make judgments and quite possibly some will not be correct. It may be that precedents will be set which we will regret at some later stage

I know that a number of people have concerns about the extinguishing of the legal rights of HomeFund borrowers if the restructuring package put together by the Government is accepted. There is another option, of course, for those with extremist views about the maintenance of legal rights for the individual; and that option is to leave those individual borrowers to their own legal recourse - in a sense to throw them to the wolves. I do not believe Commissioner Rogers intends that to happen or would like it to happen, and I do not believe any honourable member would like to see it happen. Blanket legislation that encompasses all individual circumstances will not be perfect, whatever we do. If we want a perfect solution, we should leave it to the legal system to determine each case on its merits. In my view that will not happen, because I do not believe anyone with the numbers is really proposing that course

I ask those who have that extreme view to consider that option because any other option will be a compromise to some degree. In my view, Commissioner Rogers would not agree to that because of the time scale involved. Who would win? Obviously, the lawyers would win; they would have a field day. The uncertainty for the borrowers would still be maintained. There would be some political advantage for the Australian Labor Party, I suppose, in that it might be able to run the issue out to the next election, but the borrowers would definitely be in an untenable position. Those at the lower end of the economic spectrum - which most of these people are; in fact, nearly all of them are - would be unable to involve themselves in the legal battles that would take place.

There are a number of options, in my view. The first, which I have just mentioned, is legal recourse, which probably will not be accepted; the second is the Government's restructuring package; the third - which may come out of tonight's proceedings with some amendments - is an improvement to the Government's restructuring package; and the fourth option would be the Government's restructuring package plus some degree of legal recourse for individual borrowers. I suppose over the next few hours the Parliament will determine which of those options or their variations will be accepted.

A number of honourable members have spoken in quite emotive terms about the family dream of owning a home, what went wrong, and the consequences. Some have suggested that many should have seen the economic warnings. In hindsight, we all can. Having been involved in agriculture for a

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number of years, in hindsight I can see some of the mistakes I have made in my personal life. Obviously, we can all now see what has gone wrong with HomeFund. I do not think that only HomeFund borrowers were caught. The real question we are addressing is: who is to blame? If we find someone to blame, what can we actually do about rectifying the problems that a particular organisation or body of people has caused? I do not believe that the proposal to restructure is perfect, but when individuals are in different circumstances it is not easy to place a workable blanket over everyone. [*Extension of time agreed to.*]

Some of the problems that have been raised by my constituents have not necessarily been caused by the structure of HomeFund. They are related but as I say they are not all necessarily caused by the structure of HomeFund. Some have been caused by the loss of work. That is a problem that many people are facing and is directly related to the economic recession we are going through; quite a number of problems are marital problems, partly through the loss of work by one or both partners of the marriage. That has led to enormous problems and people have found it difficult to cope. Obviously, the variations in interest rates have impacted quite heavily and have interacted with the two other factors I have mentioned. But over and above that is the general economy, and not only what HomeFund borrowers have had to go through but also what other borrowers have had to go through.

I suppose it gets back to the question: whose fault is it and who caused all these problems? There are other borrowers such as farmers, as I have mentioned, who are affected. There are government sponsored schemes such as the rural assistance scheme, and will we at some time in this House blame government assistance for keeping farmers on the land longer, who thereby incur greater debts? Are we going to be able to use a circumstance that may well come out of tonight's vote to demand some form of compensation for other people who are affected? Are we going to do the same sort of thing for some of the small business community and other people who have borrowed for home finance? Obviously, my good friend opposite will correct me in a moment but HomeFund was initiated by a government; it is a government welfare scheme designed to help people into their own homes. There are slight differences. However, we must be very careful of the precedent we may well set, which might create expectations in other borrowers who have received government assistance over the period of six to seven years that the recession has been operative. Will those people ask for compensation?

No one would deny that there have been a lot of problems with the HomeFund scheme. Suzanne Kennedy, an enthusiastic marketer of the scheme, would not deny that. She saw the onset of the recession, realised what she had been a party to and tried to do something about it. Borrowers who were very confused came to see her. Many borrowers came into my office in Tamworth and said that Suzanne had suggested to them that they would never have to pay any more than 27 per cent of their income. There was confusion about whether loans were affordable or low start loans. Borrowers were confused about what Suzanne Kennedy, Peter O'Keeffe and the employees of many of these co-operatives were saying.

There is a perception that the loans some borrowers took out, rightly or wrongly, were not the ones they ended up with. Peter O'Keeffe has been a prime mover in this debate. I have had discussions with people involved with Peter O'Keeffe who have said similar things. Perhaps the borrowers, Peter O'Keeffe and Suzanne Kennedy are all confused, but there is confusion concerning the loans that borrowers believed they were getting. It is a matter of debate whether borrowers knew at the time that they were getting low start or affordable loans. When politics started to take over in this debate borrowers might have had other beliefs. I do not believe we will find a perfect solution to this problem.

Other people have been confused about the economy and about HomeFund. Treasury should not escape a degree of condemnation in this place. I believe that at one stage Percy Allan was a member of FANMAC. If Percy Allan, with his experience, had indicated to the Government that there were problems, solutions could have been found. Whom do we blame for all this confusion and economic uncertainty in the late 1980s and 1990s? Is this debate purely emotive? Are we wishing to make some political gain, or are we really talking about a problem some HomeFund borrowers may have had? For the first time in their lives those borrowers were involved in a financial process that they did not really understand and the people trying to sell the HomeFund scheme were somewhat overenthusiastic.

I would not like to see borrowers discriminated against in the debate tonight. We must come up with a solution to an economic dilemma because, in the long run, it will create a precedent that no one really wants. We have to make the solution simple. This problem must come to an end. If honourable members really care about the borrowers concerned in this dilemma, they must not allow this uncertainty to go on for another 12 months, because it will be damaging to borrowers who are not able to make decisions on their own. If the Opposition's proposed amendments improve the legislation, I will listen to them, but I will not agree to setting a precedent that could have enormous financial ramifications in other areas. If that were the case I believe we would be better off giving borrowers individual access to legal recourse.

Mr ANDERSON (Liverpool) [9.55]: Earlier in the day, having listened to part of the debate, I decided, for a number of reasons, that I wanted to participate in it. A number of honourable members gasped when they saw me carrying my HomeFund electorate file into the Chamber. The file, which is about a foot high, has grown over a period. I live and work in an area that has been the subject of

HomeFund loans. I have come into contact with a number of people who have become the victims of

HomeFund for a host of reasons. I, like many other speakers in the debate today, want to pay tribute to my parliamentary colleague, my shadow cabinet colleague and, more particularly, my long-time friend, the honourable member for Heffron.

Over recent years I have sat in this Chamber and watched the honourable member for Heffron persistently and consistently raise the problems affecting HomeFund borrowers. She has been subjected continuously to a type of parliamentary behaviour that, frankly, has not impressed me one iota. This Chamber, which is called the bear pit, is a rough and tumble place, but there was a concerted campaign against the honourable member for Heffron with regard to this matter. Time and again the matter was raised by members of the Opposition, almost without exception by the honourable member for Heffron. The answer she received from the Government was, "There is nothing wrong with the scheme. It is wonderful".

I sat in this Chamber wondering why all those HomeFund borrowers who were experiencing difficulties were coming to my electorate office and to the electorate offices of other Opposition members. Something had to be wrong, yet the Government consistently denied that there was a problem. When the bells started ringing someone should have taken some notice, put on the brakes and had a good look at what was going on. This debate is obviously becoming terribly tedious for the Minister for Consumer Affairs, who is in the Chamber. Week in and week out I found it tedious -

Ms Machin: I have a headache.

Mr ANDERSON: I apologise; I thought the Minister was having a go at me. She was pretty consistent during the day in having a go at other Opposition speakers. If anyone wants evidence about what is wrong with the scheme, he or she should simply read the report of the Government's HomeFund Commissioner. The Government appointed him; we did not. Mr Rogers, Q.C., makes it quite plain. There is ample other evidence, whether it is through the inquiry conducted by the parliamentary committee or by other sources, that there were significant problems. But the Government consistently defended its position and it has been dragged screaming to today's debate.

I participated with the honourable member for Ashfield in preventing the Government from perpetrating a rort in the early hours of Saturday morning, the last sitting day. A bill that had been dealt with by this Chamber was parked in the Legislative Council and the Government, through trickery, adjourned that House and attempted to do the same thing in this Chamber. But Opposition members prevented the Government from doing that. I am glad we did. This important bill deserves to be considered today, tomorrow, or however long it takes this week, to finalise this matter once and for all. Congratulations should go also to Helen Wellings of the "Investigators" on the Australian Broadcasting Corporation.

Mr Hazzard: Do not congratulate the ABC.

Mr ANDERSON: I want to congratulate the ABC. It does a lot of things with which I do not agree, but it can have my 8¢ a day as long as it screens programs of the quality of the "Investigators", "The Bill", "GP", and the recent "G.B.H.".

Ms Machin: And "Police Rescue".

Mr ANDERSON: I thank the Minister for Consumer Affairs for reminding me about "Police Rescue". A few moments ago mention was made by the honourable member for Tamworth of Suzanne Kennedy and Peter O'Keefe. I have sat in this Chamber and heard those people collectively and individually vilified by members of the Government. I do not know their family history or their backgrounds. My parliamentary office is a few doors from the office of the honourable member for Heffron and I have watched Suzanne Kennedy and Peter O'Keefe put in hours and hours of work. Sometimes the light in that office is the only light on that floor, apart from mine. Those people have worked tirelessly on behalf of the HomeFund borrowers who have had problems. Whenever I have had problems - and I have had plenty of them with regard to HomeFund - I went to those people for advice, as the Government was not doing any good. I am grateful to them and I am delighted

that they have both received recognition for the work that they have done in other forums.

I do not care how they came to be doing the work or what they may have done in the past. I only know what they have done in recent times and I am thankful they did it. Someone had to do it. They, together with the honourable member for Heffron, have led the charge in this most important matter. I am stunned at the display of intellectual arrogance by members of the Government in the past and during this debate. It is all well and good to have political and management theory, political signs and what have you, but politics is about people. In my electorate office I was not sitting across from theories or economic considerations; I was sitting across from people who, almost without exception, were in tears because they did not know where to go or what to do.

Ms Machin: What did you advise them?

Mr ANDERSON: First, I made representations, but that was a waste of a stamp. Given that I was a Minister for 6½ years, I made representations thinking that Ministers who received representations might try to help people. I soon had my mind changed about that. The reality is that these people had entered into these loans as a consequence, on many occasions, of having been approached by a government agency. Who wrote the letters to Housing Commission tenants asking, "Do you want your big chance"?

Ms Machin: Michael Knight wrote a few letters.

Mr ANDERSON: Michael Knight did not write the letters that my constituents received.

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Ms Machin: He wrote a fair few letters.

Mr ANDERSON: He may have written a fair few. He probably wrote more than you did, because it is hard to get answers out of you lot. These people were approached to take the loans, and they did. Why would not people take loans when at last, dangled in front of them, is the opportunity to achieve a dream they never thought they would achieve. That is what other speakers have said and that is what happened. The community is fortunate to have community legal centres, financial counselling services, and organisations of the ilk of the Public Interest Advocacy Centre, that are able to assist people in the way they do. I hope that those organisations will be in a position to do so in the future. Ultimately it rests with this Parliament to redress problems created by government; and the HomeFund problem was created by government. I do not propose to detail each and every case from my electorate. Rather, I have chosen three cases that I believe reasonably represent the types of matters that came to my notice.

I do not expect the overwhelming majority of Government members to have any understanding of the matters of which I am about to speak. Early in this debate today I heard the contribution by the honourable member for Ku-ring-gai. Time and again as a Minister I was subjected to searching questioning on his various radio programs. Although he gave me a hard time, I used to praise what he did because he searched for truth and justice. His interviews were never easy. That was his job and he did it well. It is with considerable sadness that I see where he is headed since he became a member of this Parliament.

Ms Machin: I think he has a good career.

Mr ANDERSON: Of course he has a good career. He has not got much to beat on the frontbench or certainly on the backbench. Fair dinkum, anyone on the Government benches would have a good career prospect.

Ms Machin: Just because you have leadership ambitions.

Mr ANDERSON: How clever of you Minister; you have recovered. In the context of speaking to

clause 6 and schedule 1, the restructuring scheme, I will mention three cases. I will not name the people specifically because I do not choose to embarrass them publicly. The first case relates to a family of non-English speaking background who obtained a \$60,300 HomeFund loan a few years ago. One might say that is not very much. No, it was not very much, but it was a fair bit for this family to borrow because the husband was on unemployment benefits when he got his HomeFund loan. He is not on unemployment benefits any more; he is on an invalid pension. His wife does not work, and they have four children aged seven to 15. In addition to the \$60,300, he borrowed \$4,700 from his brother. He sold his car and his wife's jewellery so that he, his wife and their four children aged seven to 15 could buy a one-bedroom home unit. What on earth was going on? Honourable members will not be surprised to learn that he is in terrible financial difficulty. He is trying desperately to sell the unit so he can get out of the loan, which is compounding, but he cannot sell it. If he could sell it he would not receive anywhere near the amount he borrowed. That is one victim.

The second case is an elderly couple, the wife in her late fifties and the husband in his mid-sixties. He is still in employment. He travels by public transport at various hours of the day and night from Liverpool to his employment in the city, which one might classify as somewhat manual labour. He cannot retire, as he is entitled to do, because he is terrified they will lose the roof over their heads if his only income is the pension. His wife has a part-time job as a shop assistant. She, too, would like to retire and enjoy the benefits of the lifelong work she has carried out, but she will have to go on the pension. Neither of them has superannuation. All they will have by way of income when they retire will be the pension. [*Extension of time agreed to.*]

These people have lived in their house for more than 20 years as Department of Housing tenants. Who lured them to think they could afford their own home? They are not in arrears, but they want to retire. I will tell honourable members why they cannot retire. They were encouraged and assisted to borrow \$100,000. Their repayments for the 20-odd year loan for the two of them on the pension, when he is in his eighties and she is in her mid-seventies, will be \$2,441.14 a month. I could not pay that much a month, nor could anyone else on the Opposition benches, and this couple will be on the pension. Did not anyone understand that when the couple were interviewed? Why heap the opprobrium on them? Who on earth was responsible for these sorts of loans? They could have remained Department of Housing tenants, not paying rates or anything else, and paid 18 per cent of their combined income. Now what do they do? Do they stay there and take advantage of the 27 per cent under the affordable scheme? They can never possibly own their own home. They will always have to worry about it. I will watch closely, whatever the result of this legislation, to see what happens to this couple. The true test of whether the Government is fair dinkum will be what happens to these sorts of people.

The final case is the worst, and it is the case I did more for than anyone else. It concerns a divorced woman in her early forties. Part of the divorce settlement gave her \$40,000. That was a few years ago. She has two children aged 10 and eight. She was in employment. She said, "I have got \$40,000. I have my two children and I have to put a roof over their heads. That is how I will invest this money, so that one day I will own the house and everything will be all right". She borrowed a substantial sum of money, roughly \$75,000. Taken into consideration in that loan was the recently awarded \$565 a month maintenance from her former husband. Everything was going fine, except the husband did not pay and still has not paid maintenance. It is no good chasing her for the money. She has not got it.

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The Government would say it is about time she understood the economic realities and got out and helped herself. For the past three years this woman has been working 75 hours a week to keep that house. She is in arrears, from which she will never recover. She has an understanding employer in her principal job during the day. He allows her to resign each school holidays so she can take unpaid time to care for her children, because she has no one else to care for them during school holidays. She is able to obtain assistance when she works three nights a week and during the day on weekends. She rarely gets to spend time with her children. She works harder than most, but she will never be in a position to pay off her loan. I challenge anyone to say that she is not entitled to some sort of assistance. If there are people like her in different circumstances who are trying to do the same thing, they need help, too.

I find it tiresome that the majority of my electorate work involves trying to house people. The area has been dominated in the past by Department of Housing dwellings, many of which have been purchased over the years. However, the overwhelming demand in my electorate is for Department of Housing accommodation. That is the principal issue with which I deal, or with problems associated with that issue. I do not come into this House not knowing the sorts of problems confronting the broad range of members of the community, but I say that people like this woman to whom I have referred are entitled to a go. She is not interested in economic rationalism, she is not interested in political theory, she is not interested in being given anything on a plate.

I did not know the woman until she came to my electorate office about a year ago. We have been trying to obtain help for her. Her only salvation, the only light at the end of the tunnel for this woman, has been the possibility that this Parliament would do something to correct the injustice. It is now happening, and it is happening because it has been forced upon the Government, and so it should have been. It is my fervent hope that at the end of this parliamentary exercise today, tomorrow or whenever, we will be in a position to assist people such as this woman to look forward to something more than she has had to look forward to in recent months.

Returning to the point I was making earlier, I do not know and I do not care what honourable members opposite have had to deal with over HomeFund. I know only what I had to deal with. I felt totally without hope for these people, because there was not any hope at that time. What did the Government say to these people? It wrote letters. What good did that do? None. The Government told them that perhaps something would happen down the track, and happen it did, particularly because of the efforts of the honourable member for Heffron. What price did she pay? Constant vilification. Some started to believe that perhaps the Government was right, that there was really nothing in what the honourable member for Heffron was saying, but we all know differently now. One does not have to believe what the Opposition is saying, or what the Independents are saying; believe what the commissioner appointed by the Government has said in his report.

Ms Machin: Why does the honourable member not believe the commissioner's remedy? Why does he not accept the suggestion?

Mr ANDERSON: I did not say I disagreed with some of his document. When the honourable member for Heffron started today, she was -

Mr Kinross: Take his recommendation.

Mr ANDERSON: The honourable member for Gordon was one of them. It is the only time he comes in. He has never made a worthwhile contribution to anything in his life, and he certainly does not make it here. Half a dozen Government members came in and sniped away through the whole of the contribution by the honourable member for Heffron, despite the fact that the Minister was accorded some reasonable semblance of silence. Why does the honourable member not sit and listen and learn? Why does he not come out to Western Sydney for a change? He sits there with his yuppie look on his little face. He should come out to western Sydney and find out what the real people are doing, because he does not, would not, could not and never will understand what they are about or what this is about. This bill, my friend, is about people. This bill will help people when it finally comes out of this Parliament. Thank goodness the honourable member for Heffron, the State Opposition and the Independents stood up to the Government, because without being dragged here it would have done nothing.

