LEGISLATIVE ASSEMBLY

Tuesday, 3 May 1994

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Mr Speaker (The Hon. Kevin Richard Rozzoli) took the chair at 2.15 p.m.

Mr Speaker offered the Prayer.

ASSENT TO BILLS

Royal assent to the following bills reported:

Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill
Health Administration (Medicare) Amendment Bill
Maritime Services (Offshore Boating) Amendment Bill
Mine Subsidence Compensation (Amendment) Bill
Occupational Health and Safety Legislation (Amendment) Bill
Workers Compensation Legislation (Miscellaneous Amendments) Bill
Trade Measurement (Amendment) Bill
Traffic (Parking) Amendment Bill

BLUE MOUNTAINS CITY COUNCIL BOMBING

Privilege

Mr SPEAKER: On 20 April last the honourable member for Ashfield raised the issue of whether the wording of a solicitor's letter received by him in relation to the serving of a subpoena constituted a breach of the privileges of this Parliament. The words used were:

> To minimise any embarrassment please arrange for a member of your staff to contact our office within the next 24 hours to make arrangements for the service of the Subpoena for Production at a time convenient.

I indicated at the time that I would consider the matter and give a ruling at a subsequent sitting and prior to the return date of the subpoena. My inquiries reveal that the words used in the letter are in common use by solicitors in this State and they certainly were not especially directed to the honourable member for Ashfield. I therefore rule that there is no prima facie breach of parliamentary privilege. The honourable member for Ashfield later raised with me a further matter in chambers relating to the subpoena itself, to which he asked me to give consideration as a possible breach of privilege.

In anticipation of this further matter being raised as a matter of privilege I instituted extensive research into what is an extremely complex area of the law in regard to the boundary between the jurisdiction of the House and the competence of the law courts. I am advised that the subpoena has now been withdrawn, in which case there will be no need for me to adjudicate. Although I am not required to give a ruling I intend to continue my research as a source of guidance to the House should the circumstance arise at a later time.

QUESTIONS WITHOUT NOTICE

FORMER AGENT-GENERAL NEIL PICKARD

Mr CARR: My question without notice is directed to the Premier. When did the Premier receive advice from the Deputy Crown Solicitor that the Premier could not sack Neil Pickard in the way he intended under clause 16 of the contract? Did the Premier receive this advice before he dismissed Mr Pickard?

Mr FAHEY: I, like most people in New South Wales, found the decision of the arbitrator last week odd, to say the least, particularly when the arbitrator indicated earlier that certain unauthorised expenditure represented an abuse of the system by the then Agent-General while purportedly carrying out his functions in London. It was very clear to me, I think a long way back, that when someone has a contract, whether or not it be someone who is not involved in any shape or form with the Government, and when that person has legal rights - and even when someone in the public sector has rights under a contract of employment, particularly at senior executive service level - certain compensation factors come into the equation when consideration is given to altering that contract at all. A senior executive officer in the public sector is entitled under an Act approved by this Parliament to get up to 12 months' compensation from the Statutory Officers Remuneration Tribunal.

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

Mr FAHEY: Decisions have been made concerning certain senior people in some of our leading companies across Australia. When those decisions were tested in court in recent times they involved several million dollars. The decision in respect of the Agent-General's office in London related specifically to that office. It was abundantly clear to me, to all Cabinet and to all Government that we no longer needed an agent-general's office in London. That was a throwback to colonial days - to the days when it was important to have garden parties and to participate in ceremonies. Quite frankly, little or no benefit accrued to New South Wales by participating in such a process.

I and this Government are about ensuring that, if we have offices in other parts of the world - we are now restricted to London and Tokyo - those offices should focus clearly on trade, investment and jobs in New South Wales. The decision was made simply to close down an office - an office, I might add, that had 32 staff when a former Labor Minister was there. At the time the decision was taken to close the Agent-General's office in London there were about 12 staff members.

That staffing position was refocused to a point where I can say that today there is a staff of four. It is also clear from the monthly returns that that staff of four is doing more than was done previously with a larger staff. The decision was taken to scale back that operation in relation to its numbers and costs and to ensure that it was properly focused. It was very clear that there could be considerable savings. That in no way, of course, ruled out the rights that might have been available to the then incumbent or the then incumbent's opportunity to test those rights in the proper process, in accordance with this contract. That was done and it has been given a fair bit of publicity. I think most people know what occurred in the arbitration proceedings.

I find it extremely difficult to understand the quantum of damages that applied in respect of that decision. I say that for this reason: we all know that as a result of the Auditor-General's examination of what occurred in London over that period there were many matters that were dealt with by the then incumbent that had nothing to do with his responsibilities and were way outside authorities that existed. We saw expenditure on such things as personal travel, we saw frequent flyer miles being totted up and then used personally - something that does not occur anywhere in the New South Wales public sector - we saw a vehicle disposed of to friends, we saw people who happened to be related to the family of the then incumbent being employed, and we saw situations

that involved the use of a government car for private purposes by the wife of the then Agent-General.

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

Mr FAHEY: In relation to the flat we saw renovations which cost something like $17,000 or £34,000.

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

Mr FAHEY: The authorisation for the Agent-General was £10,000 and a quote was taken that represented £19,000, even though another quote was received for £15,000. So very quickly £19,000 goes up to £33,000. All of these are individual items. We saw certain people taken to the Continent on trips that had nothing to do with the operations of the Agent-General in London.

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

Mr FAHEY: When it is found that there is a requirement to pay back money, I find it very difficult to understand the measure of damages. I will never understand how someone can be compensated for the use of a driver seven days a week at London rates, and the use of a limousine for seven days a week at London rates, when they are not being used. I find that extraordinary to say the least. It is very clear that notwithstanding all of this certain people's rights have been examined and that examination is the right of any individual in this State. I find this man opposite who jumps all over the place whenever the opportunity arises - and I can quote chapter and verse -

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

Mr FAHEY: If honourable members want to know how he jumps all over the place they should ask the honourable member for Liverpool.

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

Mr FAHEY: There was a wonderful interjection from the team opposite, where there is an enormous faction fight still going on. The Right caucus this morning just jumped in and said, "We will not accept the resignation from the frontbench of the honourable member for Liverpool".

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

Mr FAHEY: It said, "Find him a job". Where is the job coming from?

Mr SPEAKER: Order! There is far too much interjection. I call the honourable member for Bulli to order and remind him of my recent injunction to two members. I place the honourable member for Bulli on three calls to order.

Mr FAHEY: "Find him a seat", said the Right caucus this morning, "Give him a continuation of the job". Is it any wonder the Hon. J. R. Johnson is in the Chamber, because he is worried about whether it is his position. As we all know, they cannot afford to lose him because he has never trained anyone to run those raffles properly. He knows he is guaranteed a place forever while he takes control of the raffles. No one can run raffles as well as he does anyhow. The Labor Party cannot afford to lose him because of the debt it has.

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

Mr FAHEY: The other factor, of course, is in the other place.

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

Mr FAHEY: Clearly the Hon. Judith Walker is in some difficulty.

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

Mr FAHEY: It was not so long ago that the Leader of the Opposition wanted to get rid of a member of the Right faction and replace the Hon. Judith Walker with a member of the Left, Peter Primrose, who was suitably outed on the last occasion by the current member for Camden. This is the disarray that is there, this is the disarray that is occurring.

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

Mr FAHEY: I say this about the Agent-General: currently New South Wales taxpayers are saving $930,000 per year for every year that goes round - almost $1 million a year is being saved as a result of the restructuring of the London office. If I can save $1 million a year in any area I will do that five times a day at every opportunity I can get. In addition, the useless building - useless from the point of view of New South Wales - has been sold. It brought in over $15 million. That money is now back in the hands of the taxpayers of New South Wales and being used appropriately.

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

Mr FAHEY: The lease of the much renovated apartment in Knightsbridge has been sold.

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

Mr FAHEY: That is $1.2 million in kitty, in New South Wales, being used appropriately for the benefit of the people. Two cars - heaven help me - have gone and that has brought in about $65,000. So close to $17 million is currently back in kitty in New South Wales.

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

Mr FAHEY: Whilst I will not deny anybody his legal rights, the advice at the time from Mister All Over the Place opposite was to legislate. Legislate! The next time the equivalent on their side of Parliament to the former member for Bankstown comes up are they going to legislate to take away his legal rights? Are they going to take away the legal rights of any individual in any of the courts in this State today? That was the advice the honourable member gave at that time when he was screaming, "Bring him home, bring him home". I make no apology for restructuring the Agent-General's office in London. It is now appropriately focused on what it should be doing and it is doing that job very well.

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

Mr FAHEY: I consider it extraordinary that there could be a finding in favour of the State - as there was - for the abuse of the system, for the perks of office in London paid to the former Agent-General, and at the same time an award could be made for compensation in the amounts that were given under headings that I regard as being totally irrelevant. The former Agent-General was entitled to compensation; clearly the contract provided for that. He exercised his rights under the contract, and sobeit. I should make one last point: the matter was examined thoroughly at the time and appropriate legal advice was obtained. That advice indicated that it was impossible to proceed under the current law to do anything about possible - and I emphasise that word - criminal offences, simply because jurisdiction did not apply to matters that occurred outside of New South Wales, in particular overseas such as in England. Notice will be given today of a bill to ensure that never

happens again.

Any person who till-tickles in another part of the world will be dealt with under New South Wales law if the person uses New South Wales money. That will apply to whoever it might be and wherever it might take place. I make a further point, which is that if anyone in New South Wales today were involved in events similar to those documented by the Auditor-General, they would be brought before the New South Wales courts. As a matter of morality I will not stand for that and will not go behind such action in any shape or form. That is the view of the entire Government. The matter does not sit well with me and I regret that the law is not better able to do something about that type of conduct. At the same time the civil rights of people will never be touched by this Government. If anyone tries to interfere with individual rights, democracy will go out the door.

FORMER AGENT-GENERAL NEIL PICKARD

Mr CARR: I ask the Premier a supplementary question. In view of the answer just given, will the Premier inform the House whether taxpayers are still paying almost $1 million a year on a lease, which still has 11 years to run, for office space in Westpac House in London? Are the four remaining staff to whom he just referred occupying space equivalent to 50 standard offices?

Mr FAHEY: I said earlier that New South Wales House in The Strand, which was the office accommodation for Agents-General for many years, had been disposed of. I understand that it was in such a state that it was virtually unfit for occupation. A decision was made some years ago, certainly before I became Premier, to lease or sublease certain space from Westpac. The rental on that lease is in the vicinity of $900,000 a year. The Canberra colleagues of the Leader of the Opposition and some of his former colleagues are now in London. It is interesting that every time Labor gets into some trouble it finds jobs for its members. It either sends them off to the knitting club or finds a job for them somewhere, but they are always paid.

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

Mr FAHEY: The current High Commissioner in London is one of those former Labor people.

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

Mr FAHEY: Has the honourable member for Liverpool been offered a job yet?

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

Mr FAHEY: The honourable member for Liverpool is welcome to become the Liberal candidate for Liverpool.

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

Mr FAHEY: I will tell honourable members something else.

Mr SPEAKER: Order! The Chair never objects to members of the House being in good humour, and obviously members are enjoying what is occurring at present. However, the level of interruption to question time that is being occasioned by that enjoyment is not in keeping with the decorum of the House. I ask all honourable members to restrain themselves and listen to the answer in silence.

[*Interruption*]

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

Mr FAHEY: In this instance the poor old member for Liverpool has been left all alone by his leader. He has stood up well to it, with a degree of dignity that does not exist among those around him in the manner in which they have performed. I assure honourable members that discussions are taking place and that ultimately I would dearly love to see the operation of the New South Wales Government in London on behalf of New South Wales taxpayers taking place in Australia House, linked with Austrade and working with the Commonwealth body for trade instead of operating separately, as unfortunately a number of other State Government organisations do; they still have their own operations over there. What I have suggested makes sense and ultimately will occur. Negotiations are continuing. The Commonwealth Government has to renovate Australia House, which has been let run down and several floors are not capable of being occupied. The action taken will depend very much on when the market allows a transfer of the existing lease from Westpac. Indications are that, with property improvement occurring in London, it may occur in the not too distant future.

Later,

Mr FAHEY: Earlier this afternoon the Leader of the Opposition referred to certain advice that was given to me in respect of Mr Pickard. I indicated quite clearly my views on the quantum of damages that were awarded by the arbitrator. I made it abundantly clear that the decision that was taken to scale down the Agent-General's operation in London was in the interests of the people of this State. Reference was made, in regard to a motion that is to come before the House later, about certain legal advice that was given. I indicated in my response earlier that I was given legal advice. That legal advice indicated that, under clause 16 of the former Agent-General's contract, there was a right for compensation.

I will argue until the cows come home as to the quantum of that compensation; but the right was there. It did not concern me on the basis of the savings and the changed focus in that operation. In terms of getting that advice, the right decision was made. I stand by that decision. Subsequent to last week I sought further advice from the Solicitor General in respect of the decision of the arbitrator. I am prepared to table the original advice that was given to me the day before the decision was made to bring home the former Agent-General. I seem to recall that the honourable member for Campbelltown could not say that often enough to the media at around that time. I seem to remember also the Leader of the Opposition making the same plaintive plea at that time.

Now Opposition members want to play their little games in the Parliament, as they do every day. I have advice from the Crown Solicitor dated 26 October, which indicated that compensation would be available to Mr Pickard. That is a well-known fact. Members opposite know why it is a well-known fact, because the file was stolen; it got into the hands of the honourable member for Campbelltown. Opposition members got the whole file. But we are still going through this charade. They had the file at the 1992 estimates and they also had the legal advice that had been received. I would have thought that any documents of any relevance to that case are well and truly in the public arena - and were in the public arena during the case. In the advice that I received relating to the decision itself the Solicitor General said:

> Like many, I remain very surprised that the Arbitrator should have concluded that the matters found in the State's favour in its cross-claim did not provide justification for summary dismissal or termination. I also remain to be convinced that the value of the car and driver and of the London residence was properly compensable either as damages for wrongful dismissal or "*compensation*" under clause 16 of the Contract.

The Solicitor General concluded:

> Regrettably, therefore, the State has no option but to abide by the award.

I table the Crown Solicitor's advice of 26 October 1992 and the advice received from the Solicitor General a few days ago. I might add that we can waste the next half hour debating a motion under Standing Order 54, but the Government is more than happy to make any documents available relating to the Pickard affair that anybody might like to see.

SYDNEY OLYMPIC BID BUDGET ANALYSIS

Mr O'DOHERTY: My question without notice is addressed to the Premier and Minister for Economic Development.

Mr Carr: Give him a break.

Mr O'DOHERTY: Has he received an independent risk analysis of the budget prepared by the Sydney Olympic bid company? If so, is the budget considered achievable? What is the Government doing to attract private sector investment in games related facilities?

Mr FAHEY: The Leader of the Opposition interjected to say "Give him a break". Many members on that side of the House would like to give
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the Leader of the Opposition a break - on various parts of his body. That is how they feel about him at present. In addition to the audit of the Games budget conducted by Price Waterhouse, I have received an independent risk analysis of financial plans associated with the Olympic Games 2000. The analysis was prepared by Dr Dale Cooper of Broadleaf Capital Pty Limited and Morgan and Banks Management Services Pty Limited. Dr Cooper reports very positively on the budget prepared by the Sydney 2000 Olympic bid company. His work also can be shown to support the Government's view that spending by the Government on facilities for Sydney's long-term benefit - facilities that will be used also during the Olympic Games - is well within the capacity of the State's capital works budget.

In short, the independent risk analysis shows that the budgets are sound, we can easily afford the cost, and the Olympics will be a huge boost to the people of New South Wales. The risk analysis looked at the budget of the Sydney Organising Committee for the Olympic Games, the authority responsible for organising and staging the Games. The budget was prepared using the skills of the finance commission of the bid company and was released publicly in December 1992. In accordance with the requirements of the International Olympic Committee, that budget estimated the costs and revenue likely to be involved in the staging of the Games.

Dr Cooper found that the budget was prepared professionally and that it was broadly conservative in both revenue and expense estimates. He said SOCOG revenues have a good chance of exceeding estimates in television rights, marketing, local sponsorship and ticketing. He said SOCOG expenditure estimates are achievable even on a cautious assessment. He said that the SOCOG budget is likely to yield a small surplus provided no major risks arise, such as cancellation, postponement, boycott or terrorism. Dr Cooper warned that there are major technical uncertainties associated with the provision of media services. He said:

> As this area is subject to rapid and continuing changes in technology, markets and marketing arrangements, further expert analysis is strongly recommended.

The risk analysis further examined the budget of the Olympic Construction Authority for specific Olympic Games venue construction. Together with the SOCOG budget, the surplus is forecast at $6 million. Dr Cooper reported on what he described as total gross revenues and expenditures with no netting effects for amounts double counted by transfer payments between the SOCOG, the Government and the Olympic Construction Authority. He said that the gross revenue was estimated at $2,060 million and that gross expenditure was estimated at $2,054 million. In the consolidated budget released by the bid company for example, a net catering expenditure of $11 million was shown while the risk analysis showed a gross expenditure of $17.3 million and a revenue of $5.4 million; in other words, he arrived at the same bottom line.

Dr Cooper reported also that media accommodation fees of $70 million were assumed to be fully recoverable so that they were netted to zero in the bid company budget but shown as gross revenue and expense items in the risk report. Dr Cooper said that the bid budgets and his analysis were presented differently. However, the overall result in the form of the budget surplus is $6 million in each case. Dr Cooper reviewed

the cost of developing Homebush Bay, which the Government is doing in stages over a period of 15 to 20 years and private sector investment in Olympic related facilities.

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

Mr FAHEY: The Homebush Bay budget released in September 1992 foreshadowed costs of $807 million offset through income from property sales of $140 million for a net cost of $667 million. That development was progressing, of course, irrespective of Sydney's success in winning the right to host the Games in the year 2000 and construction is, as Dr Cooper observed, "on time and ahead of budget". Dr Cooper reported that private sector investment in villages and some sporting facilities estimated during the bid period could be as high as $859 million. The actual level of private sector investment will become clearer following an invitation which will soon be made to the private sector. That will occur later this month. The private sector will be invited to submit investment proposals for Olympic related facilities. Indeed, there have been many informal approaches from the private sector already and rising business and investor confidence evident since last September provides great optimism for strong private sector investment in facilities that will be used for the Games. Private sector interest will be invited in the Olympic villages and also in projects, including the main stadium, the velodrome, the colosseum, tennis, equestrian and shooting centres.

Mr SPEAKER: Order! There is too much audible conversation in the Chamber. I call the honourable member for Granville to order for the second time. I call the honourable member for Wallsend to order for the second time.

Mr FAHEY: Dr Cooper's analysis is that under what he describes as a pessimistic or worst case scenario, government funding required could be about $2 billion in the unlikely event that there is no private sector involvement. That is inconceivable. Dr Cooper said:

> I took a conservative view in which the villages were fully funded or guaranteed by the Government and no off-setting revenues from sales were included.

He added, rightly:

> There is little doubt that there will be demand for housing units in the various village sites.

That worst case scenario assumes there will not be one dollar of private investment nor any revenue from the sale of Games related facilities, such as the Olympic village or venues. The possibility of no private sector investment or no offsetting revenue

from post-Games sales is inconceivable. I agree with Dr Cooper's view that thorough planning is more important than rushing the start of construction. This is consistent with the careful and prudent approach the Government is taking to Olympics planning to ensure that the Olympics provide lasting benefits for the people of New South Wales.

Indeed, the Government's spending on projects that will be used in the Olympics and for many decades and beyond is a small part of the total capital works budget. The capital works budget between 1993 and the year 2000 is projected in the region of $48 billion, based on an amount of up to $6 billion a year. In conclusion, it is well known that the International Athletics Centre was opened on time and ahead of budget. I did not see too many Labor members visiting that magnificent facility. They were invited but they did not turn up. The Government is progressing well on action to ensure that other works are delivered in a similar way and, of course, all for the benefit of the people of New South Wales.

CRUISE LINER BERTHS

Mrs SKINNER: My question without notice is directed to the Deputy Premier, Minister for Public

Works and Minister for Ports. What steps is the Maritime Services Board taking to provide berths for the large number of cruise liners likely to visit our city in the period between now and the staging of the Olympic Games in the year 2000?

Mr ARMSTRONG: This is an important question, despite the catcalls from the Opposition. I will guarantee that Opposition members will be out there at the Olympic Games in the year 2000 trying to get all the freebies they can possibly muster.

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

Mr ARMSTRONG: The Leader of the Opposition seeks to interject. The most important question in this place today is where the Leader of the Opposition, Bob Carr, was when his colleague the member for Liverpool needed him in recent months?

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

Mr ARMSTRONG: Where was the leader looking after his team members? Where was the leader of the party when his old foe was about to get tipped out? He was not seen for the dust.

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

Mr ARMSTRONG: One could not see him for sticks, stones and dust. There was no leadership there.

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

Mr ARMSTRONG: I am pleased that at the moment Sydney is hosting somewhere between 80 to 90 cruise liners each year and already we have indications from the Cunard line, P & O, several Scandinavian lines, American lines and, of course, the QEII, that they will be seeking to come to Sydney for the year 2000 Olympic Games.

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

Mr ARMSTRONG: Twenty vessels arriving here for the Games will yield about 24,000 visitors for that short period, and up to 100 private yachts docking in Sydney at that time will each bring 6 to 25 people. The logistics required to service the needs of visitors to the Games are not widely known. Visiting passenger ships will be berthed at Darling Harbour, at Sydney Cove and at harbour moorings. Construction at Darling Harbour of the second terminal at a cost of $3.3 million, which was announced earlier this year, is on time and on budget. The terminal, which is expected to open before spring, will provide a much needed, much appreciated and modern facility of international standard for cruise ships visiting our harbour from now until after the Olympic Games.

Over the next five years the Maritime Services Board is to spend upwards of $10 million on improving infrastructure around the harbour by providing more navigational aids, adapting available world technology, and upgrading sea walls and general harbour surrounds. There will be a beautification program and also a program to upgrade the safety and capacity of our port to provide the services that 24,000 people can reasonably be expected to require. The enormity of what the Olympic Games will mean for the New South Wales economy and for the rest of Australia has not yet sunk in with many honourable members opposite. The world's major cruise lines and leading business people are planning to come to Sydney in the year 2000, and many will visit before then.

Demographers predict that 25 per cent of the expected increase in tourism as a result of the Olympics will occur before the Olympics. The Opposition does not seem to comprehend the economic and cultural benefits and ongoing promotional spin-offs in Sydney, New South Wales and Australia being remembered for all time as

the place, the city, the State, and the country that hosted the year 2000 Olympics Games. The Government was able to demonstrate, with the support of those who worked on the bid, that it has the loyalty of the people of Sydney and New South Wales. There is nothing much more important than loyalty.

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

Mr ARMSTRONG: The honourable member for Liverpool would appreciate that today. All the Leader of the Opposition can do is walk around sipping water.

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

Mr ARMSTRONG: The Leader of the Opposition blew that one. He will be caught by the Left and the Right.

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BLUE MOUNTAINS CITY COUNCIL BOMBING

Mr WHELAN: My question without notice is addressed to the Premier and Minister for Economic Development.

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

Mr WHELAN: Was Mr Vincent Crupie sentenced to eight months' gaol last Friday for threatening to bomb the Victorian Premier's office? Can the Premier advise the House on the progress of the police investigations into the Blue Mountains bomb and death threats? Has he yet established why earlier police investigations of these matters got nowhere?

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

Mr FAHEY: The poor old member for Ashfield has been wandering around the desert and is still trying to put up some sort of a fight with no seat to go to.

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

Mr FAHEY: The Leader of the Opposition obviously is in big difficulties finding the honourable member for Ashfield a seat. When the hot breath of the leadership aspirant from Liverpool singed the hair on the back of the neck of the Leader of the Opposition, the Leader of the Opposition moved against that member. And he is going to move against the honourable member for Ashfield too.

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

Mr FAHEY: The honourable member for Ashfield can be the Liberal candidate for Ashfield if he likes to. I can deliver on that, just as I can deliver on many other matters. I can deliver on that for each of them. The honourable member for Ashfield can come and see me afterwards if he is interested, but he will have to come and see me sooner rather than later because that is the only hope he has. As to certain events in the courts in Victoria last Friday, I have not the faintest idea. As to matters involving the police, I am absolutely confident that without fear or favour the police are doing their job in that matter. It is not appropriate for me to know exactly what they are doing. I therefore do not know what stage those investigations are at.

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

EVATT FOUNDATION ENVIRONMENT REPORT

Mr HUMPHERSON: My question without notice is directed to the Minister for the Environment. Is the Minister aware of the recent report by the Evatt Foundation which criticises Government spending on the environment? How is the Minister's department allocating funds for environmental protection?

Mr SPEAKER: Order! I call the honourable member for Auburn to order for the second time. There is far too much interjection.

Mr HARTCHER: It is interesting that such a report should have been compiled by the Evatt Foundation. That foundation bears a name infamous in Australia's political history, the name of a man who was the hero of the honourable member for Granville and of the entire Labor Left - the sort of man who, as a civil libertarian Attorney-General, locked up Australians without trial during the second world war; a man who, to preserve his endangered leadership in 1954, launched a poisonous sectarian campaign which tore the Australian Labor Party in half.

Mr SPEAKER: Order! I call the honourable member for Kiama to order. I call the honourable member for Wallsend to order for the third time. I call the honourable member for Kiama to order for the second time. I call the Minister for Multicultural and Ethnic Affairs to order for the second time.

Mr HARTCHER: It is even more interesting when you look at the Evatt Foundation, this unbiased research think-tank. It has received in the last 10 years $2½ million dollars. Where from? From the Federal Labor Government. It gets $250,000 every year from the Federal Labor Government. Would that all the think-tanks, all the institutes in Australia, received similar treatment. This think-tank has an address in Sydney. Its address is 377 Sussex Street, Sydney. Honourable members might ask what other organisation is presently on tenuous leasehold at 377 Sussex Street as it argues with the Labor Council about its future.

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

Mr HARTCHER: That, of course, is the address of the Australian Labor Party, New South Wales branch. Even more interesting to honourable members of this House is the executive committee of the Evatt Foundation.

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

Mr HARTCHER: On the executive committee of the Evatt Foundation is no less an unbiased think-tank analyst than the present Deputy Leader of the Opposition. The honourable member for Mount Druitt has correctly drawn attention to the fact that the Deputy Leader of the Opposition should be on the endangered species list. His deputy leadership is about to come into a fast collision with the process of what the Australian Labor Party call "pure democracy". Its idea of "pure democracy" is when the side with the numbers rolls the side that has not got the numbers. We have seen that process in operation in recent days. The Evatt Foundation is worthy of the name that it bears, it is worthy of its executive committee membership, it is worthy of its address, and it is worthy of its funding. It is, and

always has been, a poorly disguised effort by the Australian Labor Party to pretend to inject some impartiality into public comment in this State.

The honourable member for Mount Druitt interjects. He was one of those ineffectual right-wingers who made no attempt at all to save the honourable member for Liverpool. Opposition members were all in Caucus this morning saying, "We will not accept your resignation. Do not do it, Peter. Do not resign". Where were they last Friday night? Were they on the telephones? Where were they last Saturday? The greatest laugh in this House is on the Left. The honourable member for Ashfield sits there and continues to laugh at them. He said, quite publicly, "I am staying in Ashfield and if they cannot find a seat for me - "

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

Mr HARTCHER: " - if we cannot get the honourable member for St Marys out on the Henry Lawson Club charge, then I am staying in Ashfield".

Mr Langton: On a point of order: we on this side of the Chamber are always delighted to hear the Minister addressing the House because every time he stands up he makes a greater fool of himself.

Mr SPEAKER: Order! The honourable member will come to his point of order.

Mr Langton: Though all Ministers are entitled to some preamble, the Minister has not even attempted to answer the question as yet. I ask the Chair to direct him to do so.

Mr SPEAKER: Order! The first part of the Minister's answer seemed to be a dissection of the nature of the body mentioned in the question, but subsequent to that he strayed a little from the subject-matter of the question. I ask him to return to the question.

Mr HARTCHER: It is always a wonderful thing in this House when we hear from the honourable member for Kogarah. He has so much to contribute to the debate. Let us look at the second part of the question raised by the honourable member for Davidson. The first part was about the Evatt Foundation. Will I go through that again?

Mr SPEAKER: Order! I call the honourable member for Waratah to order. Honourable members know that under the standing orders of this House any member on his feet at the time the Speaker rises must find a seat as quickly as possible. I do not think that should be the cause of mirth to members of the Opposition. I ask all honourable members to conduct themselves with more decorum than has been evident in question time. Members of the Opposition seem to be complaining about the length of the answer being given by the Minister for the Environment. The fact is that the Minister for the Environment has been continually baited with interjections from the Opposition benches and those interjections have prolonged the answer. If members of the Opposition want question time to proceed in an orderly fashion, they should desist from objecting and allow the Minister for the Environment to answer the question.

Mr HARTCHER: Under the present Leader of the Opposition, who was a previous environment Minister, the Environment Protection Authority, then called the State Pollution Control Commission, was receiving $12 million a year. Under this Government it is receiving $61 million - 5½ times the expenditure under Labor, a massive increase in financial investment. In addition, the EPA has a capital works budget of $5.8 million; and staff levels are now more than 630, versus the 200 under the present Leader of the Opposition. In addition, under the present Leader of the Opposition - and long he will remain so - the National Parks and Wildlife Service was receiving a budget of only $34 million.

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

Mr HARTCHER: This financial year the National Parks and Wildlife Service is receiving a total government contribution of nearly $69 million, more than double what it received when the present Leader of the Opposition was Minister for the Environment. Further, the coalition Government has allocated more than $13 million towards the Royal Botanic Gardens - taking in the Sydney Gardens and Domain, the Mount Annan Botanic Gardens, the Mount Tomah Botanic Gardens and the National Herbarium. In addition, the Government has provided $4.5 million for the Urban Parks Agency of New South Wales.

Ms Moore: Inadequate.

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

Mr HARTCHER: The honourable member for Bligh has every reason to be proud of the achievements of this Government in Centennial Park and in other areas of her electorate. In addition to this direct expenditure through the environment ministry, this Government in its commitment to clean air, clean water and clean earth has advanced other sums through other agencies on environmental expenditure. My colleague the Minister for Agriculture and Fisheries and Minister for Mines has in his budget allocated something like $27 million directly to environmental matters. My colleague the Minister for Education, Training and Youth Affairs and Minister for Tourism has $2½ million allocated towards environmental education programs and the development and promotion of ecotourism.

My colleague the Minister for Energy and Minister for Local Government and Co-operatives has allocated $2.9 million towards greenhouse related energy use and fuel substitution. The Department of Conservation and Land Management has allocated almost $100 million towards environment related projects, including $42 million for soil conservation

and more than $26 million for Crown land services. The Department of Water Resources has allocated over $35 million towards environmental management programs. None of these facts are taken into account when the so-called think-tank - of which the Deputy Leader of the Opposition prides himself on being an executive committee member - works out its ridiculous figures. All of these facts are simply ignored and the Evatt Foundation - true to its name; true to the name of its dishonest, infamous founder - extrapolates one aspect of the environment budget and tries to pretend that, represented right across the board, it is the total expenditure on environmental matters.

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

Mr HARTCHER: This Government, at every level in every Ministry, has a strong environmental ethos of which it is rightly proud, and it will continue to pursue environmental policy in the best interests of the people of this State. The Government has much to be proud of, particularly that Government members stick together and do not abandon people, like the honourable member for Liverpool has been, to the Left.

BLUE MOUNTAINS CITY COUNCIL BOMBING

Dr REFSHAUGE: My question without notice is directed to the Premier. Have major crime squad officers now interviewed the health Minister's adviser, Richard McKinnon, in connection with the bomb and death threats in the Blue Mountains? Has Mr McKinnon also been working for the honourable member for Blue Mountains in recent weeks? Will the Premier assure the House that Mr McKinnon has fully co-operated with the police in this case?

Mr FAHEY: In answer to the first part of the question, I have no idea. The second and third parts are therefore irrelevant.

PHOSPHOROUS CONTENT OF LAUNDRY DETERGENTS

Mr COCHRAN: I direct my question without notice to the Minister for Land and Water Conservation. Will the Minister inform the House if the Government's initiative of getting detergent manufacturers to reduce the amount of phosphorous in their products to combat blue-green algae is already showing positive results? If so, are other States going to follow the lead of New South Wales?

Mr SOURIS: I am pleased to have the opportunity to report to the House some initiatives that this Government has undertaken in recent months in relation to nutrient control - particularly phosphorous - in our major waterways, and the control of blue-green algal blooms. Some months ago the Government undertook an initiative whereby detergent manufacturers would come to voluntary compliance in regard to the phosphorous

content in laundry detergents. These discussions had been under way for some time; indeed, they even had been initiated by my predecessor, the Minister for Agriculture.

The conclusion of those discussions has led to three clear initiatives. First, that manufacturers would modify their product formulations so that at least 80 per cent of products sold to the market would be either 5 per cent or less by weight of a normal dose, or zero per cent of phosphorous content. Second, there would be a new regime of clear labelling of laundry detergent packets - which are already starting to appear, particularly on supermarket shelves in Sydney - whereby they would bear the symbol "P" or "NP". The symbol "P" would indicate that packets contain 5 per cent or less phosphorous by weight of a normal dose; and "NP" would indicate that no phosphorous is added to the product. Third, to undertake an education and awareness campaign so that consumers can play a part in improving the quality of waterways by selecting laundry detergents that display the logo "P" or "NP", which will lead to a dramatic reduction in the level of nutrient loads in our waterways. It is predicted that between 30 per cent and 50 per cent of the phosphorous content entering our waterways is able to be addressed by this practice.

I am also pleased to inform the House that both the City of Albury and the City of Wagga Wagga have engaged in a campaign called the local government phosphorous action campaign. The honourable member for Albury and the honourable member for Wagga Wagga have both played a prominent part in the discussions and negotiations and in launching a profile of this campaign. The New South Wales local government phosphorous action plan has resulted in - and I know the honourable member for albury is well aware of this - a 20 per cent reduction in phosphorous entering the river at Albury, and there are signs of an even greater improvement occurring in due course. A similar expectation exists in respect of Wagga Wagga. And already a number of other major cities in New South Wales intend to participate in this action campaign to reduce blue-green algae in our inland waterways.

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

Mr SOURIS: Last Friday in Hobart, at a meeting of the Agricultural Resource Management Council of Australia and New Zealand - known as ARMCANZ - it was agreed by all States and Territories of Australia and New Zealand that this action, pioneered by New South Wales to undertake an agreement with detergent manufacturers in the way that I have described, be adopted as a national standard. The chairman of ARMCANZ, Senator Bob Collins, undertook to sign, on behalf of the ARMCANZ meeting, an agreement with detergent manufacturers precisely along the lines of the New South Wales agreement. There is now a national standard and a national agreement in respect of the phosphorous content of laundry detergents as part of the overall program in respect of combating blue-green algal blooms.

This is but one of the many facets of the campaign in New South Wales to combat the nutrient load which leads to blue-green algal blooms. Other strategies include the upgrading of sewage treatment plants, filter strips, modifying flow regimes, total catchment management initiatives, and other initiatives such as the establishment of the Hawkesbury-Nepean Catchment Management Trust. These initiatives, together with the very important initiative undertaken in New South Wales - which is now a national standard in respect of phosphorous content in laundry detergents - is a clear signal to the rest of Australia that this State is serious about doing something to clean New South Wales waterways, and this campaign is indeed bearing fruit.

WATER BOARD PUBLIC MEETINGS

Dr MACDONALD: My question is directed to the Premier and Minister for Economic Development. Did the Premier issue a personal directive to the appointed board of the Water Board to overturn a decision made last year to open board meetings to the public? If so, why does he wish to keep secret decisions made by that public utility? Is this consistent with his policy of open government?

Mr FAHEY: The matter referred to by the honourable member for Manly was adequately covered in the *Sydney Morning Herald* this morning, which is clearly where he got his question from. I do not resile from what was stated in the newspaper by a spokesman on my behalf. There is simply no point in this Government appointing boards to operate commercially to deal with the private sector on many matters which are commercial in-confidence, or which involve intellectual property, if the public is to be invited to the meetings. When the Water Board and dozens of other operations of government make decisions, they have been entrusted by the Government to act sensibly and, to use their individual expertise. Such meetings could degenerate to a rabble worse than even Burwood Council could imagine.

Dr Macdonald: Real open government!

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

Mr FAHEY: One of these days I will talk about open government, and the honourable member for Manly will not be happy with the answer.

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

Mr FAHEY: This Government has been more open than any other government in the western world.

Mr SPEAKER: Order! There is no reason for such outbursts in the Chamber. The Premier has the call and may answer the question as he sees fit. Members are entitled to hear his answer in silence.

Mr FAHEY: This is the Government that introduced freedom of information legislation, but the former Labor Government would not even contemplate it when it was in office; it wanted to hide it. All the colleagues around Australia of honourable members opposite continued to say what a farce that was - a farce that will destroy any Labor government. But this Government is not afraid of it. Freedom of information legislation will be used and will stay in place for ever. This Government is proud of the fact that it established the Independent Commission Against Corruption and other organisations to ensure open and accountable government. Members of the community with particular expertise serve on boards, such as area health boards, in many cases with very little remuneration.

I am not sure this Government would be able to get anyone to serve on a board if he or she were exposed to actions that could be taken against them in their dealings with private companies, and the commercial in-confidence material that must come before boards, when making decisions in the interests of the people of this State. I assure all honourable members that the minutes of any meeting are available, not only under freedom of information but are available to be sent out to ensure that there is a proper process available for people to look at what is occurring. It would be a farce if all government boards had to bring in members of the public on every occasion. They would be hamstrung. If the honourable member for Manly wants to halt progress in this State, just like the Leader of the Opposition -

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

Mr FAHEY: The honourable member for Manly can rest assured that that will not happen under this Government. This Government will put the citizens of this State first.

BUREAU OF STATISTICS CRIME AND SAFETY SURVEY

Mr TURNER: Will the Minister for Police and Minister for Emergency Services inform the House of the results of the latest Australian Bureau of Statistics national crime victims survey?

Mr GRIFFITHS: The honourable member for Myall Lakes, who has highlighted this survey, has had a continuing interest in the safety of not only his electorate but also the entire community. The results of the

1993 crime and safety survey reflect some important facts about the improvements in the safety of New South Wales under the Liberal Party-National Party Government. In 1983, 6.1 per cent of Australian households were the subject of break, enter and steal offences. Under the Labor Government of the day, New South Wales was well above that national average, with 6.7 per cent of households the victims of such offences. A decade on, the national average has increased to 6.8 per cent, while the rate in New South Wales has fallen dramatically to 5.7 per cent. These figures should be read not only in the context of the national average but against the achievements within the New South Wales Police Service over this period - a period during which this Government has devoted considerable energy to the issue of law and order. This survey contains another important statistic regarding the offence of assault. Once again, despite any belief to the contrary, the rate of assault in New South Wales has also declined over the past decade from 3 per cent to 2.6 per cent.

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

Mr GRIFFITHS: These figures give the lie to the knee-jerk policymaking of the Leader of the Opposition, who, in his desperate attempt to score points on talkback radio, promised more and more gimmicks in law and order. It must have been about that time that he had finalised his efforts to put the knife in the back of his police spokesman, the now homeless member for Liverpool. The people of this State want firm and fair laws and they want top quality policing. Under this Government that is what they are getting. The proof is in these results.

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

Mr GRIFFITHS: I can also report that the incidence of sexual assault has remained relatively stable in both New South Wales and the rest of Australia. The combating of offences such as assault, sexual assault, and break, enter and steal is at the core of the law and order policy of this Government. The Government, the Police Service and the community have worked hard to stop the escalation of such crimes. That work is rewarded by these figures. They show that the Government is delivering the quality of life that citizens of this State demand and deserve. I assure the House that, gratifying as these results are, there is no room for complacency. Over the coming months the Government will continue to develop strategies to make New South Wales a safer place. All honourable members can be assured that these policies will be centred on real law and order initiatives, not the gimmicks paraded by a tired and desperate Opposition too bruised and bloodied by its own internal fights to have any regard for the welfare of the people of this State.

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3 X 3 COMMITTEE

Pursuant to the resolution of the House of 21 April 1994, the Clerk announced receipt of the following documents from the Minister for Transport and Minister for Roads:

Agenda, Minutes of Proceedings, correspondence, reports and other documentation pertaining to the deliberations of the "3 X 3" Committee.

Letter from Dennis A. Cowdroy, Q.C., to K. B. Ford, Chief Solicitor of the Roads and Traffic Authority of New South Wales concerning section 82 of the Business Franchise Licenses (Petroleum Products) Act 1987, dated 21 April 1994.

PETITIONS

Newcastle Rail Services

Petitions praying that the rail line between Civic railway station and Newcastle railway station not be closed, received from **Mr Gaudry, Mr Hunter** and **Mr Mills**.

Serious Traffic Offence Penalties

Petitions praying that the House review the laws relating to road accident fatality or grievous bodily harm and institute severe penalties, received from **Mr Mills, Mr Newman** and **Mr Shedden**.

Milton-Ulladulla Hospital

Petition praying that services at Milton-Ulladulla Hospital be expanded, received from **Mr Hatton**.

Shellharbour Public Hospital Children's Ward

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

Animal Vivisection

Petition praying that the House totally and unconditionally abolish animal vivisection on scientific, medical and ethical grounds and that a new system be introduced whereby veterinary students are apprenticed to practising veterinary surgeons, received from **Ms Allan**.

Pambula Courthouse and Police Station

Petition praying that the Courthouse and Police Station on the corner of Toallo and Monaro Streets Pambula be placed in trust with Bega Valley Council for use by the community, received from **Mr Smith**.

Warilla Police Station

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

Retail Price of Fuel in Country Areas

Petition praying that the House ensure that the Industry Commission recommends that the retail price of fuel in country areas be limited to the average Sydney price plus real freight, received from **Mr Souris.**

TIMBER INDUSTRY (INTERIM PROTECTION) AMENDMENT BILL

Bill read a third time.

BUSINESS OF THE HOUSE

Unanswered Questions upon Notice

Mr SPEAKER: In accordance with the sessional order I draw the attention of the House to the unanswered question upon notice No. 679, standing in the name of the Minister for Multicultural and Ethnic Affairs and Minister Assisting the Minister for Justice.

Mr PHOTIOS: The question has now been answered.

FORMER AGENT-GENERAL NEIL PICKARD

Consideration of Urgent Motion

Mr CARR (Maroubra - Leader of the Opposition) [3.26]: I move:

> That this House, pursuant to Standing Order 54, orders to be laid before it and made public without restricted inspection, by the rise of the House this day, all papers, including all legal advice and opinions, relating to the dismissal of the former Agent General, Neil Pickard, and to the matter of the compensation payable to him.

It is no good the Premier waving around two scraps of paper as he did in this House earlier and saying, "We surrender, here are the documents". One of the documents was already hinted at during the arbitration proceedings, the other was Crown Solicitor's advice on the arbitration, and that has been handed down and was produced in the past couple of days. But, I am sorry, the Opposition is not remotely interested in that. Last Thursday the taxpayers of this State learned that they would have to pay that little charmer, the former New South Wales Agent-General, $395,000 in compensation for wrongful dismissal. That night I attended the Richardson farewell, which was held at Parliament House. Every guest at that function wanted to know who was the bloke out in the corridor with the big smile and the wheelbarrow. It was Pickard. What a winner!

The people of New South Wales also learned that $600,000 had been paid to the lawyers in the case by a government that boasts about reform of the legal profession. This is the same Government that cannot find money to cut hospital waiting lists - the longest in the State's history. This is a government that cannot find money to put teachers in classrooms to reduce the number of composite classes in the early years of schooling, that cannot fix up accident and emergency care in the State's hospitals, that cannot put effective policing into the community to bring down the crime rate; but it can find $1 million to lavish on Pickard and to pay the legal costs in his case. Why taxpayers have to pay for this folly is the subject of this Standing Order 54 motion. I warn the Government to not try any of the nasty little tricks it has tried when such motions as this have been carried in the past - that is, pull out relevant documents. The Opposition is keeping count, and with the three non-aligned Independents will hold the Government accountable for the offence to this Parliament of withdrawing documents when these motions are carried. In outlining his reasons for compensation, former Justice Samuels stated:

> I find that the ground expressed in the Premier's letter of 27 October 1992 did not justify Mr Pickard's summary dismissal from the post of Agent-General or the summary termination of the Agreement of 20 May 1991.

Further, he said:

> I find that none of the grounds alleged in the State's Cross-Claim either singly or in any combination would have justified Mr Pickard's summary dismissal or the summary termination of the Agreement.

Two issues of grave concern are raised. First, what advice, most particularly what legal advice did the Premier receive prior to his letter of 27 October as to the legality or otherwise of his actions? Second, what legal advice did the Premier receive as to the possible success or otherwise of the State's cross-claim in the subsequent arbitration? On 22 May last year the Premier trumpeted to this House that he had summarily sacked the Agent-General from his London post. The Premier said - and as I read the quote, I ask honourable members to count the number of personal pronouns so they can be under no mistake about who was claiming credit for this decision:

> I sacked him, I brought him home and I am defending on behalf of the people of this State not giving him one other dollar.

The Premier was boasting of his responsibility for the decision. Why is he not here today, instead of his acolyte, the Minister for Energy and Minister for Local Government and Co-operatives, who sits here trying to

defend the decision? It is an interesting contrast. Last Thursday, when the Premier had to defend this whole mess which had blown up in the taxpayers' faces, there was not a mention of his starring role. It was not, "I sacked him, I brought him home, I did this and I acted on the legal advice"; none of that. It was all passed off as something that happened without explanation and just went wrong along the way; it was all the arbitrator's doing. The arbitration decision was extraordinary and the entire mess was the fault of the Premier's predecessor - anyway that is what the Premier would have us believe. But that is not the truth of the matter.

Throughout May last year the Opposition suggested that the Government cancel the arbitration. Opposition members suggested that legislation be introduced to ensure that Mr Pickard did not receive one cent in compensation and that the State did not lose more than $500,000 in legal expenses. The Premier opted to ignore that advice. During the arbitration hearing in November last year counsel for Mr Pickard said that the Deputy Crown Solicitor had advised the Premier that he could not legally sack Mr Pickard in the way he intended. That was revealed during the arbitration hearing, to the intense embarrassment of members opposite. It is time the public and this Parliament were able to examine all the documentation - and I emphasise all the documentation - relevant to this case. I warn the Government again that the Opposition is keeping track of every occasion on which documents are produced in response to a resolution under Standing Order 54 and the Government opts to pull out some documents and not hand over the entire file.

Mr West: How many times has that happened so far?

Mr CARR: That has happened in respect of water and, we suspect, on other occasions. The Government will be liable if it attempts to pull documents from these files. The Premier must be accountable for his actions. The only way to assess those actions is to look at the advice. The Pickard affair has dogged the Government and New South Wales taxpayers for three years. It has been a saga of knee-jerk reactions, excuses and buckpassing. We want to see the relevant papers so that the Parliament can make an informed decision on how and why the taxpayers of New South Wales paid $1.5 million in this most celebrated example of jobs for the boys. Hand over the documentation!

Pickard's conduct in this job justified his dismissal, but he should never have been appointed by Cabinet in the first place - by a Cabinet of which the present Premier was a member, and who from all accounts raised no lonely objection to Greiner's

action. There was a right way to go about the dismissal of Mr Pickard and there was a wrong way to go about it. With unerring instinct the Premier went about it the wrong way. Barging in against the advice of the Crown solicitor, the Premier, true to form, went about it the wrong way, and the taxpayers are liable. Neil Pickard may have made a laughingstock of the post of Agent-General in London, but it has been left to the Premier to make a laughingstock of himself and his Government over the issue. The tragedy is that the taxpayers of New South Wales will have to pay for the mess that the Premier and the Government, together, have created.

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [3.33]: This motion does not have a lot to do with the handing over under Standing Order 54 of the papers about which the Leader of the Opposition has spoken. This motion has been moved because last week the Leader of the Opposition failed to stand behind one of his colleagues in a preselection battle. He has brought the motion before the House today in an attempt to give a spirited defence, to try to put up some sort of fight to show that he is the genuine article, the genuine Leader of the Opposition. All I can say is that he has been a dismal failure. He could not even use up the time that was allowed to him. His contribution had no substance.

No wonder the honourable member for Ashfield is lined up to speak to this motion. He is worried that he will be the next to get the chop. The left-wing has already seen the blood; they have realised what they achieved last weekend in respect of the honourable member for Liverpool. Now the honourable member for Ashfield must stand up and defend his position. It will be only a matter of time before the left-wing will begin to dominate Australian Labor Party politics in New South Wales. The honourable member for Marrickville is the leader of the Left in this State, and he sits in this Chamber as the Deputy Leader of the Opposition. It will

be a matter of time before the numbers change and the members of the Left have the ascendancy. That is ALP politics in New South Wales.

Opposition members have attempted to suggest that a person who abuses the powers he is given, a person who deliberately flouts the rules and orders given to him, should not be removed from office. That is what happened in the case of the former Agent-General, and that is why the Premier moved decisively and swiftly. He did so on legal advice. As the Premier said, the legal advice that was tabled indicates clearly that the former Agent-General took up that position with a contract that said he was entitled to compensation if the contract were terminated, for whatever reason. This lot opposite are saying that they will now set a legal precedent: that no matter what the contract says, compensation should not be paid.

The Premier told the House that the Government has problems with what the umpire said: that because the former Agent-General is no longer in London, no longer has the use of his car and his chauffeur, he should get some compensation. I suppose it could be said that when Cabinet Ministers are removed from office they should be able to demand the same privileges for a breach of contract, because they are entitled to a car and a driver. That would be a nonsense. This standing order is being abused by members opposite. It was never designed to allow for this method of tabling papers. It was designed to provide for the tabling of papers relevant to the procedures and functions of the House and has nothing to do with topics that might be debated from time to time.

The Leader of the Opposition made the crazy allegation that the Government does not table all documents. There has been only one occasion on which the Government did not table all documents requested, and that was done publicly. It occurred in the last sitting week when the honourable member for Kogarah asked for the tabling of all papers associated with the 3 x 3 fuel levy. At that time documentation was controlled by the secrecy provisions of the business franchise licences legislation. The Government made it clear that because of those secrecy provisions it would seek further legal advice. That process is being followed. They are the only documents that have been withheld. Opposition members think that the Government will withhold documents in this instance. The Opposition does not need the documents. As the Premier said, the honourable member for Campbelltown already has the documents; he stole the file some time ago.