Mr WHELAN (Ashfield) [10.15]: I want to deal with the troublesome and vexed clause 14 of the bill. As honourable members will recall, it relates to the extinguishment of rights against the Crown. This is a matter of great concern to me and to the Australian Labor Party, because I do not think there has ever been a clause in a bill - other than perhaps a bill in a South African parliament - that would see such an enormous amount of power given to the potential beneficiaries, the mortgagees. As honourable members would be aware, the mortgagee for the purpose of this discussion will be called HomeFund.

I was perplexed about the operation of the scheme as a result of the determined effort of the honourable

member for Heffron, and I agree wholeheartedly with the remarks made by the honourable member for Liverpool. I recall vividly a remark made by the honourable member for Heffron in this Chamber in relation to one of a number of speeches and questions relating to the former director of FANMAC, Mr Michael Lynch, who did a Skase and escaped New South Wales jurisdiction. He now resides in America, living upon the largesse that his contract permitted him to receive. That largesse is in stark comparison to the disabilities of people who are the subject of these mortgages. If the passage of clause 14 proceeds, these people will see their rights

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under the mortgages extinguished. As a director of FANMAC, Mr Lynch received \$176,282 in 1988; in 1989 he received \$239,740; in 1990 he received \$713,262; in 1991, obviously to assist him with his overseas loans, he received \$1.301 million; and in 1992 he received \$1.6 million in income. In 1991 Mr Lynch received \$229,247 in director's dividend and in 1992 he received in excess of \$300,000 in dividend.

Mr Richardson: No. It was the legacy of the contract you negotiated with him when you employed him.

Mr WHELAN: The honourable member for The Hills says that this is a contract entered into prior to the Government coming to office in 1988. The Opposition accepts that Mr Lynch entered into that contract prior to that time. But, in 1993, the Government is taking from mortgagors their rights under clause 14, when between 1990 and 1993 Mr Lynch received \$3.7 million. The Government has not spoken about extinguishing the future rights and entitlements, either as dividends or as payments -

Mr Kinross: How much?

Mr WHELAN: \$3.7 million since 1990. By the same token -

Mr Kinross: What claim has he got against us? Nothing.

Mr WHELAN: Well, why has he been paid this exorbitant amount? We paid him \$300,000.

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

Mr WHELAN: The Government says that because it designed a contract it is bound by it. That is exactly what you should be doing in relation to the mortgage, you dill. That is what this is all about. The Government is extinguishing the rights of all mortgagors because of a statutory obligation. No solicitor worth his salt, on a free vote, would agree that this is not the most highhanded action in the State of New South Wales. It is unheard of and unheralded. It has to be removed. The Government is saying that that crook Lynch, who has \$4 million of State taxpayers' money, should have his contract preserved. He has fled the State of New South Wales and will not come back. He has been given \$4 million. It is all right that his contract be upheld, but the 5,000-odd people of this State who will be disadvantaged as a result of HomeFund will have their rights extinguished. I should have thought that when talking about the extinguishing of rights those opposite would have said that Lynch has had enough out of the State purse, even if there was allegedly a contract. In 1992 he was paid \$4.5 million; \$3.7 million under the Government's contract.

Mr Kinross: On a point of order. Mr Lynch is not referred to in the HomeFund Restructuring Bill. The honourable member for Ashfield has been given some latitude in talking to the bill. In no manner, shape or form are Mr Lynch's salary package and other issues relating to him the subject of this bill.

Mr Whelan: On the point of order. The honourable member for Gordon obviously has not read the bill. It is referred to in clause 14, which relates to the extinguishment of rights against any person. Mr Lynch is one such person whose rights should be extinguished and a claim made. If it means any person who is employed by FANMAC, the FANMAC trustee or the Crown in any professional capacity, no claim can be made. The very essence of the provision is to take away from the Public Trustee, FANMAC, or the Crown the right to extinguish any rights against those people in accordance with the terms of clause 14 in relation to a mortgage.

Mr SPEAKER: Order! What line of clause 14?

Mr Whelan: Line 32 which includes any person, such as "The Crown, FANMAC, the FANMAC trustee and co-operative housing society, including any person acting on their behalf". Mr Lynch is acting on their behalf.

Mr Hazzard: On the point of order. I do not want to interrupt the honourable member for Ashfield because I am sure he wants to return to the ambit of the bill. However, he is saying that that particular provision relates to Mr Lynch's contract. It relates only to a mortgage and the rights to claim compensation in relation to the mortgage. Mr Lynch is, as indicated, an employee. In no way is the honourable member right on this issue. Perhaps he might return to the point of the bill.

Mr Langton: On the point of order. It would probably come as no surprise to honourable members that Gordon is an anagram for drongo. That is evidenced by the point of order taken by the honourable member for Gordon.

Mr SPEAKER: Order! The honourable member for Kogarah will use more temperate language. I call the honourable member for Gordon to order for the second time.

Mr Langton: We are dealing with a bill with far-reaching consequences. It is quite within the rights of the honourable member for Ashfield to refer to the director of FANMAC, Mr Lynch. I would have thought that the passing reference he made was quite in order, due to the wide-ranging debate permitted on a bill of this nature.

Mr SPEAKER: Order! There seems to be considerable confusion amongst those who contributed to the point of order. First, the honourable member for Ashfield said that he was entitled to talk to it because such rights were included in the bill; then he said that the problem in the bill was that those rights did not affect that particular person and they were not in the bill. I am indebted to the honourable member for Kogarah for indicating that the honourable member for Ashfield made a passing reference, and therefore it is not substantial to the bill. This leaves me rather confused. I suggest that the honourable member for Ashfield has spoken to this for some time and there is some doubt as to whether it comes under the leave of the bill. Perhaps he might come back to the more specific matters contained in the bill.

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Mr WHELAN: Not only will the statutory rights of mortgagors be removed under the Conveyancing Act and any Act dealing with mortgages, but any equitable remedy mortgagors may have had against any of the bodies involved likewise will be removed. It is most surprising that contractual obligations entered into as a result of a mortgage, which is clearly a contract, are to be removed. In other words, warranties or conditions applied prior to the signing of the contract document - namely, the mortgage - are to be removed as a result of this decision by the Government.

Not only is the entitlement to be extinguished, but there is a proscription about those aggrieved making a determination. Clause 14 at line 33 states, "(and a determination may not be made) in respect of any HomeFund mortgage". If a person has falsely indicated that certain conditions would be fulfilled prior to the mortgage, or if any conditions precedent or any warranties have been given to any person prior to entering into the mortgage, those conditions are waived immediately, rescinded ab initio. There is no right or entitlement for a person at any later time to apply to the court. Line 33 of clause 14 says that people cannot get a determination. [*Extension of time agreed to.*]

It means that people cannot go to the Equity Division of the Supreme Court and apply for a declaration on any determination about any of the clauses of the mortgage. This Parliament, in an unprecedented step, is saying to the Supreme Court of New South Wales, "You have no jurisdiction here any more, because if this is a

HomeFund mortgage, clause 14 of the Act prescribes that possibility". Equitable leases, declarations, injunctions, and equitable relief in relation to mortgages generally will be removed by the proposal moved by the Government.

Those are some of the principal reasons for people objecting to the proposal. The legislation will remove statutory obligations under the mortgage. A mortgage is a very legalistic document. It sets out the rights and obligations of borrowers and lenders and says in no uncertain terms what those rights will be. For argument's sake, what would happen if a mortgagor breached a mortgage? Will that breach be compounded? What will happen to the title at the Land Titles Office? I should like the Minister for Consumer Affairs to tell me what will happen to the mortgagor registered on the title? Will a special reference be made on the title at the Land Titles Office that these mortgages are special mortgages that differ in all respects from other mortgages?

Ms Machin: No.

Mr WHELAN: They have to be. The Government is talking about prospective purchasers. What happens when people who have paid back their debts or still have debts outstanding want to sell? Will the mortgage be discharged? Is the borrower still there? It is a different mortgage. What would happen if the Permanent Trustee, the trustee of the fund, decided to onsell some of the mortgages? The future borrower would have to take over the loan. Would the sale be complete? I ask the Minister whether the liability to which reference is made at line 33 on page 5 is the potential liability of the Permanent Trustee to escape land tax? I shall explain that to the Minister. If there are a large number of defaults and the trustee has to transfer property into its name - say there are 200 or 300, which is not an unrealistic assessment having regard to the number of people in the various categories - that property will be transferred into the name of the trustee and the trustee will be the holder of the land and that would trigger the land tax levy. Under clause 14 the liability for the payment of land tax will be extinguished. Is that what the Government intends to do? Is this a deliberate method being used by the Government by which claims against the Crown or others can be extinguished? Think about the land tax consequences, which are an important ingredient of the bill - the claims, demands and determinations attaching to any HomeFund mortgage.

If I am wrong, I look forward to the Minister advising me as to where I am wrong. The principal proponent of the scheme is the Crown. Other honourable members have explained how the slick salesmen in silver suits persuaded people to borrow extensively against properties that were heavily devalued following the fall in the real estate market. They proffered loans to those people and propped them up so that they could get loans. All of that was immoral and illegal behaviour. The conditions and warranties can be thrown out now because there is a new law in New South Wales. The Government has failed to preside over and properly audit a scheme that has and will cost hundreds of millions of dollars. Instead of the State accepting its responsibility under the terms and conditions of the mortgages that it sponsored, it intends to rely upon its statutory right to go to the Parliament and change the law.

If the Government wants to change the law, it must expect there to be opposition and that consideration will be given to the way the law is to be changed. It cannot expect anyone in the Opposition to agree with the wide ambit of the terminology in clause 14, which exempts the Government from all and any claims against it, but goes further and says that there will be no right for anyone to go to the Supreme Court in equity or common law and that there will be no statutory obligations. Those three things will disappear before one's very eyes. All the warranties and conditions simply go out. How can the Government expect others in business to not want the same sorts of guarantees? The Public Trustee has a list of defaulters, as does the State Bank, the Commonwealth Bank, Westpac Banking Corporation - all of them have lists of people who have defaulted under their mortgages. Will the Government bow to pressure from Westpac or some of the other banks to introduce a similar restrictive extinguishing clause, when they cannot throw people out of their properties because of the deleterious consequences.

Mr Richardson: Does the honourable member mean that other people were in trouble as a result of falling real estate prices and the economic recession?

Mr WHELAN: That obviously would be a big factor. If people defaulted, what the Government would do - but the Opposition would not - would be to sell the properties over the heads of those who had defaulted. That would simply shift people out of FANMAC and put them back on to the Department of Housing waiting list. That is not the solution. This is a ruthless arbitrary act by the Government to ensure -

Mr Hazzard: It is a balancing act.

Mr WHELAN: It is not a balancing act. If it were, it would have to be less arbitrary. This is a straitjacket approach that extinguishes everything. All the slick salesmen in silver suits who got big commissions, as did this bloke Lynch, get off scot-free. The Government condoned this urger getting \$3.7 million and did nothing about it. By the same token, the battlers who have been trying to repay the home loans that they were conned into taking out to buy their homes will get no relief from the Government. Naturally the Opposition will oppose this clause, as the honourable member for Heffron said. Clearly the clause is flawed in law, and I hope the Government will reconsider it.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [10.35], in reply: This has been at times an interesting debate. The Opposition has ground me down somewhat. I intended to address a number of detailed points raised by individual members, but I shall deal with the generalities rather than the specifics. Suffice it to say that this has been an emotional debate, which has demonstrated to me that most of the Australian Labor Party members have not read the HomeFund Commissioner's report or the bill. They fail to understand for one second what the Government is trying to do. They simply want to play politics.

Mr Langton: We understand it all too well.

Ms MACHIN: The honourable member for Kogarah should tell me what he understands about it. I am sure it will not take him long.

Mr Langton: Where is Joe? Let us hear from someone who really knows what HomeFund is all about.

Ms MACHIN: Does the honourable member want to prolong this debate? We can take it the long way or the short way. One of the major myths that continues to be perpetuated is that this Government put the accelerator down, to quote a phrase that has been used in this discussion; that it ripped off the borrowers, forced them into the scheme and did everything it possibly could to make their lives miserable because that was the Government's ideology. That crystallises the Opposition's argument: that the Government promoted the scheme aggressively; therefore it is all its fault and it should pay for it, regardless of whether it is legally liable. It should be remembered that the Government was not the only one to promote the scheme. The honourable member for Campbelltown was fairly aggressive in promoting it in his electorate, with his little brochure and letter. Let us not forget what has been achieved.

I am sick and tired of hearing members opposite speak about the victims, the HomeFund disaster and the major rip-off perpetrated on these people in New South Wales. If the HomeFund scheme was such a disaster, why are 28,000 people now in homes that they would never have been able to purchase through normal lending institutions? That was the whole objective of HomeFund. It had behind it a major social policy objective, and in that sense was largely successful in the market for which it was designed. The Government has no control over changes in the market, as has been acknowledged. However, I cannot accept the argument that the scheme was a disaster, because 28,000 borrowers now own homes. That is a strange sort of disaster. Much will be achieved if the Government succeeds in introducing this package, but a lot depends on how the debate proceeds from here on. There is not a lot that the Government can change, because of the cost to the State. The package has not been easy to develop. It has taken about seven months. If members of the Australian Labor Party want to have two bob each way and a bit of a double dip, that will blow the cost out and the package will not proceed.

Mr Langton: We just want justice.

Ms MACHIN: That is an interesting interjection, because that is exactly what the Government is on about: justice and home ownership for borrowers. Commissioner Rogers spelled it out clearly in his report. If the honourable member for Kogarah or some of the Opposition members had read it -

Mr Langton: I have read it.

Ms MACHIN: If the honourable member has read it, he might tell me about some of the recommendations made by Commissioner Rogers. I shall listen with interest. The silence is deafening. The HomeFund Commissioner stated in the conclusions in his report:

Implementation of many of the recommendations that follow involves an application of legal principles and ordinary fairness.

Fairness and common sense have been missing from this debate for months and years, not just tonight. The commissioner went on to say:

The recommendations also deal with the possible rights of persons who have not made complaints.

Let us not forget about them. The restructure is also pitched to all those people, not just those who complain to the HomeFund Commissioner. The commissioner continued:

These are among the many reasons why it is impossible to implement the recommendations through determinations made by the HomeFund Commissioner whose jurisdiction is triggered by the making of a complaint and it is necessary for Parliament to legislate.

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We have adhered to the commissioner's recommendations. The general principles are as follows:

- a) That no borrower will be made homeless.
- b) Where possible, borrowers be allowed to remain in their present dwellings, if necessary as tenants.

The next principle is important:

- c) That borrowers should not be in a substantially better position than other people experiencing housing-related difficulties.

It is interesting that the honourable member for Blacktown is not in the Chamber today. I understand that she raised concerns in caucus about this point, or if she did not someone else who has a hefty dose of common sense for a change hit on this issue. Many people in the community, as many members have said, do not have the opportunity of having the Government bail them out. They are struggling with home loans with fixed interest rates at the previous market level, or for other reasons, and they do not see the equity in the Government putting up what the Opposition is proposing, which is a \$400 million package plus the add-ons that the Opposition would like the Government to provide. The commissioner understands the equity issue and says that HomeFund borrowers should not be in a substantially better position than other people. We are doing a number of different things because of the Government's involvement in HomeFund. We accept our moral obligation to many borrowers. The heart of the bill is largely contained in clause 14. The commissioner stated:

Legislation should extinguish any claims (other than claims arising from administrative mishandling of the loan) by borrowers who have voluntarily exited the Scheme by refinancing or borrowers who now take the opportunity to exit by refinancing.

For borrowers who enter the new Scheme, stripped of its inappropriate features -

Which has been done:

- legislation should extinguish all claims arising from existing loans except for those concerning administrative mishandling of loans . . . ballooning in the "early years", capitalisation of interest and a cap on repayments at 27 per cent of income, irrespective of loan type, should not be grounds for complaint.

I understand that that could seem extraordinary to people when they first see it but let us consider the issue of ordinary fairness that the commissioner referred to. Borrowers will not give up their rights for nothing; they will have a choice. They may have home ownership under a restructured scheme, and 21,000 or 22,000 people who remain in the scheme own their own homes. In round figures at the end of the day 50,000 people out of a total of just under 57,500 will own their own home. That is not a bad achievement. It relies very much on the support of this Parliament to get through the scheme as we have now proposed it. If we do not do that, we condemn the borrowers to a legal minefield and give them no chance of relief.

In considering this issue - I hope all members will consider it, but particularly those who have not yet made up their mind - we should think about the position of the borrowers. What do they want? Do they want endless legal arguments? If so, they probably would have lodged a complaint with Commissioner Rogers, because they had the opportunity in what we hoped would be a fairly simple tribunal or non-legalistic approach. However, that is turning out to be not the case, partly because of the complexity of the issues that the commissioner has been grappling with, which he has identified as being very difficult. He has identified a number of issues as being arguable. And who knows how long the argument might take? The alternative is for borrowers to accept the Government's offer of financial relief. Given that there are 26,000 borrowers left in the scheme and given that there were just under 3,000 complaints to the HomeFund Commissioner, the message that comes through to me is that people would probably rather be offered financial relief now than have recourse to all their legal rights and be tied up in courts or tribunals for who knows how long while the issues are resolved.

The other point the commissioner made - I have stated this a number of times but it is worth restating - is that the legal remedy that we might provide to a borrower would not necessarily guarantee the borrower ownership of his home, but a restructure of the scheme will. It is nonsense to suggest that borrowers are being asked to give up everything. Borrowers are being offered a \$400 million package by the Government to provide them with relief within the next six months. The Opposition is proposing a mishmash that says that they do not give up any legal rights: they can go to the commissioner, they can go to the courts, and they can have the money. We will discuss the Opposition amendments later in Committee. They simply are clumsy and unworkable. I commend the reading of the commissioner's report to members. He stated that the restructuring should be by legislation and based on the proposals in his report - extinguishing particular rights in exchange for the simplicity of a restructure and the certainty and speed that go with it.

Under the section dealing with why the restructure should be by legislation the commissioner points out that borrowers should not be left to choose between their current HomeFund mortgage and a restructured scheme. The new scheme will necessarily proceed on a number of assumptions that have been outlined. The very fact that the evolutionary examination of a restructuring has taken seven months demonstrates the magnitude of the task. Individual borrowers are not in a position to examine for themselves whether their particular circumstances would make it more advantageous to avail themselves of a restructure or whether they should stay in the present scheme. This is one of the concerns I have with the comments made by the honourable member for South Coast suggesting that we should give the borrowers a choice. What if they make the wrong choice? What if they stay in thinking that they might

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hang around and go down the legal path and perhaps get something more? I think they probably would not, but they would not get the option of a restructure under his proposal and so they might make a very wrong decision because of the complexity of the proposals. That is why the HomeFund Commissioner - who has pretty good credibility in this place, despite what the honourable member for Heffron said - has put those proposals forward and why they should be considered.

Mr Irwin: What about his recommendation on bankruptcy? Read that.

Ms MACHIN: I will read that. If the honourable member understands the system he might like to support me in approaching his Federal colleagues to deal with that very issue. That is already the subject of correspondence with the Federal Government. To summarise some of the commissioner's comments, he said:

Above all, I am most concerned at the manifest desire of the principal parties to insist on their asserted rights both substantive and procedural. Absent legislation, I foresee continuous wrangling in the courts on all manner of points. I am worried that the spirit of the Act will be thus undermined.

He was referring to the original Act which was for speedy, simple, non-legalistic resolution of complaints. The honourable member for Heffron and other members quoted from the HomeFund Commissioner's report. The honourable member for Liverpool quoted at length when it suited him, but he did not quote the pertinent parts which dealt with the crucial matter of legal rights and why we have gone down the path we did. The honourable member for Heffron prefaced her remarks about the HomeFund Commissioner by saying that the Government must have done a con job on him. That is a really nice thing to say about a former Supreme Court judge! I am sure he will appreciate those remarks! She wanted it both ways: she wanted to bag him when it suited her and then to quote from his report when it suited her arguments later in debate. She was also very critical of the Home Purchase Assistance Authority and its report. I think she suggested that it was all about something for the bondholders, as did the honourable member for South Coast in his quite extraordinary speech.

It should be pointed out to members who probably also have not read the HPAA report that in its introduction it says that in undertaking the task the New South Wales Government set the following criteria: that home ownership for low income earners was the original aim of HomeFund and should remain the aim under a restructured scheme; that the needs of the borrowers experiencing financial difficulties should be paramount; and that the restructure should achieve both these aims at affordable cost to the New South Wales taxpayer without material disadvantage to FANMAC trust bondholders. The honourable member for Gordon pointed out that clause 18 provides that bondholders do not have a lot of say; they have to essentially cop what is being put up. That does not necessarily mean good news for them. They are not particularly happy about the potential impact on them. It is interesting also, by way of comparison, for the sake of those members who have not been in Parliament for as long as I have -

Mr McManus: And that is a long time.

Ms MACHIN: It is a long time now and if the honourable member hangs around he might learn something. The moral outrage from the Australian Labor Party with regard to the extinguishment of legal rights is amusing. I am sure that my colleagues the honourable member for Oxley and the honourable member for Murray recall the debate in this Chamber on workers' compensation when the ALP was in office. The Labor Party professes to be the champion of the worker, the battler, yet it legislated away the common law rights of an injured worker to go to court to seek compensation. I remind the Opposition of TransCover - transport accident cover. The Labor Party took away the right of people to seek damages under common law. This Government not only dropped the premiums, it increased benefits and saved the State money. How dare honourable members opposite moralise about this Government's assets. Talk about political opportunists! I am continually amazed at the hypocrisy of the Labor Party - and this is a classic case in point.

A number of honourable members referred to individual case histories. I query the number of cases. The honourable member for Heffron has been critical of every action the Government has taken. I have asked her to provide me with any complaint not being resolved by the HomeFund Commissioner or complaints that people do not feel can be forwarded to the commissioner. She simply will not provide those details. I do not believe she has them; I believe she is fudging them, making them up. When it suits her she trots out the odd case study. Some of the case studies she has referred to in meetings with the Government do not stand up to close inspection. The commissioner also found that to be the case. I am able to elaborate if further details are sought.

Because of time constraints I shall not address all the matters raised by members of the Opposition. The

honourable member for Ashfield suggested that these mortgages were somehow different and asked what would happen if a property is sold? Would that be registered on the title? He is confusing the mortgage with the actual finance being provided to the borrower. The mortgage is simply a mortgage and whatever financial arrangement people enter into is a matter for them to decide. If a property is sold, it is dealt with in the normal way and mortgages are discharged in the usual manner. In essence, the honourable member for Ashfield was wrong. I am not sure why he cavilled with that. I can only say that I am glad he is not my lawyer.

The honourable member for Tamworth, who has many HomeFund borrowers in his electorate, hit the nail on the head when he said that there was considerable confusion about the scheme and the potential for lengthy legal debate. The crucial element is a speedy resolution and relief for

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borrowers. The honourable member for South Coast suggested that the proposal was akin to Thatcherism - a move to the right. He said that the Government was getting out of the provision of public housing. For a Government that is allegedly getting out of housing altogether, it has an extraordinary record of public housing rental and public housing purchase. The honourable member for South Coast does not strike me as a particularly impartial chairman of a select committee. He made unconstructive and vitriolic comments about bondholders. The commissioner pointed out that the need for bondholders to have their interest taken into account was important to the financial stability of New South Wales. I was somewhat dismayed by a comment by an Opposition member - I believe it was the honourable member for Fairfield - who said, "Too bad about what Standard and Poor's think about New South Wales and the cost of HomeFund".

Mr Irwin: I did not say that.

Ms MACHIN: One of your colleagues did. I apologise if it was not you.

Mr Irwin: I mentioned it but I did not say "too bad about it".

Ms MACHIN: You said that essentially justice for the borrowers is better. If the honourable member wishes the State's rating to drop down a peg or two, everyone in New South Wales will pay, including the borrowers.

Mr Irwin: At whose expense, though?

Ms MACHIN: At the taxpayers' expense. The Opposition seems to think that the Government gets its money from someone other than the ordinary men and women of New South Wales. That is the real problem with some of the Opposition's proposals. The Government wants to do the right thing by HomeFund borrowers. An independent arbitrator, a former justice, has said that the best and fairest thing to do is to restructure to give relief quickly to ensure that the greatest number of people can realise the wonderful Australian dream of home ownership. This bill will enable 50,000 people to own their own homes and, more important, will remove flaws in the scheme that have been clearly identified. Those flaws include ballooning interest, capitalisation of interest, the 27 per cent issue and the uncertainty about the fact that some people, on a certain level of income, would never own their own homes anyway. The flaws will be removed as soon as the borrowers accept the scheme. To slow down acceptance will be detrimental to the borrowers.

In Committee I shall address a number of the other matters raised. However, I sum up by asking honourable members opposite to consider what borrowers really want. Do they want financial relief or home ownership? The answer quite clearly is that they seek home ownership otherwise they would not have entered the scheme. Have many achieved home ownership? The answer is yes. Under the Government's proposal will a large number of them achieve home ownership in the future? The answer is yes. Is it affordable? Yes, we can fund it if one does not start to play with the edges of it. The Government cannot afford the several suggested schemes that add up to not a few thousand dollars or a few million dollars, but tens of millions of dollars. It will have to look at a new package or reconsider its position. It may have to dip into other funding, such as funding for public housing or for the needy of New South Wales. I am not sure that any Opposition member would wish to identify the areas from which the Government could take that money.

The Government's proposal stacks up on all counts with the recommendations of the commissioner and what is sought to be achieved for the borrowers. Borrowers now have the chance to be provided with home ownership by switching over to a new scheme that will be operable in about six months. The alternative is to be left to the mercy of the courts in a legal picnic. The Opposition would not wish that, I am sure. The ALP is suggesting that we have it both ways, but the State cannot afford that in terms of time or cost. I counsel honourable members opposite to put aside their ideologies. I know this is a fairly unusual step but it is not one of the Government's inventions; it has been recommended by an eminent retired justice who has investigated the human consequences of the scheme and its legal consequences. His recommendation is that the best solution for the borrowers is a restructure for which they would trade their legal rights, which though they might make many lawyers feel good, will not achieve anything for the borrowers. At the end of the day the Government is about helping the borrowers.

Motion agreed to.

Bill read a second time.

In Committee

Clause 3

Mrs GRUSOVIN (Heffron) [11.0]: I move:

Page 3, clause 3, lines 10-14. Omit all words on those lines, insert instead:

(2) This Act does not apply to a HomeFund mortgage described as a State Partnership Loan, a Rent-buy Loan or an Aged-persons Update Loan.

The Opposition made clear in the second reading debate that it agreed with the advice of the HomeFund Commissioner in relation to these products. These products were quite different from the other HomeFund products and had specific disadvantages for borrowers, to the extent that the HomeFund Commissioner stated clearly in his report, "This product should not be available in the restructure in its present form". He went on to say that he would be consulting further with the HPAA from the outset as to an appropriate overall remedy for its deleterious affects. For those reasons the Opposition believes that these products should be removed from the legislation.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [11.1]: I think I can understand where the
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Opposition is coming from. We agree there are problems, which the HomeFund Commissioner spelt out clearly. However, I think the Opposition might be cutting off its nose to spite its face - that is, in terms of the borrowers - by deleting that provision. The bill spells out - or we hope it does - that until the restructuring scheme is extended to HomeFund mortgages, described as aged persons update loans or rent-buy loans, the Act does not apply. At this point I guess it is not intended that the Act apply, but the aim is certainly not to continue those products in the scheme. However, there are flaws with the products. The Home Purchase Assistance Authority is attempting, through the restructure, to reduce the interest rate to 8.75 per cent for aged persons update loans from the date of their inception, that is, not from the present time but backdated to when the loans were taken out.

I think all members of this Chamber would acknowledge that a large number of borrowers with rent-buy loans are in difficult circumstances in both categories. The rent-buy loans are still being negotiated, but relief is being designed to meet the needs of the borrowers and of the other party involved, in this case the Australian Mutual Provident Society. Essentially, the Government is not going to be promoting these products. There are problems. In the case of aged persons update loans, the Government wants to fix problems with the scheme

in a way that will drop the interest rate and backdate it. It is in the interests of those borrowers to retain that type of loan. That is what is meant by the wording of the clause. I ask the Opposition to have another look at it. The intent is clear, that is, to provide relief to people in those categories. If they were dropped out, they might actually drop off the list and stay in the same situation.

Mrs GRUSOVIN (Heffron) [11.3]: The Opposition maintains its position with regard to the proposed amendment. The Opposition does not think what is being proposed by the Minister is appropriate, in view particularly of the scathing comments of the HomeFund Commissioner. The commissioner made very clear that these products should be excluded. The Government has a responsibility to take a hard, long look at these products and do something a little more radical than what is being proposed in the bill. The Opposition does not think the proposal is sufficient. I refer the Minister again to the HomeFund Commissioner's comments about aged persons update loans in particular. The commissioner said that information supplied to borrowers in explanation of the pitfalls of these loans had been deficient and also misleading. The commissioner was scathing about risks for aged persons in particular because property values were not keeping pace with interest rates. The Government should take a fresh look at aged persons update loans. It is correct to say that there are not too many of them. There are rather more rent-buy loans. It is not sufficient for the Government just to indicate that it is going to have further discussions with the other investor, the Australian Mutual Provident Society. The Opposition believes it should be of prime importance for the Government to consider such matters quite separately from the restructuring package. For that reason the Opposition continues to support the proposed amendment.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [11.5]: The honourable member for Heffron is missing the point. It is my understanding that the commissioner is saying such loans should not be part of a restructure, and they certainly are not in terms of new products. However, people have such loans now and, as the honourable member said, the Government has to do something with them. The Government is proposing to drop the interest rate for aged persons update loans and consider similar relief or relief that is in line with the fundamental philosophy of the restructure, that is, flattening out loans where possible or reducing the burden on borrowers. I do not understand what the honourable member thinks the Government should do in this regard and what would be gained by people dropping out of the scheme. The Government is not promoting these loans any further or remarketing this product. The Government is just acknowledging that there are people with these loans now. The Government wants to offer them some financial relief, yet the honourable member says this provision should not be in the bill. I do not understand what would be achieved for the borrowers by that amendment.

Mrs GRUSOVIN (Heffron) [11.6]: The Opposition believes that what is being proposed by the Government in relation to these products is totally inadequate and is really only scratching around the edges of this particular problem. Two products are totally flawed and most detrimental to those unfortunate borrowers who would enter into those contracts. As I recall, it was about rent-buy loans that I first asked questions in this House in 1991, as the festive season that year approached. There is no doubt that those borrowers in particular were subjected to false and misleading information. The Opposition has always believed that contracts under the rent-buy program were harsh and unconscionable. What is being proposed is not sufficient in view of the fact that the products were so absolutely deleterious to those who entered into those loans. It is not good enough for the Government to be proposing some cosmetic changes and minor alterations to the contractual arrangements of those borrowers. The Opposition suggests that they should be left out of this restructure package. The Government should pay immediate and special attention to these particular loans, and do something more than that which is proposed in the bill.

Amendment agreed to.

Clause as amended agreed to.

Clause 7

Mrs GRUSOVIN (Heffron) [11.8]: I move:

Page 4, clause 7, lines 2-8. Omit all words on those lines.

This amendment is consequential on the previous amendment.

Amendment agreed to.

Clause as amended agreed to.

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Clause 8

Mrs GRUSOVIN (Heffron) [11.9]: I move:

Page 4, clause 8, lines 20-23. Omit all words on those lines.

This amendment is consequential on the first amendment also.

Amendment agreed to.

Clause as amended agreed to.

Clause 12

Mrs GRUSOVIN (Heffron) [11.9]: I move:

Page 5, clause 12, line 23. Omit ", including fees for an appeal".

This amendment seeks to exclude the charging of fees for HomeFund borrowers when making an appeal to the advisory panel against being incorrectly classified in a restructure package category. The Opposition believes these HomeFund borrowers have been put through enough revolving doors, enough hoops and over so many obstacles that it is not appropriate to charge them a fee. To those who have been involved with HomeFund borrowers the evidence is clear that even a small fee is detrimental. Some borrowers cannot afford even the train fare to attend this Parliament to watch proceedings. The proposed fee will act as another hurdle to borrowers and will disadvantage them.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [11.10]: The Government is attempting to ensure that it targets resources where appropriate. The aim of the payment of a fee is to prevent frivolous claims. It should be noted that if the appeal succeeds, the fee would be refundable to the borrower. There is a risk of the borrower losing the appeal, but the Government does not want time and money wasted by frivolous claims. There should be some form of fee to ensure genuine cases receive a hearing.

Amendment agreed to.

Clause as amended agreed to.

New clause 14

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [11.11]: I move:

Provision of financial counselling and legal assistance to HomeFund borrowers

14. It is the duty of the Minister to ensure that HomeFund borrowers who are eligible to participate in the restructuring scheme, but who are not yet participating in that scheme, are given access to impartial financial counselling and legal assistance services.

The use of the word impartial is in the spirit of the amendment that arose from earlier discussions where concerns were expressed that advice given to borrowers had to be independent and accurate so that they knew quite clearly what their choices were. It may be a difficult choice for many borrowers, and later they will want to know that they have made the right choice in the hope that we do not have HomeFund mark II or mark III. The Government is guaranteeing that borrowers will receive independent and impartial financial counselling and legal advice. That advice will not be through the Home Purchase Assistance Authority, but will come under the auspices of the consumer affairs portfolio so that it is removed from what was perceived to be a conflict of interest or a body that may not be as impartial as it should be.

Dr MACDONALD (Manly) [11.14]: On behalf of members on the crossbenches who were involved in the meeting today with the Government I thank the Government for this amendment. It is a significant provision because the borrowers face important decisions about whether to participate in the restructuring. I refer particularly to those in the scheme who have been regarded as eligible for either category A or category B. In other words, those who have the financial capability to remain a potential owner. They will have to decide whether to exit the scheme and refinance in the commercial sector at the current interest rates, remain in the scheme with the subsidies they may already have at 12 per cent or 13 per cent, or take option B, which is a restructuring with rates between 5.75 per cent and 8 per cent.

Many of these people have previously had bad experiences and have often received bad advice. At this time there is a fresh look at the scheme, and this provides an opportunity to receive the best possible financial counselling and legal assistance. The issue yet to be debated in new clause 14 relates to the question of extinguishing legal rights. If the amendment of the honourable member for South Coast succeeds and remains in the bill when it becomes an Act, decisions must be made by those borrowers who may or may not enter the scheme. In effect, the amendment provides for the extinguishing of rights if borrowers agree to participate in the scheme. Some of the elements in the decision-making process are complex. I welcome the provision that the Government will ensure that those faced with such decisions will be given impartial financial legal assistance. Clearly, preliminary meetings with the Government prior to Committee stages often bear fruit.

Mr HATTON (South Coast) [11.17]: I too thank the Government for this amendment. It will have beneficial effects for the Government because the scheme is complex. Proceedings in the Supreme Court will be expensive for people who exercise their rights. My amendment will ensure that people who do not choose to accept the package can exercise their legal rights. People who seek financial and legal advice from an independent source, such as the Department of Consumer Affairs or the Financial Counsellors Association or Mr Rogers should have a choice. Mr Rogers does not particularly want to give such advice, and he acknowledges that there could be

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a conflict of interest because he may be adjudicating on some matters. Anyone who is aware of such a conflict might wish to approach Mr Rogers to take advantage of his wise counsel, experience and knowledge of this scheme.