Mr Knight: On a point of order: that statement is absolutely outrageous even for the Minister. I ask him to withdraw the outrageous allegation that I have stolen the file. As you know, Mr Speaker, I rarely complain -

Mr SPEAKER: Order! The honourable member for Campbelltown will not debate the point of order.

Mr WEST: I withdraw my statement that the honourable member stole the file. He certainly has access to a file that is stolen. That is clearly the case. When the House hears what the honourable member for Campbelltown, the honourable member for Ashfield and other Opposition members have to say, mark my words it will become apparent that they clearly have full knowledge of what is contained in the documents. We have nothing to hide, because we have taken public action on behalf of the people of the State to remove from office a person who refused to comply with the orders he was given, and in today's modern terms we have said that the position of Agent-General needs to be restructured. That is being done by the Premier of this State. It is an anachronism. Every other State Parliament in Australia got rid of its agent-general many years ago. New South Wales hung on to the office much longer than I believe was necessary. Not only this side of politics has had former political representatives in London. There have been others from both sides of politics. Opposition members should be somewhat careful about accusations that are made as to how that system has operated.

This is about standards that New South Wales ought to set. If persons who hold a public office, whether it be Agent-General, Cabinet Minister or any senior public servant, do not meet the required standards, they should be removed from office. That is the standard the Government is setting. This motion is not about the former Agent-General; it has nothing to do with Neil Pickard. It is about Bob Carr, the leader of the Labor

Party, trying to defend his position. Who else will line up for the position of Leader of the Opposition? I will not tell honourable members about the discussion I had yesterday with the honourable member for Broken Hill about who might be a candidate for the leadership of the Labor Party. Soon there will not be anyone left to vote because all Opposition members will be lining up as candidates for leadership. Honourable members opposite are discouraged and disappointed because they are leaderless. The speech given by the Leader of the Opposition was without substance.

It is interesting that the Labor Party has woken up to itself. The Government first tabled the documents under Standing Order 57, which explicitly provides that papers are available only in the Clerk's office and may only be read by and be made available to members of Parliament. Clearly honourable members opposite do not have the intelligence or the ability to read those documents, so they have now changed the motion to ensure that the documents are produced so that others can read them. The motion states that these documents are to be produced by the rising of the House tonight. The last time this was done the Government was tolerant. We adjourned the House at a reasonable hour and adhered to an agreement with the Opposition to have the papers tabled the next day. That was a Thursday night following a late Wednesday sitting night. Officers of the Roads and Traffic Authority worked all night to photocopy the documents so that they might be produced in accordance with the direction of the House. The Parliament is not being fair or reasonable to employees of the Government and the Parliament in setting those time constraints. This House will sit tonight until the papers are ready and available for tabling.

Mr WHELAN (Ashfield) [3.43]: The Pickard matter has been referred to in many debates in this Parliament. Today the Premier tabled a document from the Solicitor General dated 2 May 1994 and that document simply states that there are no appeal rights under an arbitration. The Government has failed to come to grips with why Neil Pickard had a watertight agreement totally in his favour. Why did Neil Pickard have advantages over the State that would enable him, on termination of his agreement, to receive this massive payout? And it is a massive payout; even the Premier has said so. Everyone admits that this is a massive payment, and that it is totally out of kilter.

The reason for the massive payout is that at the last electoral redistribution a deal was done with Neil Pickard to abolish the seat of Hornsby so that Greiner could have a seat in the Parliament. The quid pro quo was that the honourable member for Hornsby went to London on a golden triangle and a golden handshake, paid for by taxpayers. Pickard was not content with the huge largess of office, the residence, salary, lurks and perks. He was able to extract from the Government - because a seat was required for Greiner - all the promises that have led to this disgrace in the State's history; a one-way contract against the people of New South Wales and all for Neil Pickard.

The Opposition wants those papers because it wants to confirm its suspicions about the papers and information it is receiving from truthful public servants about this issue. A salacious attack about some stolen document was made on the honourable member for Campbelltown. If people give you documents they are not stolen. That is what Government members must understand. When in opposition coalition members were using such documents. When did a gift become a stolen item? This is the greatest act of contractual disaster a State has ever entered into. The former member for Hornsby was given a blank cheque on his surrender and disentitlement as a result of the contract he entered into. If one has doubts about how serious and open ended the contract is, one should read the report on page 5 from Mr Humphry.

Mr West: From which file is this being quoted?

Mr WHELAN: This is from the final arbitrator's award decision released recently. An example might be that he needed additional suits of clothing of some sort that would possibly involve some entertainment. Mr Humphry said:

> If he, Pickard, was walking down the street and ran into someone and they decided to have a beer together, he would probably put his hand in his pocket.

Guess what the arbitrator said? The arbitrator and the contract said that the State should pay for him to have a beer. That is the ridiculous part of the contract. How can the Government purport to be a great economic manager when it gave Pickard a blank cheque, told him he can have everything, lined him up to sack him deliberately, and took him out of the preselection race on the promise to give Greiner a seat? It is no wonder the public is cynical. I want the correspondence, the brief, all the information that Greiner had, all the deals that were done and the paperwork that went into this shoddy deal that resulted in New South Wales taxpayers having to pay $1.5 million.

Mr West: You have all that in the file that you have already.

Mr WHELAN: We have not. I want the brief that went to Brett Walker. I want the advice and the brief that went to the Solicitor General. This brief of the Solicitor General only states that there are no rights of appeal under arbitration. I could have told you that and charged you nothing.

Mr West: There are two reports there.

Mr WHELAN: The other report has already been tabled and the report is dated October 1992. That report states that you cannot rescind the contract. Honourable members opposite should read the first clause. [*Time expired*.]

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Mr KNIGHT (Campbelltown) [3.48]: What an interesting and fulsome response from the Government! The Premier tabled a few scraps of paper that amount to only a small percentage of the documentation sought, and bolted out of the Chamber before the motion is moved. The Minister for Energy spoke but did not defend the Government. All he did was make a scurrilous attack on the mover of the motion, the Leader of the Opposition - impugning his motive - and on me, even before I had the chance to speak. That is the sum of the Government's case. Where is the next speaker the Government is entitled to? Is it the Minister for Community Services? No, he sits there mute. Is it the Government Whip? No, he sits behind the Minister, hiding. No Government member has a single thing to say to defend the Government's position.

One should consider the record of the Labor Party compared with that of the Government in relation to the Pickard affair. Look at my record. I raised the wrongful expenditure and called for the Auditor-General's investigation. The Auditor-General validated the matters I had raised and raised even more. When the question of arbitration came up I said, "Don't go to arbitration. Call him back." That is what should have happened. The hands of the Leader of the Opposition on this matter are so clean that before the last State election he ran to the people of New South Wales on the policy of abolishing the position of Agent-General, long before John Fahey had the idea to abolish the position in a half-hearted way. Even before Neil Pickard was appointed Bob Carr said to the people of New South Wales and to the electorate, "It is the position of the Labor Party to abolish the position of Agent-General". The Labor Party, and Bob Carr, often opposed the appointment of Neil Pickard.

Bob Carr demanded the recall of Neil Pickard. He said there should be no arbitration and that special legislation should be passed if necessary. He indicated that if the Government took such a principled stand the Opposition would support it in the Parliament on that issue. Our hands are perfectly clean on this matter. They are so clean that the allegations made both by the Premier before he flitted out of the House and by the Minister for Energy about so-called stolen files are also spurious. Let me set the record straight. First, it is significant that the Minister for Energy was forced to withdraw his unsubstantiated allegations that I had anything to do with stealing a file. The Minister should ask his colleague Peter Collins about what happened to the file. He could not find the file, he could not produce the file, and he called in the police.

First, at no stage did the police ever establish that the file was stolen. Second, at no stage, despite the entreaties of Government members, did the police ever contact me to ask me did I have the file. The simple reality is that I do not have the file, I have never had the file, and I have never seen the file. But I damn sure

expect to see the file or a copy of it tabled tonight if this motion is carried. The excuse offered would have to be the worst excuse ever from a government about not tabling documents: "Aw, your Honour, someone stole it first", "I lost it on the way to the court", "The dog ate my homework", or "The rats ate the books". It is a pathetic excuse. The Opposition wants to see where the file is, and wants to see it tabled tonight.

Let me contrast the Premier's behaviour in all this. The Premier sat in Cabinet and was part of the Cabinet decision that appointed Neil Pickard to London. He was the person who, when he tried to make a big fellow of himself when he first became Premier by recalling Neil Pickard, gave him twice the notice required under the contract. He was the person who did nothing after 1 September 1992 about wrongful expenditures that had come to light publicly. He did nothing about it privately and he did nothing about it publicly. It was only when media pressure got too much for the Premier, it was only when the heat got too hot in the kitchen, that he panicked. He panicked and sacked the bloke in the wrong manner. One of the scraps of paper that were tabled today - the advice from the Deputy Crown Solicitor at the time - told the Premier that if he went about sacking Neil Pickard in the way the Premier had planned, the State would be liable for compensation. The document did not tell him not to sack him. The document did not say there were not ways to get rid of him appropriately without opening the State to liability - but not to bungle it the way John Fahey did. [*Time expired*.]

Mr McMANUS (Bulli) [3.53]: What a bunch of gutless wimps there is on the Government side. The fourth Opposition member to speak to the motion has denigrated the Government for its actions in this matter, yet not one Government member, from the backbench to the frontbench, has had the intestinal fortitude -

Mr Longley: On a point of order: it has been very interesting listening to all the highly eloquent speeches by members of the Opposition who are trying to defend their preselection, but the reality is that the motion is about production of documents.

Mr McManus: On the point of order: I have been endorsed by my party. I am not on my feet because of a preselection matter.

Mr SPEAKER: Order! I am not sure whether that statement by the honourable member goes to the point of order or to a personal explanation. I uphold the point of order made by the Minister for Community Services. Debate has strayed far beyond the leave of the motion. However, it was within the province of Government members to take a point of order much earlier. They chose not to. Debate has continued and has been contributed to in this vein by the Minister for Energy and Minister for Local Government and Co-operatives. Therefore, I do not think I am in a position at this late stage in the debate to constrain debate too much. But I draw to the attention of the honourable member for Bulli that the motion calls on the Government to produce papers. Perhaps he might show the lead to other members by addressing the leave of the motion.

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Mr McMANUS: The embarrassment and concern being experienced by National Party members in this House on this matter does not surprise me. They well recollect Davis Hughes back in 1973 - the Agent-General appointed by the Government of the day, by Askin - who ended up being a criminal. He was fined and charged on customs matters. That is why the Minister is so nervous about this whole matter.

Mr SPEAKER: Order! A point of order was taken and I ruled on it. In doing so I refused to limit how far the debate might range. I observed the debate had ranged over matters relating to the immediate former Agent-General and as that had been tolerated by the Government I was prepared to tolerate it on both sides. I do not intend to allow the debate to be widened to the question of the merits or demerits of Agents-General in past eras. Therefore, I rule such as to be outside the leave of the motion. The honourable member for Bulli should return to the leave of the motion.

Mr McMANUS: I revert to the concerns of Mr Pickard and the actions of the Government which have placed it and this State in such a position. The majority of members of this House are screaming for the Government to supply funding for proper health services, particularly in the Illawarra. Yet the Government has

categorically -

Mr West: On a point of order: I did not in any of my remarks make any reference to health in the Illawarra or anywhere else in this State. It is clear that the honourable member is going to traverse all the areas in the Bulli electorate that he would like the Government to spend money on rather than spend it on proper legal arbitration. He is ignoring Mr Speaker's previous ruling.

Mr SPEAKER: Order! The honourable member for Bulli has drawn the issue of the leave of the motion on himself and must now be constrained under my ruling to speak to the leave of the motion. That leave does not cover the way in which funds may be spent. The motion is about production of papers.

Mr McMANUS: I was drawing an analogy or comparison about the concerns of other members in this House. I am quite prepared to do what the Minister says. I am quite prepared to sit all night until the Government and this Minister provide the information that the people of New South Wales need, not what the Minister determines the Opposition needs. The people of New South Wales are crying out for proper information about what went on behind Cabinet doors. It is no good the Minister saying he will wait until midnight or later. We will stay in this House with the Minister until he provides the information that the people of New South Wales want. We will sit until tomorrow if we have to. This is a damning document. [*Time expired*.]

Mr CARR (Maroubra - Leader of the Opposition) [3.58], in reply: The Premier passed two scraps of paper across the table as his response to the motion, then he fled from the House to reach his smelling salts or whatever. I note with interest that the *Sun-Herald* is quoting doctors telling the Premier to slow down. Tell this Government to slow down? The mind boggles. The Government is doing nothing as it is. It is a do-nothing administration led by a do-nothing Premier, yet we are told that the prescription is for him to slow down. The Minister for Energy claimed that the file on this matter was stolen. The file got out, I am told, under freedom of information legislation. The Minister may think that is theft. There is only one thief in this matter, and that is the former Agent-General, who has now been enriched by the incompetence of the Premier to the extent of $400,000 plus $600,000 given to the lawyers in this case. No wonder the people of this State are scandalised and outraged by the Premier's conduct.

The desperate Premier is not here to defend his conduct, to speak in this debate, or to defend the way in which he bungled this affair and left the people of New South Wales open to this huge unjustifiable compensation payment. The first document the Premier threw across absolutely sustains the Opposition case in seeking all the documentation, which is what this motion is all about. The documentation released is the Crown Solicitor's advice dated 26 October 1992, the one referred to during the private arbitration. Here, absolutely clear in black and white, the Crown Solicitor is saying to the Premier, "You cannot sack this guy in the way you want to sack him. You just cannot do it". There was the advice the Crown Solicitor gave the Premier. When this motion is carried - if the Government is honest about it, and that is a leap of faith - we will find that more documentation will be released to show what advice was given at an earlier date.

The advice here, in black and white, is that the Premier would not be able to approach the sacking of the Agent-General in the way he wanted. He simply would not be able to do it. That is what the advice is. The Crown Solicitor was asked the question by the Premier, "Can Mr Pickard's contract be terminated immediately because of his failure to comply with a direction from the Minister?" The answer is, "In my view, the answer to the question is no". That is from the Crown Solicitor. That is the legal advice. Faced with that legal advice the Premier persisted in his cause of action, thus leaving the taxpayers of this State open to the liability that has been incurred. No wonder they cannot bowl up anyone to defend the Government. No wonder the Premier will not speak in this debate to defend his own action.

No wonder an outraged member for South Coast is forced to draw attention to the hospital needs in his electorate and how $1.5 million would have gone to meeting the needs of legitimate State government services in a region that suffered deeply under this Government. Like the song sung by Shirley Bassey, it is Fahey Big Spender, the money not going to needs and services required in New South Wales, but being squandered on

consultants and office fitouts. Here, most objectionable of all, is this payment to a man who is loathed by the people of this State, and I guess
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loathed by the Government's backbench as well. Government members ought to loathe him more deeply than anyone because they nurtured him and know him better than anyone. The Opposition is saying to the Government, in this resolution: produce the documents, every last one of them. Do not be crafty about this, as you people have been crafty in the past - slipping little pages out, sticking them away in the safes. We want every last document, and we are on your trail if you fail to produce them in line with the resolution of this House.

Motion agreed to.

CHILD SEXUAL ABUSE

Matter of Public Importance

Mr NEWMAN (Cabramatta) [4.3]: I move:

That this House notes as a matter of public importance the need for further resourcing both the Department of Community Services and the Police Department to fight the incidences of child sexual abuse.

It is appropriate in this the United Nations International Year of the Family that this House deals with a motion of this kind, not only for that reason but also because there is a great deal of public awareness about child sexual abuse. I note the Minister for Community Services is in the chair and I welcome his involvement in this important debate. I hope that the Minister will divulge to this House the number of referrals that his department has had on this question and the number of convictions that have occurred with respect to this type of referral.

The reason I have brought this motion before the House is quite simply that the system is failing to process the referrals to the Department of Community Services and to the Police Department for the action necessary to be taken against the low life in this community that is committing these types of offences. I am sure honourable members from both sides of this House find it objectionable that some people in the community are involved in these sorts of actions. To give an indication, statistics in the northwest police region department of child mistreatment have revealed a 51 per cent increase in referrals to that particular centre. In 1993 they had 1,300 cases referred to them, to be managed by a staff of 11 officers. That particular police section has had a reduction in staff this year; coupled with absenteeism of police, the staff now stands at only five officers. It is disgraceful that the conviction rate for child sexual abuse in the northwest police region stands at something like 10 per cent of the overall referrals, due in the main to parents not wanting children to face the courtroom and other factors.

This motion should evoke the extreme concern of the Government and indeed every honourable member of this House. Let me give more information to the Minister. The police child mistreatment unit at Parramatta services a number of local government areas - Blacktown, City, Auburn, Penrith, Parramatta, Fairfield - a huge population. In 1992 that unit had 660 referrals and those referrals come through the Minister's department. Due to Operation Paradox - and I compliment the people involved in that - an additional 120 referrals came through, or 780 altogether. In 1993 we had 1,300 referrals, a shocking number. It is a matter of extreme concern. I am sure it is of concern to the Minister for Police and Minister for Emergency Services, who has just come into the Chamber, to be told that the child mistreatment unit at Parramatta is supposed to have 11 officers but is operating with only five police officers at the moment. That should have the attention of the Minister and the Police Commissioner and something should be done about that fairly quickly. In fact, I suggest to the Minister for Police that that particular contingent should have around 20 officers. The number of hours of police time involved in investigations of this nature is very large.

I am pleased that many police have undergone the initial response course for this type of allegation, and

that we have some senior police who have been involved in the investigation management course for this type of crime referral. Police are under pressure and their workloads are heavy. I am concerned that these type of statistics also appear in other police divisions that are not as well resourced as Parramatta. I instance the southwest region, which has only two co-ordinating officers, so that referrals have got to go out to general police, who have their hands full. I appeal to both Ministers to get on with the joint scheme, which was supposed to be introduced a month ago, under which police and the Department of Community Services work together in the initial interview for these types of referrals. It is important that that scheme sails ahead and is given the resources, human and otherwise, that it needs. I was told only a week ago that that was not active.

It concerns me, and should concern every member of this House, that there is only a 10 per cent conviction rate for all allegations and referrals that are dealt with by the department. The Minister for Community Services should look carefully at the resources available in the many offices of his department throughout New South Wales. This matter came to my attention after the closure of the Edensor Park Child Care Centre in Fairfield. That centre is still closed. I wrote to the Minister some time ago seeking his urgent attention regarding that centre. I asked the Minister to look at the history of the centre and at allegations concerning child abuse at that centre. I also asked the Minister to consider why a condition of no entry was stipulated with regard to Mr Paredes, who was the proprietor of that centre.

The circumstances with regard to the centre sparked in my mind the overall concern that I am expressing to this House about the Children (Care and Protection) Act and the need to review that Act. If the Parliament received accurate statistics from the Minister for Community Services and the Minister for Police, it would be most concerned about what is happening with many of the referrals and allegations. I am extremely concerned that in about 25 per cent of allegations parents do not want to go ahead and they withdraw charges because of the complexity of the

system and what they consider would be a strain on the child. The Children (Care and Protection) Act needs to be reviewed to make it more user friendly, to ensure that those allegations and referrals are dealt with and convictions are achieved. Public awareness has increased, hence referrals have increased. However, sadly, only 10 per cent convictions are being achieved. That is not good enough.

Mr LONGLEY (Pittwater - Minister for Community Services, Minister for Aboriginal Affairs, and Minister for the Ageing) [4.13]: Like all honourable members in this House, I share a deep loathing of child abuse and exploitation. The protection of children is a matter that this Government takes extremely seriously. Child protection is a matter of concern for the entire community. During the history of this Parliament and through the terms of successive coalition and Labor governments, there has been a bipartisan commitment to combat child abuse and to respond to it in a humane and effective way. The phenomenon of child abuse is too important and too sensitive to be cheaply politicised as the Labor Party is doing.

Let us discuss child protection in this House, but in a way that seeks to advance the community's response to this issue. Child protection should be above political opportunism. The Labor Opposition is coming dangerously close to blurring the lines between public responsibility and self-serving sensationalism. There is no panacea for the complex phenomenon of child abuse. Experts in the field commonly speak of the need for systematic refinement of efforts and innovation in response to the problem. There is a need for adequate resourcing, as is occurring in New South Wales, but the problem of child abuse requires far more than the constant injection of new resources. No government has done more than the present New South Wales Government to provide practical and effective advances in the fight against child abuse.

I and my colleagues the Minister for Police and the Minister for Health believe there has never been better professionalism and co-ordination between our agencies. The Department of Community Services has brought to New South Wales as director-general one of Australia's leading child protection experts, Mr Des Semple. This financial year the department has committed a record allocation of $38 million for child protection. This includes the creation of 44 new positions to investigate and respond to child abuse in this State. There has been an increase of approximately 40 per cent in the child protection budget since this Government has been in office. The Government has initiated a $1.8 million pilot project to work intensively with families at risk. This

preventive program, the intensive family based service, is at the cutting edge of preventive strategy in Australia. This service is now up and running at Campbelltown. As Minister I have particularly focused on prevention - trying to prevent abuse and trying to assist families before breakdown occurs. In addition to the intensive family based service a $1.8 million enhancement was allocated in 1993-94 to services for families with young children or adolescents. This initial $1.8 million enhancement will be followed by recurrent funding of $1.2 million.

This enhancement includes: an adolescent and parent mediation and support program, which is a pilot program to assist parents and adolescents to resolve their differences before they escalate and threaten family breakdowns; a parent information and help line - this line will be a 008 telephone service to provide information and referrals for parents who need assistance with child rearing or to contact other services in their local community; and training for workers with families, to enable non-government family workers to receive ongoing training in working with stressed families with complex needs. These services will be provided by non-government organisations as well as by local government.

The Government has designed much of its work for the United Nations International Year of the Family around supporting services and projects which strengthen family life. An amount of $2 million will be made available to assist services in the provision of support and advice for families throughout New South Wales. One element of this package, which I would like to highlight, is the establishment of a specific service in western Sydney for abused children. This service, a joint Police Service and Department of Community Services project, will provide a child-friendly environment in a cottage away from a police station or a Department of Community Services office. This service will be staffed by police or by Department of Community Services personnel who have received special training in working with abused children.

If the Minister for Police is given the opportunity to speak, he will speak further about that initiative and will respond to a number of matters raised by the honourable member for Cabramatta. I mention all of these initiatives because we need to look at the work, in its entirety, that the Government undertakes for children who have been abused. In its entirety, the coalition Government has an approach to care and protection that is above reproach. This is a community issue. It affects education, health, police, justice and many other areas. The Fahey Government has approached this area in a holistic way and, as such, is leading the way. The time has come for the Opposition to treat this issue as a bipartisan issue and to work with the Government to help abused children and their families repair and restore their lives. Let the Labor Party move away from this political opportunistic method that it is starting to adopt.

The honourable member for Cabramatta raised a number of issues, but most of them concerned statistics and the level of resources. This Government devoted more resources to child protection than the previous Labor Government ever thought of doing. Members of the Labor Party are very slow to comprehend statistics of any sort. In order to simplify the process the Government produced the numbers in graph form. We can see quite clearly from the graph that the Liberal Party-National Party

Government spent more resources on child protection than the previous Labor Government. The graph shows quite clearly the level of resources that this Liberal Party-National Party Government is devoting to child protection.

Members of the Labor Party are just trotting out another series of lies about this issue. It is about time that they started talking honestly about it. They should be sensible and tackle this issue in a bipartisan way - in the way this Government has attempted to. Members of the Labor Party should approach this issue sensibly and intelligently. There has never been better co-ordination between government agencies or a higher level of professionalism. Increasingly we are seeing contradictions and attacks within the Labor Party because of its politics and its policies. The Leader of the Opposition and the Hon. R. D. Dyer cannot even get their act together. They are now contradicting one another.

I would like to thank all those people in the Department of Community Services, the Police Service, the Department of Health, the Department of School Education and people throughout government who have

devoted their best efforts to try to solve this terrible problem in our community. Those people deserve our commendation; they should not be subjected to deceitful attacks by the Labor Party. I thank in particular the chairperson of the New South Wales Child Protection Council, Mr Adrian Ford, for his unstinting efforts. I thank Dr Ferry Grunseit, Child Advocate - a new position I created - for his tremendous efforts in ensuring that the cause of child protection is advanced in this State. This motion on a matter of public importance is merely another Labor lie. This Government is producing the best possible results in regard to child protection in this State. This Government has a proud record.

Mr J. H. MURRAY (Drummoyne) [4.23]: I am particularly disappointed with the parsimonious response of the Minister for Community Services, Minister for Aboriginal Affairs and Minister for the Ageing. It is obvious that he came into this Chamber with a speech that had been prepared by the Department of Community Services. He really does not understand the problem that people in the real world face. The best he could do was produce a three-column coloured graph, which he did not explain. That graph purported to show that this Government is doing better than any previous government. No mention was made of the amount of spending per capita. The response by the Minister typifies the Government's attitude to problems facing people, especially young people, who have been subjected to sexual assault.

I support the honourable member for Cabramatta in bringing to the attention of the House the inadequate resourcing of the Department of Community Services and the Police Service to deal with child sexual abuse in our community. As a member of Parliament I have had personal experience -

Mr Longley: On a point of order: the Opposition prevented the Minister for Police and Minister for Emergency Services from responding to these comments.

Mr SPEAKER: Order! The Minister is referring to allegations made by the honourable member for Drummoyne. In debate a member may allege virtually what he likes and it is recorded in that form, whether or not there is truth in the allegation. If it is not accurate, the matter can be taken up in another form at another time.

Mr J. H. MURRAY: I was contacted by a local resident. She came to see me out of sheer frustration, because of the inadequacy of services provided by the Police Service and the Department of Community Services. Her seven-year-old daughter had been sexually assaulted by a neighbour. Unfortunately, investigations by the police and the Department of Community Services had ground to a halt. This woman was nearly out of her mind. Each day she and her daughter were forced to pass the front door of the home of the offender, who was out on bail at that time. The offender had been committed to the Supreme Court on three counts - two of sexual intercourse and one of child sexual abuse. Eventually he pleaded guilty to four counts of indecent assault on the seven-year-old girl.

My involvement in this case is clearly imprinted on my mind. First, there was a lack of liaison between the department and the police. Second, there was a total lack of commitment by the police in these areas. I wish to draw to the attention of honourable members the role of the police in this matter. The police advised my constituent that they had reported the matter to the Department of Community Services. They told my constituent, "Do not expect any help from that department. The best thing you can do is seek some assistance from people within the community". That is why this woman went to her local member of Parliament and to her local minister of religion. One of the problems is that members of the police are mostly untrained in sexual abuse cases.

Even though a specially trained unit was working at Flemington, which is within the Drummoyne electorate, no attempt was made by that unit to become really involved in this case. Every time people in that unit wanted to talk to the young lass concerned, investigating officers at the local police station insisted that they were running the case. So we have a classic example of a breakdown within the department itself. No one was interested in the plight of this poor young lass who had to walk past the offender's house every day. A letter which I have in my file states:

> As you and your daughter live in premises near our client, our client has expressed to us the wish that he would like to assist you and your daughter change residence if you genuinely believe that your daughter may benefit from a change of residence.

[*Time expired*.]

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Mr NEWMAN (Cabramatta) [4.28], in reply: I am appalled at the response of the Minister for Community Services. I asked the Minister and the Government to produce statistics with regard to child abuse, child sexual assault and the conviction rate. All we heard from the Minister for Community Services was a prepared speech that referred to some aspects of economics but failed to deal with the matters about which I was talking. The Minister has failed all those families and all those children who have been sexually abused. He did not grasp what I was talking about. I was hoping the Minister would at least fathom the point I was making. Some of the Minister's departmental heads have quite clearly been reported in this morning's *Fairfield Advance* newspaper as saying:

> The department is undertaking a major review of the Child Care and Protection Act and the Community Welfare Act to see if the legislation can be tightened and further protection be given to children.

Well done in terms of the department's care, but what is the Minister doing? The Minister must know the statistics: that only 10 per cent of those referred are convicted. That is disgraceful.

Mr Longley: On a point of order: the honourable member is clearly referring to a matter within the portfolio of another Minister. That was the essence of my earlier point of order. Mr Speaker, I ask you to draw the honourable member's attention to the fact that he is calling on me to answer matters that come within another Minister's portfolio, which clearly I cannot do.

Mr Newman: On the point of order: the Minister knows that those referrals come through his department and the end result is that his department is responsible for those referrals.

Mr SPEAKER: Order! The Chair's difficulty is that on the one hand the honourable member for Cabramatta asserts certain departmental procedures occur, while on the other hand the Minister for Community Services interjects and indicates that they do not. The Chair, of course, is not in a position to know one way or the other. My concern at this stage is that the honourable member for Cabramatta may not be addressing matters raised in the debate to rebut the points put by him and others on his side of the debate. He may be introducing new matters, which is not within the compass of a reply. I ask him to pay particular attention to replying to the debate, which constitutes replying to the matters raised by the Minister.

Mr NEWMAN: The Minister should rightfully be concerned and be upset at the revelations that I have made to the House today. I appreciate the points he is making with respect to grants such as the $2 million for family advice concerning abused children. However, the Minister fails to understand that as a result of that good work he will receive more notifications. I am told that the Minister's department is battling to handle those notifications and is frustrated about where they go. I am hoping that the joint police program, which is supposed to be under way but is late in coming, will be able to deal with this issue more effectively.

The Minister should look carefully at where these referrals go after they go through his department. There should be an examination of the Child (Care and Protection) Act and the Community Welfare Act because obviously there are flaws in these areas. The low life that exists in the community at the moment is not being punished. It is unfortunate that the children who are being abused cannot defend themselves in an adult legal system. I appeal to the Minister to also look at the Edensor Park Child Care Centre, which is closed at present. Currently there are 25 unused spaces at that centre. [*Time expired*.]

Motion agreed to.

BUSINESS OF THE HOUSE

Bills: Suspension of Standing and Sessional Orders

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [4.34]: I move:

> That certain standing and sessional orders be suspended to allow for the following bills, notice of which was given this day for tomorrow, being brought in and proceeded with up to and including the Ministers' second reading speech:
>
> Board of Vocational Education and Training Bill
> Fire Brigades (Amendment) Bill
> Liquor (Amendment) Bill
> Registered Clubs (Amendment) Bill
> Local Government Legislation (Miscellaneous Amendments) Bill
> Rural Lands Protection (Amendment) Bill
> State Revenue Legislation (Amendment) Bill

I indicate briefly that this motion will provide all honourable members with the opportunity of perusing details included in the second readings. If the motion is carried, those items of legislation could be listed as early as Tuesday next week. I have given an undertaking to the manager of Opposition business, the honourable member for Ashfield, that the Government will not list the Liquor (Amendment) Bill until Wednesday of next week; I maintain that commitment.

Mr WHELAN (Ashfield) [4.35]: The Leader of the House was good enough to give me a list earlier, and I thank him for that. However, I thought the Minister read out something different from what is on the list. Unless I am mistaken, the list the Minister gave me contains six bills and the new list contains seven bills.

Mr West: The Liquor (Amendment) Bill is a cognate bill.

Mr WHELAN: Then I have no objection.

Motion for suspension of standing and sessional orders agreed to.

LIQUOR (AMENDMENT) BILL

REGISTERED CLUBS (AMENDMENT) BILL

Bills introduced and read a first time.

Second Reading

Mrs COHEN (Badgerys Creek - Chief Secretary, and Minister for Administrative Services) [4.37]: I move:

> That these bills be now read a second time.

The Liquor Act, as it stands, stops a few exceptional restaurants in New South Wales from serving alcohol, even though there is a toilet in the immediate proximity. The Liquor Act forces a few hotels in Kings Cross to eject patrons at midnight on Sunday, even though clubs and restaurants nearby may remain open. The Registered Clubs Act imposes an administrative burden on registered clubs by requiring of them separate applications for

every function to be held in their function room, no matter how predictable or repetitive these functions may be. The Liquor Act makes it impossible for a remote motel to serve alcoholic refreshments to dry, hot and weary guests, forcing those guests to bring liquor with them or travel to a hotel or liquor store when they are tired and wanting to relax.

Under this Act, the holder of a wine licence who may have the premises destroyed by fire, cyclone or earthquake may as well tear up the licence. The Act does not allow the premises to be rebuilt elsewhere in the neighbourhood. These are silly provisions of the current legislation, which are among a number of restrictions which the relevant peak bodies in the liquor industry have encouraged me to remove. Members will notice that each of the restrictions which I have mentioned primarily affects just one sector of the liquor and registered clubs industries. Removal of each restriction will generally benefit one sector of the industry more than any other. I am pleased to advise that in a spirit of co-operation many of the industry sectors have accepted that there will be benefits to the whole community, and to the whole industry, from this balanced package.

The bills now before the House include commonsense changes to the liquor and clubs laws in this State. The changes have benefits for the community and the liquor and club industries. Many of the amendments were developed from proposals brought forward by sectors of the liquor industry. They are now placed before the House as a balanced package - one in which there are benefits for each of the major liquor industry sectors. This is an important point. The package is presented as a complete product - changing or deleting parts will result in something that is not balanced, and does not offer real benefits to a whole range of liquor industry sectors. Changes will dilute the benefits which will flow to the community. I would like honourable members to bear that in mind when considering the bills.

The bills have been the subject of substantial consultation between the Government and the liquor and club industry sectors, as well as between various government agencies. That consultation has been valuable, and through it the bills have been fine tuned. This Government understands the concerns that arise with changes to the liquor laws, and I believe the bills represent a sensible response to those concerns. This Government is not about deregulation of the liquor industry as some have suggested - that would not be accepted by the public or the industry.

The Government's program is about sensible development of the liquor laws that balances the needs of the public and the industry for the overall benefit of this State. But let there be no misreading of that - if the balance is to tilt one way, it will always be to the public interest. I will now deal with the bills and will speak first to amendments that are exclusive to the Liquor (Amendment) Bill. The bill introduces a new category of liquor licence for motels that authorises the sale of liquor for consumption by guests in their rooms. Presently, motels can be licensed, but only as an endorsement on a restaurant licence, and then they must have a 50-seat restaurant and a minimum of 15 bedrooms. Smaller motels, especially those in the country, cannot serve liquor to their guests as they do not meet those requirements.

The new motel licence will enable those motels to apply for a licence to serve liquor to their guests. This will be a limited form of licence - allowing liquor to be sold in small quantities to motel guests only. Motels will not be able to serve the public generally or operate public bars. Take-away sales will be prohibited. The bill imposes strict conditions to emphasise the limited nature of this licence. Those conditions include a limit on sales to two litres per guest per day, all liquor is to be sold in the motel reception area and consumed in the guest's motel unit, and moteliers are to purchase their liquor from an hotel or retail off-licence. This last condition is expected to assist some local hotels and bottle shops. A fixed annual fee of $100 will be payable - rather than one based on a percentage of the value of liquor - because the percentage fee will already have been paid by the hotel or retail off-licence from which the liquor is purchased.

Provisions in the liquor laws that cover the conduct of licensed premises and restrict under-age drinking will apply to motel licences. The bill also alters the caterer's licence provisions of the Liquor Act so that a caterer will not be required to operate a permanent function centre in order to obtain a liquor licence. At present it is a requirement that a caterer in order to hold a caterer's licence have a function room with at least 50 seats and minimum sanitary facilities. Caterers are then authorised to sell liquor in that function room or on

any other premises on which the licensee provides catering services, whether or not occupied or controlled by the licensee. The bill will remove this function room requirement for caterers' licences. Instead, caterers will be required to have a commercial kitchen that meets standards set by the Liquor Administration Board.

As the primary focus of a catering business is centred upon the preparation of food, it is far more appropriate to require a licensed caterer to have a commercial kitchen of a certain standard than to specify the number of people who can be seated in a function room. I would envisage that the standards that will be set by the board will be high so as to complement other requirements that must be met by an applicant for a caterer's licence. Those requirements will mean that applicants will have to satisfy the Licensing Court that their principal business is providing catering services. A similar requirement will continue as a condition on the use of a caterer's licence, unless the Liquor Administration Board otherwise approves.

Applicants will also have to possess the skills, qualifications and experience, or have undergone such training, as may be prescribed in the regulation. The prescribed standards will be developed in full consultation with the industry. These requirements, along with existing control provisions of the Liquor Act, make it clear that a caterer's licence will be granted for bona fide caterers only - not for those operating ice cream vans, portable roasts, and the like. None of these could be said to operate commercial kitchens. A commercial kitchen must be a substantial facility - it must be capable of preparing and cooking meals in substantial quantities for serving at one sitting. The kitchen must be capable of storing substantial quantities of food in hygienic, temperature-controlled facilities. Preparation, cleaning, and waste disposal must be commensurate with a significant, commercially viable operation.

Consequential amendments are also being made to various provisions of the Liquor Act to ensure that control provisions operate wherever a caterer sells liquor. At the same time, some sections have been amended to exclude private domestic premises where it would not be appropriate for those sections to operate in a private home. For example, the powers of entry available to police officers and special inspectors under the Liquor Act will not apply to private homes. Also, it will not be an offence to supply liquor to a minor in a private home during a catered function. In most respects what people do in their own homes is their own business and should not be subjected to control by the State.

As another innovation the bill also provides for the grant of any type of liquor licence to a body corporate. At present only a brewer's licence can be granted to a corporation. Corporations that hold liquor licences will be required to appoint a manager who will manage and supervise the conduct of the licensed premises. Those managers will have to be approved by the Licensing Court. In order to be approved they will have to meet fit and proper tests, just like any other licensee. Managers will then be responsible in the same way as licensees for the conduct of the business. The body corporate licensee will also be responsible for any contravention by the manager unless able to establish that the licensee did not knowingly permit the contravention by the manager, and maintained control over and supervision of the manager. Other provisions of the bill will ensure that adequate controls over licensed premises are maintained. The amendments will allow action to be taken against individuals - whether persons in positions of authority in a body corporate or approved managers - where necessary.

Other amendments proposed in the bill will enable a restaurant to obtain a liquor licence when its sanitary facilities are located in immediate proximity to the proposed licensed premises. At present the Liquor Act provides that an on-licence relating to a restaurant cannot be granted unless there are appropriate sanitary facilities within the proposed licensed premises. It is clear that if local government approval is required to operate a restaurant, that approval must still be obtained. Compliance with all of the sanitary facility requirements of the local council will be but one part of the process of obtaining a restaurant liquor licence. However, honourable members can imagine the frustration of a restaurateur who has complied with the local council requirements only to have an application for a liquor licence refused by the Licensing Court because the sanitary facilities are not located in the proposed licensed area of the restaurant. Instead, they may be located immediately adjacent to but not inside the restaurant. The bill makes amendments to assist restaurateurs in that

type of situation.

Under the new provisions a liquor licence may be granted for a restaurant when sanitary facilities are located in immediate proximity to the proposed licensed area instead of within it. Because the standard of sanitary facilities in licensed restaurants is important, a number of controls will also be introduced to ensure that those standards are maintained. The controls will include a requirement that special circumstances prohibit the facilities from being located within the proposed licensed area. The facilities will have to be located in the immediate proximity, be convenient, safe and accessible to patrons. They must not be available to other persons. There must also be satisfactory arrangements for cleaning, and the liquor licence must be required for tourism or other special needs. Licensees will be required to ensure that the facilities are maintained in a sanitary condition, and properly supplied, and police officers and liquor inspectors will have powers of entry in respect of the facilities.

Finally, regulations may be made with respect to the control and cleanliness of, and access to, the sanitary facilities - whether located within or in immediate proximity to the licensed restaurant. I wish to make it clear that these amendments are not intended to apply to every cafe and restaurant without toilets, and will certainly not allow restaurants in shopping centres to be licensed unless they can comply with the strict requirements I have just detailed. The suggestions that have been made that scores of cafes without toilets will be licensed is simply not true - that is quite obvious from simply reading the bill. The bill also introduces further controls over under-age drinking, while making an

existing law in this area more sensible. Under amendments contained in the bill minors will not be permitted to consume liquor in a BYO restaurant, although there will be a defence of parental consent. At the same time, under-age drinking laws are being extended to cover the serving of liquor to minors. The bill also introduces changes to hotel trading practices on Good Friday, under which amendments will permit liquor to be served for consumption anywhere on hotel premises, rather than in a dining-room with a meal, as is required at present.

Honourable members should note that the present hotel trading hours on Good Friday of midday to 10 p.m. will not be extended. The bill contains another benefit for hotels in the major tourism precincts of Sydney. Hotels in the city of Sydney local government area and the locality of Kings Cross will be able to apply to trade between midnight Sunday and 5 a.m. Monday mornings. Currently no hotel can trade during these hours. Strict controls over this extension of hotel trading are included in the bill. Applicants will have to satisfy the Licensing Court that the extension of trading will not disturb the quiet and good order of the neighbourhood and is required to meet tourism needs.

The bill inserts a schedule containing a description of the streets that form the boundaries of the area that constitutes Kings Cross for the purposes of the amendment. That area is limited to the commercial precincts of Kings Cross. Since the introduction of the current Liquor Act in 1983 there have been no further wine licences granted in New South Wales. This category of licence, which has existed for many years, has declined in numbers, so that today there are fewer than 60 licences left. That is a legacy of the blow struck by the Labor Party against these small businesses in 1983 - a blow against a small, weak section of the industry.

Most of those that have survived have, in recent times, suffered substantial loss of trade. Wine licensees indicate that, in part at least, concessions given to other licensed premises such as hotels and restaurants have had a significant impact on their businesses. With that in mind, the bill provides this small group of licensees with a reasonable concession in that most of them will be able to apply to sell beer for consumption on their premises. At present, those licensees may sell only wine. In order to be able to sell beer, a wine licensee will have to satisfy the Licensing Court that his or her licence is currently being exercised, and pay a fee of up to $50,000. This fee recognises the potential value of this concession to wine licensees. However, the actual fee payable in each case will be determined by the Liquor Administration Board, having regard to the circumstances of the application.

To provide further assistance to wine licensees, in certain circumstances they will also be able to apply to remove their licence to a different location in the same neighbourhood. This will overcome problems that have

arisen when a wine licensee's premises have become unusable or the licensee is forced to vacate. A savings provision will allow - when there are compelling reasons - wine licences that have been dormant for some time to be transferred to other premises. I understand that will assist at least one particular licensee in Newcastle whose premises were damaged in the 1989 earthquake. A number of minor amendments to the liquor laws are also contained in the bill. They clarify and update provisions governing the types of functions for which a liquor licence can be issued, the calculation of licence fees for wholesalers, brewers and vignerons, the records that must be submitted by an auctioneer, the issue of liquor licences by the court, the calculation of duty on gaming devices, and other administrative matters.

I will now turn to an amendment that relates to club functions contained in the Registered Clubs (Amendment) Bill, which is cognate with the Liquor (Amendment) Bill. That amendment will streamline the process whereby functions conducted in clubs are approved by the Licensing Court. At present, when it is desired to conduct functions for non-members in a club the club must apply to the Licensing Court for each function. While there are many applications made each year, very few of those applications are ever refused. To simplify this process and save on court time and resources, the Registered Clubs (Amendment) Bill will introduce a continuing club functions authority to cover all functions held at a club. The authority will be able to impose limits on the number of functions that may be held in any particular period.

Existing restrictions on the types of functions that may be held and on the availability of liquor and poker machines in function areas remain. In fact, no changes are being made to the where, who and when of club functions - only to the administrative process for their approval. Other control measures introduced by the bill will require that each function be approved by the club's governing body and that a record of that approval and of the details of each function be kept for regulatory purposes. At the same time consequential amendments are made to various provisions to enable the cancellation, suspension or variation of a functions authority in appropriate circumstances.

This amendment will not allow clubs to conduct an open bar with unrestricted access for the public - clubs do not exist for that reason. What it does is streamline an approval process, resulting in savings for those administering the law. I wish to assure honourable members that any club that abuses this provision can expect to be subject to appropriate disciplinary action. The Registered Clubs (Amendment) Bill also makes other minor amendments that will assist in the administration of the club laws. A number of minor amendments are being made simultaneously by both bills to the liquor and clubs laws. I will briefly turn to those amendments now. One of those amendments consists of an important concession for country hotels and clubs. That concession will exempt the cost of freight from breweries to country depots from the price of beer for licence fee calculation purposes.

This will result in savings for many country hotels and clubs as they will no longer have to pay licence fees on those freight charges. However, specific anti-avoidance measures are being introduced to ensure that this concession is not abused. Another amendment contained in both bills relates to the provisions governing approval of the names of licensed premises and clubs. This amendment will clarify the powers of the Licensing Court and Liquor Administration Board in approving names, and also allow for objectionable, inappropriate and misleading names to be prohibited, including the use of the term "casino". Both bills will introduce an amended infringement notice scheme that will apply to a range of offences. At present, penalty notices apply only to offences involving under-age drinking.

The bills also clarify the power of the Liquor Administration Board to require that complaints about disturbance to the quiet and good order of the neighbourhood be made by statutory declaration. They require the Director of Liquor and Gaming to complete investigations into an application within six months after the application is lodged, and provide that refunds of certain licence and registration fees may be made if a liquor licence or club certificate is surrendered. Finally, both bills make further amendments of a statute law nature.

These bills provide some much-needed assistance to sectors of the liquor and hospitality industries and

have overall benefits for those industries as a whole. The bills are supported by most sectors of the liquor and club industries. Most of the proposals in the bills were put forward by industry sectors and have been developed in consultation with the industry over a two-year period. The time has come to now go forward with these sensible changes to the liquor and club laws. I commend the bills.

Debate adjourned on motion by Mr Face.

STATE REVENUE LEGISLATION (AMENDMENT) BILL

Bill introduced and read a first time.

Second Reading

Mr COLLINS (Willoughby - Treasurer, and Minister for the Arts) [4.59]: I move:

That this bill be now read a second time.

This Government has an ongoing commitment to the improvement and simplification of the New South Wales tax system. The proposals outlined in this bill will achieve this objective, and a number of the proposals are the direct result of consultation and ongoing liaison with peak industry and professional bodies. The bill deals with a number of amendments relating to stamp duties, business franchise licences, health insurance levies, payroll tax, land tax and reciprocal powers. In respect of stamp duties, the bill introduces certain exemptions, closes an avoidance loophole, updates the financial institutions duty provisions, amends the marketable securities provisions in respect of the nexus for liability for off-market share transactions, allows the introduction of the clearinghouse electronic subregister system - CHESS - and makes other minor changes.

In respect of the other taxes, the bill limits the eligibility of State government bodies for certain payroll tax exemptions, clarifies certain land tax concessions and administrative provisions, strengthens delegation provisions in the Revenue Laws (Reciprocal Powers) Act, strengthens the powers of the business franchise licences appeals tribunals, relaxes the requirements of the diesel fuel exemption scheme, and provides relief from payroll tax and land tax for bushfire victims. A loophole was recently discovered whereby share transfer duty, which would normally be payable in New South Wales, could be avoided by a creative practice that involved stamping a range of documents in other States with minimal duty. The loss of revenue to New South Wales in one instance was $270,000, and it appears that this transaction was only one of a number of this nature that have occurred.

The bill provides for the strengthening of existing anti-avoidance legislation by ensuring that ad valorem duty is paid in New South Wales unless paid in another jurisdiction. The bill also ensures that, to avoid double duty, concessions from hiring arrangement duty are to apply where the transaction is liable to duty in more than one jurisdiction. The financial institutions duty provisions have been amended by the bill to exempt certain transfers of customer accounts where the transfer is outside the control of the account holder. The bill also clarifies the FID position in regard to term deposit rollovers. Under the existing legislation, different treatment of rollovers by financial institutions could mean a different tax result for investors. To clarify the position, the bill provides a specific exemption from FID for term deposit rollovers.

The bill makes provisions for the introduction of CHESS by the Australian Stock Exchange. A clearinghouse electronic subregister system for shares, known as CHESS, will be a state-of-the-art subregister system for the buying and selling of listed marketable securities. The traditional on-market share transfer document is dispensed with under this system. Consequently, the Stamp Duties Act is to be amended to take into account this technological change and impose duty on this type of transfer. All jurisdictions will amend their legislation to accommodate the introduction of CHESS, and consultation has taken place in an attempt to harmonise provisions relating to CHESS.

Furthermore, all jurisdictions have agreed that the nexus for charging stamp duty on transfers of shares for all Australian companies on non-broker CHESS transactions and other off-market transactions should be changed from the place of registration of the shares to the place of incorporation of the company. The bill makes provision to accommodate the change of nexus. The bill also provides for a number of exemptions and concessions from stamp duty in the areas of FID, refinancing of certain home

loans, trading in the underlying securities of warrants, property transfers from trustees in bankruptcy to former bankrupts, certain agreements under the Income Tax Assessment Act regarding the assignment of tax losses, capital losses and foreign tax credits, and transfers of shares from a trustee to a beneficial owner.

Over the last two decades there have been significant changes in the way in which the world does business, and these changes have placed enormous pressures on the existing stamp duties legislation. Stamp duty practitioners are finding it increasingly difficult to interpret the archaic language and construction of the legislation, and the legislation itself has been severely tested in the courts in recent years. Furthermore, a number of creative practices have evolved to avoid paying duty and these have acted to reduce the level of equity in respect of the duty. These factors have resulted in an overwhelming case for a total rewrite of the Act.

Consequently, it is proposed to progressively redraft the Stamp Duties Act over the next 18 months to more adequately reflect the modern style and structure of legislation. I might point out that this timely trend towards updated stamp duties legislation is also occurring in other States, with Queensland currently drafting new legislation. Furthermore, I am pleased to advise that Victoria, South Australia and the Australian Capital Territory have joined New South Wales in the redrafting process in order to develop legislation that is consistent across these jurisdictions so far as possible.

With regard to relief to bushfire victims, immediately following the January bushfires, payroll tax and land tax relief measures were announced to assist victims of the fires, and employers of volunteer bushfire fighters. The bill implements both measures. Employers who continue to pay employees while they work as volunteer fire fighters, and do not offset those wages against their employees' leave entitlements, will not be liable for payroll tax. The land tax relief measures will allow residents who lost their homes in the bushfires, or as a result of a fire, earthquake, storm, accident or malicious damage, up to two years to rebuild without being subject to land tax.

An owner's residence is exempt from land tax, but those whose homes were damaged or destroyed would normally be required to rebuild by the end of 1994 to continue to be eligible for the exemption in the 1995 land tax year. For those who decide to rebuild, the bill extends that period to two years, with provision for further extensions of time if building delays occur. These amendments will incur a minor cost to revenue but are a recognition of the pain and suffering wrought by the bushfires and a recognition of those employers who put the interests of their workers and the people of New South Wales before their own business needs.