In 99.9 per cent of cases where people seek financial advice I suspect they will be told, "Wherever there is an option in the package, take it. Do not go to court because you can get up to \$30,000 by going to Mr Rogers. You might want to claim \$50,000, \$60,000 or \$100,000 in court but you will risk spending \$100,000 or \$150,000 on legal fees, and it is our view that you should not take the risk". It will assist the Government to keep people out of court, to give them advice. Court proceedings will tie up the court system and cause problems and unnecessary complications in instituting this package.

Amendment agreed to.

New clause 14 agreed to.

Clause 14

Mrs GRUSOVIN (Heffron) [11.19]: The Opposition is vehemently opposed to the extinguishment of borrowers' legal rights, as proposed in this clause. The Opposition made its position clear in earlier debate. It would prefer to move an amendment to delete the provision in the bill that extinguishes the legal rights of past and present HomeFund borrowers. However, the Opposition accepts the inevitability that an attempt to do that would preclude an amendment which, as honourable members are aware, will be moved by the honourable member for South Coast and which the Opposition believes will at least salvage some rights for the borrowers, which is extremely important. The Opposition did not expect to see the day when honourable members would be asked to legislate in this Chamber to take away the existing legal rights of this disadvantaged class of people, the HomeFund borrowers. However, the Opposition believes that it will be acting responsibly if it supports the amendment to be moved by the honourable member for South Coast, which will bring about a much improved position for borrowers than this legislation intends for them.

Mr HATTON (South Coast) [11.21]: I move:

Page 5, clause 14. After line 29, insert:

(1) **Application of section.** This section applies to a HomeFund mortgage on the HomeFund borrower commencing to participate in the restructuring scheme.

This is a key amendment. I have great sympathy with the position adopted by the Opposition. I said with some passion in the second reading debate that I do not believe that it is the function of this Parliament to wipe out the legal rights of people who feel they have been wronged or in fact have been wronged, particularly when maladministration by government is involved and where government has, by its negligence and sins of omission or commission, encouraged borrowers to be either misled, enticed into a scheme, given unsatisfactory or incorrect information, or has encouraged or allowed others to act illegally or improperly. Therefore I do not intend to remove all of those rights, but I intend that people should have the option to pursue solicitors or representatives of co-operatives, real estate agents, the Government or anyone else who has wronged them.

I emphasise again, as I did in the second reading debate, that I believe the vast majority of people who were selling the product behaved efficaciously, though perhaps some acted in a misguided fashion because they were certainly misled and were not given accurate information and were confused. But in my opinion some were downright crooks. These people should not be allowed to get off scot-free, but that is not the main point I will emphasise. I emphasise that the Government is removing legal rights. As I said when speaking to a previous amendment, the Government has not a great deal to fear here. Many people will accept wise counsel and not pursue their legal rights; they will opt to take the package. It is unsatisfactory - and I believe that the Opposition is correct in the attitude it has taken to this matter - to say that because some people opt for the package they should be forced to forgo all their legal rights. I agree with that.

This afternoon I attempted to convince the Government - despite the fact that by moving this amendment I am denying some people rights in forcing them to agree to forgo those rights by accepting the package, even though it has those bad consequences - that my amendment was an effort to try to contain the level of litigation and to at least give people a choice. There are two fundamental reasons: One, as I have already stressed, I am opposed to removing, carte blanche, people's legal rights. Second, it is quite clear that a number of people will fall through the net and will not receive a great deal out of the restructuring package, or might want to take a point of principle and say, "I was duded. I was defrauded. I was misled," or whatever, and, "On that point of principle, even if it costs me money, I will pursue it". I hope that there are few of those people, and I think there will be, but they have a democratic right in our society to pursue that if they wish.

I ask the Government to consider accepting this amendment because on the receipt of proper financial and legal advice people will not pursue their legal remedies in 99.9 per cent of cases, because they are being offered a good package. I place on record that the Government should be commended for the strength of many areas of its package. The Opposition is criticising the bill and will move amendments, but it is important to put on record that there are some excellent features of this package and I commend the Government for it. Most people will recognise that, cut their losses, take the package and that will be it. But those people who feel that they have a genuine case, on a point of principle, or feel that the package does not compensate what they feel is a genuine loss of a right that they wish to exercise, should have every right to exercise that, and that is why I have moved the amendment.

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Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [11.26]: The Government has a major problem with this amendment, which goes right to the heart of the restructuring package and right to the heart of this legislation. The amendment seeks to have both: it seeks to have the restructure and seeks to retain people's legal rights. Quite clearly that flies in the face of the recommendations made by Commissioner Rogers, who recently met with the Opposition and the Independents to explain his point of view. All honourable members would agree that Commissioner Rogers has an outstanding legal mind. He has been addressing this issue at close quarters for the passed six or seven months.

Commissioner Rogers has come to the view, after considering the issue more closely and with more expertise than anyone in this Chamber, that the best thing for the borrowers is what is being proposed. The other side of that, of course, is the cost to the State, to the taxpayer. Do not forget that the Government does not have a money tree. The money comes from the people of New South Wales. The Government has a budget which must be adhered to. The budget is broken down into various programs across all portfolios. If the Government blows that budget, be it by way of payments to borrowers who think they might receive a cheque by going down the legal path, who might receive compensation, or whether it is simply by way of legal fees, the additional money has to come from somewhere. That compensation will be paid at the expense of some other service that the Government is providing. There simply cannot be endless legal argument; that will not advantage the borrowers.

The honourable member for South Coast was somewhat contradictory in what he was saying. On the one hand he was saying it is not enough to have the restructure. On the other hand he said it is a good package and that most people will go for it. We are trying to help "most people". It is most people that we are trying to put into homes. If the borrowers are told to go to court and pursue their rights, that has potentially large financial implications in terms of the Government's other budgets, such as for legal aid. Most borrowers will not have the financial capacity to take themselves to court with legal representation or to argue before the commissioner themselves. Commissioner Rogers recognises that many of the borrowers who are in trouble cannot put their case before him. This bill will provide a large amount of work for the lawyers, for the legal system, which is funded by the taxpayer. Large numbers of complaints have been made about the legal aid budget and the dearth of legal aid funding. That budget will be tied up if, as the honourable member for South Coast said, people feel that on a point of principle they should be able to advance their legal rights.

It should be pointed out that not all rights are extinguished and that not everyone loses them. Borrowers who have passed through the scheme but had to hand in their keys, if you like, retain their normal rights. They will have the normal administrative issues and errors in handling their loans, in the timing of origination, and in mortgage relief and so on dealt with. The commissioner has received a large number of complaints covering a basket of categories and they can still be determined by him, so the borrowers will retain their legal rights on those fronts. What the commissioner has said to the Government is that the best remedy for the borrowers is financial relief through a restructuring. The Government has worked on that basis and has produced a package that will achieve the twin aims of affordability for the State and of home ownership for 50,000 borrowers out of the total of 57,000. That is an incredible result, and it can be achieved now.

If this amendment is passed, it will delay the scheme and put borrowers in the unenviable position of having to try to choose between two enormous options, as identified by the commissioner, and the costs will be loaded on to the Government. The Government simply cannot accept this amendment. I understand the concerns of the honourable member for South Coast, but he has to look at what the commissioner said and take on board the consideration that the commissioner has obviously given to this problem. The fact that the commissioner is a lawyer suggests that this is not a conclusion he would have come to lightly. He would not be suggesting it if, in the light of all the evidence before him, he did not feel that this was the best outcome for the borrowers. I have to say that the commissioner has not been kind to the Government all the way along; he is certainly not a puppet of the Government. He has offered the Government a fair share of criticism, but he has been adamant in wanting to find the appropriate remedy for the borrowers. I believe he is really fair dinkum about helping borrowers to get out of the strife they are in now.

The types of problems that are being raised and are the subject of legal argument, as seen from public discussion the commissioner had, have no doubt been addressed by the select committee. I refer to the ballooning nature of the loans, capitalisation, misrepresentations such as that with regard to 27 per cent of income, and so on. Those issues will all be picked up by the restructuring. I suggest to the honourable member that, considering the large pool of borrowers and the fact that only 3,000 of them have so far taken the time to complain to Commissioner Rogers, there is a large number of borrowers outside the scheme who perhaps do not feel so strongly about pursuing their legal rights but who would still benefit from the restructuring.

This amendment will have an impact on them. It comes with a price tag and flies in the face of the best legal advice the Government has received over the past six months or so, not to mention the Government's very close examination of the scheme. If this amendment is agreed to, it will destroy the restructuring package and the integrity of what the legislation is about. It is something that will open it up. There is no way of knowing how many people would pursue their legal rights, where they would go,

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what that would cost, and what would be the sum of the determinations, on top of paying \$400 million odd to get people out of their financial difficulties now. I urge the Opposition and the Independents to think very seriously about what they are visiting not only on the State but on the borrowers if they accept this amendment.

Dr MACDONALD (Manly) [11.33]: Throughout the Minister's reply to the second reading debate and in her remarks tonight she invited us to look at the report of Mr Justice Rogers. I invite the Minister to look at the report and tell me where it says that those who remain in the existing scheme should have their rights extinguished. Nowhere does the report say that. However, the report does say that those who have voluntarily exited the scheme and those who take up the new scheme should have their rights extinguished. That is provided in clauses 7 and 8. Nowhere does the report say that those who do not seek to restructure should have their rights extinguished, and I ask the Minister in reply to respond to that. In support of this amendment moved by the honourable member for South Coast, I should like to draw the attention of the Committee to page 45 of the report to indicate that as much as Justice Rogers supports the concept of restructuring, he recognises that many of the complaints will be dealt with only if they go to a restructuring. The corollary to that is that if they do not accept the restructuring, their complaints will not be dealt with adequately. I quote from the report:

I have long maintained that it was essential that the Scheme should be restructured. I will address this topic shortly. However, I should at once say that in my recommendations I am not seeking to intrude into a sphere not entrusted to me. I recognise that the principal function conferred on me by the Act is the resolution of complaints made to me. It is at the heart of restructuring that it will involve persons who have not made complaints as well as matters not the subject matter of complaints. The only reason why I am venturing into the field is because, as I will explain, it appears to me that the complaints which have been made in most instances, may only be equitably dealt with in the context of restructuring.

It seems to me that he is signalling that that is the case. Nowhere has he said that those who choose not to restructure should have their legal rights extinguished. I ask the Minister to address that.

Mr HATTON (South Coast) [11.35]: It is wrong to say that I am seeking to have it both ways. I agree

with the honourable member for Manly that nowhere in the report does Justice Rogers say we should waive all rights. The intent of what he says is reflected in my amendment, which is that anyone who accepts the package should not have it both ways; those who accept the package waive their legal rights. The simple way of doing that is not to legislate away everyone's legal rights but to give the consumer the choice. Something overlooked entirely in this debate is the question of the Trade Practices Act. This Government can do nothing to prevent people from going to the Federal Court and exercising their rights under that Act. That has been acknowledged by the Government and has been pointed out by the Opposition.

But the point that has not been recognised is that one could if one so wanted - and in my view could quite legally - ask people to waive their rights to go to the Federal Court to exercise their rights under the Trade Practices Act, thereby cutting down on some of the cases to go before the court. Because I said this is a good package does not mean that I am having it both ways. I am saying that it is a good package and that it will cut down on the number of people who go to court. But because something is good, one does not prescribe that they must take it. Otherwise chemists would be making even more money than they now do. The argument here is that this bill would generate a large amount of work for lawyers. Well, everything we do in this place gives lawyers a large amount of work. If that attitude is to be adopted, no Acts of Parliament would be passed.

The experience of John Baston and David Vaile is that people avoid the courts like the plague. They do not want to go to court, and now that the Government is giving them independent legal and financial advice there is no way that they will go to court - but they should have the option to do so. Some borrowers will fall through the net and will want to go to court and they should have the option to do so. I do not believe in any way, shape or form that this will delay the scheme. Even if 100 people or 200 people exercise their rights to go before the court, 99.99 per cent of claims will still be settled. So what if there are 1,000, or 500, or 200 or 300 in the court system seeking to settle their claims. That will not hold up the scheme whatsoever.

The scheme will do what it is designed to do and assist the thousands of people who will opt for restructuring. How anyone can argue that a small number of claimants will destroy the package is beyond me. That is going over the top, considering that not many will exercise that right. The Minister has spoken about \$400 million. It has been pointed out from this side of the House that if the Government did nothing and left the human wreckage to rot - and we agreed with the Government that that is not an option - it would cost \$270 million in today's dollar terms. However, if the Government did something under the package, it would cost \$341 million. So, the additional cost is only \$71 million.

Mr WHELAN (Ashfield) [11.39]: Clause 14 is the most troublesome clause in the bill. The Government clearly intends to remove statutory obligations on mortgagees. Those statutory obligations are contained in various honoured statutes of this Parliament that have been the subject of court action and court determinations. They are now the subject of provisions of the Real Property Act and the Conveyancing Act. They are certain in law. The Government seeks to promote uncertainty in the existing statutory law. My principal objection to the clause is to lines 33 and 34, which read:

... (and a determination may not be made) in respect of:

(a) any HomeFund mortgage; or

...

The Government is seeking to disentitle people from achieving an equitable remedy in any court in the land. A person may want to obtain a declaration from

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the court as to the effect of a contract, the disallowance of a contract, a breach of contract or maladministration in the operation of a contract. Let us assume for argument's sake - and I do not suggest for one minute that this is so - that if there is an allegation of maladministration by the Permanent Trustee, who is defined in the bill as a trustee, that has deleteriously affected mortgagors under the FANMAC principles, those mortgagors will not be entitled to sue and will have no right to seek a determination in the equity division of the Supreme Court of New

South Wales. This provision is a proscription of the legal, equitable and statutory rights of people to apply to the court for redress. This heavy-handed action is unnecessary.

Ms Machin: Recommended by a judge.

Mr WHELAN: I do not care whether it is recommended by a judge or by the Minister. It is iniquitous and far-fetched and it will have an absolutely diabolical effect on New South Wales law. It will completely rewrite the law of mortgages. I can imagine that in the not too distant future Westpac mortgagors may fall into difficulties and Westpac may have a thousand people in default. Westpac will say to the Liberal Party-National Party Government "You got the HomeFund people off the hook, you got the Permanent Trustee off the hook by introducing this exclusive clause. We want the same principles to apply and we will give you all the conditions precedent to it". This provision is absolutely unheard of. As I said in the second reading debate, one might read about a provision such as this in South Africa but one should not read about this sort of clause in New South Wales. It will completely remove the rights of individuals who have entered into contracts, who have accepted offers and who have paid the necessary considerations. The Government seeks to undo the contractual terms of the mortgage obligations willy-nilly, and that is absolutely wrong.

Mr KINROSS (Gordon) [11.43]: When I first read this clause I was somewhat surprised. However, I was swayed by two matters. The first was the comments of the commissioner on page 3 of his report in relation to his view about restructuring, which is contained in clauses 6, 7 and 8 of the bill. More important was the commissioner's letter to the Minister, which appears at the front of his report. Members opposite who have bothered to read the letter will have seen that the last paragraph says that the solutions to this scheme have no basis in an adversarial context. The honourable member for Manly spoke about corollaries. He claimed that the commissioner, when referring to borrowers under the scheme, must be impliedly referring to other situations by excluding those which he mentioned. In his letter the commissioner spoke specifically about non-adversarial schemes. Coupled with the points he makes on page 3, why would he then agree to any suggestion of allowing borrowers legal redress? He does not believe legal redress is appropriate. I referred earlier to what the commissioner said, but for the benefit of honourable members I will repeat it:

... Parliament recognised that the unique and very difficult task of resolving the problems faced by HomeFund borrowers -

That is all people who have loans under the HomeFund scheme or who have had an association with it:

- required an approach which stood outside the traditional adversarial system.

I say particularly to the honourable member for Manly that I would have thought that the logical corollary of that is that no system should be put into place under which those rights would remain in law, because an adversarial approach is totally inappropriate to resolving the problems associated with the scheme. I do not believe that the matters raised by the honourable member for Ashfield in relation to mortgages have any substance. Some of his comments in relation to the mortgage documents themselves have no substance at all. Honourable members should look at what the commissioner has said, particularly about those areas. As I have said, at first glance I was somewhat surprised, but the fact is, as the commissioner has made clear, that it is inappropriate for the legal system to deal with these problems.

Mrs GRUSOVIN (Heffron) [11.46]: I wish to make some further remarks about this matter. This clause is certainly the most abhorrent part of this legislation. It is somewhat ironic that the Minister who has the carriage of the bill and who is proposing these provisions is the Minister for Consumer Affairs, who is charged with the responsibility of protecting consumers' rights in the State of New South Wales. I notice that among the advisers in the Chamber is the Commissioner for Consumer Affairs, who has a statutory responsibility under the New South Wales Fair Trading Act. I am surprised and shocked by what is happening in this House. The honourable member for Gordon has said that he was initially surprised by this denial of legal rights to those who had entered into these contracts. I would have thought that a basic factor in our legal system was confidence in a legal contract.

The Government has failed to recognise that although this restructuring package may contain provisions which will be beneficial to some HomeFund borrowers, many borrowers will not benefit by the restructure at all. Many of those borrowers have suffered a legal ill; many of them have sustained losses. In those circumstances, one could bring to mind the widow's mite. What might seem to some to be small amounts of money in these circumstances are large amounts of money in terms of the capacity of HomeFund borrowers to save a deposit for a home. Many of these borrowers have lost perhaps the one chance they might ever have had to achieve home ownership. There is no way back for these borrowers, and they have to live with a feeling of failure from here on in.

It was very interesting that members talked apparently casually about merely asking borrowers to waive their legal rights in the interests of everyone

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else and to ensure that the largest number of borrowers could keep their houses. It was interesting to see the reaction of the bondholders to a suggestion that they might accept some moral responsibilities for these matters, let alone waive their legal rights. When bondholders perceived that they faced the prospect of suffering in this restructure, they were very quick with their diagrams to indicate to the Government that they would be meeting the Government in the market-place, as they did in March 1993 when the refinancing package of \$5,000 then offered to borrowers lasted a miserly two weeks with 10 or 11 borrowers benefiting from that package. It was swiftly withdrawn because the muscle of the financial end of town was quickly brought to bear on the Government and there was a fast capitulation, but this bill deals with a rather more powerless group of people.

It is quite unbelievable that we are being asked to waive the legal rights of people who, in many cases, have suffered a legal wrong. If it were not a Government sponsored scheme, with the might of government standing here this evening, if we were dealing with a public company or private company which had proposed a scheme such as this, the proprietors or directors of that company could well be serving a prison term in Long Bay because that sort of behaviour in our society is not to be tolerated. The HomeFund borrowers have been the victims of deception and fraud and, unfortunately, it has all occurred under the banner of the New South Wales Government. I regret that the Opposition, in moving to delete these lines, would cause the failure of the amendment proposed by the honourable member for South Coast.

I should like to pay tribute to the honourable member for South Coast for his involvement in these matters. I should like to pay tribute also to the other Independents for the long hours they have put into the negotiations. Some of the improvements to the legislation could not have been achieved if the Opposition were attempting those negotiations. The work of the Independents has brought us to the stage where, at least, some benefits have been salvaged for a larger group of borrowers. To that end the Opposition will be supporting the amendment moved by the honourable member for South Coast.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [11.53]: When the honourable member for Manly was in the House, he asked me specifically where in the report it discussed those borrowers who chose to stay in the scheme. What happens to them? Where does it say that they should waive their legal rights if they stay in the scheme? The whole flavour of the report makes the position quite clear, and the Commissioner has made it clear to the Government that he understands that the Government's understanding is just that. He believes his report is quite explicit. For the benefit of the honourable member for Manly, I am addressing his query as to where the commissioner's report deals with the legal rights of borrowers who choose to stay in the existing scheme.

The whole report is predicated on removing people from the existing flawed scheme and, if they accept a restructure, waiving their legal rights because of the simplicity, because of the possible choices they face and because of the complexity for the borrowers. I refer honourable members to page 54 of the commissioner's report under the heading, "Why Restructuring Should be by Legislation". He begins by saying, "Borrowers should not be left to choose between their current HomeFund mortgage and a restructured scheme". I would have thought that concurrent with the restructured scheme is the issue of borrowers trading their legal rights for benefits under the restructure. At the bottom of that paragraph the commissioner said:

The enactment of legislation to underpin the restructuring will protect borrowers from having to make an informed choice. However, borrowers consciously choosing to stick with the devil they know must retain their right to do so.

I would have thought that if the commissioner wanted to be explicit about it, he would have included the comment that the honourable member for Manly makes. The commissioner has made it quite clear to the Government that if one takes the restructure or has an option, but does not exercise that option, one does not exercise one's legal rights. The commissioner's view is that we want a speedy resolution both in human terms and financial terms. He is concerned about the number of complaints he has before him, not only for the time they will take but also for the cost of establishing and maintaining the HomeFund Commissioner, which is not cheap. As I understand it, the options are the restructure, access to the HomeFund Commissioner and access to the courts, State and Federal, but that seems a nonsense.

On the other hand, the honourable member for South Coast said that not many people will want to do this. Why is he pressing so hard for this amendment? Is it his point that he wants to press or is it the point of the borrowers? On a point of principle they might like to do this. I put it that it is his point of principle that really is the problem because he probably does not have a HomeFund loan. Like most honourable members, he is not a borrower under HomeFund looking for a restructure. The essence of the commissioner's recommendations are simplicity, speed and affordable relief to borrowers.

The Government does not say that a \$400 million restructure will help the borrowers or the State or, therefore, the rest of the taxpayers and the beneficiary of the State's funding to have a HomeFund Commissioner available in case someone on a point of principle wants to see him, to have access to the State law - presumably the Supreme Court - and then presumably trot off to the Federal Court if the borrower is not happy. People want to run test cases on their point of principle, to prove a point, to have a go at the Government. What are they achieving? They cost the Government a lot of money. They cost the taxpayers a lot of money that comes out of other services such as housing, health or wherever.

Mr Gibson: It is called democracy.

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Ms MACHIN: It is called democracy, sure, but democracy comes at a price. A lot of people do not have these rights now. A lot of people in the electorate of the honourable member for Londonderry, in the electorates of other honourable members and in my electorate do not have the choices being offered to the HomeFund borrowers. They cannot take any particular legal action. The Government is not offering them various subsidies. They did not have the option several years ago when this scheme was established by the Labor Party. Those particular borrowers were given a leg up, they were given breaks that other people in the community were not given. Let us not say this is a one-sided argument. It is a two-sided argument and at the end of the day someone has to pay for that. Democracy certainly comes at a price. Let us not forget about democracy for all the non-HomeFund borrowers in this State, the people who have to pay for this proposal.

Mr HATTON (South Coast) [11.58]: I am staggered by the Minister's lack of logic. If this scheme is the good scheme I think it is, and if the Minister's logic is correct - the majority of people will accept the scheme - how will it possibly send the State broke? Why are we talking about \$10 million, \$20 million, \$30 million or \$40 million? The two situations cannot be maintained logically. The Government has a package that will vastly enhance the situation of the majority of borrowers, it will allow them to go to Justice Rogers for a determination and, at the same time, if the Government adopts the Hatton amendment, it will send the State broke. How can those two things sit together logically? Obviously they cannot sit together logically, simply because people have rights in a democracy. We are upholding that right and we are giving them a choice: give away that right, accept the package; or, do not give away that right and take the risk.

Mr KINROSS (Gordon) [11.59]: I have an answer for the honourable member for South Coast - and I do not intend to be smug about it but I am a lawyer. A person who goes to the Federal court and has six people

with him or her can file a class action. I believe this has already been discussed by Mr Ben Slade. The option of a class action is that everyone is in - not the seven; everyone is in unless they opt out. The honourable member should tell me why a person would opt out when there is no cost to that person. He or she would ride along with the class action. That is the cost to the State. By filing a claim under the class actions procedure every HomeFund borrower, any one of the seven who goes to the Federal court, can bring in everyone else because there are opt out procedures. A person is deemed to be in unless he or she has opted out.

Take a reasonable analogy of what happened when only 3,000 out of 27,000 people approached Andrew Rogers. If one assumes that that same proportion would go to the Federal court, one would be talking about thousands of people taking legal action. It may be, as I say with the greatest respect, a procedure that the honourable member for South Coast was not aware of, but it exists. Irrespective of trade practices, irrespective of our ability or lack thereof to legislate with respect to Federal areas, the fact is that a class action procedure will cover all borrowers and potentially jeopardise the finances of this State. All their remedies under law, under trade practices, may not be excluded and all their rights and the quantification of 27,000 borrowers and all those who may have left the scheme are deemed to be included. That is the law. There is no doubt about that.

The second thing is that I would have thought that the taxpayers of New South Wales are entitled to some certainty, quite apart from the HomeFund borrowers, and that is the certainty of bringing this mess to an end. I would have thought it was quite clear that we are here tonight and tomorrow to debate all this in an attempt to get this package sewn up once and for all so we can put this behind us. One thing that the honourable member for South Coast and I know is that we have to finish off the committee's report, which we hope will come down in January. That is the fundamental matter that I believe answers the honourable member's concerns about the impact of court actions on the State's finances, the potential jeopardy of a class action procedure in the Federal court.

Mr HATTON (South Coast) [12.2 a.m.]: One does not have to be a lawyer to know that that is nonsense. Whether or not my amendment is carried, whether clause 14 remains or is deleted, there is the right of appeal to the Federal Court in any event. No one in this House can do anything about that. I thought that the honourable member for Gordon would understand that class actions in the Federal Court cannot be precluded by an Act of this Parliament.

The logic of what I am saying is that we may discourage people from going to the Federal Court by saying to them, "Sign off all your legal rights, including that to the Federal Court, and you can take the restructured package". Honourable members should think about that. In fact, it is a better arrangement financially. To stand on the argument that has just been put forward is to stand on an argument that has no strength or basis in law. One does not have to be a lawyer to know that. The Government has already accepted that if the relevant sections of this bill - if passed into law - are in conflict with Federal law they will be struck down. There is no argument about that.

Mr WHELAN (Ashfield) [12.4 a.m.]: I am a lawyer, as is the Government member for Gordon. He tried to build a case about how class actions were going to be the financial ruination of New South Wales and infringe on budgetary allocations. I would like to remind the honourable member that the Group Proceedings (Federal Court) Act applies only to causes of action that arose after July 1992, and that 95 per cent of HomeFund actions would not therefore be applicable.

[Interruption]

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Regardless of what the honourable member says, he was wrong, very wrong, in law and the fear he intended to generate in those who intend to vote is unfounded. The honourable member deliberately intended to say that the cost factor was going to be prohibitive. The Government is not able to prevent anyone from seeking redress under any Federal Court legislation, but the honourable member is very wrong to suggest that there is going to be a class action for causes that arose prior to July 1992.

Mr KINROSS (Gordon) [12.5 a.m.]: In fact, I think the time period is March 1992 but the question then is when the cause of action arose. Leaving aside the question of when the cause of action arose, when there was a breach - it may not necessarily be when the person took out his or her loan; it may be in relation to further representations - the situation is quite clear. The Supreme Court of New South Wales dealt with a case that related to a ship that sank in New Zealand - I do not recall the name of the ship. Class actions are not the sole province of the Federal Court. Under the New South Wales Supreme Court rules class actions can exist.

Justice Carruthers decided that case and gave all the passengers who were on the ship some legal redress. It would only take a couple of HomeFund borrowers to go to the Supreme Court - in the case in question I believe it was the Common Law Division - and petition the court that it was appropriate to hear one case concerning a HomeFund borrower, rather than 27,000 cases and consolidate them. My friend may be right on the Federal aspect, and I was not seeking to mislead the House in that regard, but the fact is that class actions procedures can be taken in the Supreme Court and could have the same effect.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [12.7 a.m.]: The honourable member for South Coast posed the question: If this is such a good scheme and not many people are likely to want to complain because they will all restructure, why do we have a problem? I ask the honourable member whether he can tell the House what this is likely to cost the Government. How many people are likely to want to exercise their legal rights? In what jurisdiction? How long will it take? What will the cost be? What will be the implications of those legal actions?

The Government needs certainty. It needs to be able to sign off on this and know, in terms of its budget, what the implications are going to be. We were all in a meeting yesterday or the day before and one of the Independents, it might have been the honourable member for Bligh, asked a question of the Hon. Michael Egan about some of the ALP amendments which included things of this nature. The honourable member for South Coast said there is no way the Government can cost it; that it should not have to. It should have to because this is a major issue for the Government and for the taxpayers. There is considerable interest in it from outside and there are considerable issues of equity, not only for HomeFund borrowers but for public housing tenants who may end up having to pay for this if it goes on and on.

The honourable member for Gordon has made the point that various options that may be exercised. If the honourable member for South Coast can tell me that that will not happen, I will be happy. I do not think he can tell me when it will end, how many people might want to exercise the point of principle, as he keeps saying. I restate that the honourable member is being inconsistent. He says this is a terrific restructure. I would like to know and I ask again, whose principle? Is it really the borrowers' principle, because I do not think at the end of the day the honourable member is considering the best remedy for them as recommended by Andrew Rogers; he is considering his personal philosophy and that of some of his advisers or others who have an interest in this matter or in the legal system.

I do not think that approach will help the borrowers to get out of the spot they are now in. The Government has been prepared to concede a number of things and is doing what it can to give the borrowers the right advice; to give them every opportunity for relief. The Government will put \$400 million on the table to do that. The recommendation of the HomeFund Commissioner was that, for the sake of choices that the borrowers may or may not face, for certainty to the State - and he acknowledges the need for the State to have that certainty - the Government should ask the borrowers to take what we all concede is the unusual step of waiving their legal rights in regard to aspects of their mortgages.

Let us not forget that not every legal right is waived. A number of other claims can still be dealt with. There are still borrowers who had to hand in their keys and can have all these issues addressed by the HomeFund Commissioner and retain their legal rights. I foreshadow that the Government will be moving an amendment later, which has been discussed with the Independents. The question of a borrower's prospective legal rights was picked up by the Independents in earlier discussions. The Government has conceded that

borrowers should have an opportunity to exercise their legal rights from this point on and is prepared to move an amendment to that effect. We have bent over backwards to accommodate the view and needs of the Opposition and the Independents, but this is a bottom line issue for the Government.

The Government has put up a lot of money and it has made a number of concessions. Everyone is saying that this legislation generally is a pretty good package. We should not get hung up on the legal principles of a few people for the sake of some legal point that cannot be quantified or costed in order to satisfy a philosophical point of view. We should look at what is best for the State. We should look at what is best for the borrower, what is quick and what we can afford. The Opposition cannot give the Government assurances it must have to enable it to make to the borrowers an offer that we can afford. If Opposition members could give us such certainty that would be terrific, but they cannot. That was conceded the other day.

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Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 44

Ms Allan	Mr Markham
Mr Amery	Mr Mills
Mr Anderson	Ms Moore
Mr A. S. Aquilina	Mr Moss
Mr J. J. Aquilina	Mr J. H. Murray
Mr Bowman	Mr Neilly
Mr Clough	Mr Newman
Mr Crittenden	Ms Nori
Mr Doyle	Mr E. T. Page
Mr Gaudry	Mr Price
Mr Gibson	Dr Refshauge
Mrs Grusovin	Mr Rogan
Mr Harrison	Mr Rumble
Mr Hatton	Mr Scully
Mr Hunter	Mr Shedden
Mr Iemma	Mr Sullivan
Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan
Mr Knowles	Mr Yeadon
Mr Langton	
Mrs Lo Po'	<i>Tellers,</i>
Dr Macdonald	Mr Beckroge
Mr McManus	Mr Davoren

Noes, 42

Mr Armstrong	Mr O'Doherty
Mr Baird	Mr D. L. Page
Mr Beck	Mr Peacocke
Mr Causley	Mr Phillips
Mr Chappell	Mr Richardson
Mrs Chikarovski	Mr Rixon
Mr Cochran	Mr Rozzoli
Mrs Cohen	Mr Schipp

Mr Cruickshank	Mr Schultz
Mr Downy	Mr Small
Mr Fahey	Mr Smiles
Mr Fraser	Mr Smith
Mr Glachan	Mr Souris
Mr Griffiths	Mr Turner
Mr Hartcher	Mr West
Mr Hazzard	Mr Windsor
Mr Humpherson	Mr Yabsley
Dr Kernohan	Mr Zammit
Mr Kinross	
Mr Longley	<i>Tellers,</i>
Ms Machin	Mr Jeffery
Mr Merton	Mr Kerr

Pairs

Mr Carr	Mr Blackmore
Mr Face	Mr Collins
Mr McBride	Mr Morris
Mr Martin	Mr W. T. J. Murray
Mr Nagle	Mr Petch
Mr Ziolkowski	Mr Photios

Question so resolved in the affirmative.

Amendment agreed to.

Progress reported and leave granted to sit again.

[Mr Speaker left the chair at 12.22 a.m. The House resumed at 12.52 a.m.]

In Committee

Consideration resumed from an earlier hour.

Mr HATTON (South Coast) [12.53 a.m.], by leave: I move:

Page 6, clause 14, line 4. Before "HomeFund scheme", insert "related".

Page 6, clause 14, lines 8-10. Omit "who is eligible to participate in the restructuring scheme, or a former HomeFund borrower who has refinanced", insert instead "in relation to".

These are consequential amendments and therefore I do not seek to speak to them.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [12.54 a.m.]: The Government has made its position clear. The amendments are consequential. The Government will not cause the Committee to divide, though my comments in regard to the general principle stand. The Opposition should realise that the consequence of its agreeing to these amendments will be to retain the cake and to let the people eat it also.

Amendments agreed to.

Clause as amended agreed to.

Clause 15

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [12.55 a.m.]: I move:

Page 6, clause 15, lines 21 and 22. Omit all words on those lines, insert instead:

15. (1) Section 14(1) applies only to entitlements in existence at the commencement of section 14. Section 14(1) and (2) apply to complaints made before or after the commencement of section 14.

This is the amendment I foreshadowed during consideration of the previous clause. The Government has sought to address the concerns expressed at the consultative meetings. It is yet another concession by the Government to accommodate the desires of honourable members to ensure that the future legal claims and rights of borrowers who accept the restructure are not extinguished.

Mr HATTON (South Coast) [12.56 a.m.]: As I understand it this amendment relates to future legal claims only. I do not wish in any way to be unfair to the Government, but future legal claims pale into insignificance in comparison with the number of past legal claims. I want a clear indication that acceptance of this amendment will in no way interfere with the legal rights referred to in amendments I shall move to the same clause.

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Mrs GRUSOVIN (Heffron) [12.57 a.m.]: The Opposition opposes this amendment because it believes that as a result of the success of the amendment moved by the honourable member for South Coast there is now a new section 14(1), and that this amendment will not sit with the amendment that has just been carried.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [12.57 a.m.]: It is somewhat academic from the Government's point of view, given the position as to legal rights as amended by the Committee. The amendment passed by the Committee essentially retains the legal rights that Opposition members have voted for, and enables people to take advantage of the restructure. This amendment is prospective. It deals with any changes or any situation that may arise in the future. I ask the honourable member for South Coast whether he was seeking an undertaking that the amendment will not negate the impact of his amendments Nos 4 and 5?

Mr HATTON (South Coast) [12.59 a.m.]: The Minister has interpreted correctly what I said. I seek an assurance from the Minister that the Government's amendment will not impinge in part or in whole on the effect of amendment No. 1 and the consequential amendments Nos 2, 3, 4 and 5. Amendments Nos. 1, 2 and 3 standing in my name have been passed by the Committee against the Government's wishes, and I place that on record to avoid any misunderstanding.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.0 a.m.]: I cannot see how it can. The Government persists with its view with regard to the first amendment of the honourable member for South Coast. This amendment is prospective in nature, and I cannot see how it would impact on the amendments of the honourable member. If I can foreshadow the debate, the next amendment of the honourable member for South Coast, as I understand it - and please appreciate that I have not had these amendments long, and I have five sheets of amendments in front of me - deals with the power given to the HomeFund Commissioner to make full determinations with regard to exited borrowers. I do not believe that this amendment will in any way impinge upon what the honourable member for South Coast has just moved or intends to move.