In addition to relief for bushfire victims, the bill contains a number of minor amendments to the Land Tax Management Act that are of a concessional or minor administrative nature. The concessions include: an exemption for lessees who have sold and leased back the land; two valuation concessions that were inadvertently omitted when annual valuations were introduced in 1993 - these amendments will be retrospective to the 1993 tax year; and an exemption for child care centres providing day care only. This latter amendment retrospectively corrects a drafting error in a consequential amendment made when the former Child Welfare Act 1939 was replaced by the Children (Care and Protection) Act 1987.

Fringe benefits have been subject to New South Wales payroll tax since 1990 and are valued on the same basis as for Commonwealth fringe benefits tax purposes. The Commonwealth has passed amendments to almost double the value of fringe benefits for fringe benefits tax purposes with the objective of bringing the effective tax rate on benefits up to the rate payable for cash equivalents. These amendments took effect on 1 April 1994. The New South Wales Government has decided now to follow suit in increasing the value of benefits as the real values to employees do not change. The bill therefore amends the Payroll Tax Act to prevent a doubling of the payroll tax liability on fringe benefits for some employers.

New South Wales Government departments and agencies are liable for payroll tax in the same way as private sector employers, but are also eligible for exemptions as religious and public benevolent institutions and charitable bodies. Two exemptions to Government instrumentalities have been granted under these provisions. As a number of Government instrumentalities could, to varying degrees, lay claim to being public benevolent bodies, it is proposed to introduce certainty and consistency by removing the opportunity for exemption. This will significantly reduce Government administrative costs as well. Public hospitals and area health services, which are jointly funded by the Commonwealth and the State, will retain their exemptions.

The diesel fuel exemption scheme provides an exemption from licence fees on diesel purchased for off-road purposes. A consumer of off-road diesel is able to claim the exemption by presenting a permit issued by the Office of State Revenue to an unauthorised supplier at the time of purchase. Following concerns raised by the marina and boating industries, it is proposed to amend the Act to permit sales of exempt diesel to owners and operators of marine vessels without the need to present a permit, subject to certain conditions. In the case of the boating industry, the opportunities for evasion are minimal because most fuel suppliers selling to boat operators are not readily accessible to road vehicles. In addition, the penalties for selling exempt diesel to road users include cancellation of the seller's licence, which should be sufficient to minimise evasion. This measure will have no impact on revenue, but will remove unnecessary red tape and therefore reduce administrative costs for the marina and boating industries.

People who take out private health insurance are entitled to free ambulance services in New South Wales. The cost of these services is partially recovered by imposing a levy on health insurance funds of 56¢ per week per member. The levy is payable monthly, based on the number of members at the beginning of the month occurring three months prior to the month in which the levy is payable. For example, the monthly levy for May 1994 is payable on 15 May and is based on the number of members in the fund on 1 February 1994. A termination fee equivalent to the fees collected from members in the last three months of operation is payable where a fund ceases business or is taken over by another fund. This ensures that there is no avoidance of levies when a fund ceases business.

The health funds have sought abolition of the termination fee, because it requires them to set aside reserves to cover the contingency of ceasing business. The National Health Act requires registered funds to hold minimum reserves, and the termination fee increases the reserves required by the equivalent of three months of levies. Following consultations with the funds, the bill seeks to change the formula for the calculation of the levy and to remove the termination fee. The change to the formula involves using the number of members at the beginning of the month in which the levy is payable, instead of three months prior. As a result, when a fund ceases business and its members join a new fund, the new fund would be immediately liable for the levy in respect of those new members. This change will take effect on 1 July 1994. The change will have no effect on revenue from the levy.

The New South Wales Revenue Laws (Reciprocal Powers) Act is part of an Australia-wide legislative scheme which allows tax audits to be conducted in other jurisdictions by any participating jurisdiction. The New South Wales Act allows other jurisdictions to conduct investigations in New South Wales using powers specified in the New South Wales Act. The New South Wales Act also allows exchanges of information for the purpose of tax investigations. The bill seeks to simplify administrative provisions by incorporating uniform delegation provisions. The bill also seeks to remove a requirement that other jurisdictions confer similar powers and functions on New South Wales. The requirement is imprecise and is a potential source of legal challenge to investigations by taxpayers investigated under the legislation. As all jurisdictions have similar legislation the reciprocal requirement is now irrelevant.

Prior to amendments made in 1987, secrecy provisions in each of the revenue Acts expressly prevented the disclosure of confidential information in respect of the affairs of any person to a court, except when it was necessary to do so for the purposes of administering the relevant Act. The secrecy provisions were rewritten in

1987, in conjunction with the introduction of the reciprocal powers legislation, and the restriction on disclosure to a court, except for the purposes of administering a revenue law, was inadvertently omitted. The amendments of the disclosure provisions reinsert this restriction, which is an important protection for the privacy of taxpayers. The reforms contained in this bill will contribute to the Government's ongoing obligation to simplify the tax system and provide greater certainty for the taxpaying public of New South Wales. I table detailed explanations of the bill for the assistance of honourable members, and seek their incorporation into *Hansard*. I commend this bill to the House.

State Revenue Legislation (Amendment) Bill

EXPLANATION OF THE SCHEDULES OF THE BILL

SCHEDULE 1 - AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987

Extension of off-road diesel fuel scheme (Items (1)-(4))

Under the Business Franchise Licences (Petroleum Products) Act 1987 the fee for a licence to sell petroleum products is calculated according to the value of the petroleum products sold by the licensee in a particular period. However, if the Chief Commissioner grants a licensee an authority to sell diesel fuel for off-road purposes, sales of diesel fuel are not taken into account when calculating the licence fee. At present, the holder of an authority is only authorised to sell diesel fuel for off-road purposes to the holder of a permit (also granted by the Chief Commissioner). Items (1)-(4) extend this scheme to allow the holder of an authority to sell diesel fuel for use in propelling marine vessels on water to any person (whether or not that person holds a permit under the Act). The holder of an authority will be required to comply with the regulations and the conditions of the authority with respect to such sales. The proposed amendments also provide that the holder of an authority or permit or a purchaser of diesel fuel for marine purposes may be required to keep records of sales and purchases of diesel fuel.

Powers of Tribunal (Item (5))

Item (5) gives the Business Franchise Licence Fees (Petroleum Products) Appeals Tribunal power to require a person to provide information or attend a hearing in connection with the review of a licence fee assessment. It will be an offence not to comply with such a requirement. The proposed amendment also allows witnesses to be paid an allowance for attending at a hearing.

Updating of Act (Items (6)-(10))

Items (7), (8), (9) and (10) update references in the Act to the Companies (New South Wales) Code to the Corporations Law and replace references to particular sections with the equivalent section or term in the current Corporations Law. The term "corporation" is replaced by the broader term "body corporate" to make it clear that the Act applies to all bodies corporate and not merely to corporations within the meaning of the Corporations Law. Item (6) of the proposed amendments repeals and remakes section 9 for the same purposes.

SCHEDULE 2 - AMENDMENT OF BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987

Powers of Tribunal (Item (1))

Item (1) gives the Business Franchise Licence Fees (Tobacco) Appeals Tribunal power to require a person to provide information or attend a hearing in connection with the review of a licence fee assessment. It will be an offence not to comply with such a requirement. The proposed amendment also allows witnesses to be paid an allowance for attending at a hearing.

Updating of Act (Items (2)-(6))

Items (3), (4), (5) and (6) update references in the Act to the Companies (New South Wales) Code to the Corporations Law and replace references to particular sections or defined terms with the equivalent section or term in the current

Corporations Law. The term "corporation" is replaced by the broader term "body corporate" to make it clear that the Act applies to all bodies corporate and not merely to corporations within the meaning of the Corporations Law. Item (2) of the proposed amendments repeals and remakes section 9 for the same purposes.

SCHEDULE 3 - AMENDMENT OF DEBITS TAX ACT 1990

Amendments by way of statute law revision (Items (1) and (2))

The amendment in item (1) corrects a wrong cross-reference.

The amendment in item (2) recognises that the arrangement entered into between the Chief Commissioner and the Commonwealth Commissioner of Taxation for the assessment, receipt and collection of debits tax by the Commonwealth on behalf of the State was extended from 31 December 1992 to 31 December 1993 and validates anything done or purporting to be done under the arrangement during the period of its extension.

SCHEDULE 4 - AMENDMENT OF HEALTH INSURANCE LEVIES ACT 1982

Payment of monthly levy (Item (1))

Section 10 currently provides that any organisation that carries on the business of providing health benefits to contributors, in any month, will be liable for a monthly levy payable on or before the 15th day of the third month following the month on which it carried on that business (e.g. a monthly levy for June is currently payable on or before 15 September). However, if the organisation ceases to carry on that business, any monthly levy accrued, but remaining unpaid, is payable immediately on the cessation of business.

The proposed amendment to section 10 removes the 3 month delay in payment of the levy and provides instead that any organisation carrying on such a business, on the first day of any month, is required to pay the monthly levy on or before the 15th day of the same month (i.e. the levy for 1 July 1994 will be payable on or before the 15 July 1994 and so on). The provisions requiring payment of any outstanding monthly levies immediately on the date of the cessation of business are consequentially omitted.

Calculation of monthly levy (Item (2))

Section 10A sets out the formula for calculating the monthly levy. The proposed amendments to section 10A remove references to "relevant month" as a consequence of the proposed amendment to section 10. Section 10A (3), which specifies certain contributors who are not to be counted for the purposes of calculating the monthly levy, is amended to incorporate into the Act those classes of persons currently prescribed under the Health Insurance Levies Regulation 1983 (which is to be consequentially repealed).

Monthly returns (Item (3))

Section 11 is consequentially amended as a result of the proposed amendment to section 10.

Assessment of monthly levy by organisations in certain circumstances (Items (4) and (5)(a))

Section 12(1) currently permits an organisation which is liable to pay a monthly levy but is unable to determine the precise number of contributors who are permanently resident outside New South Wales (and thereby exempted for the purpose of the calculation of the levy) or any other matter (including the number of single or family contributors (or both)), to make what it considers a reasonable determination of its liability.

The proposed amendments will replace section 12(1) with section 11A which requires an organisation that is unable to determine the number of its contributors when the monthly levy is due to estimate those numbers for the purpose of paying the levy. The organisation must then inform the Chief Commissioner when it obtains the information allowing the precise monthly levy to be calculated and, on the basis on that information pay any additional levy required or apply for a refund.

Assessment of monthly levy by Chief Commissioner (Item (5)(b))

Section 12(2) is consequentially amended as a result of the proposed insertion of section 11A and the omission of section 12(1). The amendment makes it clear that the Chief Commissioner can assess the monthly levy payable by any organisation including assessments made by an organisation under proposed section 11A.

Transitional provisions (Item (6))

The transitional provisions inserted by item (6) will remove any doubt that the amendments to the Act will not affect any liability to pay a monthly levy that arose before the commencement of the amendments. Such levy will be due on or before the date it would have been due if the amendments had not been made, and it must be accompanied by the return required under section 11 as in force before the commencement of the amendments.

A provision has been included to remove any doubt that where there is an adjustment of the prescribed rate that adjustment will only affect the calculation of the monthly levy for the month in which the adjustment is made if the adjustment takes effect on the first day of that month.

SCHEDULE 5 - AMENDMENT OF LAND TAX MANAGEMENT ACT 1956

Valuing rent-controlled land (Item (1))

Section 61 of the Land Tax Management Act 1956 provides that land that the Chief Commissioner has determined is "rent-protected" is to have its land value determined by taking into account any restriction imposed by the Landlord and Tenant (Amendment) Act 1948 ("**the 1948 Act**") on the rent at which the premises or part of the premises on the land may be let. Land is rent-protected if there is a fair rent applicable to the premises or a part of the premises on the land under the 1948 Act. Currently, under section 61, the Chief Commissioner is not required to make a determination that land is rent-protected unless the owner applies for the determination and provides supporting information requested by the Chief Commissioner and the Rent Controller under the 1948 Act certifies to the Chief Commissioner that the land is rent-protected.

The Rent Controller has informed the Chief Commissioner that it is not possible to provide the certificates required. The proposed amendments therefore remove the requirement for certification by the Rent Controller and substitute a requirement that the Chief Commissioner be satisfied that the land is rent-protected on the basis of appropriate information supplied by the owner.

Valuing land leased from the Crown (Item (2))

Under section 58F of the Valuation of Land Act 1916 (which replaced section 160E of the Local Government Act 1919), the Valuer-General is required to furnish a "land rating factor" in respect of land held under certain classes of lease from the Crown. That factor is the land value of the land reduced by the amount attributable to the restrictions on the disposition or manner of use that apply to the land by reason of its being the subject of the lease concerned.

Before the repeal and re-enactment of Part 7 of the Land Tax Management Act 1956 (which includes section 54) section 54(1C) of that Act required a land rating factor, where determined under section 160E, to be taken to be the land value of the land for land tax purposes.

Item (2) of the proposed amendments preserves the substance of the old section 54(1C) by requiring a valuation of land under the Land Tax Management Act 1956 to take the restrictions on disposition and use into account if the land concerned is held under a lease referred to in section 58F of the Valuation of Land Act 1916.

Allowances for subdivision (Items (3) and (4))

Under the Valuation of Land Act 1916, certain allowances are noted on the valuation roll when land is valued (e.g. an allowance for

expenditure by the owner, occupier or lessee on improvements to the land). The Land Tax Management (Amendment) Act 1992 ("the amending Act") inserted similar provisions into the Land Tax Management Act 1956 in relation to the determination of the value of land for the purposes of that Act.

Item (4) of the proposed amendments provides for allowances in respect of subdivision similar to that provided by section 58AB of the Valuation of Land Act 1916. Those allowances were not included in the amending Act.

Item (3) of the proposed amendments makes a consequential amendment.

Liability of lessees of land owned by public authorities (Items (5)-(7))

Items (5)-(7) are intended to clarify the application of the Land Tax Management Act 1956 to statutory bodies that represent the Crown.

As there may be a differing liability under the Act for lessees of Crown land and lessees of land owned by public authorities, item (7) preserves the position existing before the amendment in relation to leases of existing lessees.

Bushfire and similar relief (Item (8))

On 28 January 1994, the Treasurer issued a Press Release stating that the residents who had lost their homes in the recent bushfires would be allowed up to 2 years to rebuild without being subject to land tax. A further extension may be granted if there has been justifiable delay. Item (8) gives effect to this commitment and extends it to apply to other similar cases, such as earthquake, storm, accident or malicious damage.

Sale and leaseback of land (Item (9))

At present, under section 26 of the Land Tax Management Act 1956, when land is sold and then leased back by the vendor, the vendor remains liable for land tax as a secondary owner. The purchaser is the primary taxpayer but the vendor is also liable to pay land tax although a deduction from the tax payable by the vendor is allowed to prevent double taxation. The effect of the present provision is to impose a land tax burden on a vendor that would not be incurred if the vendor leased similar land from someone else.

The proposed amendment enables the Chief Commissioner of Land Tax to exempt a vendor from the payment of land tax in the circumstances described if the sale has been completed and the Chief Commissioner is satisfied that the agreement for sale was made in good faith and not for the purpose of evading the payment of land tax.

Effect of land tax certificates (Item (10))

Item (10)(a) provides that the conclusive evidence afforded by a land tax certificate issued under section 47 of the Land Tax Management Act 1956 is conclusive evidence only against the Chief Commissioner of Land Tax.

Item (10)(b) is intended to clarify that a purchaser under a contract who has not entered into possession of the land is not an owner of the land and is not precluded from accepting the accuracy of a land tax certificate.

Ascertainment of land values (Item (11))

Item (11) (b) makes it clear that the Chief Commissioner may ascertain the value of a particular parcel of land even if the land came into existence in the form of that parcel (for example, as the result of a subdivision) after the valuation date.

Unutilised value allowance (Item (12))

An owner of land that is used or occupied as the site of a single dwelling house but which is zoned or otherwise designated for the purposes of industry, commerce, residential flat buildings or residential subdivision is entitled, under section 9A of the Land Tax Management Act 1956, to postponement of part of the land tax payable in respect of the land value of the land for up to 5 years.

The amount of land tax that may be postponed under section 9A is based on "unutilised value", that is, that part of the value of the land

that is attributable to the zoning or designation for industry, commerce, residential units or residential subdivision. Currently, under section 62J, land is eligible to have an unutilised value allowance ascertained if it comprises a parcel of land on which there is a single dwelling house used or occupied as such and the land is zoned or otherwise designated for the purposes of industry, commerce, residential flat buildings or residential subdivision.

The proposed amendment makes it clear that the eligibility to have an unutilised land value allowance ascertained arises only if the land is used or occupied solely as the site of a single dwelling house.

Arrangements for use of other staff (Item (13))

Item (13) omits a provision made redundant by the enactment of the Public Sector Management Act 1988.

Obsolete references (Items (14) (a)-(d) and (f) and (15))

Items (14) (other than (14) (e)) and (15) of the proposed amendments remove or update obsolete references by way of statute law revision and make consequential amendments.

Exemptions from land tax for certain child day care centres and kindergartens (Item (14)(e))

Section 10(1) (g) (ii) of the Act previously granted an exemption from land tax to a "place licensed" under Part 7 of the Child Welfare Act 1939. Such places included certain non-residential (as well as residential) child care centres. The repeal of the relevant provisions of the Child Welfare Act 1939 necessitated an amendment to section 10 (1) (g) (ii). That amendment had the unintended consequence of removing the exemption in so far as it applied to non-residential centres.

The premises on which non-residential child care is provided are not licensed under the Children (Care and Protection) Act 1987 (which replaced the repealed provisions of the Child Welfare Act 1939). Instead, the relevant licence specifies the person or body to whom it is granted, the child care service to which it relates and the person authorised by the licence to have the overall supervision of the provision of that child care service. Item (14) (e) of the proposed amendment reinstates the exemption from land tax for non-residential child care centres (so far as is possible), with effect from the date of its removal, by providing an exemption for land used or occupied solely as a site for the provision of a child care service the subject of such a licence. The proposed amendment also updates an obsolete reference.

Unoccupied land intended as residence (Item (16))

Section 10T of the Land Tax Management Act 1956 grants a concession to a new owner of land who has acquired the land with the intention that it becomes his or her principal place of residence. Intended use and occupation in this case is to be regarded as actual use and occupation so as to give effect to the concession. However, the concession is not available if the new owner already owns land which is used and occupied as the principal place of residence. One category of land (namely a flat) has been inadvertently omitted from the exceptions to this concession and item (16) remedies this omission.

SCHEDULE 6 - AMENDMENT OF PAY-ROLL TAX ACT 1971

Local Government Act 1993 consequential amendments (Items (1), (3)(b) and (6))

Items (1), (3)(b) and (6) make amendments that are consequential on the enactment of the Local Government Act 1993. Item (3) (b) amends section 10(1) (e) to specify the

kind of trading activities of a council that are exempted from pay-roll tax. Item (6) amends section 46B to ensure that a document is taken to be lodged by a county council under the new Act if it is signed by an employee authorised by that council.

Charitable Fundraising Act 1991 consequential amendments (Item (3)(i))

Item (3) (i) amends section 10 (2) to include a reference to the exemption contained in section 10 (1) (jl), which was inserted by the Charitable Fundraising Act 1991. Section 10(2) ensures that certain exemptions under section 10 (1) apply only to wages which are

paid or payable to employees in respect of the time they are engaged in charitable work. Item (3)(j) makes a consequential amendment to that section.

Clarification (Item (2))

Item (2) replaces section 6(1)(a) with a new paragraph to make it clear that payroll tax is not payable on any wages for services performed or rendered wholly in one other State during the relevant calendar month.

Bush fires (Item (3)(f))

Item (3)(f) amends section 10(1) to ensure that certain wages that are paid or payable to an employee during any period in which the employee was a volunteer bush fire fighter are not subject to pay-roll tax.

Exemptions for state government instrumentalities (Items (3)(a) and (c)-(e))

Item (3)(a) and (c)-(e) makes amendments to certain exemptions from the payment of pay-roll tax to ensure that State instrumentalities are excluded from the operation of the exemptions. Item (3)(g) and (h) makes consequential amendments to section 10 (1A) and (2).

Value of fringe benefits (Item (4))

Item (4) amends section 13A to ensure that recent changes to section 136 of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth by which the term "fringe benefits taxable amount" was replaced by the term "aggregate fringe benefits amount" are reflected in the section.

Designated group employers (Item (5))

Item (5) amends section 16I to enable the Chief Commissioner of Pay-roll Tax to accept or reject a designated group employer nominated by a group of employers for the purposes of the Act.

Transitional provisions (Items (7) and (8))

Items (7) and (8) will enable the making of savings and transitional regulations as a consequence of the amendment of the Pay-roll Tax Act 1971 and also provide that certain amendments made by the Act concerning wages that are not liable to pay-roll tax extend to wages paid or payable before the commencement of the amendments.

SCHEDULE 7 - AMENDMENT OF REVENUE LAWS (RECIPROCAL POWERS) ACT 1987

Amendment of certain definitions (Item (1)(b), (c) and (e))

Item (1)(b), (c) and (e) extends the definitions of "Commonwealth revenue officer", "New South Wales revenue officer" and "State revenue officer" to include persons engaged in the administration or execution of the revenue law concerned (currently the definitions relate to persons holding particular "offices" under the revenue law concerned).

Removal of restriction on the making of orders (Item (1)(f))

Section 3 (3) of the Act provides for the Governor-in-Council by order:

- to declare a revenue law of the Commonwealth or another State to be a recognised revenue law for the purposes of the Act; and
- to designate an office under that law to be the designated Commonwealth or State revenue office for that law; and
- to declare the holder of a New South Wales revenue office to be the relevant principal New South Wales revenue officer for that law.

Currently, section 3 (4) requires that such an order be made only if the Commonwealth or the State concerned has, or has agreed, to give reciprocal functions and powers to appropriate New South Wales officers. Item (1) (f) omits this requirement.

Delegation powers (Item (7))

Item (7) inserts new Part 4A which sets out the general delegation powers of the various officers who exercise powers and functions under the Act (currently the Act in this regard provides only for the delegation of certain specific powers and functions). Consequential amendments on the insertion of Part 4A are made by items (1) (a), (2)-(5) and (6) (a) and (b).

Statute law revision (Items (1)(d), (6)(c) and (6)(d)

Item (1)(d) amends the definition of "officer" of a corporation by replacing a reference to superseded legislation.

Item (6)(c) omits a reference to the National Companies and Securities Commission (which has been abolished) and replaces it with a reference to the Australian Securities Commission (the body that assumed the functions of the National Companies and Securities Commission). Item (6)(d) makes a consequential amendment.

SCHEDULE 8 - AMENDMENT OF STAMP DUTIES ACT 1920 - FINANCIAL INSTITUTIONS DUTY.

Definitions (Item (1))

Section 98 of the Stamp Duties Act 1920 defines a number of expressions for the purposes of Division 29 of Part 3 of that Act (which requires financial institutions to pay stamp duty in respect of dutiable receipts).

The amendment introduces some further definitions for those purposes. Among the additional expressions defined are "finance contract", "pastoral finance company", "Protective Commissioner" and "retailer". Similar definitions are currently to be found in the Stamp Duties (Financial Institutions Duty) Regulation 1982.

The definitions of "designated person", "designated receipts" and "short term dealing" are being replaced. A designated person will include not only a financial institution but also a retailer, a pastoral finance company and the Protective Commissioner. (Most of the obligations set out in Division 29 are imposed on "designated persons" and registered persons who are "designated persons".) "Designated receipts" will include not only receipts of financial institutions but also certain receipts of retailers, pastoral finance companies and the Protective Commissioner.

The definition of "short term dealing" is clarified. Proposed paragraphs (a), (c) and (d) of the definition clarify the dealings contained in the current definition. Paragraph (b) rectifies an anomaly whereby the making or receiving of a loan did not qualify as a short term dealing but would be subject to duty as a short term liability. This amendment is taken to have commenced on 24 September 1993 in accordance with the Variation to Statute signed by the Treasurer on that date (see clause 38 (1) in Schedule 11 (30)). Proposed paragraphs (e) and (f) relate to foreign exchange hedging contracts and futures contracts. Similar provisions are currently contained in clause 11 of Stamp Duties (Financial Institutions Duty) Regulation 1982. Those provisions are to be repealed by clause 12 of the proposed Act. The provisions in relation to foreign exchange hedging contracts have been amended to overcome a technical deficiency. This amendment is taken to have commenced on 9 November 1993 in accordance with the Variation to Statute signed by the Treasurer on 14 December 1993 (see clause 38 (2) in Schedule 11 (30)).

A definition of "excluded person" is introduced for the purposes of the definition of "financial institution". The effect of this is that persons and organisations (such as superannuation funds, insurance companies, medical benefits funds, official receivers, trustees in bankruptcy, company controllers, administrators and liquidators, certain dealers in securities and licensed insurers under the Workers Compensation Act 1987) will not be treated as financial institutions with the result that they are not required to be registered for the purposes of Division 29. (Most of those persons and organisations are already excluded from registration under the Division by virtue of the Regulation mentioned above.)

The definition of "group return" is for the purposes of proposed section 98JA (Return made out by group member in respect of group dutiable receipts). (See item (4) of this Schedule.)

Proposed section 98 (1A) is intended to make it clear that an amount added to a term deposit that is rolled over is to be treated as pan of the deposit and not as a separate amount when determining whether a deposit is not less than $50,000 for the purposes of the definition of "short term liability" in section 98 (1). The effect is that stamp duty under Division 29 will be payable on the renewal or retention of a single amount rather than two amounts (which, dealt with separately, would attract a slightly higher amount of duty).

While a receipt comprising the rollover of a term deposit will not be subject to FID (see item (2) (d)), proposed section 98 (15) provides that a rollover from a short term dealing into a non-short term dealing is a receipt for the purposes of Division 29 and will therefore be subject to FID.

Receipts not subject to FID (Item (2))

Section 98A specifies those receipts to which Division 29 of Part 3 of the Act does not apply. The amendment specifies the following further kinds of receipts to which the Division will riot apply:

- •receipts of money represented by cheques that are subsequently dishonoured;
- •receipts comprising the recrediting of a dishonoured cheque to the drawer's account;
- •receipts comprising the crediting of accounts where there are corresponding debits to customers' accounts in respect of payments of duty under Division 29 or tax under the Debits Tax Act 1990;
- •receipts comprising the rollover of a term deposit (except a rollover from a short term dealing into a non-short term dealing;
- •receipts by the Protective Commissioner of assets of patients and incapable persons (as defined by the Mental Health Act 1990) and protected persons (as defined by the Protected Estates Act 1983);
- •receipts which, having been previously credited to customers' accounts with the designated person concerned, are credited to another account in circumstances beyond the control of those customers.

Duty payable following lodgement of return (Item (3))

Section 98J requires certain persons periodically to make out returns, lodge those returns with the Chief Commissioner of Stamp Duties and pay the stamp duty payable in respect of the receipts to which the returns relate.

Proposed subsection (3A) of the section will allow the Chief Commissioner to exempt a retailer or pastoral finance company from the payment of duty if the Chief Commissioner has not issued an exemption certificate under section 98U (I) in respect of an account of the retailer or company.

Proposed 98J (3B) will enable the Chief Commissioner to reduce, refund or adjust stamp duty paid or payable by a financial institution whose sole or principal business is not that of providing finance.

A further amendment is designed to make it clear that section 98J does not apply to a member of a group to the extent that proposed section 98JA (Return made out by group member in respect of group dutiable receipts) is complied with in respect of the member.

Group returns (Item (4))

Proposed section 98JA will:

- •enable the Chief Commissioner to give approval for a person (such as a financial institution) registered with the Chief Commissioner under section 981 to make out returns on behalf of the members of a group; and

•provide for the making out and lodgement of group returns and for the payment of stamp duty in respect of the receipts to which those returns relate.

Short term dealers (Items (5) and (6))

Section 980 enables the Chief Commissioner of Stamp Duties to certify a person as a short term dealer for the purposes of Division 29 of Part 3 of the Act. The amendments replace subsection (I) of the section with 4 new subsections. The Chief Commissioner will be able to refuse an application to certify the applicant as a short term dealer if the applicant fails to enter into an undertaking with the Chief Commissioner to the effect that the applicant will use the short term dealer's account only for making:

•payments to another bank account of the dealer or to another member of the group (if any) of which the dealer is a member; or

•payments in respect of short term dealings; or

•payments of such class as the Chief Commissioner approves,

and will ensure the account is kept in credit. Section 98R requires short term dealers to make out returns in respect of short term liabilities (as defined in section 98).

Proposed subsection (3A) of the section will enable the Chief Commissioner to enter into arrangements for the payment of stamp duty with short term dealers who are not prescribed short term dealers but who are members of a group.

Proposed subsection (3B) provides for the liability of a member of a group to be reduced by the extent by which a short term dealer has satisfied that liability.

Exempt accounts (Item (7))

Section 98U provides for the exemption of accounts from the operation of Division 29 of Part 3 of the Act.

The first amendment will enable the Chief Commissioner to certify as an exempt account a clearing or settlement account kept With a bank by FTS (NSW) Pty Ltd (a company owned by the Australian Association of Permanent Building Societies and some of the permanent building societies that are members of the Association) for the purpose of enabling money to be credited or debited directly to permanent building societies' accounts.

The second amendment will enable the Chief Commissioner to certify as exempt accounts certain accounts kept with a bank by retailers and pastoral finance companies.

Passing on of duty (Item (8))

The existing section 98W enables regulations to be made for the purpose of enabling stamp duty payable under Division 29 of part 3 of the Act to be passed on to customers. This section is being replaced by a new section dealing with the extent to which designated persons (such as financial institutions) can pass stamp duty on to their customers and others from whom they receive dutiable receipts.

SCHEDULE 9 - AMENDMENT OF STAMP DUTIES ACT 1920 - TRANSFER OF MARKETABLE SECURITIES

Nexus for liability to stamp duty on off market share transactions (Items (1)-(18))

The nexus for liability to stamp duty on off market share transactions is to be changed to the place of incorporation of the company whose shares are transferred. To achieve this

object, a definition is introduced into the Stamp Duties Act 1920 by item (1) (b) of "NSW company". A NSW company is defined to mean

a body that is incorporated, or taken to be incorporated, as a company under the Corporations Law of New South Wales. Items (1) (a), (2), (3), (9) (a) and (b), (15) (b), (16) (a), (17) and (18) (b) make changes consequential on the introduction of this definition.

Items (6), (8), (10), (14). (15) (a), (16) (b) and (18) (c) remove provisions that are not appropriate having regard to the change of nexus or that are not used.

Item (18) (a) makes it clear, consequent on the definition of transfer of shares inserted in item (1) (b), that the conveyance rates of stamp duty will generally not apply to a transfer of shares.

Item (18) (d) re-expresses the rate of duty on share transfers so as to be consistent with the rate of duty specified for SCH regulated transfers of marketable securities dealt with in the amendments made by items (19)-(22).

Item (9) (c) will close a loophole whereby shares can be transferred without the payment of ad valorem duty by changing registers by ensuring that ad valorem duty is paid in another jurisdiction before New South Wales duty ceases to be chargeable.

Items (4), (11) and (12) clarify the structure and arrangement of provisions in Division 27 of Part 3.

Items (1) (b) (the definition of "Stock"), (5) and (13) (b) make consequential amendments.

Items (7) and (13) (a) and (c) make amendments by way of statute law revision.

SCH - regulated transfers (Items (19)-(22))

Items (19) to (22) provide for the payment of stamp duty on the transfer of marketable securities that are listed on the Australian Stock Exchange where the transfer takes place electronically via the Clearing House Electronic Subregister System (CHESS), which is a securities clearing house controlled by the ASX Settlement and Transfer Corporation Pty. Limited, a wholly owned subsidiary of the Australian Stock Exchange Ltd.

Commonwealth legislation was put in place to authorise CHESS with the enactment of Part 5 - Implementing the Clearing House Subregister System - of the Corporate Law Reform Act 1992 which amended the Corporations Law by, among other things, inserting a new Part 7.2A - The Securities Clearing House. The provisions in items (19)-(22) adopt much of terminology of the Corporations Law. Item (19) removes the requirement of Division 3A of Part 3 that would otherwise necessitate the lodging of a written statement with the Chief Commissioner in respect of the electronically effected CHESS transaction.

Item (20) inserts a new Division 26A - SCH-regulated transfers - into Part 3. (SCH is the acronym for Securities Clearing House). Subdivision 1 - Duty on certain SCH regulated transfers - of the new Division contains the following provisions:

Proposed section 94B contains definitions for the purposes of the new Division. Many of the definitions have the same meanings as in the Corporations Law.

Proposed section 94C provides for the application of the new Division. Principally, it applies to an SCH - regulated transfer of a marketable security which is effected in accordance with the SCH business rules and which results in a change in the beneficial ownership of the marketable security.

Proposed section 94D imposes duty on SCH - regulated transfers at the rate of 60 cents per $100, or part, of the transfer value of the marketable security.

Proposed section 94E specifies the SCH participant who is liable to pay the duty.

Proposed section 94F requires SCH participants to keep records of the making of SCH - regulated transfers of marketable securities.

Proposed section 94G makes it an offence for an SCH participant to fail to include particulars required by the Chief Commissioner in the document that is taken under the SCH business rules to effect the transfer of the marketable security (the transfer document).

Proposed section 94H provides that a transfer document is taken to be duly stamped if the SCH participant includes the participant's identification code in it.

Proposed section 94I requires SCH participants to lodge monthly returns with SCH of SCH - regulated transfers and to pay the requisite duty in respect of those transfers to SCH.

Subdivision 2 - The Securities Clearing House - of the new Division contains the following provisions:

Proposed section 94J provides for the registration by the Chief Commissioner of the body approved as the securities clearing house under section 779B of the Corporations Law.

Proposed section 94K requires SCH to lodge a monthly return with the Chief Commissioner and to pay to the Chief Commissioner the duty paid to it in respect of SCH regulated transfers made in the month to which the return relates.

Proposed section 94L requires SCH to keep returns lodged with it by SCH participants for not less than 5 years.

Proposed section 94M authorises the disclosure to SCH of information acquired in relation to the administration of the new Division.

Item (22) enables a NSW broker, or a broker's agent, who is an SCH participant to include the participant's identification code in a transfer document effected through CHESS instead of endorsing the transfer as would otherwise be required by the section.

SCHEDULE 10 - AMENDMENT OF STAMP DUTIES ACT 1920 - EXEMPTIONS FROM AND REDUCTIONS IN DUTY

Conveyance between married couple (Item (1))

Under the Act, conveyances of shares in homes between married couples are exempt if they result in both persons having an equal share or shares which reflect their contributions to the acquisition and improvement of the home. Item (1) exempts from duty a conveyance of a share in a home between a married couple (this includes a de facto couple) if the conveyance results in the person who is getting the property having less than a half share, whether or not this reflects contributions to the acquisition and improvement of the home. A conveyance which results in the person who is getting the property having more than a half share will not be exempt from duty unless it reflects contributions to the acquisition and improvement of the home.

Transfer to former bankrupt (Item (2))

At present, transmission of the real property of a bankrupt to the trustee in bankruptcy of the bankrupt is exempt from stamp duty under the Act. Transfers back to the bankrupt by the trustee are generally exempted by Act of Grace. Item (2) inserts proposed section 66G which exempts from stamp duty such transfers back to the former bankrupt.

Transfers to beneficial owners (Item (3))

Item (3) provides for a transfer of a marketable security by a trustee or manager of the security back to a person having a beneficial interest in the security to be subject only to a duty of $10. By virtue of section 73 (2AE) of the Act, a transfer of such an interest by the person having the beneficial interest to a trustee or manager is subject only to duty of $2.

Interstate hiring arrangements (Items (4) and (5))

Hiring arrangements are subject to duty under the Act but the Act provides for duty to be offset against duty paid in other jurisdictions in respect of a hiring arrangement if the

owner or hirer under such an agreement resides outside New South Wales. Items (4) and (5) extend the current provisions to provide for duty chargeable on a hiring arrangement to be reduced by the amount of any duty paid in another jurisdiction or, if that amount is greater than the duty paid in New South Wales, the amount of New South Wales duty.

Additional advances to primary producers who have obtained the exemption for refinancing (Item (6))

Currently, primary producers who refinance loans have an exemption from stamp duty under section 84CAA of the Act but are liable for duty on additional advances after the refinancing occurs. Under section 84 (3A) of the Act, duty need not be paid on an additional advance secured by a loan security if the additional advance does not result in the amount advanced being more than the amount on which duty has already been paid in respect of the loan security. Item (6) amends section 84 to give the refinanced loan security the benefit of the duty that would have been payable under the original loan security.

Exemption from duty for certain home loan refinancing transactions (Items (7)-(9))

Item (9) inserts new section 84CAC which provides for an exemption from duty for persons refinancing a home loan in the period from 1 January 1993 to 1 July 1994. The exemption extends to collateral securities but is restricted to advances of $120 000 or less and to persons having a taxable income, or combined taxable income, of less than $40 000. Item (7) amends section 84 to enable an additional advance secured by any such loan security to obtain the benefit of section 84 (3A) (see explanation above). Item (8) makes a consequential amendment.

Exemption from duty - sales and purchases on behalf of warrant-issuers (Items (10) and (11))

Item (11) inserts provisions that create an exemption from stamp duty for the sale and purchase of marketable securities and rights on behalf of warrant-issuers for hedging purposes. A warrant-issuer issues warrants, which are option contracts for the sale of shares. This exemption is consistent with exemptions given to options and futures traders in the preceding sections of the Act.

Item (10) inserts definitions of "warrant" and "warrant-issuer" for the purposes of these provisions.

Loan securities (Item (12))

Item (12) updates the exemptions for loan securities and mortgages relating to the first home purchase scheme. Loan securities in support of eligible mortgages under the scheme are to be added to the Schedule 2 exemptions, instead of being dealt with only in Schedule 2A. Item (15) makes a consequential amendment.

Exemptions from duty assignment of tax losses (Item (13))

Item (13) exempts from stamp duty agreements executed solely for the purposes of provisions of the Income Tax Assessment Act 1936 of the Commonwealth which permit the transfer of tax losses, capital losses and tax credits between corporations within a corporate group.

Exemptions from duty leases to Home Care Service (Item (14))

Item (14) exempts from stamp duty leases of premises to the Home Care Service of New South Wales. Currently the Service is required to apply for an exemption for each lease under paragraph (24) of Schedule 2.

First Home Purchase Scheme (Item (15))

Currently the scheme under which first home buyers may apply to pay a reduced rate of duty or to pay duty by instalments over 5 years applies to a person who is buying his or her first home, even though that person owns or has previously owned an investment property. Item (15) amends the scheme (contained in Schedule 2A) to prohibit any such person from being eligible under the scheme if the person owns or has owned property in Australia. However, if the person is one of a couple where the other person has never owned property then the couple will be eligible under the scheme.

SCHEDULE 11 - AMENDMENT OF STAMP DUTIES ACT 1920 MISCELLANEOUS

Former positions (Items (1)-(3))

Items (1) - (3) remove provisions relating to the positions of Assistant Commissioner and Deputy Commissioner, which no longer exist. References to former officers of the Department of Finance are also updated.

Company title dwellings (Items (4)-(8))

Item (4) amends the definition of "Company title dwelling" to include the situation where the company leases the property as well as the situation where the company owns the property.

Currently, a transfer of shares in a company which owns a company title dwelling is subject to duty in the same way as the conveyance of the real property concerned would be. Items (5) - (8) extend this treatment to the redemption and issue of shares in any such company.

Calculation of time (Item (9))

Item (9) sets out the method for calculating a period of time for the purposes of determining when duty becomes payable or a fine is incurred under the Act.

Public unit trust scheme (Item (10))

Item (10) updates references to the Stock Exchange and to the superseded Companies Code contained in the definition of "Public unit trust scheme" in the Act.

Removal of obsolete words (Items (11) and (12))

Item (11) omits words referring to gifts that are now unnecessary because death duty and differential rates of duty on gifts have been abolished.

Item (12) omits words referring to a rate of interest calculated under provisions that have been omitted from the Act.

Bills of exchange (Items (13) and (14))

Items (13) and (14) omit obsolete references to bills of exchange.

The Taxline system (Item (15))

Item (15) amends the provisions relating to the Taxline system. The Taxline system allows approved persons to obtain an assessment of duty on an instrument by electronically transmitting information concerning the instrument to the Chief Commissioner, to pay the duty by electronic funds transfer and to stamp the instrument by fixing to it an adhesive label issued by the Chief Commissioner, and to do so without having to produce the instrument to the Chief Commissioner.

The amendment provides that an instrument to which an adhesive label is attached is stamped, rather than being "duly" stamped. Omission of the word "duly" has the consequence that duty short paid can be recovered and duty overpaid can be refunded.

Put and call options (Items (16) and (17))

Proposed section 40B, as inserted by item (17), imposes duty as for a conveyance of property where an option to buy and an option to sell a property are both in force at the same time over the same property and as between the same parties (whether or not as assignees). Such a transaction has the same effect as a sale of the property and is now to be treated as such. Proposed section 40C, as inserted by item (17), provides for a refund of duty if the option is not exercised or expires.

Returns of financial institutions (Item (18))

Item (18) corrects an incorrect cross reference to a provision of the Income Tax Assessment Act 1936 of the Commonwealth.

Service of documents on Chief Commissioner (Item (19))

Item (19) inserts a provision that enables documents relating to court proceedings to be served on the Chief Commissioner by being lodged at the office of the Chief Commissioner with an officer authorised by the Chief Commissioner to accept service. The provision does not remove any other lawful method of serving such documents on the Chief Commissioner.

Access to records (Item (20))

Item (20) makes further provision relating to the inspection of records. The new provisions will entitle an inspector or other officer authorised by the Chief Commissioner to be given access to documents for the purposes of exercising functions under the Act, including for the purposes of making routine inspections to ensure that the Act and the regulations are being complied with. Other powers of inspectors and officers that are currently contained in the Act, such as the power to take copies of documents and to impound instruments, are included in the new provisions.

Release of certain information (Items (21) and (22))

Items (21) and (22) enable the Archives Authority to release, in certain circumstances, records forming part of death duty files transferred to the Authority's keeping by the Chief Commissioner.

Instruments relating to trustees (Item (23))

Item (23) makes the parties to instruments appointing trustees and other instruments relating to trustees primarily liable for the duty payable, instead of the "transferee".

NSW company (Items (24)-(29))

The amendments in Schedule 9 (1)-(18) to this Bill change the nexus for liability to stamp duty on off market share transactions. The nexus is to be the place of incorporation of the company whose shares are transferred. The concept of place of incorporation is embodied in a new definition (inserted by Schedule 9 (1) (b) to this Bill) of "NSW company". The concept of place of incorporation also has significance for provisions of the Stamp Duties Act 1920 other than those relating to off market share transactions. Items (24)-(29) make consequential amendments to other provisions of the Act where place of incorporation is relevant so that the definition of "NSW company" may be used consistently throughout the Act.

SCHEDULE 12 - AMENDMENT OF VARIOUS ACTS - DISCLOSURE OF INFORMATION

The amendments provide that State revenue officers who obtain confidential information or records under the Act concerned are not required to disclose or produce the information or records in any court except when it is for the purposes of the execution or administration of the Act concerned or for the purposes of enabling certain law enforcement agencies to exercise their powers under law. In other words, a State revenue officer is not obliged, or can refuse, to produce confidential information in a court (e.g. by way of a subpoena) if the matter before the court does not concern the administration or execution of the particular revenue law or the enforcement of a law protecting the public revenue.

SCHEDULE 13 - AMENDMENT OF VALUATION OF LAND ACT 1916

Obsolete references (Items (1)-(4))

Items (1)-(4) of the proposed amendments update obsolete references to resumptions.

Valuations (Items (5) and (6))

Item (5) repeals and re-enacts section 27B of the Act so as to provide that, if the Valuer-General values the land in a deposited plan, it will not be necessary for fresh valuations to be made on the sale of a lot in the plan (unless the lot concerned is included in a single valuation with other lots in the plan). The proposed amendment also makes it clear that the Valuer-General's discretion under the section to include adjoining lots owned by the same person in a single valuation is subject to section 26 (which specifies certain circumstances in which lots are to be separately valued and other circumstances in which they are to be included in one valuation).

Item (6)(a) makes it clear that a person entitled to an allowance for subdivision is to be given that allowance on a general valuation (as well as on a valuation under section 27B).

Item 6(b) makes it clear that the person who was the owner (other than the equitable owner) of all the land comprising the lots in a particular deposited plan at the time the plan was registered is the person entitled to any allowances available under section 58AB for that subdivision.

Item (6)(c) makes it clear that any allowance under section 58AB is to be determined as at the date at which the land value is determined.

A clarification similar to that in item (6)(b), and a provision similar to that in item (6)(c), is proposed to be inserted in the Land Tax Management Act 1956 elsewhere in this Act in relation to allowances for subdivision when land is being valued for land tax purposes.

Debate adjourned on motion by Mr Harrison.

Mr ACTING-SPEAKER (Mr Tink): Order! It being close to 5.15 p.m., pursuant to sessional orders the debate is interrupted.

PRIVATE MEMBERS' STATEMENTS

REGISTER OF ENCUMBERED VEHICLES

Mr GLACHAN (Albury) [5.14]: I raise a matter that has had a serious effect on two of my constituents. It concerns a Ford Falcon XF station wagon, registered number SUT869, said to have been stolen. Mr Des Gillett, who for many years has operated a huge car yard at Wagga Road in Lavington, one of the northern parts of Albury, is fairly well respected in the motor trade in Albury. On 29 January Mr Gillett sold the Ford Falcon car to Mr Kevin Raine, a young man with a wife and two children who lives at Jindera, a village to the northwest of Albury. Mr Gillett checked with the Register of Encumbered Vehicles when he purchased the car from a Victorian on 4 January and was told that the car was not listed as stolen. When he sold it to Mr Raine on 29 January he checked it again and was told that it was not on the register. Mr Raine's wife had access to some form of checking. She, too, had the car checked and was told it was not on the list.

The police contacted Mr Raine on 2 February, a few days after the car was transferred to his name, and said that it was believed to be stolen and would be impounded. Mr Gillett offered to impound it in his yard and make it available to the police when they needed it. The police agreed. Mr Raine was left without a car. Mr Gillett said he would refund Mr Raine's money. Mr Raine said, "You have done nothing wrong. I want the car. The matter should be sorted out. We will leave it as it is". Mr Gillett lent Mr Raine a car, and he still has the use of that car.

Mr Gillett and Mr Raine found that the vehicle had a long and complicated history. It seems that the owner, who went away, left it with a friend. The friend, believing that the owner gave him the right to dispose of the car if he wished, exercised that right - in good faith, he says - and sold it to a wrecking yard because of its poor condition. The wrecking yard sold the car to a car repair business. I imagine the wrecking yard would have checked with the register of encumbered vehicles that the car was not stolen.

The repairer repaired the car and sold it to a Victorian. The vehicle could not have appeared on the register of encumbered vehicles at the time or the registration could not have been transferred. Later, the Victorian sold the car to Mr Gillett, who checked the register. So far as I can ascertain, the car was not listed by the Roads and Traffic Authority as stolen when the police approached Mr Raine. Why did the register of encumbered vehicles not list the car? Where did the slip-up occur? If the police were notified that the car was stolen, why was something not done about it earlier? Goodness knows how my two constituents will sort out this dreadful mess. I believe that the man who sold the car has been charged and will appear in court in August, but the hearing could be deferred and my constituents could wait 12 months to find out who owns the car and whether they will get back their money.

I really feel for Mr Raine, who is a bit of a battler. He has a wife and two young children. He tries to do his job, but does not know how he will get backwards and forwards to work or drive his family about. No one can give him an answer. I ask the Minister for Police and Minister for Emergency Services, and the Minister for Transport and Minister for Roads how this situation could have occurred. I should like them to provide me with some answers so that I can help my constituents to sort out this problem.

WESTERN SYDNEY HEALTH FUNDING

Mr GIBSON (Londonderry) [5.19]: Health care cuts in western Sydney, particularly to Hawkesbury Hospital in the Richmond area, have been a very contentious issue for a long time. A new public hospital was promised by the coalition parties when they were elected to office in 1988. The Treasurer and Minister for the Arts would know a little of the history of Hawkesbury Hospital. For four or five years after 1988 every budget paper and every capital works program allocated $70 million to build a public hospital. The people of Hawkesbury have finished up with a sandshoe and a galosh; they have absolutely nothing. The people of Richmond, Windsor and Hawkesbury have been given the second prize - a private hospital to be run by a non-profit organisation. But that may change if contracts are not signed by the time the Labor Party wins the next State election to be held by March.

Health care in Western Sydney, particularly in the Hawkesbury area, took a turn for the worse last week when an announcement was made that Hawkesbury had to comply with the 1.5 per cent efficiency gains imposed by the Department of Health. Hawkesbury Hospital was omitted last year from the list of hospitals that had to show a gain because it was considered a disadvantaged hospital, but this year it is required to meet an efficiency gain. That will have a devastating effect on the people. Mrs L. Snape, the director of nursing at Hawkesbury Hospital, outlined the proposed changes that the hospital would have to make to achieve the cut.

The proposed changes include elimination of the existing level two nursery and the cessation of the domiciliary midwifery program, which will have far-reaching implications for both the hospital and families in the Hawkesbury area. The level two nursery caters for sick babies within their own geographical area and prevents unnecessary separation of families and babies. The increased rate of transfer of sick neonates will also have an impact on referral hospitals, stretching their levels of service beyond their limits. The cost of transfers will be enormous. If the domiciliary midwifery program ceases, bed occupancy in the unit will increase, frequently necessitating transfer of patients to the main hospital. That, in turn, will decrease the beds available for surgical cases, further lengthening surgical waiting lists.

In this Chamber only two weeks ago the Minister for Health said, "Show me where we have made cuts in health care as far as western Sydney is concerned?" He has mentioned the bricks and mortar that have gone to western Sydney, but the people are paying for them with health care cuts. A good example of the real cuts imposed on the people of western Sydney is the closure of the primary care unit at Westmead Hospital. The people are hurting. Last year 15,000 patients used that unit. Five thousand people work at Westmead Hospital.

Hawkesbury Hospital is one of the most disadvantaged and underprivileged hospitals in Australia. The

Minister for Health was censured in this Chamber recently for slashing hospital budgets. Every hospital in New South Wales is reeling under the latest round of productivity cuts. Services have been slashed while waiting lists for elective surgery continue to grow. People in western Sydney have to wait six months for gall-bladder operations, 2½ years for dental treatment, three years for speech therapy, and the list goes on. The Government has indicated to the people of western Sydney that it does not care for them. At the next State election in March 1995 the people of western Sydney will show the Government that they do not care for it. The coalition parties will be voted out decisively at that election.

Mr COLLINS (Willoughby - Treasurer, and Minister for the Arts) [5.24]: The people of western Sydney are entitled to hear the truth about health services. No government in this State has ever done more for western Sydney health services than this Government has done. I am pleased to be in the
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Chamber this afternoon to put a few things straight on the record. This Government made a commitment to making Nepean Hospital a teaching hospital. When the Labor Party was in office it did nothing about that. I was present when the first $80 million was committed to make Nepean Hospital a teaching hospital. When I was in Opposition in 1986-87 Nepean Hospital had a birthrate of 3,500 and only one ultrasound machine. Nepean Hospital had never heard of neonatal intensive care.

The Government opened a neonatal intensive care unit at Nepean Hospital; it strengthened neonatal intensive care at Westmead Hospital; it made Liverpool a teaching hospital. This Government is spending several hundred million dollars on western Sydney health services - at Liverpool, Nepean and Westmead. More than $300 million will be spent on the new children's hospital that will open next year at Westmead - the world's best state-of-the-art children's hospital. This Government rebuilt Cumberland Hospital next to the Westmead campus. The hospital was an absolute disgrace. That is how the Opposition let mental health services go in western Sydney. This Government rebuilt the hospital, and it received accreditation for the first time. I utterly reject the suggestion of the honourable member for Londonderry that this Government has let down the people of the west.

The Government has provided services and will continue to provide services. It has pumped in several hundred million dollars, and that is just the beginning. The Government will put the services where the people are. That is what this Government is about in delivering health services to western Sydney. I make no apology about some adjustments that may be made, some reallocation of services within the area, because the Government has greatly improved services. The figures will prove conclusively how much the Government has done to build up health services. [*Time expired*.]

NULAMA RETIREMENT VILLAGE REGISTERED TITLES

Mr TURNER (Myall Lakes) [5.26]: I raise a matter concerning the Nulama retirement village in my electorate. The village was partially completed when the economic problems surfaced in Australia and the village became caught up in those problems. Some of the units were completed, but the nursing home and the community centre were not finished. A number of elderly residing in the freestanding units have not been able to obtain title to their units and cannot take advantage of the promised amenities - the nursing home and the community centre. It is not their fault that this situation has arisen, and they are anxious.

The residents average 72 years of age. It is regrettable that in the past three years five villa owners have died and their families are unable to dispose of the assets. Those who want to dispose of their assets and enter a nursing home in another area are unable to do so. The mortgagee is Beneficial Finance, a wholly owned subsidiary of the Bank of South Australia. Recently comments have been made that it is in no hurry to assist the tenants. The tenants have told me - and I am inclined to agree with them - that they are prisoners in the homes that they purchased in good faith because they are unable to obtain a partial discharge of mortgage to give them clear title.

I understand there is a fund of about $112,000 or $115,000 held by the Bank of South Australia that could

alleviate the problems of the tenants. The Bank of South Australia has obtained a judgment against some of the guarantors of the retirement village. It may be that part of the land on which the units stand is technically unencumbered. If the Bank of South Australia wishes to look after the people from the Nulama retirement village who, through no fault of their own, have found themselves in this position, it could apply that fund to obtaining a strata plan and vest title in the owners of the units. I appreciate the deep concern these elderly people have about not having title to their homes. They are not covered under the code for retirement villages because it is outside the concept of the code.

I have written to the Hon. P. E. J. Collins, the former Minister for Consumer Affairs. I have not received advice from the Department of Consumer Affairs as to whether any action lies in that area. However, I do not believe that action by the Department of Consumer Affairs would assist these people to obtain title. The Bank of South Australia has to show some community concern for these elderly people and give them the title they have paid for. It is not their fault that Beneficial Finance did not retain sufficient equity in the land to offset its mortgage.

These people, in good faith, paid upfront to obtain title to a retirement home. It is about time that the Bank of South Australia showed some compassion to the people caught up in this situation. It is not as though the Bank of South Australia will be out of pocket, because, as I have said, the people paid their money and a fund is available. Probably more than that is involved. Further down the line we have to look at privately financed retirement homes and ensure that in the future people who borrow from private financiers to buy retirement homes are secure. [*Time expired*.]

Mr COLLINS (Willoughby - Treasurer, and Minister for the Arts) [5.31]: I apologise to the honourable member for Myall Lakes for not being able to follow up correspondence. I wrote to him, I think, in March 1992, but I have since been transferred to other portfolios. I have not had a chance to discuss this matter with my successor in the consumer affairs portfolio, but I will bring it to her attention so that a reply can be provided.

BREAST CANCER RESEARCH FUNDING

Mr BECKROGE (Broken Hill) [5.31]: I wish to add my voice to the increasing number of voices calling for more money for breast cancer research. More funding is required to enable the female population to gain access to mammography. I have

been shocked by recent figures that show that in the Broken Hill electorate, particularly in the shire of Central Darling - Wilcannia, Ivanhoe and Menindee - there is a high incidence of breast cancer. One survey listed that area as the worst area in rural New South Wales for breast cancer mortality from 1985 to 1989. In that period there were 68.3 deaths per 10,000 people. I presented to the Parliament a petition from electors in Broken Hill that called upon all governments to provide more funding for research and to provide a mobile mammography unit for women in western New South Wales.

It is not sufficient for women to be told that they should travel to Dubbo. The unit at the hospital at Dubbo has been out of service. Women have to attend private practitioners to undergo mammography screenings. A well-recognised problem, which is reflected in the Medicare arrangement, is the time lapse between the discovery of a lump in a woman's breast and her entitlement to free screening. A recent executive meeting at Cobar of western division shires expressed a desire for a mobile unit to travel around western New South Wales. This need should be brought to the attention of the Government, the Federal Government and all health authorities.

Years ago there were mobile tuberculosis testing units when TB was rife. The community virtually managed to wipe out that disease. More than half of the women in New South Wales fear this terrible cancer. It must be dreadful for them when they decide to have the test to find out that they have to travel hundreds of kilometres to do so. They will not do that readily; they will put off the day until the worst happens. Everyone has been told, and everyone knows, that early detection is a great way of saving lives. In October last year I

received a letter from the Minister for Health after I had made representations on behalf of a constituent in Cobar. The Minister advised me:

> In addition, negotiations are currently in progress with neighbouring States, in order to provide further mammography screening opportunities to suit the needs of all women, especially those in isolated parts of the State. For instance, women in Far Western NSW may prefer to go to major centres in the south and south western regions of Queensland or to Adelaide.

The Minister also said:

> The Rural Plan, being developed in liaison with the District Directors, will provide a system for the provision of rural Screening and Assessment Services . . .

The Minister said that in the Orana and far western region of New South Wales there was no appropriate expertise, but the Government was working on the problem. I urge the Minister - and I know he is interested in doing this - to ensure that women in western New South Wales have access to a mobile unit. Breast cancer research might have received more funding if more than 10 per cent of the members of the Parliament were women. It appears to me that much more funding goes into other areas. However, we have to take up this fight on behalf of women. In this the International Year of the Family it behoves us all to do something in this regard.

Mr COLLINS (Willoughby - Treasurer, and Minister for the Arts) [5.36]: No Australian family does not know or will not know the scourge of breast cancer. Breast cancer is a matter of vital concern to everyone in this Parliament and to the entire community. While I was Minister for Health I set about reassessing the services available in this State for women, who should be regularly screened for breast cancer. I acknowledge that the honourable member for Broken Hill has brought this matter to the attention of the House tonight, as have other honourable members on other occasions. Only a few weeks ago the honourable member for Burrinjuck made a plea similar to that made by the honourable member for Broken Hill. I assure all honourable members that this is a matter of the utmost priority, a matter that is receiving sympathetic consideration in the Budget, which is being considered at the moment.

Budget discussions are under way throughout the public sector. Obviously, part of the budget discussions will relate to the provision of screening, assessment and treatment services for breast cancer. I hope that, in the not too distant future, the Minister for Health or the Premier will be in a position to make further announcements about how the Government proposes to meet the challenge of breast cancer and provide greater protection for the women of this State. I take this opportunity to remind the community at large of the need for early detection. That cannot be stressed often enough. Of course, it means that services have to be in place. [*Time expired*.]

PAMBULA COURT HOUSE AND POLICE STATION HERITAGE LISTING

Mr SMITH (Bega) [5.38]: Earlier today I presented in the Parliament a petition with 1,000 signatures that referred to the old court house and police station at Pambula. Today I wish to speak on behalf of the community at Pambula and to put some pressure on the Government and the relevant Minister to try to ensure that the old court house and police station remain in public ownership. It might be worth while if I refer to the background of the old police station and court house at Pambula. It was officially proclaimed as a court in 1858. The site was first used as a lockup in 1859. The foundation stone was laid on 20 December 1860. The building was completed in 1861. Between 1861 and 1880, cells, a police station and a police residence were added to the court house. Application has now been made for the building to receive a New South Wales Heritage Council listing and for the Australian Heritage Commission to enter the building in the register of the National Estate. It is worth noting what the Australian Heritage Commission said in its letter about the court house:

> . . . for the above building to be entered in the Register of the National Estate, and resolved that it is worthy of entry in the Register. I

enclose the information about the building agreed to by the Commission.

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Public advertisement of the Commission's intention to enter the building in the Register is to take place in late 1994. It will then be on the Interim List of the Register, which allows three months for anyone who may wish to object to its entry in the Register. Unfortunately it will not be possible to include the building in the March 1994 Interim Listing.

It is clear that the Australian Heritage Commission believes it is a worthy building and should be included on the listing. However, it cannot be included at this stage; and to some degree that would protect the building and ensure that it remains at least in its present state, if not in public ownership. The building has been declared surplus to police needs and has been given over to the Department of Conservation and Land Management to be sold. The Valuer-General's valuation on this building is $230,000. However, in addition to the police and court house building there is a large block of land.

I think the planning department of the Bega Valley Council would give favourable consideration to a subdivision of the excess land around the building. That could involve three building blocks. If the property remained in public ownership, there could therefore be some recompense to the police department and Treasury. Under the New South Wales Government's current policy the police department and Treasury would each receive 50 per cent of the capital value of the sale. That is one way out. If the Government can come to agreement with the police department to retain the building and sell three subdivided blocks of land and if the Bega Valley Council agreed to maintain and upkeep the building, it would be a reasonable compromise. That valuable old building, which will be listed by the Australian Heritage Commission later in the year, would then remain in public ownership. I request the Minister to look closely at that proposition rather than say that it is surplus and must be sold. I ask the Minister to look for a compromise solution. [*Time expired*.]

Mr AND Mrs GOSDEN OFFICIAL TRUSTEE APPLICATIONS

Mr J. J. AQUILINA (Riverstone) [5.43]: As evidenced by the thick pile of papers I have with me, for a number of years I have been receiving representations from Mr Max and Mrs Helen Gosden of 62 Regent Street, Riverstone, concerning the acute injustice they have suffered as a result of an incorrect application by the Official Trustee for the Official Trustee to be registered as the proprietor of two properties owned by Mr and Mrs Gosden on the corner of Loftus and Piccadilly Streets, Riverstone. Correspondence to a number of Government Ministers, including the current Attorney General, the former Attorney General, the Minister for Conservation and Land Management at that time, Mr West, as well as the former Federal Minister for Justice Senator Tate and a number of bodies, including Insolvency and Trustee Service Australia, resulted in no joy.

I bring this matter to the attention of the Parliament in the hope that some further action can be taken on behalf of these poor people who have suffered a monstrous injustice for such a long period of time. Mr Gosden was discharged from bankruptcy on 2 February 1986. The date of the application by the Official Trustee was 24 July 1986. Despite this, at no time did the application by the Official Trustee quote Mr Gosden as being a discharged bankrupt. Further, no communication was given in the application that mortgages existed over both properties - in one instance to the Commonwealth Bank and in the other to the National Australia Bank. At no time was the Land Titles Office advised of these existing mortgages.

It is my understanding that in accordance with the relevant sections of the Conveyancing Act, the Real Property Act and the Trustee Act it is improper for a trust to be established over a mortgage. I have been advised that deeds for both of these properties are still in the possession of the respective banks that control the mortgages over the properties. However, the Land Titles Office still formally recognises the Official Trustee as the proprietor of the properties in question. Despite correspondence by Mr Gosden, and what would appear to be the clear circumstances as outlined in law by several Acts, no one body - either Federal or State - has been willing to accept responsibility or liability. However, at the same time each body is keen to pass on responsibility to some other area of the bureaucracy or to state that this matter should be responded to by

someone else.

Because of an error, deliberate or otherwise, Mr Gosden has become the victim of a gross injustice. He is substantially out of pocket and is being continuously subjected to the overbearing burden of not having his bankruptcy discharged. Despite the fact that a formal order of discharge was made by the courts, both Mr Gosden and the Official Trustee are virtually in limbo because the deeds for both properties are held by the respective banks until such time as this matter is sorted out. I request the Attorney General and the Minister responsible for conservation and land management to investigate their respective files concerning this matter, correct the injustice that Mr and Mrs Gosden continue to suffer, and give them some financial retribution for the long years of suffering they have endured as a result of the grave error perpetrated against them.

RICE MARKETING POLICY

Mr SMALL (Murray) [5.48]: I have grave concern with certain recommendations of the Hilmer report in regard to vesting powers and the future of such powers. If those recommendations were to be implemented, they would create problems in New South Wales, whereby statutory marketing authorities and boards could be done away with. I wish to make a point about the importance of orderly marketing. I refer particularly to the rice industry. For a number of years the rice industry has had vesting powers. There is an agreement between the Rice Marketing Board and the co-operative mill whereby the rice delivered to the board becomes part of the product for milling. Therefore, there is a single receiver and a single seller.

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Many people might think the rice industry is dictatorial in its use of its vesting powers. However, the rice industry is an industry owned by the growers. The growers own the storages and the milling complex and manage the whole resource. The growers package the rice, sell it and market IT throughout the world. The rice industry is a unique industry. To do away with vesting powers could be detrimental to the industry. Despite all the hardships endured by rural industries throughout New South Wales and Australia, the rice industry is an industry favourably regarded for its good management and the constructive way it ensures that rice is received, delivered and sold.

The present price of rice will probably never be acceptable to the growers in comparison with returns to growers in other countries. However, with improved technology there have been higher yields and this has been a tremendous help to the growers. The opening of the Japanese rice markets has led to a more favourable price being achieved for Australia's product. That makes it even more essential for the rice industry to retain its vesting powers. There is an agreement between the board and the co-operative that permits divesting to occur if that is considered necessary. Still on the subject of vesting powers, approximately two years ago vesting of barley was undertaken through the Barley Marketing Board for the State of New South Wales. The Minister for Agriculture at that time, the Hon. Ian Armstrong, discussed vesting powers with me and asked my opinion about it. I told him that I believed vesting powers were worth while. The Barley Marketing Board was finding it extremely difficult to secure sufficient tonnage to meet export demands so that it could achieve the best possible price for growers.

The southern area of the State has many farmers engaged in barley growing. Recently, as chairman of the agricultural advisory committee, I had the honour of visiting the Narrabri area in the electorate of the honourable member for Barwon. The region has many barley growers who are of a similar view to the growers in the south. They believe that the vesting powers are not working successfully. However, I know that there is a difference of opinion among the growers about the need for vesting powers. I request the Minister for Agriculture and Fisheries to examine this matter. He may agree to conduct a referendum among the growers. I recommend that such a referendum be held so that all barley growers can express an opinion on whether they prefer vesting powers to be maintained for the industry. That would be the best way of resolving the issue. In that way the growers themselves would be able to determine whether they should retain vesting powers.

"GLENDALLO", VARROVILLE, CROWN ROAD ACCESS

Mr KNOWLES (Moorebank) [5.53]: I speak on behalf of Mr Ian Henry and Mrs Helen Henry of "Glendallo", St Andrews Road, Varroville, concerning what I regard to be extraordinary circumstances surrounding the reopening of a closed Crown road across their farm and home property without any notification and, it would appear, without proper authority. On Saturday, 12 December 1992, Mr Henry observed a bulldozer in operation on his property. Upon investigation he discovered that the owners of the adjoining property were constructing a road approximately 1½ kilometres in length straight through his farm and land. Mr Henry was advised that special permission had been given to build the road, and that included the bulldozing of Mr Henry's property fencing and numerous mature trees.

My investigations reveal that officers of the Department of Conservation and Land Management applied to the Land Titles Office to re-establish a Crown road to benefit the owner of the adjoining property without notifying Mr or Mrs Henry or any of the registered mortgagees of the property. Specifically, Mr Paul Riddle of the Department of Conservation and Land Management wrote to the Registrar General on 2 July 1992 seeking from him, on behalf of the owner of the adjoining property, agreement to reinstate a Crown reserve road across the property, despite the fact that the road had been legally closed as part of primary application No. 38405 on 30 April 1956. In the first instance I express my concern and surprise that a public servant would seek that action from the Registrar General on behalf of a private property-owner without any reference to or correspondence with the owner of the affected land.

In his letter to the Registrar General Mr Riddle is clearly acting on behalf of the owner of the adjoining property, in an apparent attempt to provide access to that property from a public road, despite the fact that the adjoining property has, and has always had, access to a public road - that is, Farm Road - via an existing right-of-way over adjoining land owned by the Sydney Water Board. There is simply no need for the Crown road to be created over Mr Henry's property. I can only suspect the motives of officers of the Department of Conservation and Land Management and the Land Titles Office. The Crown reserve road was included in primary application 38405 on 30 April 1956. The predecessor of the Department of Conservation and Land Management, the Department of Lands, was advised of the application by the Land Titles Office on 8 November 1955. The notice of application was published in the *Government Gazette*, which also advised the expiry date of caveat of any existing interest.

The Department of Lands acknowledged receipt of the letter of 8 November 1955. However, it did not respond with any claim, interest or objection prior to the expiry date. Consequently the Land Titles Office quite properly issued the primary application and created a new certificate of title, that is, a clear and indefeasible title was issued, and from that date - 1956 - the previous Crown road reserves were extinguished. It is less clear why, almost 40 years later, the Department of Conservation and Land Management has attempted without notification to have the Crown reserve re-established in favour of the adjoining property. Clearly there is a need for an urgent investigation of the matter.

Questions that must be addressed are: Why did officers of the Department of Conservation and Land Management act on behalf of the owner of the adjoining property? Why, in acting for the owner of the adjoining property, did officers of the Department of Conservation and Land Management and the Land Titles Office fail to notify either Mr and Mrs Henry, the registered mortgagees, or Campbelltown City Council that the Crown reserve road, which had been closed for almost 40 years, was going to be re-created? Why was the certificate of title of the affected land amended by the Land Titles Office to indicate a reduced area of land, without any notification being given to Mr and Mrs Henry or the mortgagees? Why was the owner of the adjoining land given written permission by officers of the Department of Conservation and Land Management to undertake road construction and without prior local government approval? What relationship exists between the owner of the adjoining property and officers of the Department of Conservation and Land Management and the Land Titles Office?

I am sure honourable members will agree that these serious matters require immediate investigation. In addition, last Saturday Mr Henry was arrested, it seems essentially for trespassing on his own land. As bizarre as it might seem, Mr Henry was taken from his home in a police car to Campbelltown police station to be charged. However, following a sworn statement being taken by police and after considerable stress to Mr Henry personally and to his family, he was ultimately released from custody. I assure the House that there is more to this story than time will permit me to detail. However, from the information provided to me it would appear that, at best, officers of CALM and the Land Titles Office are guilty of negligence, and perhaps corrupt conduct. I wrote to the Minister responsible on 11 March seeking an investigation of the matter. I am yet to receive a substantive reply. Given the events of last Saturday, I call on the Minister to take a much closer interest in this matter and to resolve the problem. [*Time expired*.]

OLYMPIC GAMES 2000 COMMUNITY INVOLVEMENT

Mr MERTON (Baulkham Hills) [5.58]: I speak on an important matter, particularly as it affects the Baulkham Hills community. Last night I was pleased to convene an Olympic information night held at the Baulkham Hills Sporting Club. The meeting was attended by about 50 representatives of local community organisations, including the Lions Club, Girl Guides and local sporting clubs. The guest speaker was Louise Walsh, who is the manager of community relations of the Sydney Organising Committee for the Olympic Games, which is charged with organising and staging the Olympic Games in the year 2000. Baulkham Hills is ideally situated between the Sydney Olympic Park at Homebush Bay, Penrith Lakes - the venue for the canoeing and rowing events - and Eastern Creek. As I explained to the meeting - and I was pleased with the response - it is time for the Baulkham Hills community to take advantage of the increased tourism that will be generated in the lead-up to the 2000 Olympic Games.

Ms Walsh explained that the Games will be held from 16 September to 1 October. Prior to the Games taking place the local communities will have many opportunities to have training facilities placed in a register that will be distributed to overseas countries. I shall soon be preparing a questionnaire for dissemination to community organisations, designed to collate information on the training facilities available in the district that might be offered to overseas athletes. I believe that many athletes will wish to visit New South Wales over the next few years to see what the climate is like and to ascertain how facilities for the Games are progressing.

My discussions with community leaders who attended the information night made me determined to ensure that Baulkham Hills receives just recognition. I was pleased to note the number of people who attended the meeting. They were: Allan Bricknell from the Winston Hills Lions Club; Maggie Thorn, Sandra Myers and Pam Baskett from Northmead Girl Guides, the Bartholomew family from Winston Hills Girl Guides; Ray Clarke from the Winston Hills Little Athletics; Jenny Bock from Winston Hills Girl Guides; Wendy Head and Irene Robsen from the Baulkham Hills Girl Guides; Jack Binning from the Baulkham Hills Sporting Club; Brian and Ann Fogerty from the Lions Club; Janet Blanch from The Hills Basketball Association; Trevor Lapham from The Hills Little Athletics; Wally Wallington; Allen McInnes; Alan Barnes; John McLeod; Jon Graham; Susan Wallace; Noelene Leggatt; Jim Watts, President of the Winston Hills Sporting Club; Steve Shafer from the Winston Hills Sporting Club; Cliff Hinton from the Baulkham Hills Cricket Club; and David Trewin from the Baulkham Hills Council.

These community leaders attended this interesting night and demonstrated enthusiasm towards the Olympic Games. Also present were: Cathy Aird from the Baulkham Hills Netball Association; George Wasyluk from the Baulkham Hills Cricket Club; Barry Moore from the Baulkham Hills Baseball Club; Gary Guild from the Castle Hill Basketball Club; Stephen Hartwell, Don Miller, Mark Drennan, Rod Palmer, Peter Touzel from the Baulkham Hills Cricket Club; and Ralph Jones from The Hills South Scouts. These community leaders have a keen interest in the Baulkham Hills area and are anxious to ensure that it shares in the benefits the Olympic Games will bring to New South Wales.

A committee will be formed and a meeting will be held in six months' time in order to be kept up to date

with progress on plans for the Olympics. I have set up a register of interested people who wish to be kept up to date with the Olympic 2000 plans and I extend an invitation to anyone else in the area to become involved. I am pleased with the role of the Baulkham Hills Sporting Club, in particular, the president, Pam Johnson and the director, Rosemary McClellan. Soon tours of the Olympic Park at Homebush Bay will be organised by them. Baulkham Hills residents are eager to ensure that the Olympics are a success and that they are vitally involved in the organisation and participation of the Olympic Games in the year 2000. [*Time expired*.]

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MENTAL HEALTH SERVICES

Mr GAUDRY (Newcastle) [6.3]: I bring before the House the pleas of two parents in my electorate on the deficiencies of treatment and accommodation under the Mental Health Act 1990 and the terrible suffering of schizophrenics and their families under this Act. Mrs Carolyn James has written to me as follows:

> My son . . . has suffered from Schizophrenia for the last 8 years. During that time his medical care has been repeatedly impaired by the inadequacy of the Mental Health Act. He has made at least 7 attempts at suicide and has had 8 Hospital Admissions - all of which could have been prevented if medication had been given him before he totally "broke down" and was finally hospitalised. During his last Psychotic Episode he smashed windows, walls and furniture in his small rented bed-sitting room before the Police were called. Now he has no where to live because of the consequent damage to his Reputation.

Mrs James continued:

> If "Danger to his Reputation" had been one of the criteria for his hospitalisation before the last episode occurred he could have been medicated and the whole horrific situation prevented. If people who suffer from Manic Depression are prevented from doing damage to themselves by this clause in the Mental Health Act why are Schizophrenic patients forced to suffer so unnecessarily?

One is aware of the anguish suffered by Mrs James when one considers the number of times this young man has attempted suicide and damaged property. She further stated:

> It would be hard for me to describe the trauma and heartbreak caused to families by the hopelessness of this disgraceful situation.
>
> Another major problem with the Mental Health Act is that Community Treatment Orders made by the Magistrate to order the patient to have medication are automatically negated if a patient admits himself to hospital for further treatment at any time. This renders the Magistrate's Orders totally useless and can prove to be extremely dangerous to the patient and to the Community.

My constituent finished with a plea:

> Can something please be done to change this inadequate and unsafe legislation?

I am aware that moves are on foot to change the legislation, and this plea certainly adds weight to that. A letter from the Association of Relatives and Friends of the Mentally Ill brought to my notice the inadequacy of the present legislation, and its failure to protect and provide satisfactory accommodation and support to mentally ill patients, particularly patients with schizophrenia. This letter refers to a litany of harassment and exploitations of people caught in that dilemma. In this case the son of a member of the association has been housed in a Department of Housing bed-sitter since 1988. The member's son has had a serious mental illness for the past 18 years. The letter states:

> Since February 1994 our member's son has been subjected to serious harassment, vandalism, theft of goods, money and unauthorised use of telephone.

This son returns home at the weekend. The letter further states:

> On the 2nd February his watch and bankbook were stolen from his unit . . . on the 8th February, Home Care Workers reported the

unit had been vandalised . . . During March the harassments continued and coercion was used to have our member's son sign forms to withdraw money from his bank account. In the period from 28th March to 16th April 1994, approximately $3060 was withdrawn from his account. From period March 3rd to April 6th, 362 telephone calls were listed on his telephone account . . . During his absence on the weekend of April 16th the following goods were stolen; Refrigerator, Television set, Bon Air, Electric Fan and a Kitchen Tidy.

The man was advised to vacate his unit because the people who were harassing him were extremely dangerous. The letter continues:

People with a mental illness are some of the most vulnerable people in our community. The situation outlined above has caused a high level of stress for both our member and her son. Our member's son is currently being treated by the Crisis Team. Our elderly member has experienced a high level of mental anguish . . . Appropriate accommodation is so often the key to a better quality of life for people with a mental illness living in the community. There is an urgent need for appropriate accommodation, accommodation that is safe, secure, affordable, and monitored by suitably trained staff.

That is an indictment of the way in which we allow mentally ill patients to be accommodated and treated in the community. [*Time expired*.]

Mr COLLINS (Willoughby - Treasurer, and Minister for the Arts) [6.8]: The honourable member for Newcastle was not a member of this House when his party was last in office and therefore was not present when a number of debates took place in this Chamber on the mental health issue. I have always been passionately committed to mental health, and I remain passionately committed though I am no longer the Minister for Health. When I became Minister for Health in 1988 the Government set about rectifying a number of problems in the provision of mental health services in this State. We went a long way down the path to rectifying many of the grave deficiencies that then existed. I shall not recount them now but they were well publicised in the late 1980s.

As Minister for Health I put in place a quarantine budget of $150 million a year to be spent exclusively on upgrading mental health services. The Government sought, and achieved, improvement in major mental hospitals in this State. This resulted in a number of them being accredited whereas prior to the coalition coming to office in 1988 none had been accredited by the Australian Council on Hospital Standards. The Government introduced the Mental Health Act 1990 and cleaned up the terrible mess of partly proclaimed and partly unproclaimed legislation, a very old Act - a complete legislative shambles. That was done following the widest possible consultation, including consultation with many Opposition members, including the now Opposition spokesman.

The Government has put in place a monitoring mechanism that reported last year and some further improvements were accommodated. Schizophrenia is

a terrible condition, especially for the families involved. I do not begrudge the honourable member for Newcastle bringing this matter to the attention of the House. To his constituent, all I can say is please accept the assurance of this Government that it has acted in good faith in improving services for mentally ill patients in this State and for those who suffer mental illness. [*Time expired*.]

BILL RETURNED

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

Health Legislation (Miscellaneous Amendments) Bill.

[*Mr Acting-Speaker (Mr Tink) left the chair at 6.10 p.m. The House resumed at 7.30 p.m.*]

BOARD OF VOCATIONAL EDUCATION AND TRAINING BILL

Bill introduced and read a first time.

Second Reading

Mrs CHIKAROVSKI (Lane Cove - Minister for Industrial Relations and Employment, and Minister for the Status of Women) [7.30]: I move:

That this bill be now read a second time.

The introduction of the Board of Vocational Education and Training Bill represents a major milestone in the reform of the vocational education and training system in this State. Over the last four years or so there has been a major focus by all governments in Australia on the reform of vocational training. There has been unprecedented national agreement that investment in this area represents one of the most significant ways to improve our national economic performance. The growing national consensus on the importance of the vocational education and training system has been influenced over recent years by the publication of three major reports.

In 1989 State and Commonwealth Ministers commissioned the Deveson committee to report on the training costs of award restructuring. This report predicted a major expansion of both publicly and privately funded training and advocated that this expansion should be accompanied by structural reforms to promote a competitive training market and the establishment of nationally consistent arrangements for the accreditation and recognition of training. The report recognised that government alone could not fund the expansion of training required to meet Australia's future skill needs.

Secondly, the Finn report on young people's participation in post-compulsory education and training set targets for training and educational participation, and also proposed a set of seven key competencies as being essential for young people. The third significant report was the Employment and Skill Formation Council's report on the Australian vocational certificate training system. Unlike the first two reports, this report's recommendations are yet to be fully endorsed. Governments are awaiting the results of pilot programs before making final decisions on the implementation of a new entry level training system, to extend beyond those areas currently covered by apprenticeships and traineeships.

Since the late 1980s we have seen an increasing realisation of the importance of the vocational training sector. The growing internationalisation of our economy and the pressures placed upon industry during the recent recession have served to highlight the absolute importance of developing a more skilled work force. These forces have also highlighted the importance of developing training arrangements which are available to the work force at large, regardless of their age, gender, location or family circumstances. Much has been achieved already in New South Wales in the training reform process. In 1989 this Government introduced the Industrial and Commercial Training Act, which established a framework for the better management of entry level training in this State.

In 1990 this Government introduced major reforms to legislation governing the New South Wales TAFE Commission. It established an independent Board of Adult and Community Education and it established the Vocational Education and Training Accreditation Board. Successful achievement of the New South Wales TAFE Commission objective to "provide quality education and training" for vocational education and training customers has been guided by my colleague the Hon. Virginia Chadwick, and is an integral component of the overall reform process for vocational education and training in New South Wales.

Particularly relevant in terms of the national agreement is the TAFE Commission's continuing effort to work towards a more efficient total training system by collaborative educational and capital planning initiatives, sharing resources with schools, universities, adult and community education centres, and private training providers and refining relationships with industry clients. The Board of Adult and Community Education has expanded the range of opportunities for the people of New South Wales to take up study, much of it of a

vocational nature, for the first time, or to get back into study after an absence.

Arrangements have been developed for ensuring the quality of training through the New South Wales Vocational Education and Training Accreditation Board. These standards now form part of the national framework for the recognition of training allowing a nationally recognised system of training standards. A new national qualifications framework has been recently agreed between the States and the Commonwealth which will ensure consistency in the recognition of accredited courses, training programs, training providers and credentials held by individuals. The most significant of the national agreements negotiated over recent years has been the decision of States, Territories and the Commonwealth in July 1992 to establish the Australian National Training Authority, commonly referred to as ANTA. The Commonwealth passed legislation in 1992 for this purpose.

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Along with the Commonwealth Government's belated recognition of the poor funding deal it had dealt the States in relation to the vocational education and training sector came a burst of rather naive enthusiasm to take over the whole system from the States. This Government, along with most other State governments at the time, rejected this overture on the grounds that centralised control of the training system from Canberra would not be the best way to develop a flexible and responsive system. What this Government is on about is developing a training system driven by market needs rather than by bureaucrats; a system which allows for national consistency but also recognises that the States have quite different industry structures and quite different training needs.

In July 1992 the now Premier played a leading role in negotiating the ANTA agreement with the Commonwealth and the other States and Territories. It balances the national interests of the Commonwealth Government to see a nationally consistent system, addressing valid national goals for vocational education and training, with the State's primary responsibility to ensure that the specific training needs of its citizens and its enterprises are effectively addressed through its publicly funded training system. The ANTA agreement is not just about national consistency. It also represents a means by which more funding for training can be channelled from the Commonwealth to the States. Over the initial three-year period of operation of the ANTA agreement the Commonwealth has injected an additional $720 million of growth funding into national vocational education and training.

While the New South Wales share of this represents less than 10 per cent of our total State expenditure on vocational education and training, it has allowed for expansion of training in such fields as hospitality, computing, transport, business administration, engineering, health, community services and a wide range of preparatory programs. Most of the growth funding received so far has been allocated to the New South Wales TAFE Commission. However, this year, in acknowledgment of the ANTA objectives, $3 million has been allocated to a pilot private provider program. This is a demonstration of this Government's desire to broaden the training market and to allow for consistency with the ANTA agreement objectives.

A key aspect of the ANTA agreement is that the State should speak with one voice in its negotiation with the Australian National Training Authority. The agreement and the Commonwealth legislation require the establishment of a State training agency. Indeed, clause 10 of that agreement states that the "relationship between State training agencies and ANTA will be formally defined in Commonwealth and State legislation". A central role of this State agency is to identify the State's training priorities for the coming year and to negotiate the State's share of growth funding with ANTA to meet these priorities.

As a result of the ANTA agreement, the New South Wales Government appointed Sir Nicholas Shehadie, A.C., O.B.E., to head up an interim New South Wales vocational education and training agency. The interim agency conducted a public inquiry to determine how best this State might put in place the structures and processes required under the ANTA agreement. The interim agency consulted widely in terms of advertisements calling for submissions, and public meetings were held in metropolitan and country areas. The interim agency recommended the establishment of the New South Wales Board of Vocational Education and

Training to carry out the functions of the State training agency. The board will be a policy and planning advisory body on the vocational education and training system in New South Wales.

Further, the interim agency recommended that the board consist of nine members, being an independent chair, five members appointed by the Minister, the director-general of my department, the Managing Director of the TAFE Commission, and the Executive Director of the Ministry of Education and Youth Affairs. Accordingly, on 5 November 1993 I announced the members of the board, nominated on the basis of their expertise to enable them to make a valuable contribution to the work and activities of the board. The board is chaired by Sir Nicholas Shehadie. In keeping with the terms of the Commonwealth legislation, I have nominated the Board of Vocational Education and Training as the State training agency for New South Wales.

The interim agency recommended that the board should have 12 specific objects, and these have been included in the bill. They are: to advise the Minister on State vocational education and training policies in the context of State and national priorities and objectives; to promote and develop, in collaboration with other agencies, a State vocational education and training system delivering high quality and nationally recognised programs; to prepare, in collaboration with industry and vocational education and training providers, State training plans, profiles and reports based on the national strategic plan and agreed planning parameters, for approval by the Minister; to recommend to the Minister the allocation of resources to achieve optimal effectiveness and efficiency in the State's vocational education and training system; to co-ordinate the provision of statewide data on the performance of the vocational education and training system to the Minister as required; to prepare such plans and reports as may be required by the Minister and to meet the Government's requirements; to liaise with the Australian National Training Authority and other State-Territory training agencies; to commission and or conduct inquiries and foster research in vocational education and training; to promote and develop, in consultation with the New South Wales Vocational Education and Training Accreditation Board, a co-ordinated and effective State system for the accreditation of courses and registration of providers; to encourage the development of innovative programs, best practice models and the creation of

new partnerships between the users of vocational education and training and public and private providers; in collaboration with other agencies, to develop effective communication mechanisms for the dissemination of information about State and national developments in vocational education and training; and to advise and make recommendations on any matter referred to the board by the Minister.

These objects do not limit or restrict the statutory functions of any other bodies providing vocational education and training services under the Education Reform Act, the Technical and Further Education Commission Act and Higher Education Act. The consequential amendments to the industrial and commercial training legislation of 1989 flow from recommendations of the interim agency. That legislation has been amended to dissolve the Industrial and Commercial Training Council. The apprenticeship and traineeship regulatory functions previously exercised by the council have been transferred to the director-general of my department. The most important of these is the issuing of vocational training orders in respect of declared trades and declared callings.

Minor amendments have been made to the Vocational Education and Training Accreditation Act 1990. Of these, I consider the most important to be that which, in respect of declared trades and declared callings, enables any person or body to make an application to the board for accreditation of a vocational course. This provides added flexibility for industry groups, including employer and employee associations, to become more closely involved in structured entry level training arrangements. The bill represents a major step towards the implementation of a better resourced, a better co-ordinated and a more responsive vocational education and training system for New South Wales. I commend the bill to the House.

Debate adjourned on motion by Mr J. H. Murray.

FIRE BRIGADES (AMENDMENT) BILL

Bill introduced and read a first time.

Second Reading

Mr GRIFFITHS (Georges River - Minister for Police, and Minister for Emergency Services) [7.45]: I move:

That this bill be now read a second time.

There is no one here today who would not agree that the efforts of all concerned in combating the January fires are to be commended. It can be said that it was a well-run firefighting operation in spite of the many adversities that faced the firefighters and those in charge of the firefighting campaign. However, I am the first to recognise that the fires highlighted a number of areas which require improvement to effect a better firefighting force and consequently an improved level of fire protection for the community of New South Wales. One such area is the command and control structure of the New South Wales Fire Brigades. It requires clarification, and the Fire Brigades (Amendment) Bill seeks to do just that.

At present, the Fire Brigades Act provides for the brigades' senior management structure to be split between the director-general, who is the department's chief executive officer, and the chief officer, who is responsible for operations. The director-general has the statutory responsibility of taking all practicable measures for preventing and extinguishing fires and protecting and saving life and property from fire. The chief officer, in addition to operational matters, is charged under the Act with the responsibility for maintaining the efficiency, discipline and good conduct of the members of the fire brigades. The current structure is, in effect, a continuation of that which applied prior to 1989, when the former Board of Fire Commissioners was abolished and the New South Wales Fire Brigades was established as an inner budget sector department. I consider the artificial division of responsibilities to no longer be appropriate. The current arrangements are inconsistent with modern management practices and accountabilities. They are not conducive to the acceptance of managerial accountability.

It is a central principle of good management that clear lines of responsibility, command and accountability be maintained. In the circumstances, it is proposed to establish a single position of commissioner, who will have responsibility for the management and control of the organisation. Similar arrangements have worked well with the Department of Corrective Services, the Police Service and, more recently, the Department of Bush Fire Services. Once a modern and effective command structure is established, the officers of the New South Wales Fire Brigades will be able to be properly supported. It is opportune to pursue this structural change as the director-general has retired and the chief officer is retiring shortly. I commend the bill to the House.

Debate adjourned on motion by Mr Amery.

RURAL LANDS PROTECTION (AMENDMENT) BILL

Bill introduced and read a first time.

Second Reading

Mr CAUSLEY (Clarence - Minister for Agriculture and Fisheries, and Minister for Mines) [7.48]: I move:

That this bill be now read a second time.

The main aim of the Rural Lands Protection (Amendment) Bill is to enable the Minister to declare by order, published in the *Government Gazette*, that certain pest animals or birds are to be controlled within land specified in the order. At the present time if controls are to be placed on pest animals under the Rural Lands Protection

Act, the animal in question must be declared noxious and all landholders across the State are then required to actively suppress and destroy these animals. However, there are certain

pest animals that have an impact on certain areas of the State but not across the State as a whole. It is therefore not feasible to declare such animals as noxious animals under the Act. Such animals could be foxes, feral cats, feral goats, et cetera. However, these animals may have an impact on native fauna and birds as well as the environment in localised areas.

Under this proposal animals will be declared pest animals under the Rural Lands Protection Act and then the Minister will be able to impose certain controls on these pest animals within clearly defined areas specified in a control order published in the *Government Gazette*. The Crown is bound by this legislation. It is essential that the Crown be bound by this legislation as there are many environmentally sensitive areas on Crown land where pest animals are having an impact on native fauna and the environment. After appropriate consultation, authorities looking after such land will be required to impose control measures on any pest animal declared in these areas. The mechanism by which this legislation will work is that local community groups may make application to their Rural Lands Protection Board for a control order to be put in place of any land within the board's district for a particular pest species. The Rural Lands Protection Board will then make application to the Minister for the control order to be issued.

The Rural Lands Protection Board must not make application for a control order in relation to land in whole or part occupied by a public authority unless it first consults with the public authority about the proposed control order. All applications must be in writing to the Minister and must specify the land and the species of animal or bird in respect of which a control order is sought. The application must also specify the prescribed control method or methods sought by the board in respect of such animals and must indicate the level of community support for the proposed control order.

This legislation recognises the increasing role community groups are playing through land care, et cetera, in controlling feral animals. It was recognised at the feral animal summit organised by our colleague the Minister for the Environment that there must be more community involvement in feral animal control, and this legislation is designed to do this. The control order must be published in the *Government Gazette* and must specify the land and species of animal or bird to which it applies as well as the control method to be implemented in respect of such animals and birds. The Minister is not to make a control order unless he or she is satisfied that adequate community consultation has taken place in relation to the proposed control order.

With respect to public land, a public authority that occupies the land to which an order applies must reduce the number of pest animals on the land to the extent necessary to minimise the risk of those animals causing damage on that land. If a dispute arises between the Minister and the Minister responsible for the public authority in connection with a control order, then after a submission to the Premier the Premier may hold an inquiry into the dispute and may make such decisions about the dispute as he sees fit having regard to the Government's interests and the circumstances involved. The proposed legislation makes it clear that noxious animals may be declared pests for the purposes of control on public land. Public authorities are not currently expected to comply with control requirements for noxious animals - that is, wild dogs, rabbits and feral pigs - although in practice many public authorities do take control action.

Where a particular type of noxious animal poses a particular problem in an area of public land, this proposed legislation will allow control measures to be specified. The same requirements for consultation will, of course, apply. The Minister or public authority must comply with the decision of the Premier. The Government recognises the increasing importance of protecting agricultural production and the environment from the effects of feral animals. This legislation is a further endorsement of the importance that the Government places on native fauna, especially in environmentally sensitive areas across the State. I commend this bill to the House.

Debate adjourned on motion by Mr Martin.

LOCAL GOVERNMENT LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL

Bill introduced and read a first time.

Second Reading

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [7.54]: I move:

That this bill be now read a second time.

I am pleased to be able to introduce the Local Government Legislation (Miscellaneous Amendments) Bill, which continues the process of reform of local government that has received the widespread support of all members of this Parliament. Honourable members will no doubt recall that at the time of introducing the legislation the Government recognised that, as with any legislation of that size and importance, there would be a need for refinement to ensure the effective and efficient operation of the legislation as intended. The bill I am introducing today fulfils a commitment to monitor the introduction of the 1993 Local Government Act and to amend those provisions where difficulties of interpretation have occurred, unintended consequences have arisen and where fine-tuning was required after a period of nearly 12 months' operation.

The principal objectives underlying the legislation are to clarify certain provisions of the 1993 Act, to refine certain transitional arrangements, and to make some minor technical amendments of a consequential nature to a number of other Acts. Consultation with the community, local government and interest groups has continued through the implementation plan of the 1993 Act provisions. In

fact, many of the amendments have been proposed as a result of that process. The miscellaneous proposals will assist to clarify a range of matters that are minor in the overall scheme of the legislation but of significance at the local level for councils, communities and people working in or with local government.

I would therefore like to emphasise that this bill is intended to be of practical assistance to councils, council employees and the community at this time of significant change in the local government sector. I draw the attention of members to some of the more notable amendments. First, there are a series of amendments intended to enhance the safety of children and older people. These concern the regulation of safety with regard to swimming pools, skateboards and rollerblades, and water-based recreational activity, which covers surfboards and windsurfers. Secondly, new transitional provisions will allow councils to retain the title of shire or municipality if they resolve to do so by the end of this year. In addition, all councils will be able to reduce councillor numbers below 15 by way of resolution without a constitutional referendum if they resolve to do so by the end of the year.

Councils will also be able to request exemption from the need to hold a by-election if it would result in more than the reduced numbers of councillors as resolved by the council. A number of minor amendments have also been made to ensure the smooth operation of the new approvals and orders system. Amendments concerning orders affecting heritage items have been the subject of consultations with the Heritage Council, which supports the proposed amendments. The proposed amendment to allow the Land and Environment Court to direct a council to carry out works where a person fails to comply with an order is intended to have the effect of avoiding contempt proceedings, which do not achieve the desired result, and has been included following consultations with the Land and Environment Court.

One final amendment that I would like to mention concerns the provision to amend the basis for determination of senior staff positions. There have been some difficulties with the existing definition. It was always intended that only those staff commonly referred to as the executive should be classified as senior under section 332. Unfortunately, some councils adopted a very wide interpretation and classified as senior some personnel not forming part of the executive management team. The issue was brought to notice by the Health

and Building Surveyors Association, and since then there has been extensive discussions with all unions and the Local Government and Shires Association. The advice and assistance provided by the unions in particular has been appreciated. The proposed amendment will define more precisely the executive responsibilities and accountabilities associated with senior staff positions, rather than regulating the definition of senior staff on the basis of remuneration alone.

It will overcome industrial concerns that councils may be able to remove employees more appropriately placed in other bands of the Local Government (State) Award from the award and consequently from access to industrial arbitration. This has never been the Government's intention. To further address industry concerns about excluding staff on relatively modest salaries from industrial coverage, a minimum total remuneration level for senior staff will be established. However, this is more appropriately done by regulation, as provided for in the amendment. A regulatory impact statement will be prepared prior to determining this level. The amended definition will come into effect at the same time as the regulation. Appointments made under the previous provisions remain valid. It would take a considerable amount of time to speak in detail about each of the amendments. Therefore, I commend the bill to the House. I table the additional material and indicate that the matters referred to hereunder are an explanation in respect of the principal minor amendments that are proposed. I seek the leave of the House to incorporate the balance of my second reading speech in the *Hansard*.

Leave granted.

Mr Speaker, the matters referred to hereunder provide an explanation in respect of the principal minor amendments that are proposed.

Meetings and Information

Provision has been made for Councils to be able to delegate power of expulsion at a meeting to Mayor or Chair (Section 10). Presently a person can only be expelled by the Council or the Committee and the power cannot be delegated to the Mayor or the Chair. This is considered unworkable - the Mayor or the Chair should be able to remove a member for disorder where the Council has agreed that power should be available to the Mayor or Chair.

The report of an investigation into a Council by a Departmental representative will be publicly available once tabled (Section 12(1)/Section 433). This is necessary because the Act does not say, as the 1919 Act did, that the public can have access to the Department's report of an investigation into a Council once it has been tabled at the Council Meeting.

Councils or Council Committees will be able to close a meeting on the ground of legal professional privilege (Section 10(2)(f)). Presently, Councils can only close the meeting where the legal advice concerns litigation. The amendment brings the position into line with the Freedom of Information Act and will allow Councils to close a meeting where communications from legal advisers contain matters that would normally be subject of legal professional privilege.

Extraordinary meetings of Council may be called in 7 days (not 21 days as currently stated) (Section 366). This was requested by Executive of the Local Government and Shires Association which considered that 21 days was far too long when extraordinary meetings might be required to deal with urgent matters.

It has been made clear that where the Act stipulates that a function of Council is to be made by "resolution" of Council, then that function cannot be delegated (Section 377). This amendment follows advice by Parliamentary Counsel that the intended effect of the words "by resolution" in a provision is to restrict such a power to a decision of a council proper ie. the function may not be delegated. Section 377 as currently drafted lists some, but not all of the provisions expressly requiring a resolution of council when exercising a function.

Public Land

Where a Council decides to purchase operational land at auction in a closed meeting, it will not be required to disclose the decision (Section 31). The aim of this amendment is to allow Councils to maintain secrecy so as to avert any adverse financial disclosure arising from disclosure of Council's intent.

Provision has been made for Councils to be able to transfer community land to National Parks and Wildlife Service without the need for a Local Environment Plan (LEP) (Section 45). Similarly Councils are to be able to transfer community land to the Crown without an LEP where it is intended that the land be added to a reserve for public recreation or similar community purpose (Section 45). Both these proposals are needed because otherwise transfer of such land must be reclassified as operational prior to transfer - this is obviously inappropriate if it is community land, and it restores the position available under the 1919 Act.

Tendering

When a "Selective Tendering" process is used by a Council (following public advertisement for expressions of interest or following public advertisement for listing of approved contractors for particular kinds of proposed contracts) it is to be clarified that Councils do not have to advertise for a second time when selecting a tender from the short list of expressions of interest or the approved list of contractors (Section 55(2)). If Councils were to have to undergo a further round of advertising after the selective tendering process, it would completely undermine the advantages of selective tendering and lead to significant increases in costs for Councils when purchasing goods and services.

Regulatory Functions

Provision has been made so that in areas governed by the Water Supply Authorities Act, Councils will also have approval powers for stormwater drainage matters (as in the 1919 Act) (Section 68(2)). The current exemption from approval in section 68(2) means that councils may not exercise their approvals power in relation to drainage matters in those parts of their area covered by the Water Supply Authorities Act. This amendment will allow councils to regulate drainage matters in areas subject to the Water Supply Authorities Act.

Security deposits paid as a condition of an approval are now to be paid into the consolidated fund and not the trust fund, as required by AAS.27 (Section 97/407). Australian Accounting Standard 27 requires any money over which Council has control must be consolidated in its financial accounts. There will also be savings to Councils because if trust funds had to be established for each security deposit there would be considerable administrative cost.

The term "in principle" approval will be replaced by the term "deferred commencement" approval to reflect similar amendments being made to the Environmental Planning and Assessment Act to make it clear that the approval does not commence immediately (Sections 95, 99 and 177). This effects no substantive change to these sections but merely changes the headings. This continues the policy of the Local Government Act and the Environmental Planning and Assessment Act containing mirror provisions in order to facilitate a streamlined approvals process in which development and building applications may be processed more quickly.

Councils will be allowed to issue certain orders affecting heritage items, in emergencies, without the need to observe the time consuming special procedures set down for orders affecting heritage items. This proposal will provide greater protection for those items (Section 142). This amendment was formulated after consultation with the Heritage Council and applies in emergency situations only. It provides that a council is not required to notify the Heritage Council or to consider subsequent submissions from the Heritage Council before issuing certain orders. These requirements could undermine a council's ability to act quickly and effectively in emergencies. As well, the orders specified in the amendment are those which would not affect the structure (ie. the heritage value) of a building. Rather, they merely require a person to not do or to cease from doing a particular action.