Mr HATTON (South Coast) [1.1 a.m.]: Perhaps the Minister will seek advice on this, while I read out clause 14(1), to which the amendment moved by the Government refers. Clause 14(1) states:

Claims against the Crown and others extinguished.

The Crown, FANMAC, the FANMAC trustee and a co-operative housing society, including any persons acting on their behalf, are not subject to any action, liability, claim or demand (and a determination may not be made) in respect of:

- (a) any HomeFund mortgage; or
- (b) any transaction relating to, preliminary to or arising from any HomeFund mortgage; or
- (c) the promotion, origination or management of any HomeFund mortgage or HomeFund scheme.

This wide, blanket clause excludes people from acting on their claims against the Crown, FANMAC, co-operatives or others in all of those matters. The Government's second amendment states, "15(1) Section 14(1) applies only to entitlements in existence at the commencement of section 14". In other words, from a non-lawyer's point of view, that applies only to entitlements in existence at the commencement of section 14(1) and (2) as it applies to complaints made before or after the commencement of section 14. I would like a clear explanation of exactly what is intended before I decide whether I will support it.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.2 a.m.]: I am sure it will not negate what the honourable member for South Coast has moved in his first amendment, which is essentially that borrowers can retain all their legal rights or they can accept the restructure. The amendment that the Government proposes to insert maintains that. It states that if borrowers accept the restructure, they can still retain their legal rights in future if they have some sort of claim. It probably adds to what the honourable member is saying. It essentially gives those borrowers who restructure the right to lodge or pursue some legal claim. The honourable member for South Coast has retained the option of pursuing legal rights under his amendment. He has retained the option for borrowers to have the restructure or to pursue their legal rights. I ask, however, what happens if you restructure but in the future someone duds you? Can you still exercise that right? The Government suggests that they can. What happens after the restructure? The honourable member's amendment deals with what happens retrospectively, so this amendment will not cut across his amendment.

Mr WHELAN (Ashfield) [1.4 a.m.]: By way of clarification, I ask the Minister to seek advice about whether the amendment should refer to section 14(2) rather than section 14(1). That may solve some of the problems. The numbering of the amendments has been changed considerably. The effect of the section will not remove the rights provided in the new section 14(1), which was amended by the honourable member for South Coast, which the Government opposed.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.5 a.m.]: Yes, it will have to be revised. It should read section 14(2).

Amendment agreed to.

Mr HATTON (South Coast) [1.6 a.m.], by leave: I move amendments Nos 4 and 5 standing in my name:

Page 6, clause 15, line 31. Omit "1993; or", insert instead "1993".

Page 6, clause 15, lines 32-35. Omit all words on those lines.

These are consequential amendments.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.7 a.m.]: The honourable member for South Coast might like to speak to the amendments to help me understand them, and to give me his reason for wishing to delete paragraph (d). As I understand it, amendment No. 5 will omit the power proposed to be given to the HomeFund Commissioner to make full determinations for exited borrowers. I take it that this amendment is unnecessary because the earlier amendment ensures the retention of the option of legal rights. I assume that is the reason the honourable member moved the amendment. If I am barking up the wrong tree, the honourable member for South Coast might tell me.

Mr HATTON (South Coast) [1.9 a.m.]: The Minister for Consumer Affairs pointed out a moment ago that I have to give some consideration to this. I thank her for that. This section relates to the application to existing entitlements and complaints. Section 14 applies to entitlements in existence and complaints made before or after the commencement of that section. The paragraph to which my amendment refers does not affect paragraph (d), which states:

(d) any power of the HomeFund Commissioner to make a determination about complaints in relation to former HomeFund borrowers who cease to be HomeFund borrowers otherwise than by means of refinancing.

The Minister has pointed out a mistake. If that clause were removed, the commissioner would be prevented from determining HomeFund complaints relating to former HomeFund borrowers who ceased to be HomeFund borrowers by means other than refinancing. I therefore seek leave to withdraw amendment No. 5 standing in my name.

Amendment, by leave, withdrawn.

The CHAIRMAN: The question now is, That amendment No. 4 standing in the name of the honourable member for South Coast be agreed to.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.12 a.m.]: Amendment No. 4 basically centres around the word "or". All it seems to do is link paragraph (c) and paragraph (d). I should have thought that the word "or" should be retained. It is simply a drafting matter, is it not? Amendment No. 4 states: Omit "1993; or", insert instead "1993". In practice it deletes the word "or" at the end of paragraph (c).

The CHAIRMAN: I do not wish to direct from the chair, but would the honourable member for South Coast like to consider the withdrawal of the amendment?

Mr HATTON (South Coast) [1.13 a.m.]: Thank you for your guidance, Mr Chairman. I seek leave to withdraw amendment No. 4. These are consequential amendments and are not worth dividing on. They are drafting matters.

Amendment, by leave, withdrawn.

Clause as amended agreed to.

New clause 16

Dr MACDONALD (Manly) [1.13 a.m.]: I move:

Page 7. After line 12, insert:

Refund of deposits

16. (1) This section applies to:

(a) a HomeFund borrower to whom assistance is granted in accordance with Category C or D of the restructuring scheme, as set out in Schedule 1; and

(b) a former HomeFund borrower who has ceased to be a HomeFund borrower otherwise than by means of refinancing.

(2) The HomeFund borrower or former HomeFund borrower is eligible for payment by the Home Purchase Assistance Authority of an amount equivalent to the amount (including any deposit) originally contributed by the HomeFund borrower to the purchase of the property the subject of the HomeFund mortgage concerned.

I referred to this matter during the second reading debate. At this late hour I do not see the need to debate it at any great length. My amendment underpins my approach to the restructuring package. It seeks to provide for relief to those who are casualties and will never realise the dream of home ownership. I refer to those who have already exited the scheme; those who will forfeit the prospect of home ownership because they fall within categories C or D. It will provide the Government with some certainty. This proposal can be costed. One of the arguments put by the Government in relation to the retention of legal rights is the uncertainty. This amendment would provide certainty, but not to the extent suggested by the Government.

My proposed clause 16(1)(a) relates to borrowers in categories C or D; in other words, those who are restructured into those categories. It was put to me by the Government that category C might involve 3,500 people. If the average deposit was \$7,500, a figure of \$30 million or \$40 million would be required. For example, as those in category C hand over their keys and an independent evaluation is carried out, only a small proportion of borrowers will be in the position where the debt exceeds the value of the home.

In category C, as I understand it - I do not wish to hold the Home Purchase Assistance Authority to these figures, which are ball park figures - for about 1,000 borrowers at least 75 per cent of the valuation will be debt. For up to 2,000 borrowers 90 per cent of the valuation will be debt, and there will be a return to them of 10 per cent. For approximately 500 borrowers the debt will exceed the value. I do not believe that that will cost the Government more than \$4 million or \$5 million. I am happy to have those figures disputed, but I do not think they can be on the basis of the figures provided by the Home Purchase Assistance Authority. That would not involve a big blowout in Government costs.

Proposed clause 16(1)(b) covers those who have already exited the scheme. There is some uncertainty here, mainly because we are not sure how many of

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the 30,000 who have exited have ended up without a home. A figure of 1,800 has been referred to as being those who have had their keys taken from them - those who have been evicted. Others have not gone through that process but have likely sold out and lost a lot of money. I am asking the Government to refund the deposit in all of those cases. I agree that there is some uncertainty with regard to that latter group. It may well be that they number in excess of 2,000. We would have to multiply the 2,000 by \$7,500, which would give us a figure of about \$18 million. Agreement to this clause would be a clear indication from the Government that it seeks to provide assistance and relief to those who have been most affected by the disadvantages of HomeFund: those who have paid the highest price of all; those who have lost, in many cases, their life savings, their deposit on a home and their prospect of home ownership. They have been demoralised. They have become the true victims of HomeFund. I ask the Government to support this amendment.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.18 a.m.]: The head of Treasury has given me some costings on this amendment. As the honourable member for Manly has said, there have been some preliminary discussions on it. I ask the honourable member for Manly to clarify what he means by the last part of his amendment, which states " . . . an amount equivalent to the amount (including any deposit) originally contributed by the HomeFund borrower to the purchase of the property . . .". What else does that include? Does it include legal fees, other fees or stamp duties? I am not sure what the honourable member means. Perhaps he would like to tell me. It would help the Government if we knew what we were talking about. We

could then try to put some sort of costing on it, which is quite important to us, for obvious reasons. Based on what we have, some estimates have been made. I will work backwards. With regard to those who have already exited it is difficult to say how many will come forward. The Government wants to retain the rights of all of those people. They could take their complaints to the HomeFund Commissioner, who would assess loss or damage in terms of shortfalls if they had to hand over their keys or if they sold their home. He would retain the power to deal with those types of matters as well as the mishandling and maladministration that was included in the original schedule 2.

If one looks at the global picture of the numbers involved, one sees that both the proposals will be fairly expensive for the Government. It is expected that a little more than 3,500 borrowers will be eligible for category C, 1,000 for category D and possibly 2,000 - based on the figures provided by the HPAA - have previously exited other than by refinancing. They are the people who have handed in their keys. The total is a few more than 6,500 borrowers in the three categories. If one assumes that the average deposit was about \$8,000 - a reasonable assumption according to the HPAA - the total cost will exceed \$50 million. That is arrived at by multiplying the number of borrowers by \$8,000 a head, according to the quick calculations we have done.

The honourable member for Manly shakes his head. He might elaborate on the costings he has done. Another factor to be taken into account is the movement in home prices. In some areas home prices have been recovering since late 1990. Many borrowers who made large deposits may find they have net equity in their homes; in other words, the value of their homes exceeds the debt. If the Government were to return deposits, some of which it did not receive, that would give the borrowers a windfall. They may have made a small gain on their homes, or may not have lost much, and the deposit may not have been lodged with the Government. That is a significant upfront cost. The costing has been worked out over several years; there would be a \$50 million upfront cost, and in the first six years the cost of the scheme would blow out from \$200 million to \$250 million at the front end of the restructuring, if it proceeds. In addition there would be the cost of the determinations made by Commissioner Rogers.

The amendment would have a high price tag. I appreciate the honourable member's sentiments, but would point out that in one category borrowers would have the option of going to the HomeFund Commissioner, that is, those who have exited by handing in their keys. They can take their complaints to him and he can assess the damage. The Government has problems about the latter part of the amendment. Also, this is something that other borrowers do not have available to them. No one has said to them, "We are sorry you have lost your house", for whatever reason, without specifying that it might be because of a legal wrong. If there has been a divorce or a family bust-up and a person has lost a house, is it intended that that person should get the deposit back even though the Government did not receive the deposit? That does not seem to be sensible or fair to the Government, and is not equitable compared with the position of many other borrowers. The Government rejects the amendment on those grounds.

Dr MACDONALD (Manly) [1.23 a.m.]: I should respond to a couple of the matters raised by the Minister. First, I should clarify what is meant by proposed section 16(2) where it says, "an amount equivalent to the amount (including any deposit) originally contributed". That relates merely to equity provided in the house. I took advice from the Parliamentary Counsel about the wording of this proposed subsection, as it seemed to be a little tortuous. Deposit is not the correct term because the deposit can be made on exchange of contract and often a further amount is involved at the time of settlement. Basically the proposed subsection seeks to define the amount that would be subject to refund, being the equity provided by the time of settlement. It does not relate to matters such as stamp duties or solicitor's fees that were mentioned by the Minister. That was not the purpose of the amendment.

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Another point the Minister sought to make was that those who have already exited the scheme and not refinanced will be taken care of by the retention of their legal rights. I concede that is true. My concern was that the amendment should go to the heart of the refund issue by including it in legislation. If that proposed

subsection is of concern to the Minister, perhaps it can be negotiated. So far as paragraph (a) is concerned, which relates to those who restructure in category C or category D, the figures produced by the Minister as a result of multiplying 3,500 by \$7,500 are incorrect.

I have been supplied with advice from the HPAA that of the 3,500 people, 3,000 are likely to walk away from homes the value of which exceeds the debt. In many of those instances the borrower would be getting back well in excess of the deposit paid; so that will not be a net cost to the Government. Those instances in which there will be a net cost are where the value is less than the debt. Not only will the Government meet the excess, it will also give the borrowers a refund of the deposit. I accept that that will be a burden on the Government. Another group will come into the grey area in between. I estimate that will cost in the region of \$4 million to \$5 million.

If 1,000 borrowers come into category D, the amount involved might increase to \$10 million. I make the following two points: first, if it is a matter of paragraph (b) being unacceptable, I would make a concession and excise that paragraph from the proposed amendment; second, I would leave it to the commissioner and the legal system to take care of the matter through the retention of legal rights, which is already included in the bill. In regard to paragraph (a), which deals with category C and category D, I have already argued that the likely burden on the Government is a lot less than has been argued by the Minister. The simplistic multiplication of 3,500 by \$8,000 is not consistent with the discussions I have had with the Minister for Planning and Minister for Housing. A much lower figure is involved. I am happy to seek the Minister's response to those matters, and if necessary will seek leave to amend the amendment. I ask the Minister to clarify those matters.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.27 a.m.]: I appreciate the clarification the honourable member has given. However, what he proposed makes the proposal seem more expensive, not less expensive. I fail to understand how he can say that the Government should give borrowers back the \$7,000 deposit, bearing in mind the equity they have in their homes, so that they get back their deposit plus whatever other money they might have paid, and if they come into category C or category D and the sale of their homes results in a shortfall, the Government should make up the shortfall as well. I should have thought that the simple multiplication done by the head of Treasury, who one would assume knows a little about these matters, might be closer to the mark. I cannot understand how the honourable member for Manly arrives at the figure of \$4 million.

The head of Treasury has restated to me that his calculations reveal that the amount would be \$50 million conservatively, based on what the honourable member for Manly said before, and he has now said that in addition provision would have to be made for shortfalls in the sale of the homes, plus other equity. That is horrendously expensive and hard to quantify, because one does not know what might be the shortfalls, the value of the individual properties or the borrowers' equity in those homes. Therefore one does not know what the cost might be to the Government. The honourable member is suggesting that borrowers should be returned their deposit and all the money they have paid. That seems to be extraordinarily generous and is something that other people have no chance of getting - they would be astounded to think that the Government would do this when they have been in a similar position and nothing was done for them. I have friends and constituents who have been in this position with their private homes and their businesses.

The way the amendment has been worded, despite the comments made by the honourable member, suggests that deposits, valuations, real estate fees, legal expenses and stamp duties might be included. The wording is ambiguous, and the cost could be increased to \$70 million or more if all those things were loaded into it. The Government strenuously opposes the amendment. I realise that the honourable member suggested that the cost could be quantified, but I am sure that it cannot be quantified, particularly having regard to property values and any shortfalls in their sale. The honourable member is asking the Government to do something for these people that is not done for any other people, and which will add another \$70 million to the cost and make the whole scheme more unworkable. The Government strongly opposes the amendment.

Mrs GRUSOVIN (Heffron) [1.30 a.m.]: The Opposition supports the amendment of the honourable

member for Manly. After listening to the honourable member for Manly I understand that, on figures supplied by the Home Purchase Assistance Authority, most families in categories C and D have acquired sufficient equity in their home to walk away with some moneys. I understood that the homes were to be purchased by the Home Purchase Assistance Fund. As many borrowers would have suffered a loss in being induced to enter the scheme and will now become tenants, it is reasonable that they should retain their deposits.

One of the problems with the scheme was that in many cases the deposits were exceptionally low. I hardly think that too many borrowers would have put down \$8,000, or even \$6,000. One of the biggest criticisms was that the loan-deposit ratios were 95 per cent and 97½ per cent on average \$100,000 loans. In the course of bringing these matters before the Parliament I was riled that for a long time advertisements appeared regularly in the newspapers telling people that they could take out a HomeFund loan of approximately \$100,000 with a deposit of \$1,200. Many of the people involved would have a

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much lower deposit than the Minister has suggested. The Opposition supports the amendment of the honourable member for Manly.

Dr MACDONALD (Manly) [1.32 a.m.]: With all respect to the Minister, I believe she is engaging in scare tactics. For the Minister to talk of \$50 million to \$70 million is just outrageous. It is ridiculous. The true casualties are the least advantaged of all those in the HomeFund scheme. The majority of them should never have been included. They were enticed by various agencies involved in the HomeFund scheme. So if anyone deserves relief and our assistance it is those people. I wish to give a couple of examples of evaluation and debt provided to me by the Home Purchase Assistance Authority. I was told that of the 3,500 cases 1,000 are likely to have a 75 per cent ratio, meaning that the debt will be only 75 per cent of the valuation. So if the home is sold for \$100,000 and the debt is \$75,000, there is a \$25,000 increment and therefore the Government will be no worse off by what I propose.

I am not asking that the Government refund the deposit in addition to the difference between the sale price and debt value. I am just saying that it should include that amount. In another 2,000 cases it is estimated that 90 per cent of the sale value will be taken up by debt, so the 10 per cent margin could be refunded to the person who has walked away after handing in his key. In most cases that amount is likely to contain the deposit. There will be only 500 people left whose debt exceeds the value of the home. They would walk away with absolutely nothing. I am asking that the deposits of those people be refunded. I intend to call for a division on the amendment.

I ask that between now and tomorrow the Government examine the proposal. It is important that we are not hoodwinked by the Minister into believing that there will be an enormous blowout. We have been subjected to scare tactics all night. It is unfortunate that this is the case. I have put a lot of thought into the amendment and I am disappointed that the Government is dismissing it with smokescreens. I said to the people from the HPAA, "I am worried that many people will be disadvantaged by being restructured into C, handing the key in and walking away without even their deposit". I was told, "Oh, do not worry about it. At least 3,500 will be getting some money because the valuation will exceed their debt". It was the HPAA's response to me that brought to my attention that this proposal would not cost the Government a lot of money. I do not know whether I have not made myself clear on this. We could sit down tomorrow to talk it through. However, this is an important signal that goes out to those who have been disadvantaged. As I said earlier, the ones most disadvantaged are the ones who will never have the prospect of ownership.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.36 a.m.]: I do not know whether that helps me with the calculations. I have just checked with the HPAA representatives. They tell me that their database does not sustain what the honourable member was saying. The honourable member took a small sample. His intent might be one thing, but as I read what is proposed to go into the bill it says under the heading "Refund of deposits" that the section applies to categories C and D and former borrowers who have ceased to be borrowers otherwise than by means of refinancing. So it refers to those who have handed in their keys. Then it says, "The HomeFund borrower or former HomeFund borrower is eligible for payment by the Home Purchase

Assistance Authority of an amount equivalent to the amount (including any deposit) originally contributed by the HomeFund borrower to the purchase of the property the subject of the . . . mortgage . . . ". To me that refers to any deposit contributed, plus other contributions the borrower may have made. I am advised that that does not rule out various fees and duties or other money borrowers may have paid over and above the deposit.