Provision is to be made to allow the Heritage Council to exempt Councils from notification and submission requirements concerning heritage items where appropriate (Section 142). This was requested by the Heritage Council and arose from the realisation that certain orders will have an impact on heritage matters. Consequently, the Heritage Council will have the discretion to elect to not be notified in relation to such orders and thereby avoid the administrative burden of processing notification of orders in which the Heritage Council has no interest.

Procedures to be observed by fire brigades giving orders in emergency situations are to be clarified in order to exempt fire brigades (in emergencies) from the statutory procedural requirements so that quick action can be taken to save and protect life and property (Section 150). This amendment was formulated after consultation with the Fire Brigades. It provides that the Brigades may act quickly to issue certain orders in emergencies without having to comply with notification or submission requirements. Such compliance could undermine the Brigade's ability to ensure or promote fire safety.

Notice of entry requirements are to be amended so that notice is not required to read water meters or where entry is urgently required and is authorised in writing by the General Manager (Section 193). This brings the Act into line with section 33 of the Sydney Electricity Act and reflects concerns by a range of Councils about the cost of issuing notices for readings of meters or where there are sewerage blockages, breakages etc.

Elections and Council Referenda

Joint owners, joint occupiers or joint ratepaying lessees of more than one parcel of land in an area will only be allowed one vote in the area as in the case of corporations and trustees. (Currently, the Act would allow separate votes in each ward) (Sections 270, 271). This clarifies that the position in Section 270(4) for corporations and trustees will be the same for joint owners, joint occupiers or joint ratepayers, ie. if they jointly own several parcels of land they will only receive one vote in the area.

Provisions for constitutional referendums after 1995 for either optional, preferential or proportional voting systems are to be deleted. Following the deletion of the Equal Value Voting Option during debate on the 1993 Bill these provisions are unnecessary (Section 285).

All Councils will be able to reduce numbers below 15 by way of resolution, without a constitutional referendum if they resolve to do so by 1 January, 1995 (Amendment to Schedule 7 of the Act, Clauses 26-30).

Where any Council resolves to reduce its numbers and has received Ministerial approval, the Council may seek an exemption from holding a by-election if it would result in more than the reduced numbers of Councillors as resolved by the Council (Amendment to Schedule 7 of the Act, Clauses 26-30). These proposals will provide considerable direct cost savings to Councils by averting the need for costly by-elections or constitutional referendums to reduce Council numbers (if Councils resolve not to hold them) prior to the 1995 election. It will also encourage ongoing savings to the community as a result of efficiencies and cost savings flowing from smaller numbers on the Council. Under the existing provisions only those Councils with more than 15 Councillors can reduce in number by resolution and without a constitutional referendum.

Shire or Municipality

Councils will be allowed to retain "Shire" or "Municipality" in their title if they so resolve by 31 December 1994 (New Savings and Transitional Schedule). There is widespread Council and community demand for this amendment.

Council Management

The role of the Chairperson of a County Council is to be specifically defined - it is not at present (Section 391/400). The role will be expressed in terms corresponding to that of the Mayor. It will also allow the Chairperson of a County Council to receive an annual fee in addition to the fee paid as a member of the County Council - in the same way as the Mayor.

The General Manager will be obliged to report on the management plan on a quarterly basis rather than every 4 months - this brings it into line with financial management reporting requirements (Section 407). The Financial Management Regulation requires Councils to submit to the Director General a Budget Review Statement each quarter. The same reporting period should apply to both management and financial reporting.

Staffing

Senior staff positions will be determined on the basis of appropriate executive responsibilities (Section 332(2)).

The amendment will define the executive functions and accountabilities associated with senior staff positions, rather than defining senior staff on the basis of remuneration alone. It will overcome industrial concerns that councils may be able to remove employees in other bands of the Local Government (State) Award from award and industrial arbitration by increasing their salaries to match the Executive Band.

In real terms, it means that Councils will not be able to determine a position as senior staff merely on the basis of salary - the position

will need to have appropriate responsibilities and accountabilities attached to it.

Honesty and Disclosure of Interests

The Pecuniary Interest Tribunal will be given the power to make a decision in relation to persons who are on Committees or are advisers to a Council - but who are not councillors or employees. Such persons are currently obliged to declare a pecuniary interest at a meeting. They do not have to provide a written return (Section 482). Without this power there is no statutory sanction available concerning Council advisors or consultants or outside Committee members who breach the honesty and disclosure principles of the legislation.

Councils will be allowed to "designate" a person on a Council committee. This will be a discretionary power. Where a person is so designated they will have to provide a written pecuniary interest return. This will encompass persons on Committees who are neither councillors nor employees (Section 441). At present where a Council delegates a power to a Committee the persons on that Committee cannot be "designated" persons required to submit a pecuniary interest return - even if Council wishes them to do so. Councils will now be able to request the submission of such returns.

It will be made clear that where an employer of a councillor has a pecuniary interest in a matter before the Council, then that councillor will have to declare a pecuniary interest also. This provision was in the 1919 Act (Section 443(2)). This will ensure that all pecuniary interests arising from the employment of a councillor are properly disclosed.

Council Finances

Domestic Waste Management Services: it is proposed to make it clear that Councils may fund such services annually by internal financing arrangements where necessary, and that such charges may comprise annual charges and charges for actual use. Councils may not, in addition, charge a fee for a domestic waste management service (Section 504).

These amendments are needed because:

- the present provision does not allow councils to fund domestic waste management (DWM) services except by DWM charges but Councils may, at times, not have sufficient accumulated funds and should be able to finance DWM expenses by internal loan arrangements - but not by cross subsidisation arrangements.

- Councils will be able to fund DWM services by both annual and use charges. This was the intention of the 1993 Act but some people say it is not clear. It was never intended that Councils should charge a fee on top of annual and use charges.

It is to be made clear that charges for use are not subject to rate pegging (Section 505). This was originally intended - but some people say it is not clear. If use charges were subject to rate pegging there would be no incentive for better waste management by Councils. This approach is strongly supported by Councils and the Environment Protection Authority.

It is proposed to introduce a provision to allow councils to aggregate value of certain parcels of land for rating purposes in order to alleviate onerous rating assessments (New Section 548A). A large number of ratepayers could be financially disadvantaged without this provision because base amounts and or minimum amounts could be applied to each small parcel of land they own - eg. if a garage was owned on a separate parcel from the house they would pay the base or minimum twice - as well as the ad valorem amount. A similar provision existed in the 1919 Act.

Reference to Commonwealth legislation in definition of eligible pensioner will be removed so that definition can be prescribed in the regulations. This is necessary to extend the Pensioner Concessions Scheme as agreed to by the Commonwealth and the States (Dictionary). The present definition contains references to Commonwealth legislation which could restrict the scheme and limit access to the wider group of recipients entitled to benefit under the Pensioner Concession Scheme. The amendment means the Act will not have to be amended every time the pensioner category changes.

Offences and Enforcement

Where a person is given an exemption for an approval under either a regulation or a local approval policy and they fail to carry out the activity in accordance with any exemption requirements, this will be considered a failure to obtain an approval, and penalties for that

offence would apply (Section 626). This amendment will assist in enforcing compliance with the terms of an exemption. It clarifies that when a person does not comply with such terms, the exemption will no longer apply and an approval will be required in order to lawfully carry out the activity. Failure to do so will constitute an offence under section 626.

It is proposed to refine the definition of public place and public reserve and to apply the offences on public land provisions to public places also. This will allow Councils to prosecute for offences on beaches and certain Crown lands, but not on land owned by the National Parks and Wildlife Service (Chapter 16, Part 2, and Dictionary). The amendment is intended to extend Councils' capacity to undertake authorised enforcement activity on land where they currently cannot do so - namely eg. beaches, public reserves, and other public places as defined. The current provisions do not allow Councils to undertake enforcement activity on beaches and certain other Crown lands. Coastal Councils are particularly keen (e.g., Sutherland) to have this amendment and have expressed the view that the local lifesaving service may be withdrawn if it has no lawful basis to enforce compliance with Council notices.

It is also proposed that the Land and Environment Court be able to direct a Council to carry out works (and allow costs to be recovered from the owner) where a person fails to comply with an order. Currently the Court has no direct power to direct a Council to carry out the work. Although Councils may carry out work when an order is not complied with, they often choose not to do so. Instead, on occasion, Councils sometimes bring successive contempt proceedings for failure to comply with the order or conditions of an

order leading to further legal costs and sometimes, terms of imprisonment. The Court did not have this direct power under the Local Government Act, 1919 and these difficulties have existed for some time (Section 678). The proposed provision will have the effect of avoiding contempt proceedings which do not achieve the desired result. If Councils consider there could be difficulties in carrying out a Court order, it is anticipated that these concerns would be raised in proceedings for the Court to consider and it would still be open to the Court to consider its injunctive power or its powers in relation to contempt. The proposed amendment is strongly supported by the Land and Environment Court.

Liability of vehicle owners for offences in free car parks will be extended to liability for offences on public land (Section 632/679A). At present Council officers can issue penalty notices to vehicle owners parked in a Council's free parking area - but cannot issue a penalty notice where the vehicle is parked contrary to a notice on public land outside the free car park or where a vehicle is parked contrary to a notice on public land but a parking fee has been charged. It is intended that the amendment will allow penalty notices to apply in such situations.

Disclosure of information relating to proceedings at a closed meeting of a Council or Council Committee will be made a specific offence, unless authorised by Council resolution (Section 664). While the Meetings Regulation stipulates that information relating to a closed meeting or closed proceedings must be disclosed, there is no specific offence which allows this requirement to be enforced. It will now be a specific offence with a penalty of up to $5,000.

Powers of an authorised person to demand the names of an offender will be extended to cover situations where the person is suspected on reasonable grounds of committing an offence under the Act. (The current provision says the person must be found committing an offence in a public place, which inhibits enforcement activity by Councils.) (Section 680(1)). The amendment was requested by the Australian Institute of Local Government Law Enforcement Officers Inc., (formerly the Australian Institute of Ordinance Inspectors) who were concerned that the existing provision was inadequate for enforcement purposes.

Authorised persons (mostly Council officers but also Police) will be able to confiscate recreational equipment including skating equipment and water based recreational equipment such as surfcraft and surfboards for up to 24 hours where used contrary to a Council notice (New Section 681A).

The skating equipment provision reflects a resolution of the LGSA Annual Conference and representations by Manly Council and the National Council of Australian Jewish Women who are concerned about street behaviour on skateboards etc., the injuries that have been incurred by the elderly and disabled by the use of skateboards etc, on streets and footpaths and the difficulty, under current legislation, of dealing with or apprehending offenders.

The amendments concerning water based recreational equipment were requested by Coastal Councils as a beach safety measure. Confiscation is considered by many Coastal Councils to be an essential means in controlling the dangerous use of surfboards and was a power used under the 1919 legislation. The Department has surveyed all Coastal Councils on this matter. Almost all these Councils support the amendment and many have used the previous confiscation provisions.

Safety of Council Swimming Pools

Schedule 6 of the Act will be amended to enable regulation of the safety standards of any swimming pool erected on public land so that Council pools will have to comply with regulations governing staff, such as training, qualification and numbers of staff, and standards of safety equipment. This amendment has been prompted by the recent Coroner's finding into the tragic death of Rebecca Hassler. It will not cover private swimming pools. Details will be included in the regulations.

Statutory Committees

The Minister will be able to establish statutory committees under the Act (Section 740A). This will facilitate the establishment of committees with a statutory basis to undertake specific functions for the purposes of the Act such as the Building Regulation Advisory Committee - and is a provision similar to section 22 of the Environmental Planning and Assessment Act 1979.

Other Acts

Very minor related technical amendments will be made to the:

- •City of Sydney Act 1988
- •Environmental Planning and Assessment Act 1979
- •Justices Act 1902
- •Impounding Act 1993
- •Land and Environment Court Act 1979
- •Roads Act 1993
- •Traffic Act 1909.

Debate adjourned on motion by Mr Amery.

CRIMES LEGISLATION (DANGEROUS ARTICLES) AMENDMENT BILL

Bill received and read a first time.

IRRIGATION CORPORATIONS BILL

Second Reading

Debate resumed from 21 April.

Mr AMERY (Mount Druitt) [8.4]: I lead for the Opposition. The Opposition will move to postpone the conclusion of the second reading stage until later this year. I foreshadow a motion to establish a legislation committee to give all persons an opportunity to make contributions on the various provisions of the bill. The foreshadowed motion to be moved at the conclusion of the second reading debate is:

1. That the Irrigation Corporations Bill 1994 be referred to a legislation committee for consideration and report;
2. That the committee consist of three Government members nominated by the Leader of the House and three non-Government

members nominated by the Leader of the Opposition, whose names are to be submitted in writing to the Clerk of the Legislative Assembly; and

3. That the committee report by 1 November 1994.

The stated objectives of the bill, which are outlined on the front page in the explanatory note, are:

(a) to establish State owned corporations to manage certain existing irrigation schemes; and

(b) to enable those and other irrigation schemes to be owned and managed by corporations on behalf of the irrigators.

As the Minister said in his second reading speech, the provisions of the bill outline the various irrigation areas and districts affected. On the face of it, the Opposition has no objection to irrigation districts and areas being corporatised. Early last year the Labor Party issued a discussion paper on its proposed policy and the question of corporatised bodies. Page three has this statement:

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The local irrigation bodies will be corporatised in accordance with Labor's corporatisation policy. This will involve the following modifications to the Coalition Government's approach:

•All bodies to be corporatised will not be converted to public companies with a share base. Instead they would operate as a statutory corporation.

That is fairly consistent with stage one of the bill. The paper continued:

•Bodies would operate under the reintroduced concept of Ministerial accountability but not leading to hidden political interference.

•Ensure a staff or employee elected director on the board . . .

•Subject bodies to FOI provisions . . . to ensure accountability and open government.

•Require bodies to be audited by the Auditor General.

•Have board recommendations for the appointment of the chief executive approved by Cabinet.

•Require bodies to operate in an appropriate and regulatory environment if a monopoly body, and subject to Federal controls such as the Trade Practices Commission.

I shall refer again to that document. When this bill was introduced the Minister was prompt in providing me with copies of the briefing notes, his second reading speech and organising a briefing, which was conducted last Thursday at the Department of Water Resources office in Parramatta. I thank the various officials from both the Department of Water Resources and the Premier's Department for that fairly substantial briefing. Prior to the meeting I sought details from interest groups in the southwest of the State. Those contacted were representatives of horticulturalists, members of the trade union movement in the electorates of Burrinjuck and Wagga Wagga, and a number of representatives of local government bodies in that region.

After the Labor Party issued its discussion paper I received a number of letters outlining concerns about any change to the current system involving irrigation areas and districts. I am sure that, had the Government followed a similar path, it would have been lobbied about these issues. That is perhaps one of the fundamental problems with the bill: of all those people, no one had seen a copy of the bill prior to the last couple of days. Many issues were raised with me about Labor's discussion paper, and I am sure they would have been raised with the Government had the opportunity presented itself. I shall refer to a few issues.

One issue was the attempt by the Government to transfer the responsibility for the maintenance of irrigation assets to local government. I am sure the Minister and the honourable member for Murrumbidgee would concede that that is a big issue in the Murrumbidgee Irrigation Area and the Riverina. Nothing in this bill or in the Minister's second reading speech outlines a resolution of that problem. One local government person contacted today put forward the proposition that the bill cannot become law because the issue of infrastructure maintenance by local government has not been resolved. He said also that legal counsel has been engaged by the affected councils. Therefore, the bill pre-empts those discussions and perhaps even legal action. The Opposition asks the Minister in his response - or perhaps even the honourable member for Murrumbidgee, who seems to be keen to make early contributions to the bill - to address the present position. Will the House, the MIA and various council representatives be advised of the current situation? What are the implications for the industry, if any, if the bill were passed without amendment?

There is concern about what will happen with the outstanding grievances if the bill is passed. No one in the Murrumbidgee Irrigation Area knows; the Minister did not make any reference to it in his second reading speech, and there was no reference to it at the briefing, except that the matter is still the subject of negotiation. I referred earlier to the discussion paper issued by the Opposition. The Opposition received a document from an organisation consisting of local government bodies called Councils Against Asset Transfer, which is relevant to some of the concerns being expressed in that area. In correspondence addressed to me on 8 September 1993, signed by D. W. Tull, Secretary, a number of issues were raised about concerns in that area. The organisation was responding to the Opposition's discussion paper and also expressed some concerns about the bill. The organisation wrote:

> . . . expressing total opposition to the "privatisation" or "corporation" of the public assets involved in the states irrigation systems without the conduct of a thorough and complete plebiscite of all users . . .

That issue is very contentious. The Hon. Ian Causley, former Minister for Natural Resources, promised a plebiscite on this matter. That did not eventuate. I understand the latest advice is that it is not considered necessary. But it is considered necessary by a few people in that area. They are suggesting in the strongest terms that future board representatives should be elected and not appointed. Some reference should have been made to that by the Minister today, and some reference should be made to it in the bill. There are no references or assurances given on that issue. Ministerial responsibility is always the subject of debate when referring to corporatisation of any State government activity. How much say will the taxpayers of New South Wales have in these areas and districts when they become corporations? I would have to say the Minister's answer would be, "Not much". To substantiate my statement I refer to the Questions and Answers paper of Thursday, 14 October 1993, at page 2032. The honourable member for Charlestown asked the Minister for Land and Water Conservation:

> (1) How many homes in the electorate of Charlestown have fitted to their sewerage systems reflux non-return valves to prevent sewage entering into their homes during wet weather periods?
>
> (2) How many instances of sewerage manhole covers lifting and spilling out raw sewage are reported each year during wet weather?

> (3) Will this problem be exacerbated with further medium-density housing development of the area?
>
> (4) What measures does the Hunter Water propose to overcome this problem?

The question is not really relevant or important to this debate. However, the answer from the Minister for Land and Water Conservation is relevant, for it was:

> Hunter Water is now a State-owned corporation, fully accountable and responsible for determination of operational matters such as this. All matters concerning its operations should therefore be referred to the Corporation.

How will a member of Parliament be able to ask a question in this House about an irrigation district or area that has been corporatised? What form of ministerial accountability will exist? People are concerned that there should be some ministerial involvement with corporatised bodies and that a member of Parliament can ask a question and receive from the Minister an answer other than, "This is now a fully corporatised body. Do not ask me, ask the organisation". That is against the principle of ministerial accountability. Ministers are responsible for all the State's assets. That answer was not good enough. I hope that such answers will not be given when honourable members ask questions about the operations of corporatised irrigation areas and districts.

An issue that arises time and again when I visit the Murrumbidgee Irrigation Area is representation on the boards that cover the irrigation regions. I ask the Minister: will there be a representative of employees on the boards established by this bill? It is fair to ask that question, which has been put to the Opposition many times over the past couple of days. The Opposition has examined the bill and cannot find in it anything that refers to employee representatives on the boards. Inquiries of the union reveal that employees have not even seen the bill, and they do not have a knowledge of whether they will be represented on the various boards.

Mr Souris: Did you not send them a copy last week?

Mr AMERY: Yes, we finally did. The Minister is asking me whether we sent them a copy of the bill after the second reading speech in this House. That indicates that there has been little consultation in the formulation of the bill. Similar questions were asked at the briefing. The Opposition was told this will be set out in regulations and will be subject to further negotiation. Again, that is not acceptable. Negotiations should have been held with the unions long before the bill was introduced.

Mr Souris: They were in my office at Parliament House over six months ago.

Mr AMERY: Yes, and the Minister showed them an exposure draft of this bill. There is little information in the bill about matters affected by the corporatisation of these areas and districts. Local government representation is another issue to be considered. Will local government have representation on these boards? It is a substantial user of water in these areas. The honourable member for Murrumbidgee would be aware of the members of councils in his electorate who have lobbied strenuously on this matter over many years. Inquiries of elected members of a number of councils show that they have had no consultation on this matter and do not have assurances as to whether they will have representation. People in the local government area have not even seen the bill.

I raised earlier the question of how the appointments were to be made. That question was raised by the Councils Against Asset Transfer. No one knows and no one has been told how these matters will be addressed. It is not only the Opposition, local government people in that area or the trade unions who are calling for more consultation on the bill. Early today a fax was received from the Australian Conservation Foundation, which raised environmental issues, a matter which has not been covered in our discussions over the last few days. The letter was signed by Mr Jeff Angel on behalf of the Australian Conservation Foundation, National Parks Association, and Total Environment Centre. He states:

> We are writing to ask you to oppose the passage of the Irrigation Corporations Bill. The Bill should be opposed for the following reasons:
>
> 1. The legislation is premature . . .

That is a similar theme to that which has been pushed by local government, unions and some horticulturalists.

Mr Cruickshank: It has been going five years.

Mr AMERY: The bill might have been going five years, but no one has seen a copy of it, no one has

seen an exposure draft, and no one has seen a discussion paper on it. It might have been going five years, but I do not know where it has been going. It has not been going with the people who are now expressing concern about the bill going through the House unamended. If the honourable member for Murrumbidgee has known about it for five years and he is the local member, he should have told a few people about it, because they do not know about it. I refer again to the letter from the Australian Conservation Foundation:

> 1. The legislation is premature. The government has been preparing detailed amendments to its water legislation comprising what has been known as Stage 3 reform proposals. These proposals have been formulated over the last three years. The details include amendments to the Water Administration Act, a new water licensing Bill which repeals Parts 2 and 8 of the Water Act and a Community Water Management Bill. The provisions of the Irrigation Corporation Bill must be considered in the light of the Stage 3 proposals once passed. There has also been no consultation in relation to the Irrigation Corporations Bill.

At the risk of being warned about tedious repetition - there may be repetition in that different organisations are singing the same song, that is, the words "no consultation" - the letter from Mr Angel continued:

> 2. The Bill is not linked to the Stage 3 proposals. It creates its own scheme, makes no provision for public involvement in its processes or environmental impact assessment. Indeed the real purpose of the legislation

> appears to be to avoid the environmental impact assessment provisions of Part IV of the EPA Act which would otherwise apply to the grant of licences provided for in the Bill.
>
> 3. Further, the Bill should not be considered until the broader regulatory and institutional arrangements for water are in place.
>
> 4. The Bill is another example of moves to privatise public resources. It makes no provision at all for the protection of any public values of the resource.

The letter goes on to ask the Opposition for its support. They are not alone in their concern about the haste with which this bill is being dealt with. I do not believe there has ever been such a dramatic, fundamental change to an industry with so little consultation. I certainly have not seen it in the 11-odd years that I have been in this House. I say in response to some of the interjections by the honourable member for Murrumbidgee: what would have been wrong with releasing the bill as an exposure draft and seeking comments from some of the people I have mentioned, prior to the legislation being introduced in the Parliament - as with my discussion paper on water resources issued a year ago? The numerous documents I have here are but a small proportion of the submissions the Opposition received on its discussion paper. Imagine the number of submissions the Government would have received from local government, trade unions, horticulturalists, rice growers, and the environmental movement, had it done the decent thing and released this bill in exposure form prior to its introduction to the House as a final draft. Irrigation issues are important to the State and the participants deserve far more consultation than has taken place.

Mr Cruickshank: You did not think of that in the 45 years you ran the place.

Mr AMERY: "Consultation" seemed to be a big word in some of the speeches made by the honourable member for Murrumbidgee in this place, particularly when in opposition. I can recall those speeches. I was one of the few members to listen to him, so he should be careful about interjecting. Let me read into the *Hansard* a comment made in a letter addressed to me last August by the Coleambally Irrigation Area Management Board. It is not attacking the bill; it is in relation to the importance of New South Wales irrigation areas. The comment is:

> This Board is impressed that your paper concentrates so much on the activities in the irrigation areas and districts, the development and administration of which was the purpose for which the former Water Conservation and Irrigation Commission was established.

I am getting to the point of how important irrigation areas are. The board sets it out very clearly as follows:

> The value of irrigated agriculture in NSW is about 25% of total agricultural production and about 85% of total crop production. Irrigated agriculture results in a very high degree of value adding, leading to flow on impacts which mean that irrigated agriculture generates $5 worth of output and income for every $1 of irrigation farm output and income and four off-farm jobs for each job on irrigation farms. Half of that off-farm output, income and employment is generated in the irrigation regions, but the remaining half accrues to the rest of the State, predominantly to the Newcastle, Sydney, Wollongong areas. In the Murrumbidgee and Murray regions, irrigated agriculture accounts for about 30% of all economic activity.

The point I make - and this is without dispute from either side of the House, I am sure - is that our irrigation areas are the jewels in the crown of agriculture in this State. They are something that members on both sides of the House have strongly supported throughout many decades. When the Government proposes to make a fundamental change in the administration of our irrigation areas, at the very least it should have the decency to release an exposure of its proposed legislation some months before this House gets a copy of the bill. As I said in my opening comments, I received a copy of the bill and the Minister's second reading speech when he introduced the bill only a couple of weeks ago. Opposition members have been surprised at the number of calls they have received in the past week from people who do not know anything about the provisions of the legislation, and who are asking questions about the various points I have raised.

At the conclusion of the debate the Opposition will move as I indicated earlier. It is fair to ask what we expect from the adjournment and from the legislation committee. First, I would like the legislation committee to meet with the various organisations I have mentioned; with people from the Murray, Burrinjuck, Murrumbidgee and Albury electorates and all the electorates in the southwest of New South Wales that would have an interest in this matter. Second, there should be submissions from the various unions involved, from Department of Water Resources employees and all workers affected, from those who have expressed concern about the bill, from the environmentalists - the ones I have mentioned and many others who have concerns - and particularly from local government bodies. Those in Griffith and Leeton have always been very vocal on this issue, as has the organisation I referred to, Councils Against Asset Transfer. I believe it should be consulted.

Mr Cruickshank: It is consulted all the time.

Mr AMERY: I repeat that it has not seen a copy of the bill. It is a fundamental flaw in the bill that the Government has brought before the House. I have seen many exposure drafts of legislation, and I have seen departmental people. My comment is that the lack of consultation in this instance surprised me because my experience of water resources bills brought before the House is that exposure drafts are issued and submissions are received from interested groups. For some reason that procedure has not been followed with this bill. I find it unusual that the process of consultation which is normal conducted by the Department of Water Resources appears not have been carried out in this particular instance.

Issues to be considered are the mode of selection of people to serve on the board, whether appointed or elected; protection for all interested groups; job security; things such as asset transfers; representation on the board, including local government and worker

representation, and so on. I believe that, at the very least, there should be consultation on all those issues with the people concerned. With those comments I indicate that the Opposition will move an amendment for the deferral of this legislation so that there can be proper and well informed debate in November 1994 when the committee makes its report.

Mr CRUICKSHANK (Murrumbidgee) [8.30]: I have never heard such a sanctimonious hypocrite as the honourable member for Mount Druitt, who spoke on this legislation. He talked about irrigation areas being the jewels in the crown of the irrigation industry in Australia. He employed a phrase that the Labor Party used to use, which was that the Murrumbidgee electorate was the jewel in the Labor Party's crown. After 45 years of politically raping the Murrumbidgee, the Opposition now says, "We have to look after it; we have to save it; we have to do this, that and the other". The Opposition is a pack of mealy mouthed hypocrites. A $25 million bill in the bottom drawer! That is money that was owed on the water bill for the electorate of Murrumbidgee. The Government dispensed with that debt when it found out that that was what the Labor Party had accrued. Its

having done that over 45 years, it was not fair to then turn around and dump it on the farmers.

The honourable member for Mount Druitt, who spoke earlier in debate on this legislation, does not have the correspondence that he says he has from people complaining about this bill. He has no correspondence at all. He visited the Murrumbidgee electorate and stirred up a whole lot of trouble. He contacted people in that area, stirred them all up and said, "There is trouble in the Murrumbidgee electorate. The local member wants to ignore it". I have spoken almost daily with the people who have been negotiating with the Government to put together this legislation. We have been negotiating since 1988. We finally have a bill which, if passed, will provide that the Government will no longer be in charge of the Murrumbidgee Irrigation Area. Before I became a member of Parliament I was horrified at the way in which the Labor Party ran the Murrumbidgee Irrigation Area - a little bit of nudge, nudge and wink, wink.

Mr Beck: What about the 43 years of corruption?

Mr CRUICKSHANK: I will refer later to the 43 years of corruption. If I resisted the introduction of this bill I could, after leaving this Parliament, become a very rich man because of the way in which the Labor Party managed the Murrumbidgee Irrigation Area. Little bits of land called NIPs - non-irrigable purchases - are not worth a lot of money, but once they are turned into rice farms they are. How does this happen? Nudge, nudge and wink, wink. In the days when it was strictly forbidden, rice farms that were worth $500 an acre were cut up into orange farms, which are now worth $5,000, $6,000 and $7,000 an acre. That is not a bad capital gain. But one had to know people to be able to do that. One had to know who was in power. One had to know on which side one's political bread was buttered.

That is the way in which the Labor Party ran the Murrumbidgee Irrigation Area. It was the personal fiefdom of Mr Enticknap, Mr Grassby and Mr Gordon. They did well out of it. Unfortunately, the workers and the Department of Water Resources, or the Water Conservation and Irrigation Commission as it was called in those days, did not do well. Patronage, grace and favour were the order of the day. Opposition members have the gall to criticise this Government for introducing legislation which will enable those people to manage their own affairs and be in control of their destiny. This bill will not force anyone in the Murrumbidgee Irrigation Area or any other irrigation area to do anything. It does not threaten employees, employers or superannuation benefits. This legislation is merely the gateway to enable the Murrumbidgee Irrigation Area to become a State owned corporation rather than an area owned by the Government and run by the Department of Water Resources and the local member.

Mr Martin: Do you believe that?

Mr CRUICKSHANK: Yes, I believe that. The Government has listened to people in the Murrumbidgee Irrigation Area, which is more than members opposite did when they were in government. I first started talking about boards because I did not like the way in which the place was run before I became a member of Parliament. After I became a member of Parliament, Mrs Crosio, the then Minister in charge of water resources, proposed the establishment of advisory boards. That proposal was not worth the paper it was written on. Good, genuine people were asked to become members of those boards, but they were not listened to by the previous Labor Government. Everyone became very frustrated and decided that those boards just would not work.

It was determined that those boards would not work because the previous Labor Government's proposal was a sham. They were never meant to work because they would have taken away the power of the local member and the power of the Labor Party in the Murrumbidgee electorate, which was the one country electorate - apart from Broken Hill - prized by the Labor Party. Before the 1988 election the then Leader of the National Party visited the Murrumbidgee Irrigation Area and offered irrigators autonomy. It has taken a fair while to establish a legislative framework which will enable that to occur. There were big changes that a lot of people had to get used to. I believe they have. The honourable member for Mount Druitt said that people in the Murrumbidgee Irrigation Area were apprehensive about those big changes. He said that the livelihoods of people had been threatened. What a load of rubbish! If anything is to happen, it will happen only after this

legislation becomes law.

Mr Martin: Right from the Government.

Mr CRUICKSHANK: It is not from the Government; it is from the irrigators. Once this legislation becomes law irrigators will decide whether they want to do anything. If they do not want to do anything, the area will remain exactly as it is. If they

want autonomy, if they want to run their own affairs, if they want to collect their own fees and make savings, that will take place at their instigation. The Government will not be pushing them. It is up to the irrigators of the Murrumbidgee Irrigation Area. In the south, in the Murray area and in Coleambally people are breaking their necks to become part of State owned corporations so that they can then become irrigation companies. They want to do this as soon as they possibly can. When the Murrumbidgee Irrigation Area was run by the previous Labor Government and the local member there was no such thing as repairs and maintenance.

Mr Martin: They had good representation in those days.

Mr CRUICKSHANK: They had good representation? The local member knew which side his political bread was buttered. He could make it worth his while. If he supported the right people, he could have gone a long way in the Murrumbidgee Irrigation Area. This legislation will give irrigators an opportunity to decide their own future and determine their destiny. As I said earlier, if they do not want to do so, they do not have to. It is important to bring the House up to date on the history of the operations and management of irrigation schemes. Since the 1989 review of water distribution operation in areas and districts of New South Wales there have been substantial reforms to public irrigation management. Those reforms include the splitting of the Department of Water Resources into commercial and operational divisions to give schemes a clearer commercial focus and the establishing of irrigator management boards to advise the Minister and the department on the operation of each scheme.

That is a first step towards autonomy in the Murrumbidgee Irrigation Area. Irrigators and horticulturalists are well represented on those boards, which have made an input into the formulation of this legislation. Reference has been made to the election of boards, but it has been difficult to do that in this sorting out stage. Once irrigators go through that second door and become irrigation companies they can decide how to conduct elections and determine who will be represented on those boards. This bill proposes the transfer of the management of irrigation schemes in New South Wales from the Department of Water Resources to irrigators. This move is overdue. Numerous discussions have been held with local management boards to develop this legislation, and the boards are very supportive of it. It is important to note that the irrigation schemes involved in this process will not be available for sale to private companies or entrepreneurs. Opposition members have referred to the fact that they will be flogged off to BHP or John Elliott. That is a load of claptrap. I have a press release from the honourable member for Mount Druitt which states, "ALP says consult on irrigation boards sell-off". Who does he have in mind - Hong Kong or Singapore?

3 **Mr Souris:** It is full of Labor lies.

Mr CRUICKSHANK: This press release is full of Labor lies. Members of the Opposition, who are objecting to this legislation, want to move amendments and rubbish like that. They are using tactics to try to delay the passage of this legislation. There are so many skeletons in the cupboards in the Murrumbidgee Irrigation Area that Opposition members should watch what they say or they might hear a little more. The 17 schemes covered under this legislation broadly fall within the Murrumbidgee, Murray, lower Murray, Coleambally, Jemalong and Wyldes Plains irrigation areas and districts. Changes to the management of the two remaining schemes will take place in due course because they are so small.

Both irrigators and the Department of Water Resources will benefit from this reform because they will be able to focus on their specific core business. The irrigation corporations, which will be created under the legislation, will be able to pursue commercial objectives. That will be very different from the days when the

corporation was run under the rigidities of bureaucracy. The Department of Water Resources will be freed from its conflicting role as an owner of large irrigation businesses, and will be allowed to undertake its proper role as a water manager, which involves setting standards by the measuring and monitoring of both water use and licensing.

The legislation provides for the corporatisation or autonomy to take place in two steps. I hope all honourable members are paying attention. In the first step the legislation will allow State owned corporations to operate the 17 irrigation schemes, now owned and operated by the Department of Water Resources. I explained that at the beginning of my speech. In the second step, these State owned corporations may be converted to irrigator owned corporations at the request of the irrigators. Did honourable members hear that? At the request of the irrigators. [*Extension of time agreed to*.]

The boards of the irrigator owned corporations, way down the track and not immediately after the legislation is passed, will have powers to manage the irrigation area or district on behalf of their shareholders - the irrigators. Honourable members opposite do not know about shareholders, have never heard about shareholders. Honourable members opposite laugh and giggle; they do not know about the people who will have shares according to the amount of water that is attached to their land at the moment.

Mr Martin: Yes I do - their water entitlement.

Mr CRUICKSHANK: That has not been mentioned and it is pretty important. The irrigation area or district will be abolished at this second stage with the establishment of the irrigation owned corporation, and each corporation whether State owned or irrigator owned will be given an operating licence defining the terms under which the business can be run. These operating licences will most likely include requirements that each corporation carries on its business in accordance with an approved business plan and a land and water management plan. That is not the province of this legislation. This legislation has nothing to do with what is to happen in the future.

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With the passage of this legislation the irrigators can complete their business plans to demonstrate to the Government and their customers the financial and economic viability of the irrigation business under autonomous management. This will happen way down the track. It has nothing to do with this bill, but this bill will allow it to take place. Opposition members do not want to accept that fact, but the truth is that it cannot happen unless the irrigators want it to happen. The land and water management plan will help ensure environmentally sustainable development of the irrigated land. It will co-ordinate land use decisions through integrated catchment management principles. This will happen with the autonomy of the area.

The irrigators realise the limitations of their areas, and are aware of the raising of salt and water-tables. Irrigators know all that; they know rule of thumb that man-made irrigation schemes last an average of 80 to 100 years. The irrigators know that they are nearing the end of their time. They know they have to take precautions so that these things will not apply to this area. If irrigators are given the freedom to do what they want to do, in consultation with total catchment management boards et cetera, I am sure all honourable members would have greater optimism about what they will achieve under this scheme than they ever would achieve under the bureaucratic control of another government department.

In addition to the operating licence, the corporation will be issued a water licence by the Department of Water Resources. This will define the bulk water allocation available to the corporation and the conditions of supply of water by the Department of Water Resources from the river and the use of water in the areas and districts. That is a good thing; it is far more flexible. An important measure is the water licence requirement that the corporation give councils supply priority. Did the honourable member for Smithfield hear that? It gives councils water supply priority - the people of Griffith or Leeton are not to be left without water to drink; they will pull the water off the rice and off the vegetables and give it to the people of Griffith. A drainage licence will be issued by the Environment Protection Authority.

The Environment Protection Authority will make the decisions over the top of the boards, over the top of the total catchment management and over the top of the Department of Water Resources, whose responsibility will then be the supply of water through the dams and rivers; that is its right and proper role, rather than trying to flog water around the irrigators. I suggest that the boards alone will be able to make the necessary savings which will cover what is predicted to be a lower usage of water through drip irrigation.

Mr Martin: They will not be able to afford it.

Mr CRUICKSHANK: That is an idiotic statement; it has nothing to do with water usage. If the water-table and the salt are raised, everyone will be driven out of business. Only one bunch of people will take care of that - that is the cockies - and they will do it in consultation with the total catchment management, the Department of Water Resources and the Environment Protection Authority. Left alone they will do a successful job. I hark back to say that this bill is the only bill ever to come before this House to allow that to take place. It will not happen immediately the legislation is passed, but these new developments will be allowed to take place. Frankly, they will be the saviour of irrigation areas in New South Wales, particularly in southern New South Wales.

In the first step, when State owned corporations take over ownership and management from the Department of Water Resources, existing water rights held by irrigators are maintained. No one will be deprived of a water supply. If State owned corporations move to class two, irrigator ownership, the corporation will be issued with a bulk water supply licence. The legislation provides for irrigators to preserve their water entitlements. This will be done by the corporations issuing shares which will be based on the individual irrigators' water entitlements. Each irrigator will receive shares in the new company according to his or her current volumetric entitlement. That is about the only specification contained in the bill. It is there merely to protect the asset of water subsequently further downstream as the irrigators apply for their new status. One of the commitments given by the Government early in negotiations was to bring irrigation works up to an acceptable standard. The Opposition never spent a cent on the place; it took the money out and had an auction.

Mr Martin: We built it.

Mr CRUICKSHANK: You did not build it at all; you had an auction. You said, "Vote for me and I will bring the price of water down". That is why this Government found a bill for $25 million for moneys owing in the bottom drawer when it came to office in 1988. The previous Labor Government had been fiddling the books to buy votes; it is as simple as that.

Mr Martin: So what did you recommend?

Mr CRUICKSHANK: Our Government wiped off the debt. Would the honourable member want to be presented with a bill for $25 million? This commitment will be met with Government funds being provided for renewal of water supply infrastructure including bridges and culverts, over a period of 10 to 15 years. The bridges and culverts are all falling to bits. It is also important to consider the rights of existing Department of Water Resources employees. In the class one phase employees will continue to contribute to the State Government superannuation scheme and retain the rights to all benefits, including leave.

In the class two stage employees will no longer be able to contribute to the State superannuation scheme. However, they will be able to join in the private schemes which must be established by the class two irrigation corporations. Employees will be

able either to preserve the benefits they have already accrued in the State Government superannuation schemes or to transfer their accrued benefits into the new private schemes. They will also retain the rights to any accrued or accruing benefits as employees of the Department of Water Resources or the ministerial corporation and, where applicable, as employees of class one irrigation corporations. [*Time expired*.]

Mr MARTIN (Port Stephens) [8.50]: I was fortunate to have served as the district horticulturalist in the Griffith region from 1969-70 and was the horticultural adviser for the southern part of that region, which included 642 horticulturalists who farmed more than 10 acres and about 470 growers who farmed between two acres and 10 acres. They comprised a third of the horticultural districts in the Murrumbidgee Irrigation Area. At that time the use of irrigation was well controlled, as it had been since the time it was built by the McGowen Government in 1910, through until Lang put a moratorium on debts, and then under the administration of Ministers such as Enticknap, Gordon, Crosio and others.

This proposal by the Government is typical of the dry Reagan and Thatcher type economics favoured by the coalition. At the end of the day one must ask whether the State of New South Wales is any richer as a result of the decisions the Government has made. That is the responsibility that must be met by the Parliament. Members on this side of the House expect the proposed legislation to be discussed responsibly by all users of irrigation. We want consultation. The Government has not consulted anyone from the Griffith shire.

Mr Souris: That is rubbish.

Mr MARTIN: The Government has not consulted the unions or the employees.

Mr Souris: That is also rubbish.

Mr MARTIN: The Minister might say it is also rubbish, but the employees have not been consulted, apart from being told that this is what will happen. They have not seen a copy of the bill, because it has not been distributed. Members opposite - the godfathers, the agrarian socialists - have simply told the employees that they will dish up what they want. A fellow called Mike Young, a Commonwealth Scientific and Industrial Research Organization economist, has prepared a paper. I do not know why the CSIRO is having economists do this work. It should be engaged in scientific research on matters pertaining to two or more States; it is not its task to tell us about dry economics.

Mike Young has dished up this paper, which deals with market forces governing water usage in New South Wales. He is driving the Government and has been used on other matters. Opposition members are not fools; they know what he is up to. The Government has allocated more water than is available. Wal Murray, whose electorate of Barwon is in the north of the State, has ensured that more water is available to irrigators in the north than to areas in the south of the State. All the way down the line water is being flogged off and the people in the southern part of the State do not have much more than blue-green algae coming down the rivers.

The Government now wants to move to its hidden agenda and have market forces driving water usage. The farmers in the southern parts of the State will be forced out of business under this system whereby the richest man - whether he be a beer baron from Melbourne or whoever he might be - will be able to buy up the water rights. That is the bottom line of the Government's proposal. If one examines this proposed legislation one becomes aware of the distortion. Not much consideration has been given to what happens in the Murrumbidgee Irrigation Area. One can see how this fits together with what happened with the Leeton cannery and how much the Government thinks of the Murrumbidgee Irrigation Area; it even defied motions that were passed by the Parliament.

This proposed legislation has been ill considered. Minimal concern has been shown for the horticultural industry, which has had next to no consultation. The rice industry will be the major users of the water and the principal shareholders, pro rata; they will control the system. The horticulturalists deserve a fair say because numerically they far outnumber those engaged in the rice industry. There is no way that consultation will happen. As the honourable member for Murrumbidgee said ultimately the Government will want to issue shares. Who will want to take over the sections of the irrigation scheme that were built in 1915? No one will. No one will want the old sections; they will want only the new infrastructure which does not require much maintenance. Will irrigators in the Murrumbidgee Irrigation Area be responsible for the system right back to the storage source for the Murrumbidgee Irrigation Area, the Burrinjuck Dam? The Minister should address that in his reply.

Eventually the onus will fall on farmers in the southern part of the State. They might get into bed with the Government for a short time, but when they wake up to the long-term agenda and what the economists are attempting to do it will be a different story. What is the Crown land component that is subject to this legislation? The State owns all of the channels, the drainage areas and the infrastructure. The second stage of these proposals will result in a similar outcome to what happened with the Hunter Water Corporation. All of the assets will be transferred so that they can be flogged off for a song. This Government is all about privatisation of the irrigation systems. I recall attending a ricegrowers conference in Deniliquin a few years ago. I overheard people talking about how they would fix up the employees and make them work as they should work. That would not be much better than slave labour. Rice is planted on the October long weekend and is harvested at Easter. The ricegrowers intended that the employees would work from daylight until dark for that period of six months. One can rest assured that they would want to pay them only a basic wage, but would expect them to work seven days a week.

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Opposition members are concerned at the lack of consultation with employees in the system or their representatives. One of the main concerns is related to superannuation, which is crucial for employees in the latter stages of their lives. This rip-off by the Government is nothing short of scandalous. That is why members on this side of the House want the legislation to be deferred, so that there can be consultation to ensure that the bill is right before it is accepted by the Parliament. Members opposite have not done what is expected of them. They have failed to consult interested groups. They may have spoken to the ricegrowers, but mark my words, the honourable member for Murrumbidgee is not all that popular with the Ricegrowers Co-operative. If the Government is accepting his word as to what is right for the ricegrowers, it had better think again. The member for Murrumbidgee has made terrible mistakes. He has attacked the Ricegrowers Co-operative because he does not like co-operatives, just as he did not like the Letona co-operative.

The honourable member for Murrumbidgee will not answer the questions raised by the shadow minister for agriculture, the honourable member for Mount Druitt, about consultation. He delivered a prepared speech and would not deviate from it. He failed to speak his mind or to put forward the expectations of the people of his electorate. Many issues related to this legislation remain unanswered. The Opposition is not willing to accept the line that was constantly put by the honourable member for Murrumbidgee. We do not accept the implication in his statements that he can be trusted, that he is from the Government and will do only what will be good for the irrigators. We want to ensure that the legislation is right, so that the employees are given a fair go in regard to their employment and superannuation. We want to ensure that the horticultural industry is consulted. The bill was introduced into the Parliament on the Thursday of the last sitting week, 10 days ago, but representatives of the horticultural industry have not seen a copy of it. How much serious discussion has taken place with the local government body in the region? My information is that no decision has been made about what will happen to the 700 bridges across the canals in the Griffith shire.

The Government is seeking to palm off its responsibility to a local government body with which there has been no consultation. The Opposition is being asked to agree that the legislation is fair and correct and that Government members should be trusted. The agrarian socialists opposite have another think coming if they think that the Opposition will provide them with a blank cheque. It is time for the Parliament to examine the legislation closely to determine whether it is fair for the people of New South Wales. One would think that a Government with such precarious numbers would introduce correct legislation to ensure its smooth passage through the Parliament. I will support my colleagues to make sure that the bill is deferred.

Mr SMALL (Murray) [9.4]: The reason that the Labor Party is in Opposition is obvious: it has no respect for, no interest in and no knowledge about what is happening in the bush. I was appalled to hear the honourable member for Mount Druitt and the honourable member for Port Stephens, when they referred to irrigation areas, admit that they have little knowledge of the relevant area. They seek to delay this bill in the hope that they will gain office and prevent irrigation management structures from being corporatised and then privatised. The last thing irrigators in my area want is interference from a Labor government that imposes

further charges - which is very much what the honourable member for Mount Druitt was on about.

I strongly support the Irrigation Corporations Bill and oppose any delay in the passing of the bill. The honourable member for Mount Druitt is off the mark by seeking to delay the bill at this stage. I should like to correct the misconceptions of the Opposition about the stage three legislation, which the Government has been considering for the past two or three years. It is an important package for irrigators in New South Wales. Its overriding objective is improve drainage and environmental areas, and this is of paramount importance. I am only disappointed that it has taken this long for such legislation to come before the House.

Honourable members opposite cannot begin to understand the circumstances in which irrigators find themselves. The Opposition has prevented the Government from introducing such important legislation for a number of years. The Labor Party has no idea and no respect for what is happening in rural areas. In 1987 the Hon. Wal Murray, who was then the Deputy Leader of the Opposition, visited Deniliquin because the SRIDC, the Southern Riverina Irrigation District Council, was eager to take over the irrigation district. At that time the Hon. Wal Murray said that when the coalition came to government it would act on behalf of irrigators and give them an opportunity to manage their own industry, and this is exactly what this bill seeks to do.

Since 1988 when the coalition came to office there has been a push by irrigators - and not by the Government - for legislation to enable them to manage the resource. It is absolute nonsense for the honourable member for Mount Druitt to say that the unions and the industry have not been informed of, or received a copy of, the bill. Constant consultation has been had with irrigators, and management boards, which are elected by the irrigators, have been operating for almost four years. Irrigators are anxious for the legislation to pass so that they can begin to manage this resource. It is selfish of the Opposition to seek to delay the bill. Though the Opposition pretends to have the interests of irrigators at heart, it is obvious they have not.

I have been an irrigator for 41 years. Irrigation was introduced in the Denimein in 1951. My former colleague, the Hon. Joe Lawson, who was a member of this House for 42 years after being elected as the

member for Murray during the Depression in 1932, understood the problems of those who lived in the dry, arid areas of the west and southwest. He realised the importance of irrigation, and particularly the storage of water and the construction of dams. The Hume Weir was built for irrigation, and complementary storage areas beyond that point such as Eucumbene, Dartmouth, Murray 1, Murray 2 and the upriver storages at Blowering added to Burrinjuck in the Murrumbidgee - all wonderful initiatives for our State and nation. They have enabled this State to produce good, wholesome, quality food - the best environmentally produced food in the world.

I pay tribute to Joe Lawson for contributing to the development of irrigation. The Lawson syphon was named after him. The Murwala canal was syphoned under the Edward River to support irrigation on the western side of the river. The southern irrigation district has developed and now produces rice. Management boards have been established. The Department of Water Resources currently operates 18 rural irrigation schemes. This bill applies to 16 of them. Because of their relatively small size, the Gumly Gumly Irrigation District and the Hay Irrigation Area will be reformed separately. The Minister for Land and Water Conservation was the first Minister to allow privatisation of the Gumly Gumly Irrigation District scheme just east of Wagga Wagga - an historic landmark.

At present there are seven irrigation areas in the southwest of New South Wales: Buronga, Coleambally, Coomealla, Curlwaa, Hay, Mirrool, Tullakool and Yanco. The nine domestic and stock water supply and irrigation districts in the west and southwest of New South Wales are: Benerembah, Berriquin, Deniboota, Denimein, Jemalong, Tabbita, Wah Wah, Wakool and Wyldes Plains. Berriquin, Denimein and Deniboota are provisional irrigation districts. These irrigation districts are administered by the Department of Water Resources under the provisions of part 6 of the Water Act 1912. There is significant change occurring in the Coomealla, Dareton, Hay and southern irrigation districts.

For example, 9,000 kilometres of water supply and drainage channels within irrigation areas and districts

service about 6,400 rural landholdings comprising a total land area of almost 4,000 square kilometres. This development is of major significance for New South Wales. The irrigators have worked extremely hard. I compliment the three managers of the larger schemes - Wally Hood in the Murrumbidgee Irrigation Area, Alan Wray in the Coleambally Irrigation Area, and Kelvin Baxter in the Southern Irrigation District - who have taken on enormous responsibility and are working with executive officers and elected board members. Board members were not appointed but were elected by the growers. The Minister, when requested, acknowledged their appointments. Management in this area is hands on.

I congratulate and compliment the present Minister, the Hon. George Souris. I also congratulate the previous Minister, the Hon. Ian Causley, and also the Hon. Wal Murray for pushing the initiative. When Janice Crosio was Minister under the former Labor Government there were ongoing fights about water charges. The 22 per cent water cost increase imposed by the Labor Government at that time was unbelievable. Great anger was expressed by the irrigators, and for the first time in my life I marched in a rally in protest against a cost increase which made water unaffordable. In 1986 the Labor Party was heading down the track towards management structures on irrigation boards, yet the Opposition wants more time and wants to delay the process.

The Opposition, if successful in its efforts, will delay benefits that irrigators will enjoy in being able to manage their resources. I compliment the Department of Water Resources on its irrigation management structure, which has been in existence for almost 100 years. Irrigation started in 1888 in the Curlwaa area, developed in the Murrumbidgee Irrigation Area in the 1920s, was extended in the 1950s and 1960s in the Coleambally area, commenced in the southern districts in the late 1930s, and was later instituted in the Deniboota area in about 1956. [*Extension of time agreed to*.]

Irrigation in New South Wales has created a rich resource. Irrigation farmers, dependent on the supply of water to their land, have developed management skills and have become environmentally conscious, as they have to be. Enormous changes have occurred in this State and in Australia in our attitude to the environment and the resources of the earth. Our country is arid. Without water during drought farmers would be unable to produce excellent food crops for export and for consumption by the large population in our metropolitan areas. We have developed, we have learned, and we have nurtured the land.

The honourable member for Port Stephens is critical of the bill and suggests the Government has not consulted horticulturists. That statement is rubbish. The management board in the Sunraysia horticultural area has had constant consultation with the Minister, with the Department of Water Resources and myself for a number of years. Irrigation has developed from furrow irrigation in vineyard areas to citrus fruit horticulture, to spray irrigation and to the present microjet drip system. Such developments have cut water usage to about 40 per cent of the original level of use. Those improvements, through good management, have brought increased production, lower water use and fewer salt problems. Farmers engaged in broad flat acreage pasture grazing, in cereal and rice crops in particular, and in dairy farming do not find it easy to move to spray irrigation or a drip system with present technology. However, farmers are engaging in land forming, employing reticulated water storages, and using their land more manageably through drainage. Farmers are using less water and are more careful about how their land is used. Farmers have developed a deeper understanding of water-tables, their heights and locations, and of salt content.

Key reforms since 1989 have included the splitting of the Department of Water Resources into commercial and operational divisions giving schemes a clearer commercial focus, and the establishment of irrigator management boards to advise the Minister and the department of each scheme's operation. The bill now before the House proposes transfer of the management of irrigation schemes in New South Wales from the Department of Water Resources to irrigators. The proposed legislation is the culmination of extensive consultation with the irrigation boards. The bill will bring in reforms that are at the forefront of water resource and irrigation management in New South Wales and other Australian States in their efficient and sustainable use of water. The proposed legislation will also affect about 6,400 farms and in particular irrigators throughout the southeastern and southwestern districts of New South Wales.

The bill addresses 17 of 19 schemes. Changes to the management of the remaining two, Gumly Gumly Irrigation District and Hay Irrigation Area, are already under way and will be completed separately. It is now time for these substantial commercial operations to be placed on modern businesslike foundations with ownership being transferred to the users of irrigation infrastructure. Both irrigators and the Department of Water Resources will benefit from this reform because both will be able to focus on their specific core businesses. The irrigation corporations which will be created under the legislation will be able to pursue commercial objectives. The Department of Water Resources will be freed from its conflicting roles as an owner of large irrigation business and its proper role as a water manager, which involves setting standards by measuring and monitoring both water use and licensing.

The legislation provides for corporatisation and autonomy to take place in two steps. The bill, in the first step, will allow State owned corporations to manage the 17 schemes now owned and operated by the Department of Water Resources. In the second step, State owned corporations may be converted to irrigator owned corporations at the request of the irrigators. The boards of irrigator owned corporations will have powers to manage this irrigation area or district on behalf of their shareholders, the irrigators. The irrigation area or district will be abolished at the second step with the establishment of the irrigator owned corporation. Each corporation, whether State owned or irrigator owned, will be given an operating licence defining the terms under which the business can be run.

These operating licences will most likely include requirements that each corporation carries on its business in accordance with an approved business plan and a land and water management plan - the latter being extremely important. With the passing of the proposed legislation irrigators will be able to complete their business plans to demonstrate to the Government and to their customers their strategy for long-term financial and economic viability of their irrigation business under autonomous management. The land and water management plan will help ensure environmentally sustainable development of irrigated land. They will co-ordinate land use decisions through integrated catchment management principles. In addition to the operating licence, the corporation will be issued a water licence by the Department of Water Resources. This licence will define the bulk of water allocation available to corporatisation and conditions of supply of water from the river and the use of water in the areas and districts. A comment was made by the honourable member for Port Stephens about how the water would be lost and could be sold off. The sale or transfer of water certainly can occur but only within the district or area where that water is contained now. It is terribly important to maintain the viability of that water structure and the farming enterprise in that area or district, and any transfer or sale has to be approved by the management board.

Mr COCHRAN: (Monaro) [9.24]: I support the bill. I express disappointment that the Australian Labor Party for some misguided political purpose intends to move amendments to this bill which will include the formation of the legislation committee. That is a misjudgment on its part because it certainly has not understood the debate which has taken place in the Murrumbidgee Irrigation Area. Its members have not listened clearly to what the two local members have said tonight. The Minister said in his second reading speech that the debate has been ongoing for some years and that the bill has the support of the irrigators. I am proud to have participated in a consultation process second to none. I congratulate the Minister for having honoured an agreement that was put in place initially by former Deputy Premier Wal Murray and former Minister Causley.

It provides for framework legislation which, I should say at the outset, is at the request of the irrigators. As chairman of the land and water conservation committee I visited that area with other members of that committee to take part in the consultation process - not once but twice. I was there in June 1993 to conduct a reconnaissance of the area and undertake preliminary negotiations with those affected - the irrigators, local council officers and members of council. I was able to take with me on the second occasion in March this year members from the upper House - Mr Moppett and Mr Coleman - and members of this Chamber, the honourable member for Blue Mountains, the honourable member for Oxley and the honourable member for Tamworth. A member of the Minister's staff, Guy Roth, also accompanied us. He has an intimate knowledge of water issues and was able to advise us and take notes on behalf of the Minister and reflect the views of the irrigators and

local government authorities on our return to Sydney.

I was interested to hear the honourable member for Mount Druitt criticise the Government for its lack of consultation in this issue, particularly with regard to unions, environmentalists, and councils. His objective was for political gain and a wish to in some way delay this bill for a six-month period in order to
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take it close to the election, so that the Opposition can campaign around the various electorates and try to make some political mileage out of the issue. It is regrettable that the honourable member for Mount Druitt seeks to do that at the expense of irrigators and of a process which now has been extensive and certainly reflective of the views of the irrigators. There have been numerous productive discussions between irrigators, the ministerial advisory committee and the Minister, and between councils and the Minister. There has been a broad process of consultation, a fact that has not been apparent to the member for Mount Druitt and the member for Port Stephens.

Having observed the member for Port Stephens in this place on various other occasions on other issues, I am not surprised that most of the issues have gone over his head. I am surprised, however, that other members of the Opposition backbench have not taken his place in the debate. I should like to refer to what is proposed by the ALP and try to relate to the House the very destructive nature of the proposed amendments. Having had negotiations with the councils and the irrigators, I am of the view that this delay of six months will cause almost irreparable damage to the momentum which has developed over a period of years. This legislation is framework legislation which will actually create a process of consultation and negotiation. This process that we are referring to cannot commence until the legislation is passed - and that is something that apparently has been missed by the member for Mount Druitt and the member for Port Stephens.

The legislation committee is not authorised - and both members are experienced members of this Chamber, one is led to believe - to undertake financial negotiation on behalf of the Government. Part of the process of this legislation is to provide for that negotiation and allow for the boards to establish financial strategy for future years. I cannot understand why these two members are intent on destroying the purpose of this bill, that is, to provide for the future cohesive management of waters flowing into the Murrumbidgee Irrigation Area. Let us set aside for the moment the likelihood of political opportunism and examine the objections raised by the ALP and its proposal to postpone this legislation.

Other speakers have referred to the positive aspects of the legislation. What we really need to do now is to analyse exactly the consequences of these ALP demands on the legislation. We have heard Opposition members say that they do not agree with the concept of State owned corporations. In fact they do not agree with the processing of the ownership into public companies so that there will be public investment. That is probably explainable, because the socialist philosophy which emanates from the other side of the House would prevent the Opposition from allowing irrigators to have autonomy in the ownership or in the management of irrigation. It is a socialist philosophy and one which is predicated on government management of these areas and the prevention of the consumers of water being involved in the management of that resource. The Federal Government has already agreed to this, in principle, at a meeting of the Council of Australian Governments.

I cannot understand why Opposition members cannot agree with their Federal colleagues and facilitate the transfer of this management responsibility to those who obviously have a better understanding of it than the Government has. The suggestion that there should be a staff nominee on the boards in the class one stage is again beyond the comprehension of anyone on this side of the House. After all, we are talking about a board of investors, not a home for retired shopkeepers. Australia is desperately in need of refined management practices - a fact acknowledged by the Federal Government and others in this community. Those who do not acknowledge that are behind the eight ball and will not make it into the twenty-first century. The Opposition suggested also that local government should be represented on the boards. Local governments have been fully consulted, as I mentioned earlier, and they really do not have any great interest in the actual management of the water. That is the purpose of the boards. If they really want to be involved, they have the opportunity to become shareholders and have input through other members of the board. The democratic process allows them some participation in the management of water. Therefore, there is no real need for local governments to be

represented on the boards.

The honourable member for Mount Druitt said he wants State owned corporations to be subject to restrictive trade practices and monopoly controls. The bill provides protection for irrigators and for community investment and infrastructure; it is all contained in the bill. The honourable member for Mount Druitt should read it. I would be surprised if he has done so. He and the honourable member for Port Stephens spoke of the transfer of assets to local councils. This process of negotiation is ongoing. The Opposition assumes the bill is in some way pre-empting a decision being made. That is incorrect. Negotiations were occurring as late as a few days ago, and they are still occurring with Councils Against Asset Transfer. CAAT has had an input into negotiations from the outset.

It is accepted widely in the community that the Minister is a man of great honour. He has given a public undertaking that the process of consultation will continue. The Minister and the advisory committee sat down amicably with the councils involved and reached a general agreement as to the need for ongoing funding for the redevelopment of infrastructure. The councils were happy with that. The honourable member for Mount Druitt and the honourable member for Port Stephens criticised the lack of a plebiscite, as had been promised by the former Minister, the Hon. Ian Causley.

Opposition members cannot accept that in 1991 this Government introduced the irrigation management boards, which have been advising the Government on behalf of the irrigators after lengthy consultation. As

late as two weeks ago the irrigation boards were supporting the legislation and still support it to this night. They are left shaking their heads, wondering why the Opposition has decided that there should be a six-month delay. There is no reason, apart from the Opposition's need to satisfy some political whim, as it looks forward to a campaign in that area over the next six to 12 months. The Opposition wants to create some momentum that can be used as a campaign issue between now and March next year.

In the meantime the irrigators, the people who demand this legislation, will be the losers. There are three main areas of criticism that have been raised by Opposition members in their call for the six-month delay, the six-month annihilation of this excellent legislation. They have claimed that local government has not been consulted, that unions have not been involved in negotiation and that irrigators have not been consulted. Local government has been thoroughly consulted and is satisfied with the level of consultation. The Minister has given the undertaking to which I referred previously. [*Extension of time agreed to*.]

There was also criticism that the unions had not been part of negotiations. That is nonsense. There has been consultation on superannuation arrangements for the unions and for those who will be affected by this legislation. Enterprise agreements have been entered into already with some of the affected personnel, and they have been given undertakings through the legislation that their superannuation will be fully protected. As recently as two weeks ago the irrigation management boards had given the Minister full support for the bill. However, the Opposition will prevent this process from continuing for at least six months. The Opposition's rejection of the bill for political purposes will raise anger within the Murrumbidgee Irrigation Area. The beneficiaries will be the honourable member for Murrumbidgee and the honourable member for Murray. They will gain points along the way and will gain votes as well. The Opposition has gained nothing by upsetting the irrigators in the MIA.

The six-month delay in the passing of this bill will result in the loss of an opportunity to bring water management in this State into the twenty-first century. If in six, eight or 12 months this process has not been completed, the irrigators, fruitgrowers, horticulturalists and ricegrowers - all those who are affected by the Opposition's denial of the process of democracy in conjunction with those Independents whom the Opposition managed to secure in the vote - will criticise the Opposition's action for years to come. Members of the Opposition should go to the MIA, as the Minister and the advisory committee did, and ask those on the boards and the consumers what they think. They should not ask their Labor mates, who want to get a campaign going by 25 March next year; they are leading the Opposition astray. They simply want to gain some momentum. They have taken members of the Opposition by the nose; the Opposition has missed the boat. That has merely

provided a free run for the honourable member for Murrumbidgee and the honourable member for Murray - two of the best members in the Parliament who deserve to be re-elected. The Opposition has assisted them.

Mr NEILLY (Cessnock) [9.37]: I have no qualms about the sincerity of the three "Ms" - Murrumbidgee, Murray and Monaro. It is fair enough to ask the Minister to qualify the difference between legislation which we are now dealing with - which is to corporatise certain irrigation schemes - and the legislation that was passed in the Parliament a couple of years ago to corporatise the Hunter Water Board. I have not seen any comparable legislation. Why did the Hunter corporation legislation provide for licensed operators to report back to the Government, and why did the legislation to corporatise the Hunter Water Board also provide for consumer contracts? Water is a valuable product, wherever it comes from.

Why are the people in the Hunter treated differently as a result of the corporatisation of the Hunter Water Board as compared with those who will be affected by the legislation before the House? I have only briefly perused the legislation. What is proposed by the Opposition is a fair proposal. There is a big equity in water; many dollars are involved. I know what happens with cotton, and I know what happens in the Murray area. However, the ordinary consumer - the person who owns a building block, the person in a small town - has to pay for water. The Hunter Water Corporation has a consumer contract which is available.

Mr Cochran: The irrigators want this legislation.

Mr NEILLY: The irrigators want it, but what about the people who live in the towns and villages? What will they be given through this legislation? I am not arguing with the legislation as it is currently proposed; I want to know what impact it will have on the ordinary individual, how anyone else can come in -

Mr Cochran: I have a question without notice.

Mr NEILLY: The honourable member for Monaro would know that questions without notice can be asked at any time, but we should know the answers to questions before we enact legislation. I think the Minister for Land and Water Conservation is a fair and reasonable man, but I just want some answers to the questions I have asked.

Debate adjourned on motion by Mr Glachan.

CRIMES LEGISLATION (DANGEROUS ARTICLES) AMENDMENT BILL

Second Reading

Mr HARTCHER (Gosford - Minister for the Environment) [9.41]: I move:

> That this bill be now read a second time.

The Government is gravely concerned by the level of violence against women both inside the home and on the street, and is committed to ensuring the safety of

women and their protection from physical and sexual assault. The Government supports the view that women should be allowed to defend themselves against attack. The Government was therefore understandably concerned by the recent Court of Appeal decision in *Taikato* v. *The Queen*. In this case, the appellant, 29-year-old Janet Taikato, was charged under section 545E of the Crimes Act with the possession of formaldehyde, an article capable of discharging an irritant liquid chemical. Ms Taikato was carrying an aerosol can filled with formaldehyde, an embalming preservative, in her handbag when it was searched by police in 1992.

She told police that the formaldehyde was for self-defence and was charged under section 545E of the

Crimes Act with possessing, in a public place, a thing capable of discharging an irritant liquid chemical. She was convicted and fined $400 in the Liverpool Local Court. She appealed and a District Court judge referred the matter to the Court of Criminal Appeal. The appellant argued that she was carrying the formaldehyde spray for self-defence, should she be attacked. This argument was based on an incident some years earlier when she and her husband had returned to their house to find someone breaking in.

Under section 545E of the Crimes Act, Ms Taikato had a defence to the charge if she could show that she had a "reasonable excuse" for possessing the can of formaldehyde or if she had possessed it for a "legal purpose". The Court of Appeal followed English law to hold that self-defence could only be a lawful purpose where the possession of the article was motivated by "a reasonable apprehension of imminent attack or imminent danger". As Ms Taikato had purchased the formaldehyde following an attack several years ago and had not shown that there was any rational fear of an imminent attack, her claim of self-defence had to be rejected.

The court reluctantly dismissed Ms Taikato's appeal on the basis that it felt compelled to follow precedent. Justice Meagher stated in his judgment that he made this decision with some reluctance because, "it seems to me to be an absurd result in terms of practical effect and it is based on what seems to me to be an unwarranted interpretation of the language of the statute". This finding follows the common law, which in effect provides that while it is unlawful to carry anything for the sole purpose of personal protection, for example a knife or, for present purposes, a can of formaldehyde, this same article is carried lawfully if it is actually used in the case of an attack.

The Government is concerned about the implications of the present law for women and others whose vulnerability to physical attack places them at a disadvantage. The Crimes Legislation (Dangerous Articles) Amendment Bill overcomes this problem by requiring the court to take a range of factors into account when determining the issue of lawful purpose. The Government has elected to follow the example of section 7(4) of the Victorian Control of Weapons Act 1990 which provides that, in considering self-defence, the court must have regard to the reasonableness of the defence in all the circumstances of the case, including the immediacy of the perceived threat to the person charged; the circumstances, such as the time and location of the incident; the type of dangerous article carried; and the age and experience of the person charged.

This provision provides greater guidance and flexibility to the court when determining whether a person has a legitimate self-defence need which justifies the carrying of a dangerous article. In particular, it allows the court to determine reasonableness on a number of grounds. The list is not exclusive and not all the criteria need be present to enable the court to find that self-defence is available to the defendant. As the characteristics and experiences of the person charged are factors to be taken into account, it would appear that regard may be had to the person's fears for his or her personal safety as a result of previous assaults or threats.

Section 7(4) of the Victorian Control of Weapons Act has been in force in Victoria since 1990, and it appears to have had no apparent untoward consequences for the community in Victoria. Accordingly, it is an appropriate provision to be included in section 545E of the New South Wales Crimes Act. The Crimes Legislation (Dangerous Articles) Amendment Bill amends the Crimes Act 1900 to provide that a person is not guilty of an offence of possessing anything, other than a firearm, capable of discharging irritant matter or any substance capable of causing bodily harm if the person satisfies the court that he or she possessed it for the purpose of self-defence and that it was reasonable in the circumstances to possess it for that purpose.

In considering whether it was reasonable to possess such an item for the purpose of self-defence the court must have regard to all the circumstances of the case including the immediacy of the perceived threat to the person charged; the circumstances such as the time and location in which the thing was possessed; the type of thing possessed; and the age, characteristics and experience of the person charged. The bill also provides for the repeal of item (40) of schedule 1 to the Prohibited Weapons Act for the purposes of section 5 of that Act. Schedule 1 to this Act lists prohibited weapons, the possession of which is an offence under section 5 of the Act. Item 40 includes in this list "anything designed or intended as a defence or anti-personnel spray that is capable of discharging by any means any irritant matter in liquid, powder, gas or chemical form".

Under the present law, possession of irritant spray is an offence under two separate New South Wales Acts: the Prohibited Weapons Act and the Crimes Act. However, unlike section 545E of the Crimes Act, section 5 of the Prohibited Weapons Act does not allow a specific defence of lawful purpose or reasonable excuse. This is not a satisfactory situation and is contrary to the Government's desire to streamline the criminal law and to make it more

accessible to the community. The law relating to the possession of irritant sprays will now be contained in one clear provision: section 545E of the Crimes Act. The remaining provisions of the Prohibited Weapons Act 1989 other than the offence under section 5 continue to apply to irritant matter as defined by item (40) of schedule 1 to that Act.

The Crimes Legislation (Dangerous Articles) Amendment Bill will give the courts a greater flexibility in determining when an irritant spray may be lawfully carried. It will require courts to examine each case individually and to take into consideration a variety of factors when assessing the claim of self-defence in a particular case. No longer will the courts be confined to allowing self-defence only where there is an "imminent fear of attack". The age, characteristics and experience of the person and the circumstances of the incident will be among those factors that may be taken into consideration by the courts. The matters to be considered are not exhaustive and so allow for unique circumstances. The Crimes Legislation (Dangerous Articles) Amendment Bill recognises that all members of the community, and in particular women, should be able to defend themselves against a potential attacker. Accordingly, self-defence should be more widely available as a defence to the unlawful possession of articles such as irritant sprays. I commend this bill to the House.

Debate adjourned on motion by Mr Whelan.

CRIMES LEGISLATION (UNSWORN EVIDENCE) AMENDMENT BILL

Second Reading

Debate resumed from 20 April.

Mr WHELAN (Ashfield) [9.50]: It is time to deal much more honestly with this debate on the Crimes Legislation (Unsworn Evidence) Amendment Bill. We have heard nothing but hype from the Government since August last year, when the Attorney General first announced by press release that he would single out from the bulk of the measures contained in the evidence bill, which had been thoroughly considered by all Attorneys General throughout Australia, a proposal whereby dock statements would be abolished. He did so for political opportunism. The House did not hear anything other than that statement from him in August 1993 that dock statements were to be abolished. This House has now become aware of the colour of the Government's intentions.

I mentioned introducing much more honesty into this debate. If the Government had dealt with this matter honestly, it may have been excused for introducing the bill. At the same time the Government should have proposed a bill that would have provided the necessary protection that everyone in the community has now recognised - it is no secret, in 1985 it was recognised by the Law Reform Commission - that the right of victims was not as it should be and it should be amended. But the Government ignored that. The Government wanted to forget about victims and witnesses and control the public agenda, the publicity agenda and the political agenda in an attempt to convince the public of New South Wales that the Government is all about caring for people who have been witnesses in trials or victims who must sit in court. For proof of that, honourable members can read the Attorney General's reply to a recent speech in the upper House - an absolute travesty. The Attorney General should know more about the law than what is clearly in evidence by that speech.

Mr Richardson: What about other States?

Mr WHELAN: Other States have different laws. Why not talk about the abolition of the dock statement and what it has meant in Queensland? Later I will talk about the case in Queensland of Bjelke-Petersen, who abolished dock statements in Queensland, and the deleterious effect that is having on Queensland law. I will give an example of a woman who spent six years in gaol as a result of not being able to make a dock statement because that procedure was abolished by Bjelke-Petersen. Government members would know - it would be constructive to them to know - of any practitioners who practise in the field, whether legal aid or otherwise, who deal with intellectually handicapped people or with Aborigines, who would put any one of those in the witness box.

Honourable members on the Government side who are legal practitioners would put anyone in the witness box, particularly an Aborigine. Not one solicitor in Sydney would put Aborigines in the witness box; they are the most agreeable people in the world and will say yes to anything. The Government does not provide any protection for Aboriginal people or intellectually handicapped people. I can quote from solicitors who have written to me who represent Aborigines, or from the Law Society or from the bar.

Mr Hazzard: Tell us about the Queensland case.

Mr WHELAN: Yes, I will come back to the Queensland case. The Opposition will move a series of amendments which will do away with the advantages by people who make unsworn statements in court. The Opposition will eliminate the current abuses in the practice of unsworn statements. The Opposition will introduce consistency of treatment of all kinds of evidence given in court. The Opposition will do away with the lying and irrelevancies and end the free kick given to those who make a dock statement under the present regime. The Opposition will ensure that the system is fair for all people who appear in court. These proposed amendments are not new.

The present Government has, for six years, known of the concerns of the judiciary and law reform agencies who have called for some of these reforms. The Parliament will now have the opportunity to act on these concerns to ensure consistency and fairness. The Opposition's proposals will end the irrelevant,

vexatious and overlong statements and end attack on victims and witnesses in unsworn statements and the lies and false statements made in those unsworn statements.

Mr Hartcher: How will you do that?

Mr WHELAN: Easily. Stay tuned. Minister, you are in government, and you are asking me how to do it. I will advise the Minister how to reform this law. The Opposition will introduce amendments to provide greater power for judges to limit dock statements. The Minister has asked the question and here are the answers. The Opposition will give power to the prosecution to bring the accused's character into issue. The Opposition will introduce a new criminal offence of making a false statement, will permit comment by the judge and prosecutor on the dock statement and end the artificial fetter, and provide restrictions on the accused giving both a statement and sworn evidence. The end to the unfair advantages enjoyed by accused who presently give dock statements will lead to a diminution in their use.

The amendments I propose will retain the dock statement as an alternative for those accused who wish to exercise their right to speak directly to the jury and to tell their story. The amendments will place accused in a far more equal position in a court. It is acknowledged that the fact that the accused person makes an unsworn statement at a trial reduces the chances of success for any appeal they may lodge against conviction. Dealing with lengthy, vexatious, irrelevant and insulting dock statements, it is clear that an accused who gives a dock statement currently has the unfair advantage over a person who gives sworn evidence of not being under the control of the court. The accused who gives sworn evidence does so by answering questions. The lawyers and judges determine the length of time taken by the questioner and are in a better position to control the content of the evidence given.

At present the accused who gives an unsworn statement determines the length of the statement. Most are less than 30 minutes. My source for that is the 1985 document entitled "Law Reform Commission Unsworn Statements of Accused Persons". It is arguable that judges already have the power to curb excessively long statements. But Calin's case in 1992 blew all that out the window. It was a ridiculous situation in which an accused made a statement that lasted for 14 days. That showed that something in the system was not working.

Mr Hazzard: Was Calin a member of the upper House?

Mr WHELAN: No. It was a case where clearly in retrospect the judge should have exercised a great deal more restraint. There were difficulties because of interpretation and the person concerned was not skilled in English. For someone to suggest that a dock statement could be permitted to go for 14 days -

Mrs Chikarovski: How long are you suggesting - three, two, one?

Mr WHELAN: Minister, the majority are 30 minutes; 99 per cent would be less than 30 minutes. The Government is trying to say to the public that dock statements can be unlimited. My amendment will control that. Minister, you asked me how the Opposition would control that. The Opposition will introduce provisions in the Crimes Act to ensure that judges control the content, relevancy and length of unsworn statements. In relation to the new criminal offence of making a false statement, an accused who makes an unsworn statement has an unfair advantage over a person who gives sworn evidence, in that a person who makes an unsworn statement cannot be prosecuted for telling lies in court.

The accused who gives sworn evidence and tells lies may be prosecuted for perjury under section 327 of the Crimes Act, which carries a maximum penalty of 10 years, or for making a false statement on oath - section 330 of the Crimes Act - for which the maximum penalty is five years. The accused who makes an unsworn statement cannot be prosecuted for making that false statement. That is anomalous, not only for the person who gives sworn evidence but because under section 35 of the Oaths Act even children who give evidence not on oath are subject to conviction for perjury if they make false statements. The amendment that I foreshadow, upon which I shall expand at a later stage, will demonstrate how the proposed change will operate.

In relation to the solution to the comment by the judge and the prosecutor on the dock statement ending the artificial fetter, an accused who gives a dock statement currently has an unfair advantage, in that the judge and prosecutor are not permitted to tell the jury that the accused had the choice to give evidence but did not do so. The amendment I shall move will permit comment on the choices available and will satisfy the concerns of and criticisms by judges about dock statements. Those concerns have been expressed most recently in the New South Wales Court of Appeal case of King, unreported, in 1993. The case related to judicial comment on the dock statement following a question from the jury as to why the accused was not put in the witness box. The bench agreed with the statements of the former chief justice, Sir Laurence Street, in Greciun-King's case in 1981 that the prohibition on comment was an artificial fetter which could serve only to mislead the jury as to the true state of the law. Statutory secrets enforced on the courts and on juries do less than justice to the common sense and fairness of juries.

In the appeal Mr Justice Wood said, "Legislative review is, in my opinion, well overdue". In 1987 the Australian Law Reform Commission recommended in its evidence report that dock statements be retained but amended. The commission published a draft bill, which included a clause on comment on the dock statement. The amendment that I propose is based on that recommendation but extends the right of comment to the prosecutor as well as to the judge and other

parties. I mentioned earlier responses to attacks on prosecution witnesses and victims, an essential ingredient in the positive proposal I shall put before the Parliament, and with which I expect the Government to agree. An accused person who makes an unsworn statement has an unfair advantage over an accused who gives sworn evidence when the accused attacks the general character of the victim or other prosecution witness. When an accused person who gives sworn evidence attacks the general character of a victim or other prosecution witness, the prosecution may reply by leading evidence of the accused's bad character. This is an inconsistency in the

current law, for an accused who does the same thing in a dock statement cannot have character raised in response.

The amendment I have foreshadowed will extend to apply to accused who make dock statements the current powers of the prosecution to reply to attacks on victims and other witnesses by leading evidence as to the character of the accused. Not only will that punish those accused who make such attacks in unsworn statements but it will deter accused from making such comments in the first place. The recipe that was available to the Government but which it failed to use is that the trial judge will be able to allow the prosecution to call evidence in reply to an unsworn statement of an accused or the address of the accused person's legal representative. Basically that is the thrust of the Opposition's positive proposals, in contrast with the negative proposal of the Government, which has a veiled idea of reforming the law. Governments are supposed to listen to the people. I have received an enormous amount of correspondence, and I shall not refer to all of it.

Reference was made previously to the Aboriginal community. I was challenged to ask about the case of Robyn Kina in Queensland. Before I comment on that case I should tell the House about the recommendations made by the Government's own Aboriginal justice advisory committee at its meeting on 24 February. That meeting was attended by nominees from the Minister for Police, the Attorney General, the Department of Courts Administration; the Minister for Justice; and the executive assistant and three community representatives also were in attendance. The report from that meeting was as follows:

> The Committee recommends that:
>
> > Clause 26 of the Evidence Bill . . . (Annexure "A") be removed to allow accused persons (both male and female) to maintain their basic civil right to make statements from the dock at the close of criminal proceedings.

That was the recommendation made by the Attorney General's Aboriginal justice advisory committee - a committee that deals with Aboriginal matters. Why can the Government not listen to the committee? Why can it not sample the precedent? Surely members opposite cannot keep putting their heads in the sand. Did they read the *Good Weekend* last Saturday? Did they read the story about the terrible trials of Robyn Kina and what happened to that poor woman, how she spent six years in gaol because Bjelke-Petersen abolished dock statements?

Mr Hazzard: Did she give evidence?

Mr WHELAN: She could not do so; she was emotionally distraught, as are most women who are involved in domestic disputes. She killed this man because of the horrible things he did to her over a period of time. She was not given the right to defend herself, because the Queensland Government at that time abolished dock statements - through the fault of the lawyers. That is why this innocent woman spent six years in gaol. This terrible person with whom she had a relationship was like so many in the community who can only be described as animals. The article about this poor woman in the *Good Weekend* told of what she went through. The basic flaw in the whole of this argument for abolition is that this woman was disadvantaged following the abolition of the dock statement. I shall quote briefly from the article, which gives an insight into why she spent time in gaol:

> Kina was freed from gaol just before Christmas, after the Queensland Court of Appeal ruled that justice had miscarried at her trial, and set aside her conviction. She had spent six years in gaol. The court concluded that the legal system had failed Kina by not allowing evidence of her brutal treatment at the hands of Tony Black - who she says raped and bashed her repeatedly over three years - to be presented in her defence.
>
> Kina was unable to give her trial lawyers a full account of these matters because of her shame and embarrassment, and the formal way they interviewed her. But she did tell social worker David Berry, who still can't understand why his reports to her lawyers - detailing Black's abuse of Kina and her tragic background - weren't used as a basis for defence at her trial, or at her first appeal.

Mr Hazzard: I feel sorry for her also, but how does this affect her?

Mr WHELAN: Because she is Aboriginal. The honourable member asked me to tell him about Aborigines.

Mr Hazzard: She was not capable of talking to her lawyers. How could she talk to the court?

Mr SPEAKER: Order! The honourable member for Wakehurst will have a chance to contribute to the debate.

Mr WHELAN: There was no opportunity for her to do so. She had two options in Queensland, similar to the options that she will be given in New South Wales. The Government would give Robyn Kina an option: get in the witness box and be cross-examined and ripped apart by lawyers, or remain silent. That is what the honourable member for Wakehurst will be voting for. He should understand that. He will be voting to abolish dock statements. There will be one choice: give evidence or do not give evidence. The honourable member would say to the Robyn Kinas of the world, all of those bashed housewives who live with animals like that bloke Black, that they should go into the witness box and defend themselves. That is an absolute insult not only to women but to everyone.

Mr Hazzard: What about if the bloke who did the bashing makes a dock statement?

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Mr SPEAKER: Order! The honourable member for Wakehurst has already been told that he may make a contribution to the debate at a later stage.

Mr WHELAN: Obviously the honourable member for Wakehurst does not care about this matter, because his party has made a decision as to what it will do. He mentioned lawyers and the Aboriginal community. I shall read correspondence I have received from practitioners in the field. Before I do so I should refer to a letter that was written by the Aboriginal Legal Service. This is a press release from Mr Coe, dated 19 April, which says, inter alia:

> The ability to make unsworn statements which are not subject to cross-examination provides an important protection for Aboriginal people who find the Australian criminal justice system alien and hostile.
>
> Aboriginal people do not understand that system, and have an understandable fear and distrust of it. The proposed legislation would leave them with two options: to stand by without being able to say anything in their own defence, or to be put through the wringer.
>
> The confusion of an Aboriginal person confronted by a skilled prosecutor can easily be misconstrued by a jury as an indication of guilt.

That is one letter from the Aboriginal Legal Service. I wish to refer to the exhaustive list of letters I have received from legal practitioners. Honourable members would have received representations from many people. I would like to refer later to a letter from the Law Society of New South Wales but I have probably lent that letter to someone. It was a very telling letter because it just says it straight. It states that a legal practitioner of many years' experience would never put an Aborigine in the witness box but would have an Aborigine make an unsworn dock statement. However, the Government seeks to abolish that principle. Honourable members would also have received representations from the Women Lawyers Association of New South Wales Incorporated, which represents 600 women lawyers. I do not imagine that the association would have any political motivation. It refers to the bill being debated in the Legislative Assembly tonight, so obviously that association knew more than most people. The letter from the association states:

> The issue is of great concern to the 600 members of the Association, many of whom work in the criminal jurisdiction. The issue of abolition seems to us to be confused and concerned with irrelevancies such as other jurisdictions have abolished this right; and the victim or witness's credibility is subject to attack in cross examination, whereas the accused's may not be. I note that many witnesses'

credibility is normally attacked in both criminal and civil matters.

The association asks a series of questions that it believes are relevant. I am sure that most members of Parliament have received a copy of that letter. Other members of Parliament have referred the letter to me. In the letter the association notes:

> . . . the following case is indicative of how women, in particular, may be further disadvantaged in the criminal justice system by the abolition of the dock statement.

The letter refers also to Robyn Kina. It states:

> Robyn Kina was convicted, in Queensland, for the killing of her drunken, violent and sexually demeaning defacto husband, under the headline: "How did the legal system fail so badly when it came to dealing with this long-suffering victim of rape and domestic violence?"

The women lawyers say that the answer in part was due to the abolition of the dock statement by Premier Bjelke-Petersen in 1975. The letter continues:

> At her trial the defence was unable to use the social worker's evidence of abuse without Kina confirming the truth of what she had told the social worker. Since the dock statement had been abolished, this meant that she had to go into the witness box to do so, and endure cross-examination, but her lawyer told the Good Weekend [that I quoted from] that she had been "totally unwilling to give evidence before a jury, or to be subjected to cross-examination".

Mr Hartcher: What is wrong with that?

Mr WHELAN: The Minister would want to put her in the witness box. He reminds me of people who say, "They must have been guilty otherwise the police would not have charged them". The letter further states:

> He told the Court which ultimately released her: "I did not think that the appellant should give evidence. One of my main concerns about the appellant giving evidence was the fact that, at that time, she was still in a depressed and remorseful state, and seemed to blame herself, rightly or wrongly, for everything which had occurred . . . I was of the view that she should not give evidence". Accordingly, she remained silent before the jury, as damning as that was.

I have solved a matter raised by that association, namely, that accused persons making a dock statement should be prosecuted if the dock statement is false. I shall introduce an effective method for a penalty of false swearing to be imposed.

Mr Hazzard: It has never caused a problem in the summary jurisdiction.

Mr WHELAN: The honourable member will have his opportunity to talk about it later. I have a copy of the three-page letter written by the public defenders to the Attorney General in support of the retention of dock statements. It refers to failures of the Government's proposals and outlines positive suggestions for the Government to adopt on this issue. The Government should lead by example and introduce appropriate legislation to ensure that people are not prejudiced.

Mr Hartcher: This is riveting stuff.

Mr WHELAN: The Minister might not think this is important but he will have an opportunity to read a prepared speech.

Mr Hartcher: You want to protect guilty people from the consequences of their acts.

Mr SPEAKER: Order! I ask the Minister not to intervene.

Mr WHELAN: What an absolutely fallacious remark. This Minister of the Crown has said that this is about protecting guilty people from cross-examination. He is a lawyer and yet he says that.
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Since when has there been a presumption of guilt? The Minister must be joking. He is one of 20 people in Cabinet who vote on bills. Can one imagine paying the Minister for legal advice? He must have put a sign out the front saying, "Come and see me. I am your lawyer. You get $20 a head to come in". Imagine someone seeking advice from him and saying, "Listen, I have committed this transgression of the Crimes Act. Will you look after me?" He would be told, "Yes, I will look after you. No worries. You will get five years with me. But if you go and see Hazzard down the road; he might get you off".

That is a disgraceful suggestion by this Minister and demonstrates the motivation and intention of the Government in relation to this bill. I have received many submissions opposing this bill and supporting the positive proposals I will be putting forward in amendments. Jocelyn Scutt sent letters to all members of Parliament; and if any member of Parliament did not receive a copy, it would be worth their while obtaining one. The letter sets out positive suggestions, though the Opposition has already taken those into consideration. This respected woman lawyer from Melbourne is sufficiently keen to make representations.

Mr Hartcher: They do not have it in Victoria.

Mr WHELAN: She is practising in Victoria. Maybe she did not have a vote in Victoria. Perhaps she should write to the Victorian Attorney General. However, she has written to the New South Wales Government stating that it is in error if it believes it is reflecting the views of women in abolishing dock statements in New South Wales. The Government has ignored women lawyers, Aborigines and its own justice committee. I ask why the Government did not take notice of the Law Society of New South Wales? In August 1993 the Law Society wrote a long letter to the Attorney General following his press release. That three-page letter refers to many of the matters I have outlined and pleads with the Attorney General to reconsider the decision. The letter states:

> The Law Society has maintained a policy of supporting the retention of dock statements over the years and it is thought to be appropriate for council to reach a policy decision in the light of your [the Attorney-General's] decision to abolish the right of an accused person to make a dock statement.
>
> The Law Society has resolved to affirm its support for the retention of the right of the accused person to make an unsworn statement from the dock in a criminal trial.

The letter further states, as many would also agree:

> Solicitors who appear for Aborigines in indictable criminal trials express the view that their clients face difficulties with our criminal justice system. They find the courtroom atmosphere intimidatory, are very often not sufficiently skilled to handle the giving of evidence and, more importantly, cross-examination from a skilled advocate. A similar difficulty is shared by a very large segment of the community who come from a non-English speaking background and from a culture whose legal system is very different to our own. Moreover, as you will appreciate, the overwhelming majority of accused have very limited education and are not lucid in their expression.

The letter continues on page 2:

> It is not accurate to say that the dock statement is the inevitable occasion for an accused person to make an unchallenged allegation and attacks on the character of witnesses and victims. If an accused does raise allegations about the Crown witness for the time being in the course of making a dock statement, the same adverse comment by the trial judge is available as if the accused had made these allegations in sworn evidence. Moreover, there is authority for the proposition that dock statements should be confined to relevant and admissible material, and accordingly it is certainly not beyond the control of the trial judge.

My proposed amendment will overcome and remove once and for all any ambiguity on that issue. The Law Society pleaded with the Attorney General to reconsider his position. The Bar Association has written to the

Attorney General, and has written numerous communications to me and to the *Sydney Morning Herald* offering all the reasons I have given and many more for retention of dock statements. I have received letters from people concerned about children's evidence. My proposed amendments will protect witnesses. The Government has had ample opportunity to protect children in the courts. Nothing can be done within the scope of the bill to protect kids.

Mr Hazzard: You do not want to protect them, do you?

Mr WHELAN: Of course I do. The Opposition, disadvantaged with the sole resource of a private member's bill, will seek to do what the Government is not doing. The Opposition will introduce, in addition to other toughening provisions, an amendment to the Justices Act so that a magistrate or judge will be able to give a direction to counsel representing a child victim, or to the child's representative or guardian, that the child does not have to be present in court. However, the Opposition cannot introduce a bill cognate with the current bill. If I could, I would seek to streamline the bill and propose many more tougher measures than the Government has proposed. The Government has missed the opportunity to reform the law properly on this issue, and that is disappointing. The Government wants to grab a cheap headline on an issue that is far more important than to be thrown away at the Minister's whim.

Having listened to the Minister in the House and his definition of justice, guilt and innocence, and the presumption of innocence, I despair. He obviously went to a different law school from the one I did, or nothing went into his head at law school - that may be the difference between us. I have received letters from university lecturers about children's evidence and the use of closed circuit television. Why does the Minister not propose amendments? Why does he keep making statements about videotaping children's evidence? It is impossible to obtain videotaping of evidence in court cases. Courts with videotaping facilities for the taking of evidence cannot be found, yet the Minister keeps making announcements about all the money being allocated for that purpose.

Mr Hartcher: They are just over the road.

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Mr WHELAN: Of course they are over the road, but in how many court cases have videotaping facilities been used? I challenge the Minister in reply to give evidence of the number of court cases and the location of courts in which videotaping of evidence has been applied. Hey, Big Spender, he spends on everything else but not on these needs. I am not going to say who wrote to me but it is someone well respected in the child protection field who is concerned about children's evidence. I have now satisfied that person's concerns about the retention of dock statements. That person makes a telling point about an issue that is solely within the administrative province of the Government, not of the Opposition. I would be happy to take the initiative, if necessary; though how the Opposition would do it, I do not know. Where in the Minister's negative bill is there any provision for educating judges on this issue? What does the Minister do in Cabinet - snore? Why does the Minister not talk about educating judges or getting the judicial commission to do something about the issue? Why did the Minister not have in his amendments a positive proposal about judges' directions?

Mr Hazzard: That is not within the leave of the bill.

Mr WHELAN: That is exactly within the leave of the bill. That is what my amendments will be proposing, and they will be more relevant than any member opposite would ever think. The Legal Aid Commission is under stress because the Government wants to reform it with dynamic management. The big reform is that the Government will replace the nine Legal Aid Commission appointees, fill their positions with Liberal Party hacks, and reduce their numbers from nine to seven. That goal is to be achieved by the so-called big bill, the big dynamic piece of Government legislation designed to overhaul the Legal Aid Commission. The Legal Aid Commission knows a lot about dock statements. The commission wrote to Attorney General Hannaford on 2 May and said to him, "Don't abolish dock statements". I will give the Minister a copy of that letter, and he should go and ask the Attorney General about it.

The commission issued a press release on much the same topic. I see one of the legal aid commissioners in the gallery tonight. I give the commission full credit for coming out and attacking the Government on a matter of merit and for not being afraid to do so on a matter that is most important to the people of New South Wales. My proposed amendments are positive and will improve the rights of courts and the powers and strength, in one sense, of a judge to give directions in a criminal trial. The amendments will offer enormous advantage, for instance, in providing a new offence of false swearing during a dock statement. My proposed amendments are a proper and detailed response to the bill and to this issue, which has caused so much concern in the broader community.

A great deal of disquiet has arisen within the community about abuses in the system that have existed since 1985. I could blame the Labor Party for not doing anything from 1985 to 1988. If that is so, I accept it, but I am not going to accept responsibility from then on. I am not going to accept responsibility for this knee-jerk reaction by the Government to try to solve the problem. The Government, instead of reaching for a solution to the problem, has seen only political opportunism. My proposed positive amendments will give courts power to make directions as to the length and subject-matter of an unsworn statement and, in particular, by direction, to exclude from an unsworn statement material which in the opinion of the court is irrelevant, vexatious, and would make a statement unduly lengthy or constitute an unjustified attack on the character or credit of a witness.

Mr Hazzard: How do you stop that before it is done?

Mr WHELAN: Wait for the amendments. You have got hundreds of people. You have got 2,000 people in the Attorney General's Department to advise you how to do it. Do you want me to read the whole lot of it to you? I am too old for that. I will let you wait. You will have to wait until you get the amendments.

Mr SPEAKER: Order! I have reminded the honourable member for Wakehurst on several occasions that he can make a contribution to the debate at a later stage. If he wishes to make a contribution to the debate but cannot refrain from interjecting, I suggest he leave the Chamber.

Mr WHELAN: The direction is going to say to the judge, "You have got power over this operation" and if something goes wrong, if there is a vexatious comment, it can be revoked instantly. As I have said, it will provide comment for the first time. A judge or counsel may comment on the fact that an accused person has made an unsworn statement and has not given sworn evidence. It will reinsert the requirements contained at present in section 405(3). As I have said, I despair at the thought of the Government seeking this short-term political advantage. I did say to honourable members that I would read a letter from a practitioner who practices in Aboriginal matters. I have quoted the Aboriginal justice commissioner, the Attorney General, and the Aboriginal legal service. I fear I have misplaced the letter, but when we come to the Committee stage I will provide that communication so that Government supporters can see what practitioners in the field are going to do.

I would like the Minister to stand up and make a positive contribution, not that ratbag diatribe that I read from the Attorney General in the upper House, who was factually incorrect, legally incorrect, emotionally distraught and who does not understand the bill. However, I believe he has a bit more knowledge of the law than the Minister for the Environment. This issue has to be dealt with

sensibly, sensitively and positively. I expect the Government to oppose the amendments that I will be moving to this bill. It will do so at its peril. I ask the House to reject this Government's hypocrisy on this issue, to look very seriously at the proposals that the Government has and to support the amendments that I will be moving at the appropriate time.

Mrs CHIKAROVSKI (Lane Cove - Minister for Industrial Relations and Employment, and Minister for the Status of Women) [10.33]: I have sat here listening to the diatribe of the honourable member for Ashfield for almost an hour now. I have bitten my tongue. I did not interject in relation to the Labor Party, yet again saying one thing on one occasion and saying an absolutely opposite thing on another. We have heard members

opposite say on a number of occasions recently that they are concerned about the women of New South Wales. They have stood up in this Chamber, they have been reported in the press, and on each occasion they have claimed to be members of the party that looks after women in this State. If there was ever an opportunity to do something for the women in this State, it must surely be to support the abolition of the unsworn dock statement.

Women in this State are sick to death of the sorts of attacks and slurs that are inflicted upon them by people who seek to use the unsworn dock statement as a means of defending themselves, and yet they are not accountable for it. The accused stand in the dock and attack the victim maliciously, viciously and continually. They put the victim on trial. In the large majority of cases the people who are put on trial are women. It is absurd for the honourable member for Ashfield to claim that he is seeking to protect women by advocating the maintenance of the dock statement. For members of the Labor Party to suggest that it is the champion of women in New South Wales is also absurd, given their attitude to this bill.

A number of points were raised by the honourable member for Ashfield, on which I would like to comment briefly. Firstly, however, I remind the Opposition that this is not a piece of legislation which is supported only by the Government. This is not a piece of legislation that the Attorney General - to use the words of the honourable member for Ashfield - is using for cheap political gain. This is a piece of legislation which women in this State have been demanding for a considerable period. In my capacity as the Minister for the Status of Women I have been involved with a number of groups who are very concerned about the continuation of the unsworn dock statement in this State. Members will recall that last year the Government released the sexual assault phone-in report and the Government's response to that report.

The report was released on 31 August, 1993. What was one of the important recommendations of that report? I shall read it: "Let unsworn statements by accused be abolished". The Government's response was to support that recommendation. The Government had already announced its intention to abolish unsworn statements by defendants in criminal proceedings. The people involved in the sexual assault phone-in report recognised that one of the principal impediments to women having the courage to go to court and charge their attackers was that defendants could stand in the dock and say whatever they liked about the woman victim and the character of that woman - and get away with it.

Absolutely nothing could be done to stop that from happening. That meant that one had to be a pretty game woman to go to court in a sexual assault matter. The women of this State are not prepared to put up with this any longer. They do not believe that it is in their best interests that dock statements be permitted. The honourable member for Ashfield has quoted all sorts of people who say that they are opposed to it. I would like to refer to a number of the groups that have come out in support of the abolition of the unsworn statement. They are reasonably disparate groups - they do not belong to the type of alliance one would often expect in terms of an issue like this, but on this they are united. Among the groups are the Catholic Women's League, the Country Women's Association of New South Wales, the Victims Advisory Council, the New South Wales Sexual Assault Committee, various sexual assault teams of health services, the Council of Women Victims of Sexual Assault, the Reclaim the Night Committee, the Domestic Violence Advocacy Service, the Women's Legal Resource Centre and the Child Protection Council.

Unlike the honourable member for Ashfield I have spoken with women's groups in this State, and in every single case the one issue that has come up time and time again is the unsworn dock statement. It is recognised by the women who are working with victims that it is one of the principal impediments to women actually getting justice in this State. The honourable member for Ashfield can stand up here and say that he is very concerned about women but the reality is that dock statements have been used to malign and discredit victims. They are often used in sexual assault cases and domestic violence cases.

Women have had to sit in court and listen to spurious allegations about their behaviour by individuals who are not subjected to any cross-examination. Imagine the devastating effect that those statements have on women. I congratulate the women who have had the courage to go into court to confront their attackers and sit there while they become the accused - which is essentially what happens. The Government recognises the unfairness of that anomaly and is prepared to address it and correct it. The honourable member for Ashfield

has accused the Government of not listening to people. The reality is that the Government has listened to the people, to the women who are affected, and they are the ones who are saying to us that they want -

Mr Whelan: You are making it up.

Mrs CHIKAROVSKI: I am not making it up. When was the last time the honourable member for Ashfield went out to the bush and spoke to the women working in these services? When did he last talk to

members of a sexual assault committee or representatives of domestic violence emergency services? When did he ask them what they really want? He has pretended to talk to these groups as he is pretending to represent the victims of crime in this State. The reality is he does not represent the women of this State, and it has got his goat that the Government is taking the initiative on this matter and is doing something about it. The lack of interest in women's issues by the Opposition is in sharp contrast to the concern for women demonstrated by the Government.