I am not scaremongering for the sake of it; I am actually trying to make - in a rather vain attempt, I have to say - a few people in this House a bit accountable. The more the honourable member for Manly speaks the more he adds to the cost. A couple of other things ought to be taken into account. As I said, the Government did not get the deposit; the vendor got the deposit. The honourable member for Manly is saying that the taxpayer should pay back the money plus other moneys - and we do not know how much that might be - plus any shortfall on the house. That does not seem particularly fair to me.

The honourable member has not set out what would happen if there were improvements to the home, et cetera. I simply work off what the honourable member has provided in the amendment. Let us say there are 3,500 borrowers, take one of those groups, and say the average deposit was about \$8,000. I am told that is a reasonable figure. That simple calculation still leaves us with a price tag of just over \$31 million. That is a lot of money to give back to people when the Government did not receive the deposit; it went to a vendor. He would be happy to have received the deposit from the borrower and to have the Government a few years later give the money back. It is a flawed system. Let us look at the logic of it. Whether the buyer or the vendor received a gain, the proposal is that the Government get out the taxpayers' cheque book and write people a cheque. That is ridiculous. How would the honourable member for Manly like to argue that in his electorate? He proposes to give away \$31 million to people who could not hang on to their house. Many people in category C and category D were living in a house that for some time was their own and making repayments that in some cases would be less than what others were paying in rent for an equivalent place. They did not have all bad news, for that short term anyhow. It is a crazy argument to suggest the Government give all that money back to people, even though it did not receive it in the first place. Where is the equity? Where does the Opposition suggest that the Government would find \$31.5 million plus, if one works on a conservative estimate. I cannot see how one gets around that.

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Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 42

Ms Allan	Mr Markham
Mr Amery	Mr Mills
Mr Anderson	Mr Moss
Mr A. S. Aquilina	Mr J. H. Murray
Mr J. J. Aquilina	Mr Neilly
Mr Bowman	Mr Newman
Mr Clough	Ms Nori
Mr Crittenden	Mr E. T. Page
Mr Doyle	Mr Price
Mr Gaudry	Dr Refshauge
Mr Gibson	Mr Rogan
Mrs Grusovin	Mr Rumble
Mr Harrison	Mr Scully
Mr Hunter	Mr Shedden
Mr Iemma	Mr Sullivan
Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan

Mr Knowles	Mr Yeadon
Mr Langton	
Mrs Lo Po'	<i>Tellers,</i>
Dr Macdonald	Mr Beckroge
Mr McManus	Mr Davoren

Noes, 44

Mr Armstrong	Ms Moore
Mr Baird	Mr O'Doherty
Mr Beck	Mr D. L. Page
Mr Causley	Mr Peacocke
Mr Chappell	Mr Phillips
Mrs Chikarovski	Mr Richardson
Mr Cochran	Mr Rixon
Mrs Cohen	Mr Rozzoli
Mr Cruickshank	Mr Schipp
Mr Downy	Mr Schultz
Mr Fahey	Mr Small
Mr Fraser	Mr Smiles
Mr Glachan	Mr Smith
Mr Griffiths	Mr Souris
Mr Hartcher	Mr Tink
Mr Hatton	Mr West
Mr Hazzard	Mr Windsor
Mr Humpherson	Mr Yabsley
Dr Kernohan	Mr Zammit
Mr Kinross	
Mr Longley	<i>Tellers,</i>
Ms Machin	Mr Jeffery
Mr Merton	Mr Kerr

Pairs

Mr Carr	Mr Blackmore
Mr Face	Mr Collins
Mr McBride	Mr Morris
Mr Martin	Mr W. T. J. Murray
Mr Nagle	Mr Petch
Mr Ziolkowski	Mr Photios

Question so resolved in the negative.

Amendment negatived.

New clause negatived.

Clause 17

Mrs GRUSOVIN (Heffron) [1.48 a.m.]: The Opposition opposes clause 17, lines 16 to 26, which seeks to eliminate the abolishment of the claims by HomeFund borrowers relating to the capitalisation of interest on their loans. The HomeFund Commissioner has flagged this matter as an arguable legal claim by HomeFund borrowers. One of the most objectionable aspects of the whole HomeFund program has been capitalisation of interest blowing out loans, borrowers not being made aware of why loans were blowing out, and what effect

capitalisation of interest was having on the true cost of those loans. The Opposition opposes the clause.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.51 a.m.]: This recommendation came directly from the HomeFund Commissioner, Mr Rogers. It was always intended that the design of the scheme would include capitalisation of interest; but that feature was mentioned in some documentation not in others. The new design of the scheme was envisaged by others, not by the Government, and the documentation is seen as ambiguous. The HomeFund Commissioner has recommended that the clause be put beyond doubt to avoid endless ongoing legal debate about this matter. The commissioner foreshadowed proceedings not only in the lower courts on this issue but also in the High Court. The issue has the potential of attracting particularly drawn out and expensive legal argument if the advice of the HomeFund Commissioner is taken by the Government. The scheme does not make such provision but has that inherent characteristic, as the Opposition should know.

Interpretation of this clause will have significant legal and financial implications. The provision could attract considerable retrospectivity depending on how it is applied. The measure should be considered in terms of legal action that might be taken on its interpretation and where that could lead. As the commissioner has said, such action could lead the Government to the High Court and thus cost a lot of money and time. The features of the clause are inherent in the scheme. The provision contained a fair amount of ambiguity, though not everyone misunderstood it. The restructure is intended to address and remove that ambiguity. The commissioner has strongly recommended that such ambiguity be clarified. For that reason the Government strenuously supports the clause.

Mrs GRUSOVIN (Heffron) [1.53 a.m.]: I want to make very clear that the Opposition is concerned about this clause. The whole question of capitalisation of interest was not made clear to borrowers. Proper disclosure was not made to them. In fact, if financial institutions had been operating under the New South Wales Credit Act and if these loans had not been secured by home mortgages, the financiers would have been found to be in severe difficulty and at risk of losing their licences. If one

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considers what has happened in recent cases involving large banking institutions and the costs incurred by them after findings of their non-disclosure to their clients, one would have to conclude that these HomeFund borrowers were very badly done by in the whole process. The question of non-disclosure of capitalisation of interest has caused great concern to Commissioner Rogers. For that reason the Opposition believes strongly that lines 16 to 26 of clause 17 should be deleted.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [1.54 a.m.]: This point has been specifically recommended in no uncertain terms by the HomeFund Commissioner. Unlike some of the matters discussed earlier tonight, the commissioner is quite explicit on this point. It is not correct to imply that every single borrower was unaware of the provision; that is not true. The honourable member for Heffron knows that in some documentation that provision was made quite clear, although in other cases it was not. The commissioner's examination of other documentation has led him to see the discrepancies, hence his view that they should be clarified. Like it or not, capitalisation of interest was a fundamental and important part of the scheme in order for it to survive. This issue has significant costs and legal ramifications which, according to the commissioner, would lead the Government to the High Court. The Government strongly argues that this is a fairly sensible clause. The Opposition might not like every feature of the scheme, but this matter will be addressed by the restructure.

Question - That the clause stand - put.

The Committee divided.

Mr Armstrong	Mr O'Doherty
Mr Baird	Mr D. L. Page
Mr Beck	Mr Peacocke
Mr Causley	Mr Phillips
Mr Chappell	Mr Richardson
Mrs Chikarovski	Mr Rozzoli
Mr Cochran	Mr Schipp
Mrs Cohen	Mr Schultz
Mr Cruickshank	Mr Small
Mr Downy	Mr Smiles
Mr Fahey	Mr Smith
Mr Fraser	Mr Souris
Mr Glachan	Mr Tink
Mr Griffiths	Mr Turner
Mr Hartcher	Mr West
Mr Hazzard	Mr Windsor
Mr Humpherson	Mr Yabsley
Dr Kernohan	Mr Zammit
Mr Kinross	
Mr Longley	<i>Tellers,</i>
Ms Machin	Mr Jeffery
Mr Merton	Mr Kerr

Noes, 44

Ms Allan	Mr Markham
Mr Amery	Mr Mills
Mr Anderson	Ms Moore
Mr A. S. Aquilina	Mr Moss
Mr J. J. Aquilina	Mr J. H. Murray
Mr Bowman	Mr Neilly
Mr Clough	Mr Newman
Mr Crittenden	Ms Nori
Mr Doyle	Mr E. T. Page
Mr Gaudry	Mr Price
Mr Gibson	Dr Refshauge
Mrs Grusovin	Mr Rogan
Mr Harrison	Mr Rumble
Mr Hatton	Mr Scully
Mr Hunter	Mr Shedden
Mr Iemma	Mr Sullivan
Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan
Mr Knowles	Mr Yeadon
Mr Langton	
Mrs Lo Po'	<i>Tellers,</i>
Dr Macdonald	Mr Beckroge
Mr McManus	Mr Davoren

Pairs

Mr Blackmore	Mr Carr
Mr Collins	Mr Face
Mr Morris	Mr McBride

Mr Murray	Mr Martin
Mr Petch	Mr Nagle
Mr Photios	Mr Ziolkowski

Question so resolved in the negative.

Clause negatived.

New clause 19

Mrs GRUSOVIN (Heffron) [2.3 a.m.]: I move:

Page 7. After line 34 insert:

Mitigation of damage

19.(1) This section applies to proceedings before a court or tribunal (being proceedings with respect to any matter arising out of a HomeFund mortgage) to which a HomeFund borrower is a party.

(2) In determining any question with respect to the mitigation of damage, the court or tribunal is to disregard any action taken by the HomeFund borrower, or any failure by the HomeFund borrower to take action, in connection with the restructuring scheme.

This proposed new clause relates to technical legal argument identified by the HomeFund Commissioner whereby HomeFund borrowers must accept the restructure package in order to satisfy the strict legal requirements of mitigation. This amendment needs no further comment.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.4 a.m.]: The Government opposes this amendment, which provides that a court or tribunal, in dealing with a HomeFund mortgage matter, should
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disregard any lack of action by the borrower to mitigate damages. Subclause (2) appears to waive an accepted legal premise. The commissioner pointed out in his report that borrowers ought to mitigate their damage. Borrowers will have the opportunity to mitigate their damage but the Opposition says that there should be a double dip once again: borrowers should have a restructure and their legal rights, but they should not have to mitigate their damages. The amendment is outrageous and once again advantages HomeFund borrowers over other borrowers or individuals in this State. No other person has those rights. For those reasons, the Government strongly opposes this silly amendment.

Amendment negatived.

New clause negatived.

New clause 19A

Mrs GRUSOVIN (Heffron) [2.6 a.m.]: I move:

Page 8. Before line 1, insert:

Suspension of limitation period

19A.(1) This section applies to any limitation period provided for by:

(a) the Limitation Act 1969; or

(b) the Contracts Review Act 1980; or

(c) the Fair Trading Act 1987; or

(d) the Consumer Claims Tribunals Act 1987.

(2) The following periods are to be disregarded when determining the last day of any limitation period to which this section applies:

(a) in the case of proceedings arising out of a HomeFund mortgage in respect of which a determination is made by the HomeFund Commissioner, the period between 10 May 1993 and the date occurring 2 years after the determination is made;

(b) in the case of any other proceedings arising out of a HomeFund mortgage, the period between 10 May 1993 and 31 March 1996.

This important amendment seeks to prevent the expiry of time under various Acts while the HomeFund borrower obtains independent advice or secures a determination of a complaint by the HomeFund Commissioner. For some considerable time these borrowers have been waiting for a determination of their HomeFund problems. In relation to the Acts set out in the amendment, the Opposition seeks to delete the expiry of time provision so that eligible borrowers will be able to make claims.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.7 a.m.]: This provision was included in the previous bill that came before the House. The Government opposed that amendment, though in part it conceded certain sections of it. The Government believes it is unnecessary because it again opens the door to keep the clock running to allow endless legal debate, endless costs and endless delay which, at the end of the day, will disadvantage borrowers. The Government gives notice that in the upper House it will seek to delete this amendment.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 44

Ms Allan	Mr Markham
Mr Amery	Mr Mills
Mr Anderson	Ms Moore
Mr A. S. Aquilina	Mr Moss
Mr J. J. Aquilina	Mr J. H. Murray
Mr Bowman	Mr Neilly
Mr Clough	Mr Newman
Mr Crittenden	Ms Nori
Mr Doyle	Mr E. T. Page
Mr Gaudry	Mr Price
Mr Gibson	Dr Refshauge
Mrs Grusovin	Mr Rogan
Mr Harrison	Mr Rumble
Mr Hatton	Mr Scully
Mr Hunter	Mr Shedden
Mr Iemma	Mr Sullivan
Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan
Mr Knowles	Mr Yeadon
Mr Langton	
Mrs Lo Po'	<i>Tellers,</i>

Dr Macdonald
Mr McManus

Mr Beckroge
Mr Davoren

Noes, 42

Mr Armstrong	Mr O'Doherty
Mr Baird	Mr D. L. Page
Mr Beck	Mr Peacocke
Mr Causley	Mr Phillips
Mr Chappell	Mr Richardson
Mrs Chikarovski	Mr Rozzoli
Mr Cochran	Mr Schipp
Mrs Cohen	Mr Schultz
Mr Cruickshank	Mr Small
Mr Downy	Mr Smiles
Mr Fraser	Mr Smith
Mr Glachan	Mr Souris
Mr Griffiths	Mr Tink
Mr Hartcher	Mr Turner
Mr Hazzard	Mr West
Mr Humpherson	Mr Windsor
Dr Kernohan	Mr Yabsley
Mr Kinross	Mr Zammit
Mr Longley	
Ms Machin	<i>Tellers,</i>
Mr Merton	Mr Jeffery
Mr Morris	Mr Kerr

Pairs

Mr Carr	Mr Blackmore
Mr Face	Mr Collins
Mr McBride	Mr Fahey
Mr Martin	Mr W. T. J. Murray
Mr Nagle	Mr Petch
Mr Ziolkowski	Mr Photios

Question so resolved in the affirmative.

Amendment agreed to.

New clause agreed to.

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Schedule 1

Mr HATTON (South Coast) [2.17 a.m.]: I move:

Page 9, Schedule 1, line 24. After "waived.", insert "Any sale is to be for the market value of the property, as determined after an independent valuation is obtained."

The Government should readily accept this important amendment for people who, under category C, are unable to pay a restructured income-geared mortgage and are not three months or more in arrears as at 7th December,

1993 or such later date as may be prescribed by the regulations. These borrowers will be able to sell their properties to the authority or to a body nominated by the authority, and any part of the debt that is more than the value of the property will be waived. Obviously it will be in the Government's interests to achieve the maximum value and maximum sale. Consequently, the Opposition proposes an independent valuation. I do not believe that the Government will have any problem with the amendment.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.18 a.m.]: I am advised this is basically the current practice. The Government accepts the amendment.

Amendment agreed to.

Mr HATTON (South Coast) [2.19 a.m.]: I move:

Page 9, Schedule 1, line 36. After "C", insert "or may instead be offered assistance as set out in Category B, as determined by the Authority."

I presume that the Government will accept this amendment.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.19 a.m.]: I would like the honourable member for South Coast to speak to that amendment in order to assist me. I may have some problems with it but if he could give me his rationale, that might assist.

Mr HATTON (South Coast) [2.20 a.m.]: Category D says that a borrower who is three months or more in arrears as at 7th December, 1993, or such later date, can sell the house and so on, and certain arrangements can be made. Borrowers who make satisfactory arrangements within three months to pay the arrears will be offered assistance as set out in category C. I am suggesting that we add the words "or may instead be offered assistance as set out in Category B, as determined by the Authority". In other words, it gives them an opportunity to go from C to B, but that is still determined by the authority.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.20 a.m.]: If I understand what the honourable member is moving, the Government's concern is that this is already covered in that borrowers can move from one category to another, essentially in both directions, if they meet certain criteria or if they decide to appeal and the appeal is upheld by the panel. The Government's view is that this amendment is unnecessary because arrangements have been put in place already under the scheme, through the authority, to do that.

Mr HATTON (South Coast) [2.21 a.m.]: If I can have that as a firm assurance, I am happy to seek leave of the Committee to withdraw my amendment.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.21 a.m.]: I am being told by the Home Purchase Assistance Authority that that does happen, so I give that assurance to the honourable member.

Amendment, by leave, withdrawn.

Mrs GRUSOVIN (Heffron) [2.22 a.m.]: I move:

Pages 9 and 10, Schedule 1, line 40 on page 9 to line 9 on page 10. Omit all words on those lines.

This is a consequential amendment to the first amendment I moved in Committee and that of course related to the rent-buy and aged persons loans. I want to make it quite clear again and to emphasise that the rent-buy problem has not as yet been solved. It is a matter that the Government will have to pay some special attention

to and will need to do so fairly quickly. But there is no place for these products in this restructuring.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.23 a.m.]: Basically the Government has stated its view. The amendment will do nothing to speedily assist borrowers in those categories, but the amendment is consequential and, accordingly, the Government will not oppose it here. However, I should state for the record that this is another matter that will be addressed by the Government in the upper House.

Amendment agreed to.

Mr HATTON (South Coast) [2.23 a.m.]: I move:

Page 9, Schedule 1, line 39. After "Authority.", insert "Arrangements under this category may include arrangements to capitalise arrears."