I was appalled when I heard the so-called feminists in the upper House - those so-called strong advocates of women's issues in the upper House, the Labor Left women - speak against the abolition of dock statements. They claim to have the ear of the women's movement, they claim to be on side with women in this State. Both the Hon. Dr Meredith Burgmann and the Hon. Ann Symonds are dead against the abolition of the unsworn statement - a most appalling abrogation of responsibility by those members to the women of this State. The women of New South Wales will not forget this shameless, opportunistic betrayal by the New South Wales Labor Party. It highlights the hypocrisy of the Labor Party with regard to women's issues. When it finally has an opportunity to do something positive for women, it walks away.

The Labor Party is big on rhetoric but not on action. Women's groups and experts advising the Government on policy have said that this is one clear statement that the Government can make to the women of New South Wales to protect their interests. It is a clear statement and a commitment by the Parliament to the women of New South Wales. This Parliament can say it is concerned about the women of this State and will act in their interests. The honourable member for Ashfield suggested that the Government was not concerned about Aborigines. That is entirely incorrect. The Government recognises that many groups and individuals experience difficulties when they appear before the courts. The way to address that problem is to provide counselling and assistance to those people to enable them to understand the law. As the honourable member for Ashfield has said, many people are not capable of getting up in court.

The better approach is to provide them with an understanding of the court process, and that will give them the confidence to be involved in the court process rather than dock statements being used by accused for however long they wish and for whatever purpose. To suggest it is only used by people who are not literate is a complete lie, as the honourable member for Ashfield well knows. A former member of the High Court hardly qualifies as illiterate and incapable of making a sensible statement on his own behalf. The honourable member for Ashfield is fully aware of those who have used the dock statement over the years. It is not only used by those who are incapable. The honourable member for Ashfield quoted many letters in his speech. I shall read what judges who have presided over cases involving unsworn dock statements have to say on the matter. A letter to the editor of the *Sydney Morning Herald* stated:

> To assert that the dock statement is "an old common law right" that allows "weak, poorly educated or inarticulate people to speak in their own defence without being subjected to cross-examination" is simply incorrect.

The former judges stated further:

> It is here available, and frequently used, not only by those who are said to be weak, poorly educated and inarticulate, but by the strong, the educated and the articulate.

And that includes a former High Court judge of this country. The former judges continued:

> We are satisfied that the making of an unsworn statement, which is in no way subject to the ordinary rules of evidence or to the laws against perjury, is an anachronistic procedure which frequently lends itself to abuse and manipulation of the trial process.
>
> We know of no valid reason why accused persons should not, like every witness in the trial, pledge his or her oath to their evidence and be subjected to cross examination.

The women of New South Wales agree, and that is what the women of New South Wales expect in terms of justice in this State. They expect that when they take their attackers to court, their attackers will not be allowed to stand in the courtroom and say whatever they like for as long as they like and in whatever way they care to say it - to be maligned, attacked and vilified. The women of this State demand justice and expect that they will receive justice in our courts. However, they know that if this anachronistic procedure is allowed to continue, as the judges have said, of allowing people to stand in court and say whatever they like, women will not receive justice and will continue to be subject to attack and vilification; that they will become the accused and not the person who is most rightfully placed to be the accused - the person whom they had the courage to take to court over serious sexual assault and domestic assault offences. This legislation is entirely appropriate, and I would be surprised if members of this House do not support it. They know this is the only way that women in this State will feel safe and protected and will get a fair go.

Mr NAGLE (Auburn) [10.48]: The Minister for Industrial Relations and Employment and Minister for the Status of Women spoke about justice. In 1974 I was charged under the Local Government Act for breach of ordinance 1 of clause 48 of the Local Government Act for divulging confidential information to a committee of the council without the council's approval. I am the only person in the State of New South Wales ever to be prosecuted under that ordinance. That ordinance was introduced in 1894 and I am still the only person to be prosecuted under its provisions. A former member of the upper House, Lee Serisier, defended me in that action. I said to him, "Justice will be done in this case". He said, "Peter, there is no justice. There is only the law". But in criminal matters there is right. When an accused goes to trial he or she goes before a jury or a judge. The judge is not concerned with whether the victim or the accused is going to receive justice.

It is for both parties to see determined, beyond reasonable doubt, whether the accused is guilty of the charges laid. The burden rests with the Crown to prove beyond reasonable doubt to a jury of 12 of the accused's peers - a quote from the Magna Carta - or under modern legislation to a judge, whether the accused is guilty. Though I have been a solicitor and a barrister for 14 years, when I attend court I am still nervous. When I speak in this House I am nervous - as I am now - and so is the Minister for the Environment, and the honourable member for Wakehurst when they speak. I have been in court on a number of occasions with the honourable member for Cronulla and I have seen his hands shake at the bar table when addressing a magistrate or a judge. If lawyers themselves are stressed and upset when they appear before a court, victims and accused persons must also be upset and distressed when they stand up before the courts.

Under this legislation the victim has the support of the police, the Crown prosecutor and support groups. There is no support for the accused other than his own lawyers. Ask Ziggy Pohl - a man accused of murdering his wife. He went to trial and was advised by his counsel to give evidence in the box - not a dock statement. The evidence against Ziggy Pohl was circumstantial. He gave evidence in the witness-box before a jury of 12. He was cross-examined by an articulate Queen's Counsel and by a junior barrister and his evidence was torn apart. The jury, after deliberating for only 35 minutes, found him guilty of murder in the first degree. He was sentenced to life imprisonment. Ten years later a man walked into a police station and said, "I killed Ziggy Pohl's wife". Ziggy Pohl had spent 10 years in gaol because he gave evidence and because he was cross-examined on that evidence!

Under the amendments proposed by the honourable member for Ashfield a judge can comment - and he rightly should comment - that the victim gave evidence, as did other witnesses, under oath before the court but the accused opted to make a dock statement. The prosecution should be permitted to make such a statement also. But silence is a right. Honourable members might recall Saint Thomas Moore's comment, "As long as I

am silent you must accept that silence is consent". Saint Thomas Moore was tried on the basis that he was silent. He would not comment on Queen Anne Boleyn's marriage to Henry VIII. He lost his head as a result. Not one lawyer came to his aid; he had to defend himself. When he knew that he was going to be convicted he uttered those words, which have had a far-reaching effect on our legal system.

Five hundred years of tradition have enabled accused to remain silent. We have permitted accused people, those who are inarticulate and those against whom the community is prejudiced - such as Aborigines, Turks, Arabs, Croatians, Serbs and Macedonians - to make dock statements. They have been allowed to remain silent or to make a statement in their own defence because the general community have been was prejudiced against them. At least they were able to make a statement contrary to the version given by the Crown. Remember that we are dealing with a presumption of innocence, not a presumption of guilt.

When an allegation is made an accused person is presumed to be innocent until a jury of his peers, by virtue of the Magna Carta, says otherwise. Modern legislation states that an accused person is presumed to be innocent until a judge says that he is guilty of an offence. Does this Government really believe that juries in New South Wales, after sitting in court day after day listening to evidence given under oath and listening to people being examined and cross-examined, are stupid enough to say after an accused has stood up in the dock and made a statement, "The accused made a statement so we will accept his version"? Members of the jury have common sense. They know about people giving evidence on oath, being examined and cross-examined; they are not stupid. They understand what is happening. That is the purpose of the dock statement.

The amendments proposed by the honourable member for Ashfield will enable a judge to comment on a dock statement. A judge will now be able to say, "The victim gave evidence under oath before God and was examined and cross-examined. The accused has said whatever he or she wants to say from the dock but it was not said on oath and was not subjected to cross-examination. The members of the jury, who have common sense, will now have to decide". When I attended the American Bar Association conference in Atlanta, Georgia, I informed delegates about our dock statements. Many United States criminal lawyers at that conference said, "I wish we had dock statements in the United States so the accused could get a fair trial". As I said earlier, judges and juries are not stupid. Members of the Liberal Party are good on cheap emotion, but trials are not black and white. Different versions of every story can be given.

At the end of the day, if an accused is found guilty, he loses his liberty. In 1974, when I was an alderman of Auburn Council, I was prosecuted under Ordinance 1, clause 48, of the Local Government Act. Though it involved a fine of only $200, I was beside myself. I was worried sick about what was going to happen. I had never been to court before. I did not know what was going to happen. I had to go to court, day in and day out, to hear evidence about the fact that I had the audacity to tell a man that Auburn Council was about to rezone property next to his to allow the construction of home units, which was contrary to Auburn Council's planning requirements. Because I advised him of that fact -

Mr Hartcher: On a point of order: the experiences of the honourable member for Auburn are always interesting and riveting, but they are not relevant to the scope of the bill. He should be asked to address the issue of the abolition of dock statements and not the occasions on which he has appeared before the court as a criminal defendant.

Mr Nagle: On the point of order: what I am relating refers to the nervousness and stress of an accused who has to give evidence before a tribunal. A person like me, who is involved in politics, was stressed and nervous, so how nervous would an accused and victim be? They are both stressed because of the circumstances in which they find themselves.

Mr ACTING-SPEAKER (Mr Rixon): Order! I am sure that the honourable member for Auburn was making only a passing reference to illustrate a point and that he will return immediately to the scope of the bill.

Mr NAGLE: In the very near future a trial will be held in Sydney in which two of the accused will be given legal aid. Because of the financial circumstances of his wife, one co-accused, a 65-year-old man, will not get legal aid. He will have to sit through what has been estimated to be a 12-week trial and defend himself. He will not be able to make a dock statement; he will not even know how to go about it. It is a furphy for Government members to say that legal aid is available to everyone and that every accused will have a lawyer. I do not believe Government members are aware of the number of people standing trial in New South Wales who have to defend themselves because they cannot get legal aid either because of circumstances involving themselves or their relatives. That is a disgrace!

Government members should not tell us that everyone is receiving legal aid and everyone has a competent lawyer to defend his or her interests. The accused involved in a trial estimated to run for 12 weeks will not have legal aid. The Minister for Industrial Relations and Employment and Minister for the Status of Women gave us a great speech about criminal trials and victims. She said her heart bleeds for the victims. My heart and the heart of every member in this House also bleeds for the victims of crime. I have attended trials and seen victims being cross-examined. I have seen the same rape victim cross-examined at four different trials. Though I was a defence counsel in that trial, my heart bled for the victim.

The fundamental principle is that the Crown, which makes an allegation, has to prove that allegation. That is fundamental to the presumption of innocence. Ask Ziggy Pohl. After spending 10 years in prison Ziggy Pohl was told one day that someone came into a police station and said, "I did it; I killed Ziggy Pohl's wife". Ziggy Pohl was cross-examined by a smart, well-trained Queen's Counsel, and his evidence was destroyed. If he had not given evidence but had made a statement from the dock - which he should have been able to make - he might have been acquitted by the jury.

Mr Hartcher: He was able to give it.

Mr NAGLE: I acknowledge the comment of the Minister for the Environment; Ziggy Pohl was able to make a dock statement, but his counsel wrongly advised him not to do so. Under this legislation a person such as Ziggy Pohl would not be able to make a dock statement. He would have to give evidence and be cross-examined by experienced Crown prosecutors. If that is the way it is to be, the same resources should be provided to the accused to enable him to conduct inquiries and investigations to establish his alibi, if that is his defence.

Over 500 years this system has developed. Australia was built by people sent here from England because false allegations were made against them and they did not have the right to a fair trial. The Opposition does not want to see that situation any more. There was a bit of a laugh about Thomas Moore when I said "that situation". Honourable members should read the trial of Sir Thomas Moore and discover exactly what did occur. If this Government remains in office, in the future there will be no presumption of innocence; accused will be guilty until they prove their innocence. That will be a virtual impossibility. The words are "beyond reasonable doubt" - very simple words. It is a presumption of innocence beyond reasonable doubt.

Police officers do a great job in performing their duty which is to investigate, arrest, charge and bring to trial. The Crown prosecutor's job is to prosecute according to law - let right be done. They are not there to do justice; they are there to find the truth of the matter and to let right be done. A fair trial is a most important buffer against the tyranny that can emerge about innocent people being convicted. It is so easy to make an allegation. Outrageous allegations have been made in this Chamber by the Minister for the Environment and other honourable members. It is hard to prove an allegation, whether beyond reasonable doubt or on the balance of probabilities. It is far harder to disprove an allegation. The presumption of innocence is important.

The honourable member for Ashfield wants to move three amendments which I believe are fundamental. The first is to allow a judge to make a comment on a dock statement, for example, to say that the victim gave evidence and was cross-examined by a competent defence counsel but that the accused made a dock statement not under oath, and was not cross-examined. This is designed to stop outrageous dock statements which malign and insult the victim. The Evidence Act states that you cannot adduce evidence which is insulting and vile

against the victim. This is an important issue. The Government should think seriously about retaining the dock statement and supporting the amendments of the honourable member for Ashfield. They are good amendments and will protect the victim as well as the right of the accused to a fair trial.

Mr HAZZARD (Wakehurst) [11.2]: I listened carefully to the debate, particularly to the honourable member for Ashfield and the honourable member for Auburn. The honourable member for Ashfield made a number of pertinent points in relation to options dealing with unsworn dock statements. Essentially he recognised that the current situation could be retained, that is to have unsworn dock statements, or the way

dock statements are operated could be modified, or dock statements could be abolished. On behalf of the Opposition the honourable member for Ashfield supported the middle ground, of modifying what is currently applicable in the courts. I found it hard to follow the logic in his debate, if there was any.

Dr Macdonald: Maybe that is your problem.

Mr HAZZARD: The honourable member for Manly points out that it may be my problem, and it may be. Being so close to him for the last three years and recognising the complete lack of logic that comes from him week after week, month after month, year after year, it may well be that I have caught his disease - a lack of logic. The honourable member for Manly is only interested in raising unnecessary fears in the local community for his own political end. The problem is that the honourable member for Ashfield has some fundamental issues haywire. The honourable member wants to amend the Justices Act to have a halfway house. I do not follow that at all.

The Justices Act currently applies only to the local courts, courts of summary jurisdiction. For many years in courts of summary jurisdiction there has been no use of dock statements. There has never been a cry of unfairness for the accused in local courts where an accused person can be imprisoned for long periods of time. Similar issues arise in local courts but this has not been a problem. Why is it that there will be a huge problem if the Government extends that same system to the higher jurisdictions? I was not quite sure what the honourable member for Ashfield meant when he said he wanted to amend the Justices Act, to somehow deal with the questions that arise in the superior jurisdictions. Clearly the Justices Act was never designed and will never be applicable to those superior jurisdictions.

One suspects that what one was listening to in that debate was the honourable member for Ashfield playing games with the House and with some of the groups that have real concerns. I recognise that there are some concerns by representatives of the Aboriginal population and also by representatives of the disabled. Those concerns are not addressed by what is proposed by the honourable member for Ashfield. I tried to follow what the honourable member was saying, as best I could. He quoted from the *Good Weekend* about a case of a lady of Aboriginal descent, in Queensland, having been gaoled unfairly, unreasonably and improperly for six years. The honourable member said that if Queensland legislation had allowed for an unsworn dock statement, possibly she would have been saved from that fate.

I question that statement. The honourable member was saying that the Aboriginal woman could not talk to her lawyers about the horrific things that her husband had done to her over a number of years. I ask this Chamber whether retaining a dock statement in those circumstances would have helped. Perhaps she had not been able to talk to her doctors about the issue. I do not know. Clearly she was not capable of talking to her lawyers. Therefore she would not have been capable of saying anything, by way of dock statement or otherwise, in the court. That was a spurious argument from the honourable member for Ashfield. Basically most of what the honourable member was proposing was in complete opposition to the abolition of the dock statement. The honourable member tried to extrapolate from that that therefore we should have amendments to the dock statement procedure.

Most of my colleagues on the Labor benches would agree with what the Government is doing. Members opposite know it would be nice to have a halfway house and know that it would be a way of addressing some of the concerns, but in real terms we cannot have a halfway house that works. That is why each of the groups who

had written to the honourable member for Ashfield opposed the abolition of the dock statement. For every group that has written and opposed the abolition of the dock statement, many other groups support the abolition of dock statements. Clearly those groups would be people who have seen victims of crime suffer at the hands of defendants who are able to put up, by using an unsworn dock statement, arguments that have some persuasive effect on a jury but are never capable of being properly tested.

That is not fair, particularly to the women of New South Wales who are constantly being exposed to allegations of impropriety on their part when the person who should be on trial is sitting in the dock. By virtue of the fact that New South Wales is the only Australian State to retain the unsworn dock statement, if one is charged with a criminal offence in New South Wales, one receives different treatment than if one puts one's foot one centimetre into the Victorian, Queensland or South Australian domain. Why should someone charged with a criminal offence in New South Wales be treated any differently than would a person charged with a similar offence in another State? More than a decade ago other Australian States moved to abolish unsworn dock statements. Only Ireland, South Africa and Fiji still allow unsworn dock statements. I fail to understand how the honourable member for Ashfield - though I doubt that most members of the Labor Party support him - can seriously put his arguments to the House. Having been a member of this House for three years I have come to realise that a lot of political games are played. It seems to me that the honourable member for Ashfield is seeking to appeal to the groups which have written to him, for example, Aboriginal groups and the Legal Aid Commission. They have genuine concerns, but not from a broad community perspective.

I accept that political games are played in this place, but I would be disappointed if, when it comes to a vote, the three members who claim to have the moral high ground fail to see through what is really a sham of an argument put forward by the honourable member for Ashfield. It is interesting that few of the honourable member's colleagues in the other place were willing to support him. One suspects from the silence of a number of Opposition members in that

place and in this place that the Government's proposal is the right way to move. There were good reasons for the original introduction of unsworn dock statements. That occurred in the days when the law was for the wealthy; there was no automatic right to legal representation. Following a High Court case any accused person in a criminal trial is entitled to legal aid. A case involving Mr Kalajzich is proceeding at present before the High Court in which that principle might be extended further.

We have a situation in essence in which something from the past still exists in New South Wales when it has long gone from other parts of the world and from other States of Australia. I would be the last person to want to deny to an individual the opportunity to exercise his rights. However, as a practising lawyer who has struggled with the difficulty I should say that I am aware that the Bar Association and the Law Society have conducted an expensive campaign to put forward their views forcefully in the public forum. I wonder whether their views are really the views of the majority of the profession? I say that in the context that to my knowledge there has been no canvassing of views from the profession. I assume that the committees of the Law Society and the Bar Association, which are vested with overseeing changes to the criminal law - and they tend to be lawyers who appear for defendants - made a decision that in the interest of justice, which they interpret as being justice in the narrowest sense of defending clients, they would argue the case for unsworn dock statements.

From my association with many lawyers I am aware of a strong view among the profession, those not biased towards acting only for defendants, that we must strike a balance and protect those who have already suffered, in many cases enormously, from criminal action. I know that this is an emotional issue but one cannot escape the fact that women and children who have been subjected to sexual assaults arising from which charges have been laid against defendants, sitting in the gallery of the court and listening to an unsworn dock statement, must wonder what justice is all about. As prosecution witnesses they have given evidence under oath and probably have been tested by rigorous cross-examination, in some instances for a week or two. They have seen what can occur at the hands of a skilful attorney and must wonder whether they really caused the problem. That lack of fairness to those people must cause them to wonder why the system allows someone accused of the crime to make a statement - often a statement that has been prepared, not just a naive statement made by an

individual - usually a statement prepared by the defendant in concert with his counsel, often senior and experienced counsel, to the point where it will present the right case for the accused. [*Extension of time agreed to*.]

A person who has been on the receiving end of an horrific crime must wonder about justice when a defendant is able to make a statement, often a carefully crafted statement drafted with the assistance of senior counsel, with legal aid, and that statement is unchallengeable. The honourable member for Ashfield said he would introduce amendments that would make things fairer, that the judges would be able to determine what was relevant, and that the amendments would eliminate vexatious and frivolous statements. The honourable member is either having us on or he did not pass the conveyancing examination when he was at Ashfield.

Mr Hartcher: He failed that subject.

Mr HAZZARD: In his present role he has probably not had much experience in the criminal courts. One wonders how he can sustain his argument. The law as it stands requires that an unsworn dock statement be relevant. The honourable member for Ashfield said he wants unsworn dock statements to be relevant, but he must realise that they are supposed to be relevant according to the present law. The difficulty for judges is that when an accused makes a statement the natural inclination of a judge, especially based on the way our culture has developed, is to give an accused absolute licence, absolute openness to say whatever he wishes. That results in character assassinations occurring beyond belief in our criminal courts, day after day - not in the local court as the honourable member for Ashfield seemed to suggest, but in the superior courts. Hence in the past few days a letter appeared in the *Sydney Morning Herald*, signed by a number of retired Supreme Court judges who are totally opposed to anything other than the abolition of dock statements.

On balance, though I have some reservations and concerns about groups such as the disabled and Aborigines, I would hope that the House realises that those concerns will have to be dealt with in a different way. If Aborigines are too agreeable, as the honourable member for Ashfield said, in relation to questions asked of them or are perhaps intimidated by the court process, we need to ensure that those disadvantaged groups have better legal assistance from lawyers who can counsel them on presentation of evidence in court. All too often lawyers tend to rush, as do members of Parliament. The honourable member for Manly would agree that some doctors fail to properly counsel patients because they are dealing with the issue expediently.

All professional people should advise disadvantaged people of their rights and opportunities, and ensure that they understand the process. The most common complaint about professionals is that they do not properly explain the process. It would be a better solution if the process were explained and cultural backgrounds or disabilities were taken into account in a caring and concerned way rather than simply trying to modify the existing system, which has proved an utter failure for women. Though I recognise and sympathise with the concerns, on balance it is my view that New South Wales should follow what has occurred in every other State in Australia and in the civilised world, with the exception of the three countries to which I have referred, and get on with the business of abolishing unsworn dock statements.

Dr MACDONALD (Manly) [11.21]: In the past three years I cannot recall another bill attracting such powerful submissions from both sides of the debate as this one. This is an immensely complex subject. I have tried to be as objective as possible and to consider the merits of both sides of the argument. Accordingly, I cannot agree with some of the comments made by the Minister for the Status of Women, who appears to think that this is simple and is about protecting women. The Minister failed to mention that some accused are women who may need the protection of a dock statement. I ask her to address the question of whether reform of the existing situation would be preferable to total abolition.

The honourable member for Wakehurst made certain concessions in his contribution. He recognises that this is a complex problem; it is not simply black or white. This is a grey area and one needs to consider the history of the issue to realise that it has been addressed by some of the most learned groups and that

recommendations essentially have been for no change. I caution the Parliament not to throw the baby out with the bath water. Apparently some problems arise with dock statements and those problems should be addressed rather than abolition. There are powerful groups for and against the legislation.

For the record I have received submissions supporting retention of the unsworn dock statement. Those groups include the Legal Aid Commission, the Women Lawyers Association of New South Wales Incorporated, public defenders, the New South Wales Society of Labor Lawyers, David Patch, Richard Kozanecki and a petition signed by 16 criminal law solicitors, Maurie Stack, the president-elect of the Law Society of New South Wales, Jocelyn Scutt, the New South Wales Bar Association, J. Booth, Crown Prosecutor, the New South Wales Council for Intellectual Disability, the Council for Civil Liberties, the Mental Health Co-ordinating Council, and Judith Fleming, Lady Mayoress. Those who are proponents for retention have put up a strong case, and that has been acknowledged by both sides. Maurie Stack said:

> Poor and uneducated people, and particularly those for whom the culture and procedures of our criminal justice system are alien, are at infinitely greater risk of arrest and conviction for crimes they did not commit.

When I hear a statement such as that from the president-elect of the Law Society, I am concerned. It has been put to me by proponents seeking retention of the facility that a court case is not a contest between the victim and the accused; it is a determination of guilt or innocence of the accused. It is understandable that in many cases the victim feels that he or she is on trial. But whatever happens tonight, prosecution witnesses, usually including the victim, will always be cross-examined; whether dock statements are abolished, those witnesses will always be at the mercy of counsel, and I recognise that. As Jocelyn Scutt said, "If there are problems now with the women being cross-examined inappropriately, the trouble is with the courts", in other words, application of the rules of evidence and admissibility by the court. She continued:

> Abolishing the dock statement does not mean that the defence counsel will no longer harass complainants and ask irrelevant and inadmissible questions. The failure of the judge to conduct trials properly by allowing the defence a latitude in cross-examination which is outside the bounds of the proper conduct of sexual assault and rape trials is the problem, not the dock statement. The failure of the prosecution to strenuously object to questions that should be objected to, denies women, children and intellectually disabled justice, not dock statements.

A further argument is that abolition will shift the onus of proof from the Crown to the accused. If that is the case, it is a matter of concern. The dock statement is an important opportunity for the accused in his or her own words to give an account of events without necessarily being broken down by the adversarial system. On the other hand, passionate pleas have been made from certain groups for abolition of the dock statement. Those were mainly from groups representing victims of sexual assault and child abuse. I have received submissions from such groups as the New South Wales Child Council, a senior lecturer in law at the University of Sydney, Judy Cashmore, sexual assault counsellors, and the sexual assault unit of the Royal North Shore Hospital.

I have visited that unit and I am impressed by the work that is carried out there. I feel uncomfortable about perhaps not supporting the position taken by that unit. I have also received submissions from 10 former judges who were quoted recently in the media. The case put forward for abolition is that the victim can be vigorously cross-examined. That argument is very compelling. Also, it is asserted that the accused is getting free kicks, hiding behind the dock statement. Honourable members should consider some of these issues. The letter from the 10 former judges states:

> If a person is innocent of a crime he or she need fear nothing from having to submit to cross-examination by a Crown Prosecutor.

I ask honourable members to consider some of the outcomes from the Lindy Chamberlain case in the Northern Territory. The criminal barrister who was acting for the prosecution was Ian Barker, Q.C. He has become an active campaigner for retention of the dock statement. However, when Lindy Chamberlain was tried the court watchers were certain that flaws in the Crown case would see her discharged. However, in the witness box, under interrogation from the softly spoken Mr Barker, she highlighted aspects of her personality that distracted the jury from the real evidence and overwhelmed her now undisputed innocence. She spent 3½ years in gaol

before eventually being pardoned. I seek the Minister's response to that statement by the former prosecuting counsel.

The experience in other States following abolition of dock statements has been mentioned. I ask the Minister in reply to provide information about the evaluation in other jurisdictions following abolition of dock statements. I am given to understand little such evaluation has taken place. Anecdotal

information has become available about such abolition. In Queensland, Robyn Kina, who was significantly disadvantaged in not having the opportunity to make a dock statement, was sentenced to six years for killing her husband. Anecdotal reports from the Northern Territory indicate that abolition there is not working and is not fair. Colin McDonald, a Darwin barrister, is reported as saying there is unfairness without dock statements and that most accused are from ethnic or socioeconomic groups that have problems articulating, especially under pressure.

What is the experience in other States? Is an analytical evaluation available to help us come to grips with this issue? We have to reconcile the dilemma of affording the protection which is at the essence of a dock statement and overcoming abuse by the accused. Surely tonight we should be concentrating on the dilemma posed by what is a grey issue, not one cast in black and white, as other members have claimed the luxury of in this debate. I spoke to Peter Berman, a Crown prosecutor living in the Manly electorate, who could be expected to support abolition. However, he stated in a letter which he provided to me:

> In 1974 legislation to abolish the dock statement was drafted. The same legislation also made various reforms which were drafted on the basis that the dock statement was to go. After a very, very long debate in the Legislative Council an amendment to the legislation was passed which had the effect of retaining the dock statement. Unfortunately the other parts of the Bill which were drafted on the assumption that the statement would go were not amended consequentially. The result is that for 20 years there has been a glaring anomaly in the criminal law which has unfairly worked against the prosecution and victims of crime.
>
> Under current law an accused is entitled to make allegations about the character of prosecution witnesses, including victims of crime . . . However if the accused alleges bad character of the witness in a matter unrelated to the offence the subject of the trial, he or she can be cross-examined about his or her character, including any previous convictions. However if the accused does not give evidence, but makes an unsworn statement, the prosecution can not adduce evidence of prior convictions.
>
> This anomaly came about because when the 1974 Bill was drafted the only way an accused person was going to be able to put his or her case to the jury was by giving evidence and being cross examined. Clearly the drafters intended that in every case where an accused person attacked the character of a prosecution witness, the prosecution could lead evidence about the accused's bad character. However the last minute reprieve of the dock statement, without the consequential amendments of the rules regarding putting character at issue, has given the accused who makes the statement a free kick at the character of the prosecution witnesses.

That issue is to be addressed in the amendments proposed by the honourable member for Ashfield. The letter continues:

> He or she can make all sorts of allegations about having the jury made aware of his or her character. This is unfair and has been for 20 years.

Peter Berman goes to the heart of the matter when he states in his letter:

> The anomaly can be rectified without abolishing the right of the accused to make an unsworn statement.

The message seems to be that there are ways of doing it other than abolishing dock statements. The letter continues:

> Parliamentary Counsel could be asked to redraft section 413A and 413B of the Crimes Act to provide that whenever an accused person attacks the character of a prosecution witness in relation to a matter unrelated to the alleged offence at issue, the Crown is entitled to lead evidence of the accused's bad character.

The honourable member for Ashfield has developed that provision in one of his proposed amendments. The letter continues:

> Another valid reform would be to allow the trial judge or the Crown Prosecutor to comment on the accused's failure to give sworn evidence. For too long juries have been left in the dark to speculate about the accused's rights - I can see nothing wrong with juries being told the truth.

I regard those suggestions seriously. Peter Berman, whom I did not know, came up to me in a shopping centre, introduced himself as a Crown prosecutor, and said, "You are going to be put in a tight spot next week. Let me talk to you about it". He sent me this letter, and it is most valuable. Contrary arguments also need to be considered. Dr Judy Cashmore researched sexual assault when she was a member of the Office of the Director of Public Prosecutions. She stated in a letter to me dated 27 April:

> An issue that aroused resentment and feelings that the system was unjust was the dock statement. In the words of one child,
>
> I had to answer lots of questions for about five hours. His lawyer kept on saying I lied and that I did think that I didn't. But when he [defendant] gets up and tells a heap of lies, I can't say anything and no-one asks him any questions.

That difficulty is addressed by the amendments, which provide that character can be called into question. Dr Judy Cashmore made the further point in her letter:

> The difficulty of allowing an unsworn statement to go unchallenged and without comment as to its status was also highlighted by a statement from one of the parents who overheard a juror's comment as he left the court. The juror was reported to have said that the prosecution could not have had any problems with what the defendant said because they did not ask him any questions. This comment indicates the likely confusion among jurors as to the rules surrounding dock statements and the prohibition against challenge by the prosecution to it and against comment by the judge.

That difficulty can be overcome by the amendments providing for the judge and prosecution to be able to comment. [*Extension of time agreed to*.]

Safeguards need to be introduced. Currently no recourse is available if an accused is found to have lied. Under the amendments to section 405(4), proposed by the honourable member for Ashfield, an accused could be regarded as having taken an oath and thus would be subject to a charge of perjury. The second major area that needs safeguarding, where an accused can attack the character of a prosecution witness and that of the victim without becoming open to an attack on character, is covered by the honourable member's proposed amendment in relation to section 405(9). In other words, if the accused or the accused's witnesses raise character, the accused's character can be called into question.

The third major area requiring safeguards is that the judge or prosecutor can say nothing about the choice of dock statement or silence. Under proposed new section 405(5) they will both be able to make comments. Finally, concerns that an accused has unlimited time to make statements can be covered by direction of the judge under clauses 405(2) and 405(3)(c) as proposed by the honourable member for Ashfield. These amendments will bring some improvements, though others could still be done. The bill is not perfect yet. Should further protection of victims through victims' impact statements and victims' statements be considered? I am given to understand that issue is the subject of debate in legal circles. I recognise the complexity of the situation. Dock statements can be abused. I also recognise, from the powerful submissions put to me, that there are real benefits in dock statements. We have to look at amending the law so that those who seek to use the dock statement and take advantage of it can no longer do so. I will certainly be supporting the Australian Labor Party's amendments.

Mr DAVOREN (Lakemba) [11.40]: I wish to speak briefly on this important subject. There are two

systems of jurisprudence: the Code Napoléon and the British criminal law system, which has been derived over many years. I am led to believe that accused persons were not entitled to any representation but were permitted to make a statement from the dock prior to the judge pronouncing his decision and possible sentence. When accused were permitted legal representation, dock statements were still permitted. It was felt that was in the best interests of the accused. The criminal law system, which we laud, that operates in this country is that the accused is presumed innocent until the Crown or the State proves he or she is guilty beyond a reasonable doubt.

One problem that arises - because the case is not between the accused and accuser but between the accused and the Crown, representing the State - is that the Crown has all the resources available to the State and to a large extent money is no object. Crown prosecutors, as has been pointed out, are usually eminent counsel. They usually have recourse to more resources than does the defence; and they are backed by the investigating police who supply them information through the Director of Public Prosecutions. The defence often does not have the resources available to the Crown unless the accused persons are extremely wealthy, or manage to have their costs paid by a company. We have all read about accused persons who have tried to subvert the system by asking the court to rule that the prosecution has no right even to lay a charge against them.

There are two ends of the spectrum. We surely must protect people who are incapable of protecting themselves for all sorts of reasons, such as lack of education or lack of finances. The Legal Aid Commission, of course, provides legal representation but often does not have the resources that are available to the Crown. I do not know whether many members of this House have looked at the problems faced by the Guildford Four and the Birmingham Six.

Mr Hartcher: Have you seen the movie?

Mr DAVOREN: I did see the movie "In the Name of the Father". It was one of the few movies that a vast majority of the audience clapped when it finished, because they were so moved.

Mr Hartcher: Were they Irish?

Mr DAVOREN: I did not quiz them about their nationality. They may or may not have been. I did not clap; I was so moved that I could not clap. The point I am making is that the resources are with the Crown and often information that should be made available to the defence is not available. The Minister for Industrial Relations and Employment and Minister for the Status of Women made much of the fact that a major problem arose in regard to women who were involved in sexual assaults or who were the accuser in a rape case. But as the honourable member for Manly pointed out, often the accused person in the dock is a woman.

Surely we should try to protect the rights of both the accuser and the accused. I am led to believe that the trial judge has the right to comment on an unsworn dock statement and on matters that are not relevant to the case. I am advised that because of the complexity of this issue, judges - whether matters are expressed or implied - have decided to make no comment at all. The Opposition's amendment will resolve that problem. The amendments proposed by my friend and colleague the honourable member for Ashfield will mean that the judge is certainly permitted, and probably will be asked, to make a comment to the jury when he or she feels it is necessary.

Much has been said about the problems of unsworn statements. But the problem is that nobody can really tell - how can we - how often a jury came to a decision because an unsworn statement was made or because an unsworn statement was not made. We will never know what was in the minds of members of the jury, whether they were swayed because of an unsworn dock statement or because there was no unsworn statement. Surely the accused has the right to decide, on legal advice, whether he or she should enter the witness box and give evidence on oath - and be subject to cross-examination - or to make an unsworn statement. Surely it is the right of the accused - and is a basic principle of the criminal law under which we operate - to remain silent; and as the honourable member for Auburn said it is the duty of the Crown to prove beyond reasonable doubt that the accused committed the crime of which he or she was accused. We do not know how many jury decisions have been made because a dock statement was made or was not made. It is often said, "If it ain't broke, why bother

fixing it".

Mr Hazzard: Because it is broken.

Mr DAVOREN: The honourable member for Wakehurst says because it is broken, but he cannot prove where it is broken. I am putting it to the House that nobody in this place could possibly indicate how many decisions were made because of an unsworn dock statement or because of the lack of an unsworn

statement. We boast that it is better that 10 guilty men go free than one innocent person be convicted. Surely the accused should be given an opportunity to refute the charges made against him or her.

One argument put forward in support of this legislation is that we should do what many other jurisdictions in this country and around the world have done. If that is the argument that the Government is using, why does the Government not introduce legislation to remove the upper House? Queensland does not have an upper House and New Zealand has managed to get along without a House of Review. I refute the Government's argument. I say that we should make our own decisions. The amendments proposed by the honourable member for Ashfield will reform the legislation, tidy it up and remove some of the arguments being put forward. The amendments will give more ammunition and more strength to judges, who already have the right to make some comment - which they have decided not to make because they are completely and utterly impartial, and rightly so.

The Opposition suggests that there should be an opportunity to refute any outrageous statements that are made by an accused person. If they are outlandish and obvious lies, there should be that opportunity to refute them. I do not see anything wrong with that proposal. The current system has operated for a considerable time. There is not a great deal wrong with it except for a few problems, such as occurred in the case of Ziggy Pohl. In that case the evidence was presented and not refuted. Later, when another person confessed to the crime, it was found that the jury's decision was wrong, and action was taken to remedy the decision. There is nothing wrong with the existing system of unsworn dock statements. However, the honourable member for Ashfield proposes some amendments that will reform but not drastically change the system. Some reform is required because of the outcry by the public. Therefore, action is being taken. However, the principle will be preserved, as it should be.

Mr GAUDRY (Newcastle) [11.52]: It was not my intention to contribute to this debate. However, I have been sitting in my room listening to the highly technical approaches to this debate by lawyers opposite. I am buoyed by the practical approach of the honourable member for Lakemba. Confronted by the technicalities of the court system, many ordinary citizens in this State are rendered inarticulate. When they are accused of a crime they are unable to conduct themselves in a way that adequately presents their evidence and benefits them before the criminal justice system.

In the past I have had to attend court in relation to a simple motor vehicle accident. I was required to give evidence before learned members of the bar. I attended court thinking I would be able to openly present my view of what had occurred. However, I found that I was constrained by the leading of evidence and was not able to present the facts as I saw them. I imagine many people less articulate than I am and less knowledgeable of the law are often placed in that situation and have but one recourse - the unsworn statement, which allows them to give their account of the events that occurred and their interpretation of those events. If their interpretation traduces the reputation of the victim, there is an opportunity for it to be refuted.

In the amendments put forward by the Opposition the traducing of the reputation of the victim is taken into account, first, by the ability of the judge and the prosecutor to comment on the unsworn statement, and, second, by the ability of the judge, in the other amendment - if that accused person either traduces the reputation of the witness or becomes totally vexatious in the unsworn statement - to terminate that statement and to remove the capacity of the accused to use the unsworn statement to attack the reputation of witnesses. I, like other members of this House, am aware of the difficulty faced by victims, particularly those victims of sexual assault, or children, who are placed in the unfortunate position of having to give evidence against an accused when they

are not only compromised by the situation within the court but also are often terrified by the court system itself. That is more a fault of the system that now exists than of the unsworn statement. There is a definite need for a change to the system - a change that will particularly give children in these situations an opportunity to give their evidence in a non-threatening situation. The Hon. Bryan Vaughan in the other place, in considering the history of the unsworn statement, said:

> The relevant section of the current Crimes Act states:
>
> > Every accused person on his trial, whether defended by counsel or not, may make any statement at the close of the case for the prosecution, and before calling any witness in his defence, without being liable to examination thereupon by counsel for the Crown or by the Court and, after the prosecutor has addressed the jury or has declined to address the jury, may, personally or by his counsel, address the jury.

The Hon. Bryan Vaughan also said:

> . . . unsworn statements remain as an important plank in defending three key criminal justice principles. They are, first, that one is innocent until proven guilty; second, that the accused does not have to prove anything, but, rather, the Crown has to prove guilt beyond reasonable doubt; and third, that every effort should be made to avoid convicting innocent people.

Undoubtedly many people accused of a crime lack either the academic background or the verbal ability - or have a cultural problem - to deal with what is an extremely threatening system, that is, the present system under which the court operates in New South Wales, and obviously the system under which a court operates in any jurisdiction. On first contact an accused is most vulnerable. He is confronted by procedures that militate against him; that prevent him from defending himself effectively in court. The prosecution will marshal as much evidence as possible and utilise whatever system is available to disadvantage an accused. An accused has several options. He can remain silent, give sworn evidence,

or make a dock statement. This gives inarticulate, culturally deprived accused persons or persons who may have problems in getting across their version of events an opportunity to make a statement.

Mr Hazzard: What about the victims?

Mr GAUDRY: The honourable member for Wakehurst asks, "What about the victims?" The current system in the courts is the Crown versus the accused. The prosecution marshals a case against the accused. I have total sympathy for the victims, but the victims are not part of this procedure. At the moment it is a matter of the Crown versus the accused; that is our present system. If an unsworn dock statement traduces the reputation of a victim, under our current system a judge has the opportunity to intervene. The amendments proposed by the Opposition will enable the judge and the prosecutor to intervene and to make a statement to the jury, which will clearly advise members of the jury that an accused's statement has gone beyond the presentation of views and has broken down or attacked the reputation of a victim. The amendments proposed by the Opposition will enable a judge to terminate a dock statement if it becomes irrelevant or vexatious.

Mr Hazzard: He can do that now.

Mr GAUDRY: I realise that a judge can do that now, but the Opposition wishes to entrench that concept in law. I am sure that the honourable member for Wakehurst, who operates within the system, will agree that that will empower those in the justice system to take into account what is being said by the accused in a dock statement. They will be able to control that statement and confine it to relevant information. They will be able to assist an accused to make a statement that he understands - a statement that is not subjected to contrived questioning by learned legal people such as the honourable member for Wakehurst and the Minister for the Environment, who are trained to break down statements of accused persons.

I believe that the Opposition's approach to this matter is responsible. The Opposition recognises the difficulties faced by victims in the court system. The reputation of victims can be ridiculed by those in the

court. The Opposition also recognises the fundamental right of a person whose reputation, freedom and future can be totally compromised. The honourable member for Lakemba referred earlier to the case of Ziggy Pohl. Because of our system Ziggy Pohl was unable to defend himself and was incarcerated for a lengthy period. It was not until someone overcome by guilt at his deed confessed to the murder of Ziggy Pohl's wife, that Ziggy Pohl was given a pardon. Because of the efforts of the honourable member for Rockdale, we hope that Ziggy Pohl will be compensated for an unjust imprisonment at the hands of those in our present justice system.

That is a classic example of prejudice against an accused - a classic example of why an accused should be able to make a statement to the court in his own terms. The court should hear that clear statement. In 1991 only 1.4 per cent of people charged with criminal offences in New South Wales were tried by a jury and had the option of making a dock statement. I am not talking about the bulk of people in New South Wales - I am talking only of a small percentage. That small percentage of people who were jeopardised should have been given every opportunity under our justice system. [*Time expired*.]

Mr HARTCHER (Gosford - Minister for the Environment) [12.7 a.m.], in reply: Tonight the eyes of the people of this State are on this Parliament. People in this State are very concerned about crime and the response of members of Parliament to it. Tonight the Opposition took a clear stand against the abolition of dock statements. Members of the Opposition nailed their colours to the mast. The Government has nailed its colours to the mast. It said that it is determined to abolish dock statements. The Government is taking the side of the victims; it is taking the side of honest citizens. The Government is standing up for the community of New South Wales and the people of this State. It wishes to ensure that justice is done.

The Government is not denying to any criminal or any person charged with an offence the right to a full and valid defence. The Government is determined to ensure that the pendulum, which has swung too far in favour of the smart criminal assisted by the smart lawyer, swings back to the middle so that justice is done to all those who face the courts. This Government makes no apology for the fact that it stands for the victims; it makes no apology for the fact that it stands for innocent people. This Government makes no apology for the fact that it stands for law and order in this State. The Australian Labor Party and the Independent member who supports the Australian Labor Party have indicated clearly that, when the chips are down, they would prefer to be on the side of the criminal. They would prefer to make life easy for criminals rather than stand up for victims. That is in stark contrast with the policies of the Government.

The dock statement has been used as a coward's castle by criminals like Lionel Murphy and other people in this State. Members of the Opposition have said that the dock statement should be kept as a mechanism to be used by the intellectually disabled or those unable to cope culturally. Dock statements have been used Murray Farquhar, a former Chief Stipendiary Magistrate, and by Lionel Murphy - an honours graduate in law, a former Senator, Cabinet Minister and High Court judge. These are the various people who have hidden behind the dock statement. This Government is determined to ensure that justice is done and is seen to be done in every case. All persons who give evidence before a court will face cross-examination and have their evidence tested, as is the normal course of events.

The dock statement, which is now an historical anachronism in virtually every common law jurisdiction in the world, is the system that the Australian Labor Party, aided by one Independent

member, wishes to perpetuate in New South Wales. Historically the dock statement was available because accused persons could not give evidence in their own defence and were offered the alternative, the election of a dock statement. Then, of course, they were allowed to give evidence in their own defence and the dock statement was retained for a period. Gradually the dock statement was seen to be the coward's castle that it is and was abolished in every jurisdiction in the United States, England, South Africa, Canada and every other State of Australia. It now survives only in New South Wales and Fiji. Now as New South Wales rushes headlong into the twenty-first century to have a criminal law system which is appropriate to the time, the Australian Labor Party - the most outdated retrogressive political organisation in Australia - still stands for nineteenth century justice in this State.

The Australian Labor Party puts criminals ahead of the innocent and puts the rights of the offender ahead of the rights of the victim. Some lawyers have argued and been quoted by the Australian Labor Party as supporting the dock statement. However, it must be understood that while the Government remains committed to preserving the fundamental rights of the accused, the dock statement is not one of those fundamental rights. The accused has always had the option to remain silent, and the effect of exercising this right is only to underline that the burden of proof is upon the prosecution. The rights of the accused with respect to the presumption of innocence, the privilege against self-incrimination, the burden of proof, the golden thread and the right to silence are all preserved by the Government. Much has also been made by the honourable member for Manly and honourable members opposite about the fact that the Parliament failed to abolish the dock statement 20 years ago and that the New South Wales Law Reform Commission, among others, recommended retention of the right.

The New South Wales Law Reform Commission and the Australian Law Reform Commission and others, in recommending retention of the right, also made extensive recommendations about necessary reforms to place some limits on the right; reforms that go well beyond the proposals being referred to by the Opposition. Among other things, they recommended the clarification of the evidentiary status of dock statements, restriction on its use as evidence for or against another accused person, restricting the right to also give sworn evidence, and where sworn evidence is given cross-examination should be extended to material presented in the dock statement, giving the judge the right to inform the jury about the various options open to the accused in giving evidence and not giving the prosecutor the right to comment.

Similarly the Australian Law Reform Commission in 1985, in arriving at the recommendation that the right be retained, only did so in the context of extensive reforms, including: one, that the statement should be treated as evidence and subject to the rules of evidence, including rules as to admissibility; two, that the accused should be liable to perjury charges; three, that the role of lawyers in preparing and delivering dock statements should be clarified; and four, that procedures should be introduced to control the content of the dock statement. They also recommended a number of the reforms recommended by the New South Wales Law Reform Commission. The Government is well aware of the deficiencies in the present right to make a dock statement which have attracted attempts at reform. However, it is clear from the many reports that the whole system is badly flawed and needs total overhaul. Significantly, a number of those who wrote the report in 1985 have now changed their opinion and favour abolition of the dock statement. Mr Adrian Roden who was, at the time, a member of the New South Wales Law Reform Commission and later its chairman, said:

> For what it is worth, my own position has changed since 1985. While I still support the Law Reform Commission view that the right to make an unsworn statement can only sensibly remain if the prohibition on comment is removed, I believe now that the better course is to abolish the right to make the statement.

That is Adrian Roden repenting his views of 1985. Similarly the present Solicitor General, Keith Mason Q.C., another member of the commission in 1985, said in comments to Mr Roden on his letter:

> I agree entirely with the comments you make in your letter to Mr Nelson . . . As to the bottom line as to whether my own position has changed since 1985, I think it probably has.

The very people who in 1985 still supported retention of the dock statement, subject to heavy modification, now argue for the abolition of the dock statement. Why should the dock statement be abolished? The Opposition and an Independent member have chosen to ignore entirely any consideration of the purpose of abolishing dock statements. The testing of evidence in cross-examination is the basis of all criminal trials in our adversarial system of law. The truth of assertions made in a dock statement cannot be tested in cross-examination. If a defendant chooses to put information before the jury, the jury is entitled to assess the veracity of that information. This can only be achieved if the accused's evidence is subject to cross-examination. The Opposition says that its views are supported by some lawyers. However, it is clear that the majority of legal opinion remains against the retention of the dock statement. In the Court of Criminal Appeal in 1993 Mr Justice Wood in King's case said:

> Until the law is changed, as it has in every other State and Territory, either by permitting comment or by removing the right of an accused to make an unsworn statement altogether as Lee J. recommended in Greciun-King, this distinctly unsatisfactory position will remain. Legislative review, in my opinion, is well overdue.

Mr Justice Lee in his remarks in the case of McKinney and Judge said:

> The question of the improper manipulation of trials by resort to the unsworn statement is a matter which must be urgently addressed by the Government if there is ever to be any reduction in the time taken up by criminal trials or in the amount of money spent by the Legal Aid Commission on criminal trials.

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Mr Justice Yeldham has said:

> The real problems with unsworn statements are that the scales of justice are unevenly balanced. They are unevenly balanced against the victim, against the community, against the Crown and in favour of the accused. I can understand why the police believe it is a licence to lie.

Mr Justice Lee said:

> One asks why, with Sydney the crime capital of Australia, and with enormous pressure on the Supreme Court and District Court, the legislature does not take immediate action to abolish unsworn dock statements.

Mr Justice Lee said further:

> Justice has indeed become lopsided . . . when criminals can malign police . . . through their counsel . . . without fear of a single question being directed to them by a Crown prosecutor.

Why has the dock statement been retained? He went on to say:

> The reason why it has taken so long in New South Wales to follow the rest of the world . . . is because the legal profession has a very powerful influence . . .

That is the point. Sections of the legal profession have a very powerful influence on the Australian Labor Party and it listens to them. It does not listen to the voice of the victims, the children in this State, the women in this State or the sexually assaulted. It listens to sections of the legal profession to which it panders. The Australian Labor Party has chosen to make a clear stand against victims, against those who have suffered sexual assault, and against those who would seek to protect the children and women of this State. Let it be on the record as to where the ALP stands: it stands against the abolition of dock statements, the coward's castle of criminals. Mr Justice Carruthers in *The Queen* v. *Darwin* in the Court of Criminal Appeal in 1992 said:

> The trial judge was obliged by law to warn the jury that it was dangerous to act upon the sworn evidence of the two police officers . . . the accused on the other hand was entitled to make an unsworn statement and remain immune from cross-examination or any comment by the judge or Crown Prosecutor . . . this is yet another example of the necessity for the legislature to reconsider the provisions of the Crimes Act to bring the law with regard to the unsworn statement in New South Wales in line with that in the other States and Territories.

Mr Kevin Waller, a former State Coroner, said:

> The criminal justice system is burdened by hangovers from the 19th century . . . the right to make an unsworn statement from the dock should be abolished.