In other words, the amendment extends those arrangements so that people may be able, as determined by the authority, to capitalise their arrears.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.24 a.m.]: I do not understand the logic behind this amendment given that the Committee and the honourable member for South Coast have just voted to delete capitalisation of interest. He might

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like to explain to me why he is now proposing to capitalise arrears or give the authority to do that. It seems to be inconsistent with what has been agreed to by the Committee.

Mr HATTON (South Coast) [2.24 a.m.]: There is a difference between having capitalisation of arrears imposed and having a choice to capitalise arrears if that can be used as a short-term measure to get over a problem and therefore improve the circumstances. I just want that option available.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.25 a.m.]: It would seem that this amendment will have a ballooning effect on the loans of those who are already having problems with their loans. That is a feature of the loans and what the honourable member proposes does not seem to be a particularly useful remedy to the borrower. On that basis the Government would oppose it because it does not seem to be a very constructive solution to the problems.

Amendment agreed to.

Mrs GRUSOVIN (Heffron) [2.25 a.m.]: I move:

Page 10, Schedule 1, line 20. After "up", insert ", but in any case the period must not end before 30 June 1994".

This amendment seeks to allow sufficient time for the obtaining of independent advice on the restructuring package by HomeFund borrowers and sets the earliest date for a HomeFund borrower to be obliged to decide whether to accept the package at 30th June, 1994. This will allow a sensible period of time while borrowers obtain the advice that will be necessary so that they can determine what is the best option for their families.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.26 a.m.]: The Government accepts the amendment. That was pretty much the date that was in mind in terms of putting the restructure in place, if the restructure goes ahead, and I must say that that is in some doubt. In any case, the Government accepts the amendment.

Amendment agreed to.

Schedule as amended agreed to.

Schedule 2

Mrs GRUSOVIN (Heffron) [2.27 a.m.]: The next circulated amendment relates to pages 10 and 11, schedule 2, line 23 on page 10 to line 36 on page 11. This amendment seeks to delete schedule 2. The Opposition believes that schedule 2 is too narrowly focused so far as the reasons are concerned. The Opposition believes the commissioner is the best person to determine the reasons with regard to the ability to make these decisions. It believes also that the Government has faith in the commissioner in making his determinations and, in fact, schedule 2 as it stands would fetter his discretion in making determinations.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.28 a.m.]: I point out that schedule 2 is what the HomeFund Commissioner wants. These are exactly the sorts of examples of administrative error that he put to the Government. He alluded to some of them in his report, but elaborated on them for my benefit so that I knew exactly what we were talking about. I cannot see what is to be gained by deleting this schedule, other than leaving it open-ended. As I say, this was something the commissioner sought. These are the sorts of problems that have been coming to his office and I do not understand why the Opposition would seek to knock out the schedule.

Mr HATTON (South Coast) [2.29 a.m.]: This was one of the things that the Government did when we asked it to define what the commissioner was going to do. It may well be felt by the Australian Labor Party that the provisions of the schedule are a little restrictive, but it is not the way to handle it to take the whole lot out and leave a void. I cannot support the deletion of the schedule.

Schedule agreed to.

Schedule 3

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.30 a.m.]: I move:

Page 12, Schedule 3. Before line 20, insert:

(3) Section 13A (**Establishment of Housing Reserve Fund**):

After section 13A(3)(c), insert:

- (c1) contributing to the funding of financial counselling and legal assistance services to HomeFund borrowers who are eligible to participate in the restructuring scheme under the HomeFund Restructuring Act 1993, but who are not yet participating in that scheme;

Basically this amendment follows on from the Government's earlier amendment, which gave a commitment to provide independent assistance. This amendment provides the funding mechanism for that independent assistance.

Amendment agreed to.

Mrs GRUSOVIN (Heffron) [2.31 a.m.] I move:

Page 13, Schedule 3. After line 36, insert:

"FANMAC Guidelines" means so much of the document published by FANMAC under that name as is comprised in:

(a) PART II - CREDIT REQUIREMENTS AND PROPERTY GUIDELINES, and

(b) PART IV - LOAN MANAGEMENT

This amendment inserts the definition of FANMAC guidelines. It is a consequential amendment and follows the lines of earlier legislation dealt with by the House, the HomeFund Commissioner (Miscellaneous Amendments) Bill.

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Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.32 a.m.]: The Opposition sought to insert this definition in the previous bill. The Government opposed it for several reasons. It is the view of the Government that the first part of the amendment is already dealt with by existing law - that is, if a loan was originated in contravention of the prevailing guidelines. The second proposal is less simple or straightforward. It seeks to impose responsibility on a lender or originator of a loan to assess the creditworthiness of the borrower. Although the making of such assessments is very much the subject of discussion in relation to new credit laws, the amendment seeks to apply such assessments retrospectively. The Government has the benefit of an advice or opinion from the Bar Council. It has some concerns about this amendment, and I shall quote briefly from the Bar Council:

There is therefore an element of retrospectivity to the application of the proposed amendments to HomeFund transactions. Parties will apparently find themselves potentially facing adverse determinations in respect of past transactions, which at the time they occurred would not have given rise to a legal remedy in favour of another party.

To save time, I will not go on. Essentially the Government has a problem with that retrospectivity, which has to be addressed. The Government believes the former proposal is already dealt with by existing legal remedies. Basically the Government opposes this amendment for the same reasons it opposed the amendment to the earlier bill. The Government will not divide the Committee but will certainly oppose the amendment in the upper House.

Amendment agreed to.

Mr HATTON (South Coast) [2.34 a.m.]: I move:

Page 13, Schedule 3. After line 38, insert:

(2) Section 8 (**Principal Functions**):

In section 8(1)(a), after "advice", insert "(including advice about relief under the HomeFund Restructuring Act 1993)".

At this stage I indicate that I do not propose to move amendment No. 10 standing in my name. The amendment seeks to allow the HomeFund Commissioner to give advice on the restructure. He has indicated that so far as he is concerned, he would prefer not to give advice. However, I wish to make that facility available so that people are able to go to him, because, as I said in earlier debate, the HomeFund Commissioner is one independent person from whom people can seek advice, knowing that there may be a conflict of interest but wishing to take advantage of his considerable knowledge as a former judge of the commercial division of the Supreme Court of New South Wales and his prodigious knowledge of the scheme.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.35 a.m.]: The Government will not go to the barricades on this amendment because I do not think honourable members want it to do so. The Government

does not believe the amendment is necessary. It has inserted mechanisms into the bill to provide for impartial legal and financial advice. As the honourable member for South Coast said, the HomeFund Commissioner does not want to be put in the position of giving this advice. I understand that this matter is dealt with in section 8(1A)(g) of the HomeFund Commissioner Act. It seems to be a little inconsistent for the honourable member for South Coast to turn to the HomeFund Commissioner when he believes it is suitable. On other issues he does not want to accept the commissioner's advice or expertise. However, that is the view of the honourable member for South Coast and he has stated his reasons for it. The Government believes that this matter is dealt with by the Act. I will clarify that if the honourable member for South Coast wishes me to do so.

Mr HATTON (South Coast) [2.37 a.m.]: If the Minister, upon clarification, is able to assure me that the matter is dealt with elsewhere, I will seek leave to withdraw the amendment.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.37 a.m.]: I have had a quick look at the HomeFund Commissioner Act. The matter is dealt with. It says "provide advice to borrowers" et cetera.

Amendment, by leave, withdrawn.

Mrs GRUSOVIN (Heffron) [2.37 a.m.]: I move:

Page 14, Schedule 3, lines 6-8. Omit all words on those lines, insert instead:

Omit section 10(2), insert instead:

(2) Complaints must be made before 31 March 1994. However, the Commissioner has a discretion to accept a complaint after that date.

This amendment seeks to extend the time for complaints to the HomeFund Commissioner to 31st March, 1994, and thereafter further lodgment of complaints is to be at the discretion of the commissioner. This is an extension of the existing close-off date from 31st December to 31st March. The Opposition moves this amendment because in recent weeks there has been a great deal of discussion and publicity about the Government moving to produce a restructure package for HomeFund borrowers. There is some general concern that borrowers have not continued to file complaints and have been lulled into a false sense of security by a belief that the Government was moving to address their problems. The Opposition believes the amendment will provide a little extra time to borrowers who may need it.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.38 a.m.]: The Government opposes the amendment. I move an amendment to the amendment:

That the amendment be amended by deleting "March 1994" and inserting in lieu thereof "December 1993".

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The effect of that amendment will be a return to what has been the status quo since the HomeFund Commissioner in early September started to disseminate the complaints guide, advertise the rights of borrowers, and set up a network of regional and suburban advisory centres. The Government believes that despite some of the more recent publicity, borrowers have been contacted not once but several times. They are still being telephoned by the people administering that questionnaire. When this matter was previously before the House it was agreed that the commissioner would have the discretion to accept complaints after that date.

The Government obviously wants to retain that provision and the commissioner is very comfortable with it. It will give people who have a good case the chance to have their complaints heard, and the provision has

been well publicised. No one could be unaware of the opportunities and the avenues available, both from publicity and personal contact. The Government feels that the time frame borrowers have had and the mechanisms that have been put in place, combined with the discretion of the Commissioner to accept complaints outside that period, ought to give borrowers a fair go if they really want to have their chance to have a fair say. For those reasons the Government moves the amendment.

Amendment of amendment agreed to.

Amendment as amended agreed to.

Mr HATTON (South Coast) [2.41 a.m.]: I have indicated that I will not be moving amendment No. 10 standing in my name. However, I will be moving amendment No. 11 standing in my name, which refers to page 19. I believe that there are some ALP amendments to be moved before that.

Mrs GRUSOVIN (Heffron) [2.42 a.m.]: I will not be moving amendments Nos 14 and 15 standing in my name. I move amendment No. 16 standing in my name:

Page 17, Schedule 3. After line 6, insert:

Specific entitlements to legal remedy

26D. (1) For the purposes of section 25(4) but without limiting that subsection, a HomeFund borrower has an entitlement to a legal remedy in relation to a complaint if the circumstances leading to entry into the HomeFund mortgage to which the complaint relates did not comply with the FANMAC Guidelines in force:

(a) at the time the loan was granted; or

(b) at the time of the event to which the complaint relates.

(2) For the purposes of section 25(4) but without limiting that subsection, a HomeFund borrower has an entitlement to a legal remedy in relation to a complaint if the Commissioner is satisfied that, at the time the HomeFund borrower entered into the mortgage to which the complaint relates:

(a) any one of the parties referred to in section 25(2)(b); or

(b) the relevant officers of a co-operative housing society or of the Department of Housing,

knew, or could have found by reasonable inquiry at the time, that the borrower could not reasonably be expected to pay in accordance with the terms of the mortgage or could not do so without substantial hardship.

This amendment seeks to include a breach of FANMAC loan origination guidelines and blatant financial overcommitment of borrowers at the time of their loan applications as grounds for entitlement to a legal remedy for the purposes of the HomeFund Commissioner Act. This will give these borrowers so affected an opportunity to approach the commissioner. This matter has already been debated in the House. It was part of one of the amendments moved successfully in the Chamber to the HomeFund Commissioner (Miscellaneous Amendments) Bill.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.43 a.m.]: The Government opposes this amendment for the reasons I stated earlier and for the reasons enunciated previously in the debate. The Government will not divide the Committee on this amendment, but again the Government feels the amendment is not necessary and not relevant and the matter will be attended to in the upper House.

Amendment agreed to.

Mrs GRUSOVIN (Heffron) [2.44 a.m.]: I move amendment No. 17 standing in my name:

Page 17, Schedule 3, lines 8-11. Omit all words on those lines, insert instead:

(a) Omit section 28(1), insert instead:

(1) A determination binds such of the following as are persons to which it applies:

(a) the State of New South Wales;

(b) a public authority;

(c) a mortgagee under a HomeFund mortgage.

(b) After section 28(2), insert:

(3) Despite subsection (2), a determination binds such of the following as are persons to which it applies:

(a) a party referred to in section 25(2)(b) or (f);

(b) a co-operative housing society;

(c) FANMAC;

(d) a HomeFund borrower,

to the extent to which the determination provides the HomeFund borrower with relief against that person and to the extent to which the HomeFund borrower consents to being bound by the determination.

(4) If a determination requires a person referred to in subsection (3)(a), (b) or (c) to pay an amount to a HomeFund borrower and the amount is not paid in full within 28 days after the determination is made, the State of New South Wales is to pay to the HomeFund borrower the amount by which the amount required to be paid remains unpaid.

(5) Any amount paid under subsection (4) may be recovered by the State of New South Wales from the person by whom the amount was ordered to be paid as a debt in any court of competent jurisdiction.

(6) The State of New South Wales is to pay to the mortgagee under a HomeFund mortgage such amounts as may from time to time be necessary to compensate the mortgagee for:

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(a) any costs incurred by the mortgagee in complying with a determination; and

(b) any loss of income suffered by the mortgagee as a result of its compliance with a determination.

(7) Payments under subsections (4) and (6) are to be made out of funds legally available or out of funds to be appropriated by Parliament for that purpose.

(8) A HomeFund borrower's entitlement under a determination, to the extent to which the determination orders the payment of money to the HomeFund borrower, is stayed by an appeal against the determination.

This amendment seeks to bind the State, a public authority and the HomeFund mortgagee. It seeks also to bind other parties. However, if such other parties fail to meet the orders of the HomeFund Commissioner within 28

days, the State will meet the order and become entitled to recover the amount from the other parties who fail to meet the order in the first place. This again was a matter that was fully debated during the passage of the HomeFund Commissioner (Miscellaneous Amendments) Bill. The Opposition believes that this amendment will address the needs of some borrowers who otherwise, despite having had an order made in their favour, might have to take continued action to have that order met.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.45 a.m.]: This is really where we started from last time when we tried to amend the bill, and it was finally agreed that it would be necessary to bind parties if the Commissioner is to make his determinations stick. However, the ALP is proposing that certain parties be bound and that other parties not be bound. That stems from further amendments that were discussed last time and, I believe, it is intended to include them with regard to appeals. The problem is that this amendment was loading it up against the Government once again, simply because we are the Government and we are seen as a soft touch.

Certain parties, such as the State of New South Wales, the public authority and the mortgagee, were to be bound; others were bound only if the borrower consented. The Government felt that to have a final scheme it was all in or none in. All parties ought to be bound, including the borrower, although the Government's proposal was to give the borrower the option of pulling out at any time up until the determination was made. This amendment is inconsistent and unfair. It is one law for one and one law for another, just because one happens to be the State of New South Wales, the custodian of the taxpayers' money. The Government opposed the amendment then and it opposes it now. The Government will not take the time of the House, but this is something that will be addressed in the upper House.

Amendment agreed to.

Mrs GRUSOVIN (Heffron) [2.46 a.m.]: I move amendment No. 18 standing in my name:

Page 18, Schedule 3, line 34. After "Court", insert "by a person referred to in section 28(3)(a), (b) or (c)".

This amendment specifies the parties eligible to appeal to the Supreme Court on a question of law against the determination of the HomeFund Commissioner. This is a similar amendment to one that was debated in the House in relation to the HomeFund Commissioner (Miscellaneous Amendments) Bill.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.47 a.m.]: This amendment was something that the HomeFund Commissioner commented on in his report in the section headed "Amendments". I forget the turn of phrase he used, but he said he found it anomalous that some parties had a right of appeal when others did not. I hope that most lawyers in this House would have a sense of fair play. The amendment is particularly unfair and, again, means that the Government can be locked into something for which it is not responsible and against which there is no right of appeal.

The Government feels that this amendment is particularly unfair and it again highlights the ALP's general philosophy: to make the Government as liable as possible or inflict as much pain as possible on the Government, regardless of whether it is responsible. The ALP wants to inflict political and financial damage on the Government. It does not particularly care about the circumstances. The Government strongly opposes the amendment. It is not fair. Again, in the interests of time, I will not divide the Committee on this amendment, but the Government will certainly seek to delete this amendment in the upper House.

Amendment agreed to.

Mrs GRUSOVIN (Heffron) [2.48 a.m.]: I move amendment No. 19 standing in my name:

Page 19, Schedule 3, lines 5-7. Omit all words on those lines, insert instead:

(5) The parties to an appeal are the Commissioner and, except as otherwise provided by the regulations, each of the parties to the determination against which the appeal is made.

This is a consequential amendment to the last amendment, amendment No. 18 standing in my name.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.49 a.m.]: This basically makes the commissioner a party to an appeal. He found it rather extraordinary. Again, the Government strongly opposes the amendment and, in common with the commissioner, finds it a bit odd.

Amendment agreed to.

Mrs GRUSOVIN (Heffron) [2.49 a.m.]: I will not be moving amendments Nos 20 and 21 standing in my name.

Mr HATTON (South Coast) [2.49 a.m.]: The Australian Labor Party has withdrawn its proposed amendment which would have deleted item (19)

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relating to section 42A of the HomeFund Commissioner Act in regard to the activities of lawyers and barristers. I move:

Page 19, Schedule 3. After line 38, insert:

(3) Nothing in subsections (1) and (2) applies in relation to advice given by a barrister or a solicitor about relief under the HomeFund Restructuring Act 1993.

If people are to have legal rights, naturally they are going to have to seek advice on the restructuring package. I commend the Government for its intent, which will be preserved if my amendment is accepted. The intention is to prevent barristers and or solicitors from taking unfair advantage and asking for a percentage of the settlement.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [2.50 a.m.]: The Government accepts this amendment. In his report and in discussions with me the Commissioner emphasised the fact that he found it objectionable that people were actively soliciting fees or a percentage from borrowers in return for helping them fill out their complaints guide. The Government regards such activity as offensive. I think I understand what the honourable member for South Coast is saying, which is essentially that genuine advice, given on a professional basis, can be charged presumably on a fee-for-service basis, which is the position of the Law Society, but not the other side of the coin where people are soliciting for a slice of the action.

Amendment agreed to.

Schedule as amended agreed to.

Bill reported from Committee with amendments and passed through remaining stages.

SPECIAL ADJOURNMENT

Motion by Mr West agreed to:

That this House at its rising this day do adjourn until Wednesday, 15th December, at 2.15 p.m.

House adjourned at 2.54 a.m., Wednesday.