He went on to say:

. . . while victims of crime are subjected to prolonged, often hostile, cross-examination, the person they see as the criminal may say what he likes without the risk of being exposed as a liar.

That is the difference: the victim of crime under Labor would be subject to arduous examination and cross-examination in the witness box. Under the Labor Party proposal the criminal would be able to say what he or she liked from the dock without fear of contradiction, without fear of cross-examination and without fear of comment. The choice to be made by the Australian Labor Party is whether it stands for the victims or for the criminals. The decision by the ALP today is that it prefers the rights of the criminal over the rights of the victims. There could never be a more clear contrast between where the Government stands and where the Opposition stands. Judge Johnston of the District Court said:

The problems of unrestricted dock statements were highlighted in the "Romanian Drug Case" (*R.* v. *Calin*), presided over by His Honour. The dock statement in this case took 14 days followed by a further 6 days of sworn evidence. The net effect was that the dock statement took up 4 weeks of court hearing time.

Ten retired judges who had served in the Court of Criminal Appeal or the Common Law Division of the Supreme Court of New South Wales wrote to the *Sydney Morning Herald* on 2 May stating that they supported the abolition of the dock statement. I quote briefly from that letter:

Our concern arises principally because the New South Wales Bar Association and the Law Society of New South Wales have taken a stance which in our opinion is quite indefensible and which misstates the issues involved . . .

We are satisfied that the making of an unsworn statement, which is no way subject to the ordinary rules of evidence or to the laws against perjury, is an anachronistic procedure which frequently lends itself to abuse and to manipulation of the trial process.

We know of no valid reason why accused persons should not, like every other witness in the trial, pledge his or her oath to their evidence and be subject to cross-examination. The option of not speaking at all would still (as now) be available to them.

Each of the signatories to this letter is a former Judge of the Supreme Court of New South Wales.

These are people who have presided over hundreds upon hundreds of criminal cases and have reached a considered, mature determination that the existing system of dock statements unfairly favours the criminal in the court trial. The choice is whether one looks to the victim or to the criminal. In Bewick's case Judge Ducker of the District Court made the following comment to the jury after it had delivered its verdict:

The law is in an absurd state at the present time, but at least according to the publicity that we have received in the last few days, it is about to be changed at long last.

The law says in its present state that if a Crown witness is cross-examined about matters adverse to his credit, including prior convictions, which have no connection with the events before the jury at any particular trial, then if the accused gives evidence himself, he may be cross-examined about his prior antecedents including prior criminal convictions. However, if he remains in the dock and makes a statement from there, he cannot be cross-examined and there is no other mechanism by which his record can be placed before the jury.

But that in my view is an extremely unfair system. Justice must apply not only to accused persons but also to the community. In my view it is grossly unfair to a jury to ask it to determine beyond reasonable doubt questions of that nature when it is deprived of information which would make meaningful its discussions.

This all arose because some years back there was a move to abolish the statement from the dock, which many regard as an anachronism, harking back to the times long

since gone. Once an accused person could make no answer to the charge against him. He did not have the right to give evidence and he did not have the right to say anything, and it was in that situation that indeed proof beyond reasonable doubt was cast upon the prosecution. I am not for a moment suggesting that proof beyond reasonable doubt should ever be abandoned because it is a great safeguard to protect the

innocent. No doubt it protects a number of guilty as well.

> However, it was then thought that the accused ought to be able to place some sort of version before a jury. However, in those much more religious pious days, it was thought to be much worse for a man to commit perjury than to commit murder, because to commit perjury was to sin against God himself. Therefore, there was devised the system of a statement from the dock in which an accused person was not required to take an oath.

> In the days when there was not virtually universal education, it perhaps served an important purpose by allowing inarticulate, uneducated people an opportunity of giving a version of events to the jury. However, the jury could not then and still cannot today as things stand, be told that the accused had the right to go into the witness box, but declined to do so. If any such comment is made by the Crown Prosecutor or by the Judge, there is an automatic mistrial.

The Opposition appears unable to appreciate that a further justification for abolition of dock statements is that it will remove the existing unchecked process whereby an accused can make unchallenged allegations and attacks on the character of witnesses and victims, and can freely implicate other persons in the crime. This bill is about the impact of the system on human beings and reinforcing community confidence in the system of justice. Let me give some example of cases in which dock statements have been used by criminals to hide their guilt.

In Church's case the accused sexually assaulted his stepson systematically over five years. He pleaded not guilty, so the boy - then 13 years of age - had to give evidence from the witness box for two days. In his unsworn statement the stepfather denied the charges but later admitted in interviews with a psychiatrist and a psychologist preparing presentence reports that he had lied in his dock statement. He cannot be charged with perjury. In Lowe's case the accused murdered a 16-year-old boy in 1989. In his unsworn statement Lowe blamed three other boys, all of whom had to face lengthy cross-examination in court. After conviction Lowe admitted he had killed the boy by ramming his head against a telegraph pole.

In the Jasmin Lodge case, which recently has received a lot of attention, the accused Beltrame alleged in his unsworn statement that he had been threatened with a knife. This was not supported by any sworn evidence and conflicted with his story to his former girlfriend that he had strangled the victim, a teenage prostitute, because he had been dissatisfied with her sexual services. The knife was never found. The abolition of the dock statement will make our system of justice more accountable, more transparent and more honest. The community will be able to see people dealt with equally before the law. The Opposition has mentioned a number of interest groups who have expressed the view that dock statements should be retained. However, there has been more support for the proposal that they be abolished. The honourable member for Newcastle will be interested to know that the Hunter Community Legal Centre Incorporated has written as follows:

> In the course of our work at the Legal Centre, a number of clients have expressed concern about this right [to make unsworn statements from the dock]. Specifically, survivors of child and adult sexual assault have expressed concern that they are disadvantaged during the hearing in so far as they are confined by the rules of evidence in relaying their experience, and then subjected to gruelling cross examination whilst the defendant's statements are both unsworn and untested . . . In the present context, the Dock Statement amounts to an unfair practice.

> We support your proposal to bring New South Wales into step with reform in this country and overseas.

The Child Protection Council of New South Wales states:

> The Council supports the abolition of the use of Unsworn Statements generally as has occurred in NZ, England, NT QLD, WA . . . Children who are victims of crime are vulnerable. While some measures have been introduced to assist children in giving of their evidence, the retention by the accused of the right to give unsworn testimony emphasises the inequality of power between the accused and the child victim of crime. Abolishing the right to make an unsworn statement is a means of levelling the power differences between the defendant and the child victim.

> The retention of the right of the accused to give unsworn statements is archaic and does not have a place in today's criminal law procedure.

The Uniting Church in Australia states:

> It seems to us most unjust that a victim, particularly a young child, can be cross examined concerning his or her evidence while the accused is able to avail himself of this loophole in the law.

The Country Women's Association of New South Wales states:

> We are very concerned that the accused is able to make an unsworn statement, whereas the victim, and particularly a young child, can be cross-examined and yet the accused cannot be cross-examined.

Mr Whelan: I am sick of these left-wing organisations.

Mr HARTCHER: The honourable member for Ashfield likes to make light of the people who have made representations for the abolition of dock statements. He calls them left-wing organisations. The honourable member for Ashfield has his own special problems with the left-wing of which we are all aware, but notwithstanding that let me now quote from a letter by the Victims Advisory Council. This may be a joke to the Labor Party but the Victims Advisory Council at its meeting on 8 September last passed a motion supporting the announced proposal that an accused person's right to make an unsworn statement from the dock be abolished. That letter is signed by Kevin Waller, Chairman. The New South Wales Child Protection Association states:

> When attending court with child and adult victims it is always difficult to explain to them that although they may have undergone hours or even days of confusing repetitive and humiliating questioning, the accused need never face this . . . The full meaning of "unsworn statement" is rarely explained to juries. Technically the accused is able to tell

> lies, misrepresent events or withhold information, without being held responsible by the court, or questioned by those whose task it is to air the truth. The victim/witness, subject to the laws of perjury does not have this "protection".

The New South Wales Sexual Assault Committee wrote to the Attorney General as follows:

> I am writing to congratulate you on your recent announcement of your intention to abolish the right of accused persons to make unsworn statements from the dock. . . . I am aware that the Dock statement has also been abused in some lengthy criminal trials of late and it is to be hoped that your initiative will ensure such practice does not continue.

Does the Labor Party argue that the Sexual Assault Committee is a left-wing organisation and should not have any credence given to its views? The well regarded sexual assault unit of the Royal North Shore Hospital in a letter written by the co-ordinator, Susan Kendall, states:

> We are writing as a group of professional people who work with victims of sexual assault. Together we would like to take this opportunity to endorse the recent proposal to abolish the right of the accused person to make an unsworn statement from the dock.

It goes on and on. Organisation after organisation dealing with children, women and victims of sexual assault in this State have all put up a continuous litany to this Parliament - not just to the Government: protect the victim; abolish the right of the criminal to make an unsworn dock statement; make sure that the scales of justice are weighed evenly so that victims' rights are taken into account. Again and again submissions are being sent. What do members of the Labor Party do? They sit, laugh and call them left-wing organisations. The Macarthur sexual assault team of the Campbelltown Health Service has written to the Attorney General as follows:

> Your proposal will bring New South Wales into step with almost every other jurisdiction in the country and spare victims of violent crime the humiliation and frustration of having to listen to the accused's unsworn and untested account without the counter balance of the accused - him/herself having to face the test of cross-examination.

The Sexual Assault Centre of the Central Coast Area Health Service, in my electorate, has written as follows:

> Juries are frequently left with an impression of the victim that is negatively impacted by the doubts raised by cross-examination. The offender on the other hand can not be cross-examined on an "unsworn statement" and so, often appears in a very good light after making his statement.

The letter concludes:

> I strongly urge the Attorney-General to proceed with the abolition of the "unsworn statement" from the dock.

Is that another left-wing organisation? The Sexual Assault Centre of the Hunter Area Health Service writes as follows:

> Being a witness in a court of law can be a stressful experience. When the witness is recounting a severe trauma such as sexual assault, the distress increases. Talking about a traumatic experience which has had significant effects on the individual is a very difficult task. Sexual assault crimes carry with them many myths that are endorsed by our community. Myths such as "she asked for it," "what was she doing there?" "she's making this all up just because she doesn't like him" etc. Victims adhere to these myths just as much as the rest of the community and as a consequence internalise guilt, blame and much shame about the assault.
>
> For the victim to know that the defendant can say anything to discredit him/her in court and that she/he and the prosecution have no opportunity to defend any allegations that arise, serves to endorse not only his/her distress but also her/his own sense of shame and guilt.

The letter concludes:

> It is for these reasons that our team could endorse your proposal to abolish the unsworn statement as we would equally encourage any law reform that represents an improvement in the equity of our judicial system.

The honourable member for Newcastle has heard the views of the Hunter Community Legal Centre Incorporated and the Sexual Assault Centre of the Hunter Area Health Service and yet he is prepared to vote tonight against the express views of the people he would claim to represent in this Parliament.

Mr Gaudry: On a point of order: the honourable member is misrepresenting the situation.

Mr ACTING-SPEAKER (Mr Tink): Order! There is no point of order. The honourable member for Newcastle will resume his seat. The Minister has the call.

Mr HARTCHER: The Reclaim the Night Committee writes:

> We are writing to congratulate you on your recent announcement of your intention to abolish the right of accused persons to make unsworn statements from the dock.
>
> . . .
>
> We hope that you will consider the participation of women in the community in the Reclaim the Night March as supporting your intentions to abolish unsworn statements from the dock, particularly as it relates to the crime of sexual assault.

Every group in the community claiming to represent children, to represent the victims of sexual assault, and to represent the women of this State cries out, "Abolish the dock statement, abolish the coward's castle of the criminal". The Opposition has made clear that it would prefer to retain dock statements and permit comment by the judge and prosecution. But the best and fairest method to test evidence known to our judicial system is cross-examination. Victims are cross-examined and witnesses are cross-examined. There is no reason why an accused, if he or she wishes to bring evidence before a court, should not also be cross-examined. The accused has the right to remain silent and to give evidence. There is no reason why the accused should be placed in a

special position over and above the rights of the victim or of ordinary witnesses. The Government strongly supports the bill, which it believes will restore balance and ensure that victims of crime can see the accused tested, if he or she wishes to give evidence. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

Page 1817

In Committee

Clause 4

Mr WHELAN (Ashfield) [12.42 a.m.]: My circulated amendments are in relation to clause 4 on page 2.

The CHAIRMAN: I have examined the proposed amendments as circulated by the honourable member for Ashfield. I have also been guided by established practice and precedent, with reference to the publication "A Guide to Procedure in Committees of the Whole House". I quote from that publication at page 33:

> . . . An amendment which might be related to the general subject under consideration need not necessarily be relevant to the particular phase of the subject contained in the bill under consideration and is therefore inadmissible, being beyond the scope of the bill.

And further on that page:

> Inadmissible amendments include amendments which
>
> (i) directly or indirectly conflict with the principles of the bill (as read a second time).
>
> . . .
>
> (vi) introduce a new principle.

The long title of the bill currently under consideration is "a bill for an Act to abolish the right of an accused person to give unsworn evidence or to make unsworn statements in criminal proceedings and to make consequential amendments to the Crimes Act 1900 and the Mental Health (Criminal Procedure) Act 1990". Accordingly, the principle of the bill is to abolish unconditionally all unsworn evidence. That is what the House agreed to at the second reading of the bill. The essence of the honourable member's amendments is to allow an accused person to make an unsworn statement under the direction of the court and retain the current position under the Mental Health (Criminal Procedure) Act 1990. The principles of the bill agreed to at the second stage leave no scope for such modifications. There is either provision for unsworn evidence or not.

I am therefore of the opinion that the amendments are subversive of the principle of the bill. Not only are the proposed amendments subversive by allowing unsworn statements, but by allowing "the court the discretion to give directions in relation to unsworn statements" the amendments seek to introduce a new principle. The amendments themselves propose an amendment to the long title of the bill. Thus, proposed amendment number 5 to the long title of the bill highlights that the amendments "reform the law relating to the right of an accused person to make an unsworn statement" and are in conflict with the principles of the bill "to abolish the right". I therefore rule the amendments circulated by the honourable member as inadmissible and out of order.

Mr WHELAN (Ashfield) [12.45 a.m.]: I raise an objection, and my objection is in writing. I move:

> That the Chairman do now leave the chair to report a point of order and ask leave to sit again so soon as the point of order shall have been decided by the House.

The point of order is that the Chairman was in error in, one, ruling that the proposed amendment to clauses and schedules of the bill was not relevant to the subject-matter of the bill, and, two, ruling that the amendments proposed by myself and circulated were not relevant to the clauses and schedules in the amendment under discussion.

The CHAIRMAN: Order! There are certain cases in which the Chairman is not bound to accept a motion that he report a ruling to the Speaker for the latter's determination. They are rulings which are given in accordance with the standing orders and long established practice of the Committee, including that given by the Chairman in 1928, as reported at page 1105 in volume 113 of *Hansard*. Thus, I refuse to accept the motion of the honourable member for Ashfield.

Mr WHELAN (Ashfield) [12.48 a.m.]: Mr Chairman, I move:

That you do now leave the chair, report progress, and seek leave to sit again tomorrow.

The CHAIRMAN: Order! In view of the previous rulings I have made that the amendments proposed by the honourable member are out of order and outside the leave and scope of the bill, and having ruled against the motion of dissent, I am of the opinion that the motion by the honourable member for Ashfield is one of delay and is likely to cause obstruction. Therefore I do not accept the motion.

Mr J. H. MURRAY (Drummoyne) [12.49 a.m.]: I move:

That the debate be now adjourned.

The CHAIRMAN: Order! It is out of order to move that motion in Committee.

Question - That the clause stand - put.

The Committee divided.

Ayes, 44

Mr Armstrong	Mr W. T. J. Murray
Mr Baird	Mr O'Doherty
Mr Beck	Mr D. L. Page
Mr Blackmore	Mr Peacocke
Mr Causley	Mr Phillips
Mr Chappell	Mr Photios
Mrs Chikarovski	Mr Richardson
Mr Cochran	Mr Rixon
Mr Collins	Mr Rozzoli
Mr Cruickshank	Mr Schipp
Mr Debnam	Mr Schultz
Mr Downy	Mrs Skinner
Mr Fraser	Mr Small
Mr Glachan	Mr Smith
Mr Griffiths	Mr Souris
Mr Hartcher	Mr Tink
Mr Hazzard	Mr West
Mr Humpherson	Mr Windsor
Dr Kernohan	Mr Zammit
Mr Kinross	
Mr Longley	*Tellers*,

Mr Merton	Mr Jeffery
Mr Morris	Mr Kerr

Noes, 45

Ms Allan	Mr Martin
Mr Amery	Mr Mills
Mr Anderson	Ms Moore
Mr A. S. Aquilina	Mr Moss
Mr Bowman	Mr J. H. Murray
Mr Crittenden	Mr Nagle
Mr Doyle	Mr Neilly
Mr Gaudry	Mr Newman
Mr Gibson	Ms Nori
Mrs Grusovin	Mr E. T. Page
Mr Harrison	Mr Price
Mr Hatton	Dr Refshauge
Mr Hunter	Mr Rogan
Mr Iemma	Mr Rumble
Mr Irwin	Mr Scully
Mr Knight	Mr Shedden
Mr Knowles	Mr Sullivan
Mr Langton	Mr Thompson
Mrs Lo Po'	Mr Whelan
Mr McBride	Mr Yeadon
Dr Macdonald	*Tellers*,
Mr McManus	Mr Beckroge
Mr Markham	Mr Davoren

Pairs

Mrs Cohen	Mr J. J. Aquilina
Mr Fahey	Mr Carr
Ms Machin	Mr Clough
Mr Petch	Mr Face

Question so resolved in the negative.

Clause negatived.

Mr WHELAN (Ashfield) [1.6 a.m.]: Mr Chairman, I move:

That you do now leave the Chair, report progress, and seek leave to sit again in accordance with Standing Order 327.

The CHAIRMAN: Order! In accordance with my previous ruling, the amendments as circulated by the honourable member for Ashfield are out of order. In accordance with further rulings I have given in relation to this matter, it is my opinion that such a motion by the honourable member for Ashfield is one that is likely to cause obstruction to the debate. I refuse to accept the motion.

Mr WHELAN (Ashfield) [1.7 a.m.]: In accordance with Standing Order 162 I raise objection to the ruling or decision that you have just made. I suggest a clear reading of Standing Order 162 will show that it simply states:

> . . . and if the Committee so decide (no debate being allowed, except a statement of the objection limited to five minutes), the Chairman shall leave the Chair. . .

I am raising this objection in my five minutes. There is no opportunity for the Chairman to dissent or not to abide by the Standing Order. As that Standing Order provides:

> . . . the Chairman shall leave the Chair, and the House resume, and the matter be laid before the Speaker; and having been disposed of, on the terms set forth for debating dissent from Mr Speaker's ruling, the proceedings in Committee shall be resumed where they were interrupted.

The CHAIRMAN: Order! In accordance with my previous ruling made a short time ago, I again confirm for the honourable member for Ashfield that in certain cases the Chairman is not bound to accept a motion that he report a ruling to the Speaker for the latter's determination. Those rulings have been given in accordance with the standing orders and long-established practice in Committee. Again I refer as far back as 1928 where the Chairman at that time refused to accept such a motion.

Schedule 1

Question - That the schedule stand - put.

The Committee divided.

Ayes, 44

Mr Armstrong	Mr W. T. J. Murray
Mr Baird	Mr O'Doherty
Mr Beck	Mr D. L. Page
Mr Blackmore	Mr Peacocke
Mr Causley	Mr Phillips
Mr Chappell	Mr Photios
Mrs Chikarovski	Mr Richardson
Mr Cochran	Mr Rixon
Mr Collins	Mr Rozzoli
Mr Cruickshank	Mr Schipp
Mr Debnam	Mr Schultz
Mr Downy	Mrs Skinner
Mr Fraser	Mr Small
Mr Glachan	Mr Smith
Mr Griffiths	Mr Souris
Mr Hartcher	Mr Tink
Mr Hazzard	Mr West
Mr Humpherson	Mr Windsor
Dr Kernohan	Mr Zammit
Mr Kinross	
Mr Longley	*Tellers*,
Mr Merton	Mr Jeffery
Mr Morris	Mr Kerr

Noes, 45

Ms Allan	Mr Martin
Mr Amery	Mr Mills
Mr Anderson	Ms Moore
Mr A. S. Aquilina	Mr Moss

Mr Bowman	Mr J. H. Murray
Mr Crittenden	Mr Nagle
Mr Doyle	Mr Neilly
Mr Gaudry	Mr Newman
Mr Gibson	Ms Nori
Mrs Grusovin	Mr E. T. Page
Mr Harrison	Mr Price
Mr Hatton	Dr Refshauge
Mr Hunter	Mr Rogan
Mr Iemma	Mr Rumble
Mr Irwin	Mr Scully
Mr Knight	Mr Shedden
Mr Knowles	Mr Sullivan
Mr Langton	Mr Thompson
Mrs Lo Po'	Mr Whelan
Mr McBride	Mr Yeadon
Dr Macdonald	*Tellers*,
Mr McManus	Mr Beckroge
Mr Markham	Mr Davoren

Pairs

Mrs Cohen	Mr J. J. Aquilina
Mr Fahey	Mr Carr
Ms Machin	Mr Clough
Mr Petch	Mr Face

Question so resolved in the negative.

Schedule negatived.

Schedule 2

Question - That the schedule stand - put.

The Committee divided.

Ayes, 44

Mr Armstrong	Mr W. T. J. Murray
Mr Baird	Mr O'Doherty
Mr Beck	Mr D. L. Page
Mr Blackmore	Mr Peacocke
Mr Causley	Mr Phillips
Mr Chappell	Mr Photios
Mrs Chikarovski	Mr Richardson
Mr Cochran	Mr Rixon
Mr Collins	Mr Rozzoli
Mr Cruickshank	Mr Schipp
Mr Debnam	Mr Schultz
Mr Downy	Mrs Skinner
Mr Fraser	Mr Small

Mr Glachan	Mr Smith
Mr Griffiths	Mr Souris
Mr Hartcher	Mr Tink
Mr Hazzard	Mr West
Mr Humpherson	Mr Windsor
Dr Kernohan	Mr Zammit
Mr Kinross	
Mr Longley	*Tellers*,
Mr Merton	Mr Jeffery
Mr Morris	Mr Kerr

Noes, 45

Ms Allan	Mr Martin
Mr Amery	Mr Mills
Mr Anderson	Ms Moore
Mr A. S. Aquilina	Mr Moss
Mr Bowman	Mr J. H. Murray
Mr Crittenden	Mr Nagle
Mr Doyle	Mr Neilly
Mr Gaudry	Mr Newman
Mr Gibson	Ms Nori
Mrs Grusovin	Mr E. T. Page
Mr Harrison	Mr Price
Mr Hatton	Dr Refshauge
Mr Hunter	Mr Rogan
Mr Iemma	Mr Rumble
Mr Irwin	Mr Scully
Mr Knight	Mr Shedden
Mr Knowles	Mr Sullivan
Mr Langton	Mr Thompson
Mrs Lo Po'	Mr Whelan
Mr McBride	Mr Yeadon
Dr Macdonald	*Tellers*,
Mr McManus	Mr Beckroge
Mr Markham	Mr Davoren

Pairs

Ms Cohen	Mr J. J. Aquilina
Mr Fahey	Mr Carr
Mr Petch	Mr Clough
Ms Machin	Mr Face

Question so resolved in the negative.

Schedule negatived.

Bill reported from Committee with amendments.

Adoption of Report

Mr HARTCHER (Gosford - Minister for the Environment) [1.17 a.m.]: I move:

That the report be now adopted.

Mr WHELAN (Ashfield) [1.18 a.m.]: I move:

That the question be amended by omitting all words after the word "That" and inserting instead the words "the bill be recommitted for reconsideration of the bill as a whole".

Amendment agreed to.

Motion as amended agreed to.

In Committee (Recommittal)

Progress reported and leave granted to sit again.

COURTS LEGISLATION (CROWN APPEALS) AMENDMENT BILL

Bill received and read a first time.

Second Reading

Mr PHOTIOS (Ermington - Minister for Multicultural and Ethnic Affairs, and Minister Assisting the Minister for Justice) [1.20 a.m.]: I move:

That this bill be now read a second time.

The purpose of the Courts Legislation (Crown Appeals) Amendment Bill is to amend the Children (Criminal Proceedings) Act 1987 and the Justices Act 1902 to allow the Director of Public Prosecutions to appeal to the District Court from sentences imposed by the Children's Court. The Children (Criminal Proceedings) Act was one of a number of Acts dealing with juvenile justice matters passed in 1987. Another was the Children's Court Act 1987. This latter Act established the Children's Court of New South Wales and the office of Senior Children's Court Magistrate, and provided for the appointment of qualified persons as Children's Court magistrates. The Act also allowed the Governor, by proclamation, to declare that the jurisdiction of the Children's Court may be exercised by any magistrate sitting at a place specified at the proclamation. The intent was that, so far as possible, juvenile offenders should be dealt with by specialist magistrates sitting in the Children's Court.

The Children (Criminal Proceedings) Act regulates the conduct of criminal proceedings against children and other young persons. It is important to note that it applies both to juvenile offenders who are dealt with by the Children's Court and to juvenile offenders who are dealt with according to law. Part 2 applies to criminal proceedings generally. Part 3 applies only to proceedings in the Children's Court. Where a juvenile offender is not being dealt with by a children's court, for example, in serious indictable matters, committals and traffic matters, only part 2 of the Act is relevant. Where the offender is being dealt with by a children's court, both part 2 and part 3 are relevant.

Part 2 contains five principles relating to the exercise of the criminal jurisdiction generally. Four of those principles relate to penalty, and they underscore the general law position that the principles applicable to the sentencing of juvenile offenders differ from those applicable to the sentencing of adult offenders. Part 3 prevents a children's court from imposing a sentence of imprisonment and stipulates the penalties that may be imposed by a children's court. It also requires a magistrate imposing a particular penalty to indicate why it would have been wholly inappropriate to impose a less severe penalty.

In 1987, the Crown did not have an entitlement to appeal to the District Court from sentences imposed on offenders by magistrates. That was altered by the insertion of division 4A of part 5 into the Justices Act in 1988. At the same time, section 42 of the Children (Criminal Proceedings) Act was amended to provide that the new division 4A did not apply to decisions of the Children's Court. The consequential amendment to section 42 has created an anomaly in that although the Crown could appeal to the District Court in respect of a sentence imposed on a juvenile offender by a court which was not a children's court, it could not do so where a sentence was imposed on such an offender by a children's court.

As a matter of principle, there is no reason why some sentences imposed on juvenile offenders should be immune from correction on appeal and others should not. The purpose of this bill is to deal with this anomaly. It is not expected that the passage of this bill will lead to a large number of Crown appeals from sentences imposed by children's courts. Since the 1988 amendments previously referred to came into operation, Crown appeals from sentences imposed by magistrates have represented a very small percentage of such matters. For example, in the 1992-93 financial year, only 143 requests were made to the Director of Public Prosecutions to institute appeals under division 4A. Approximately 90 per cent of these were acted upon and, of this number, approximately 80 per cent to 85 per cent were successful.

These figures suggest that if the bill is passed it will be only in clear cases that there will be Crown appeals from sentences imposed by children's courts. Although the number of appeals may be small, there is no reason why the correction mechanism provided for by this bill should not exist. Just as a sentence of a children's court may be unduly harsh, in which case the remedy of appeal already exists, so too may a penalty be unduly lenient. It has already been noted that, in sentencing offenders, a children's court may not impose a sentence of imprisonment, and that it is limited to the sentencing options contained in section 33 of the Children (Criminal Proceedings) Act. This bill now before the House will not alter that. In cases where there is an appeal by the Director of Public Prosecutions, the District Court judge will not be able to sentence the offender to a term of imprisonment and will be confined to the sentencing options that were available to the magistrate sitting in the Children's Court. The introduction of Director of Public Prosecutions appeals from sentences imposed by a children's court is supported by the Chief Magistrate and the Senior Children's Court Magistrate. It is also supported by the Chief Judge of the District Court. I commend the bill.

Debate adjourned on motion by Mr Whelan.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

Second Reading

Debate resumed from 21 April.

Mr WHELAN (Ashfield) [1.27 a.m.]: The Statute Law (Miscellaneous Provisions) Bill provides for minor amendments to various Acts, as has its predecessors. About 38 Acts of the Parliament are to be amended. The bill contains some fairly innocuous amendments, including on page 37 a correction to a spelling error to section 87 of the Election Funding Act 1981, where "contribution" is incorrectly spelled as "conttibution". The House now has to go to the trouble of correcting it. If the bill contains silly things like that, it is a waste of time preparing it. Acts of Parliament with spelling errors should be left as they are. I acknowledge an offer by the Minister for Energy and Minister for Local Government and Co-operatives to withdraw the bill if it contains matters of concern that warrant reconsideration. My colleague the honourable member for Coogee has drawn to my attention and to the attention of the Minister one such matter that I understand the Minister will address in Committee. In all other respects the Opposition supports the bill.

Motion agreed to.

Bill read a second time.

In Committee

Schedule 1

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [1.30 a.m.], by leave: I move the following amendments in globo.

No. 1 Page 10, Schedule 1, lines 16-20. Omit all words and matter on those lines.

No. 2 Page 10, Schedule 1, lines 27-31. Omit all words and matter on those lines.

Both amendments, which are in schedule 1 on page 10, refer to the Exhibited Animals Protection Act. The amendments will omit all words and matter on lines 16 to 20 and lines 27 to 31. The effect of the amendments will be that the advisory committee appointed under the Act will continue to select its own chairman. The Minister will not take over this function. The Government is moving these amendments in response to concerns about the proposal to remove the selection of chairperson from the members of the advisory committee. This is not a minor revision of the Exhibited Animals Protection Act; therefore it is not appropriate for the statute law revision program.

As I indicated in my second reading speech, the Government is attempting to maintain and conform to the principles of this bill. Clearly, the Government has no qualms in adhering to this process. I take cognisance of the fact that the honourable member for Coogee raised this matter with me. I have, therefore, decided to take this action. The honourable member for Coogee may well have some comments to make, but I believe this is the appropriate measure to take in this instance.

Mr E. T. PAGE (Coogee) [1.32 a.m.]: I thank the Minister for his indulgence in this matter. He gave an undertaking which he is following through. There is a change in principle in the matter raised in the amendments. As the Minister has indicated, that is not what the Statute Law (Miscellaneous Provisions) Bill is designed to do. I am not arguing about the rights or wrongs of what has been proposed; I just do not believe it is appropriate to include this provision in such a bill. When such bills are brought before the House only minor technical matters should be alluded to. Nothing in this bill indicates any change in policy. I thank the Minister for moving those amendments. With those amendments the Opposition will support the bill.

Amendments agreed to.

Schedule as amended agreed to.

Bill reported from Committee with amendments, and report adopted.

FORMER AGENT-GENERAL NEIL PICKARD

Ministerial Statement

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [1.35 a.m.]: I wish to make a ministerial statement. Earlier today the House unanimously passed a resolution calling on the Government to table certain documents under Standing Order 54. The poorly drafted motion, put forward by the Leader of the Opposition, placed members of this House in a ridiculous position. I have been advised that some of the documents referred to in the resolution are located in London. A number of the documents are also in the possession of the Solicitor General, who has been interstate today. If the terms of the resolution are to be adhered to, this House would be required to continue sitting until such time as the

documents could be brought to Sydney.

Sadly, the Leader of the Opposition, in his rush for another headline, has shot himself in the foot. To avoid the continuous sitting of this House and the elimination of all question times and other business until these papers are retrieved, I take this opportunity to invite members of the Opposition to seek the leave of this House to amend their Leader's clumsily drafted resolution and to defer the request until the tabling of papers on Tuesday next week when the Government can reasonably comply with that resolution.

Mr WHELAN (Ashfield) [1.36 a.m.]: What an outrageous suggestion! The Government has had since three o'clock or four o'clock to produce all these papers. If the Crown Solicitor or the Solicitor General gave advice and they did not have all the papers with them, what sort of advice could they have given? What sort of documentation did they have when they gave this so-called learned advice? What is the Government trying to cover up?

Mr West: We are not covering up anything.

Mr WHELAN: The Government is trying to cover something up; that is as clear as crystal. Have members of the Government heard of a fax machine?

Mr West: Sixty-three files in the Solicitor General's hands.

Mr WHELAN: Sixty-three files! Last week we were faced with a similar problem. Members of the Government said that they could not obtain documents and the Leader of the Government in this House asked whether I would agree to the documents being provided 12 hours later, in the morning. That was arranged. We now have this absolute arrogance and total untruths because this documentation is not available. [*Time expired.*]

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [1.37 a.m.], in reply: In light of the fact that members of the Opposition have not sought to amend the resolution, this House must continue to sit. Having regard to the fact that the business that has been listed has been completed, I ask you, Mr Speaker, to now leave the Chair until the ringing of one long bell.

Mr Whelan: On a point of order: the Leader of the Government in this House should know that the motion was moved by the Leader of the Opposition. No one knew that the Minister would make a ministerial statement. I did not know, the Opposition Whip did not know and the Leader of the Opposition did not know. I certainly -

Mr Cochran: You dolt!

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

Mr Whelan: Mr Speaker, I demand that you ask the honourable member for Monaro, who called me a dog, to withdraw and apologise.

Mr SPEAKER: Order! I ask the honourable member for Monaro to withdraw and apologise.

Mr Cochran: I did not refer to the honourable member for Ashfield as a dog; I referred to him as a dolt.

Mr SPEAKER: Order! I must confess that I did not hear the interjection; therefore I accept what the honourable member says. We should try to get on with resolving the dilemma before the House.

Mr Whelan: The difficulty is that I did not move the motion that has been referred to. The Leader of

the Government in this House should have acquainted me with the fact that there was a difficulty. I am advised that the Leader of the Opposition, whose motion this was, is paired. That motion is now a resolution of this House. The Leader of the Government has suggested that I, without consulting with the Leader of the Opposition, should make a decision arbitrarily. The important motion that was moved by the Leader of the Opposition is now the property of the House, yet the Government now asks for this matter to be adjourned for one week. It is not practical for the reasons I have mentioned. Obviously, we need a more sane proposition. The Minister has proposed that the House rise and wait for the ringing of one long bell. That might give the Leader of the Government and I an opportunity to sit down and talk about the ridiculous rulings that have been made tonight.

Mr West: On the point of order: when taking this point of order the honourable member for Ashfield referred to a situation that occurred during the last sitting week when certain documents were required to be tabled before the rising of the House. At that time I had certain discussions with the honourable member for Ashfield and we agreed that the documents would be tabled the next morning. The result of that agreement was that staff of the Roads and Traffic Authority spent all night photocopying documents to meet the terms of the resolution of this House. Bearing in mind occupational health and safety requirements, I do not believe that we as members of Parliament should impose that sort of task on public servants. The honourable member for Ashfield suggested also that the motion is the motion of the Leader of the Opposition. The honourable member for Ashfield is the manager of Opposition business and may seek leave, on behalf of the Leader of the Opposition, to amend the motion. I indicate clearly that it is impossible to photocopy the quantity of documents required within a reasonable time.

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

Mr West: Members of the Opposition should think more clearly about the terms of the resolution. I remind them that the motion was carried unopposed. I am advised that 63 files in the possession of the Solicitor General require photocopying, and that the documents could be compiled and tabled next Tuesday. Clearly, to impose that sort of order on those officers is unfair.

Mr Whelan: Further to the point of order: this is an amazing debate. The motion was carried unanimously. At that stage no objection was taken that the motion was invalid or inappropriate, or that it would take all day, all night or until next week to comply with. Surely some documentation must be held in Sydney that can be made available to comply partly with the resolution of the Chamber.

Mr West: Piecemeal?

Mr Whelan: No, not piecemeal.

Mr SPEAKER: Order! Before the honourable member for Ashfield continues with a debate under the guise of a point of order - although I doubt that a point of order is involved - I suggest that the House is faced with a dilemma. The Leader of the Government has stated, and the Chair accepts that the statement was made in good faith, that the resolution of the House involves constraints that make it difficult for the Government to present photocopies of the files within a reasonable time. I have no idea of the exact magnitude of the task or the amount of material the Opposition expects to be produced at a particular time. The honourable member for Ashfield has suggested that certain documents could be made available in the interim. However, that would be contrary to the terms of the resolution passed in this House earlier today. In the interests of trying to resolve the matter in a sane and sensible fashion, I will now leave the Chair for a relatively short period or for however long it takes to resolve the dilemma. The House will resume at the ringing of one long bell. If the Leader of the Government and the manager of Opposition business wish to discuss the matter with me, I extend an invitation to them to do so. If they do not wish to do so, I will await advice from either or both of them before I decide when to return to the chair.

[*Mr Speaker left the chair at 1.44 a.m. The House resumed at 2.18 a.m.*]

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [2.18 a.m.]: Mr Speaker, during the adjournment of the proceedings I had a discussion with the honourable member for Ashfield on behalf of the Opposition. We jointly agreed that we ask you to leave the Chair for the ringing of one long bell at 2 p.m. tomorrow when this House will conclude consideration of the resolution which was moved earlier this sitting day. I also give the undertaking that at the conclusion of that resolution I will seek your indulgence to conclude Tuesday's sitting and commence a Wednesday sitting.

Mr WHELAN (Ashfield) [2.19 a.m.]: That is my understanding, Mr Speaker. The only difficulty that may arise is if there is some protracted debate that might take place at 2 p.m. tomorrow which would mean that question time and any matters that follow question time will be delayed. However, that is not my concern. I am hopeful that between 2 p.m. and 2.15 p.m. this matter can be resolved. By

constructive suggestion maybe the Government could provide a list of documentation to provide some evidence that the resolution of the House is being complied with. However, we should wait until 2 o'clock and see what happens.

[*Mr Speaker left the chair at 2.20 a.m., Wednesday.*]

Wednesday, 4 May 1994

[*Continuation of Tuesday's Sitting*]

[*The House resumed at 2 p.m.*]

Mr WEST (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [2.0 p.m.], by leave: Yesterday in this Parliament the Leader of the Opposition set out clearly to recover his position as Leader of the Opposition in this place. This Parliament then unanimously carried a resolution under Standing Order 54, which required the Government to table all papers in relation to both the dismissal and the compensation relating to former Agent-General Neil Pickard. The Government agreed to that resolution because it has nothing to hide in respect of those papers. When I was replying on behalf of the Government to the motion by the Leader of the Opposition I indicated that this House -

Mr Langton: On a point of order: this matter is one of great importance to the Parliament, as I am sure all honourable members are aware. It is a matter upon which the Premier has made a determination in relation to the former honourable member for Hornsby.

Mr SPEAKER: Order! The member for Kogarah will come to the point of order.

Mr Langton: My point very simply is that I believe the importance of this matter requires the Premier to make this ministerial statement.

Mr SPEAKER: Order! There is no foundation for such a point of order. A Minister may make a ministerial statement on any subject within the Minister's jurisdiction. The issue here, if there is one, is the conduct of the proceedings of the House, which is in the hands of the leader of government business. The Minister is well within his province as he was speaking on exactly the same subject last night.

Mr WEST: It is obvious that the honourable member for Kogarah is still trying to undermine the numbers of the Leader of the Opposition. I indicated yesterday afternoon that the House would continue to sit until the Government was able to comply with the terms of the resolution; that is why in effect this is still a sitting Tuesday. At the conclusion of government business last night I indicated to this House the large amount of paperwork that is required to comply with the resolution and I invited the Opposition to amend its resolution

to allow for those papers to be tabled during the tabling of papers on Tuesday next. That was not agreed to, and therefore this House is still sitting. Today I am in a position to indicate to the House some of the details of the amount of paperwork that is required.

Dr Refshauge: On a point of order: Mr Speaker, I draw your attention to *Decisions from the Chair*, page 48, paragraph 18.1.2, where Speaker Lamb said, "Under cover of a Ministerial Statement a Minister should not discuss details of departmental administration, but should confine his remarks to Government policy". The Minister has obviously spent a lot of time talking about departmental administration. He now seems to be launching into a long list of further departmental administration matters, which has absolutely nothing to do with government policy - I know the Government does not have any policies.

Mr SPEAKER: Order! The Deputy Leader of the Opposition is going beyond addressing the point of order, which relates to the subject-matter which may be part of a ministerial statement. Other rulings contained on the same page of *Decisions from the Chair* indicate that ministerial statements are not governed by standing orders but by the established practice of the House. The situation which occurred last night, and which continues today, was most unusual. The House chose - and no objection was taken at the time - to allow the matter to proceed by way of a ministerial statement. Even after the conclusion of the ministerial statement, the Chair allowed considerable tolerance, as it always endeavours to do, in an endeavour to arrive at a sensible solution to a difficult problem.

I regard the point of order as spurious. In the absence of using other forms of the House, a ministerial statement is a satisfactory way to pursue this matter. The Opposition will have the same time to reply as the Minister took to make his ministerial statement. If that should not be adequate, the House will explore other means of addressing the problem. I inform all honourable members that the prime purpose in debating this matter at the moment is to find a resolution. That is the principle which will guide the Chair in determining the way this matter proceeds. I rule that the Minister for Energy and Minister for Local Government and Co-operatives is in order.

Mr WEST: Another leadership contender: the Deputy Leader of the Opposition. I shall indicate to the House the complexity of the paperwork required. The Office of Economic Development has completed the collation of its material and is now photocopying it. It has 10 lever arch files - estimated at some 4,000 pages, plus 1,000 miscellaneous pages, totalling some 5,000 pages - and a filing drawer full of miscellaneous receipts relating to London office expenditure which needs to be photocopied. I indicated to the House last night that there are certain documents in London which have to be retrieved to check that the files we have in Sydney are complete. Mr Speaker, you might remember that the Leader of the Opposition was pointed in saying to us that we must make sure that we do not try to pull any papers. We want to make sure that when we deliver, we deliver the full set as required.

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

Mr WEST: There are 40 lever arch files, estimated at some 16,000 pages, in London and it will cost some several thousand dollars to airfreight them to Sydney. Of more significance, last night the honourable member for Ashfield said, "Fax the copies over". Can honourable members imagine faxing 16,000 pages from London to Sydney? The Opposition is making a farce of this Parliament. The Crown Solicitor's Office acted during the arbitration proceedings.

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

Mr WEST: The Crown Solicitor's Office acted during the arbitration proceedings. An estimated 26,000 documents confined in 78 lever arch folders together with other miscellaneous folders cannot physically be

photocopied in-house, and commercial photocopying is currently under way at security protected premises. That photocopying is expected to cost about $6,000 plus labour. The Solicitor General also has documentation.

Mr SPEAKER: Order! Excessive audible conversation in the Chamber makes the Chair ponder whether members, having stated publicly that this matter is of some gravity, are attaching much gravity to it at all. That question is not really for the Chair to adjudicate upon. It is the responsibility of the Chair to maintain order. I warn honourable members that if the level of conversation persists I will be somewhat more strict than normal in regard to calling to order members who offend in that way. I ask all honourable members to listen in silence so that this matter may be determined as quickly and as efficiently as possible.

Mr WEST: The Solicitor General has written from Canberra where he is currently representing the State in a High Court appeal. It is a legal aid case in which all other States and the Commonwealth have intervened. The Solicitor General in his letter has indicated that he will not be back in Sydney until late Thursday and he will then locate all documents and make copies which need to be retained for his own records. It might be remembered that the Auditor-General was also involved in this process. The Auditor-General, Mr Tony Harris, has issued a handwritten memorandum declining to hand over the papers held in his office. Mr Harris does not believe that the documents he has are covered by this standing order of the Parliament. So much for Mr Harris' belief.

Former Justice Gordon Samuels has also been contacted. He is in Canberra for an in-camera hearing in a Federal Australian Secret Intelligence Service inquiry. He has advised that his exhibits will be handed over to the Crown Solicitor by courier on Friday and he will not be providing his personal notes on the case. That brief summary indicates the Government's attempts to collate all this material and put it together to meet the resolution of this House. Last night I invited the Opposition to amend its resolution specifically to agree that the tabling of these papers be done at the time for tabling of papers on Tuesday next. I again invite the Leader of the Opposition, who is now present in the House, to seek leave specifically to undertake that amendment.

Mr CARR (Maroubra - Leader of the Opposition) [2.12 p.m.]: There has not been a more unconvincing excuse since Phillip Smiles pleaded in this Chamber that the dog ate his homework. The Premier is up to giving a press conference on this subject today, but he cannot speak in the House. He will not speak in debate in this House justifying the pathetic excuse issued in his press release today. The Premier said in his press release that there are 10,000 documents in London. Yesterday he told us in this House there were only four members of staff in London occupying an economical office. He now says they are presiding over 10,000 documents on this issue alone.

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

Mr CARR: There were not as many documents tabled at Nuremberg. The Premier's press release goes on to say that in the Crown Solicitor's Office they have 78 files devoted to this subject.

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

Mr CARR: Now we know why the Government has been told by its doctors to slow down: it is devoting all its energies to documentation on the Pickard matter and none to governing the State. This press release is a story of a Government that has ground to a halt over documentation of the whole sordid Pickard affair. The resolution of this House was very clear. The Opposition wants tabled all papers, including legal advice and opinions, relating to the dismissal of former Agent-General Neil Pickard and compensation payable to him. What this Government is trying to say is that every file and every document that ever had any relationship to the Agent-General's office in London is covered by the motion.

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

Mr CARR: The motion refers to documents relevant to the dismissal of Neil Pickard and to the payment of compensation. It is as simple as that.

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

Mr CARR: The claim that there are 10,000 documents, 7,000 filing cabinets, choking with this material is a pathetic excuse.

Mr West: On a point of order: very clearly, what the Leader of the Opposition is trying to suggest is that all these papers that the Government has been requested to table have nothing to do with the question of compensation.

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Mr SPEAKER: Order! I call the honourable member for Drummoyne to order for the second time. I ask the Minister for Energy and Minister for Local Government and Co-operatives to come to the point of order.

Mr West: The whole question of the documents that are here is to do with Mr Pickard's compensation, and that was very much the ruling by Gordon Samuels.

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

Mr CARR: What the Government is all about here is covering up the Premier's bungle which has resulted in millions of dollars being wasted on this affair. Let me make it very clear that if this Government continues to thwart the will of the Parliament after we have invoked Standing Order 54, it is risking all.

Mr SPEAKER: Order! I call the honourable member for Wakehurst to order for the second time. I call the honourable member for Burrinjuck to order. I trust that the honourable member for Wakehurst heard that he was called to order for the second time. I had already indicated to members that the previous level of interjection was quite intolerable. I ask all honourable members to co-operate in ensuring that this matter comes to a conclusion in a proper and decorous fashion.

Mr CARR: Erskine May unequivocally states:

> . . . to falsify or improperly alter any records of, or documents presented to, either House . . . will constitute a contempt.

This, according to Erskine May, would represent a grave contempt.

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

Mr CARR: The thwarting in such a manner of Parliament's undoubted right to inspect documents raises the question of the Parliament's ongoing confidence in the Government. The memorandum of understanding reserves to the Independents the right to move a motion of no confidence in relation to matters of corruption or gross maladministration which reflect upon the conduct -

Mr W. T. J. Murray: On a point of order: the Leader of the House made specific statements which are not now being replied to by the Leader of the Opposition.

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

Mr W. T. J. Murray: The limitations on the right of response by the Leader of the Opposition to a ministerial statement are very restrictive. He cannot go into the history of the matter; he can only respond directly to the matters raised by the Minister in his ministerial statement. Mr Speaker, I request that you direct

the Leader of the Opposition to respond directly to those matters in relation to the availability of the papers, not the history of the matter.

Mr SPEAKER: Order! It is a general rule that the member replying to a ministerial statement is restricted to matters raised within the statement and cannot cover the general topic dealt with. I ask the Leader of the Opposition to conform with that rule.

Mr CARR: The withholding or falsification of such documents would constitute such conduct.

Mr SPEAKER: Order! The Leader of the Opposition is flouting the ruling I just gave. I ask him to come back to matters mentioned in the ministerial statement made by the Minister.

Mr CARR: Mr Speaker, the Premier was part of the Cabinet that appointed Pickard. The Premier's bungling of Pickard's dismissal has resulted in the payment of $1 million in this affair - public money that should have been devoted to the hospitals and the school systems of this State.

Mr Photios: On a point of order -

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

Mr Photios: Mr Speaker, the Leader of the Opposition is not only flagrantly flouting your ruling, he is extending the abuse by not discussing the protocol and processes of this House in relation to this matter. He is now debating the very issue of Neil Pickard's appointment, its history and the substance of the issue, which is in no way relevant to the issues which have been raised by the Leader of the Opposition. Already the honourable member for Barwon has raised the point and you have ruled. Now the Leader of the Opposition is extending the scope of his speech in flagrant disregard of your ruling.

Mr Whelan: On the point of order: I recall the Leader of the House saying words to the effect that the matter was of such importance that the resolution of the House was under consideration. That is suggesting that the non-acquiescence by the Government to the resolution passed, is tantamount to contempt. Contempt of the Parliament is what the Leader of the Opposition was referring to earlier, and I ask that you rule him in order.

Mr SPEAKER: Order! Until the interruption by the Minister for Multicultural and Ethnic Affairs I did not find the remarks of the Leader of the Opposition to be in the same category as those objected to by the honourable member for Barwon, who took a point of order on which I ruled. Unless the remarks of the Leader of the Opposition take a different trend, I am prepared to hear him. The substance of his remarks has been wide ranging and I will listen carefully to what he says. If I believe that he is flouting my ruling I will certainly pull him up on it.

Mr CARR: Thank you, Mr Speaker, for your wise counsel. The Government says that all this material is scattered over the globe and it cannot bring it home. The fact is the material was marshalled for the arbitration. It was all marshalled; it was all

available for the arbitration. That is the material the Opposition wants. This is a Government engaged in a cover-up to disguise the Premier's involvement. This is all about attempting to protect the Premier from his role in bungling the dismissal and leaving the taxpayers of this State open to a huge compensation payment to this unworthy man.

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

Suspension of certain standing and sessional orders, by leave, agreed to.

Amendment by Mr Whelan agreed to:

That the order of the House agreed to this day relating to the order for papers under Standing Order 54 be amended by leaving out ", by the rise of the House this day," and inserting "on Tuesday 10 May, 1994, at 2.15 p.m.".

SPECIAL ADJOURNMENT

Motion by Mr West agreed to:

That this House at its rising do adjourn until 2.45 p.m. this day.

House adjourned at 2.25 p.m., Wednesday.