LEGISLATIVE ASSEMBLY

Wednesday, 26 October, 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.

STANDING ORDERS AND PROCEDURE COMMITTEE

Report: Standing Order 78

Mr Speaker laid upon the table the report of the Standing Orders and Procedure Committee on a proposed amendment to Standing Order 78 dated 25 October 1994.

Ordered to be printed.

INDEPENDENT COMMISSION AGAINST CORRUPTION

Annual Report

Mr Speaker laid upon the table the annual report of the Independent Commission Against Corruption for the year ended 30 June 1994.

Ordered to be printed.

QUESTIONS WITHOUT NOTICE

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HONOURABLE MEMBER FOR GEORGES RIVER SEXUAL HARASSMENT INQUIRY REPORT

Mr CARR: My question is directed to the Premier. What assurance can the Premier give the House that the processes and procedures in the Niland inquiry will not jeopardise action against his former Minister? In particular, how does the Premier answer the member's charges about the absence of sworn evidence, coaching of witnesses, rewriting of evidence and so-called informal chats?

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

Mr FAHEY: As I indicated to the House yesterday, Cabinet has had a preliminary discussion in respect of the question of processes and procedures in ministerial offices. There are a number of recommendations in respect of codes of conduct and the Anti-Discrimination Act, and I indicated yesterday that legislation would be introduced to ensure that the employer will be the Minister for

purposes of the Equal Opportunity Tribunal. That matter will come before the House in the very near future.

In respect of other matters, particularly matters that relate to the opportunity of any member of any ministerial staff not only to seek counselling but to seek to activate a formal complaint, or a complaint of any nature, that will not be suppressed in any shape or form by any other process. To make it very clear, there is a contact point, and that contact point will be sufficiently clear of any intimidation based on -

Mr Carr: On a point of order: my question was not about the recommendations of the Niland report. It was about the processes and procedures of the investigation.

Mr SPEAKER: Order! The Premier is well aware of the question. There is no point of order. I call the honourable member for Drummoyne to order.

Mr FAHEY: It will be abundantly clear, when this process is completed, to any ministerial office that there is a contact point sufficiently clear of any intimidation or any other reason for a complaint being suppressed, to allow that complaint to be dealt with in a proper fashion. I want to make it very clear to all members of this House and to everybody that the rights of women are rights that I will protect, the rights of any person are the rights that I will protect, and I will not allow those rights to be suborned by any position of authority in any workplace. I do not distinguish between a Minister's office and any other office being a workplace.

In terms of the incident that has been referred to in the Niland report and the information that is there, I have made it quite clear that my party must deal with that matter, and I have referred the matter to my party to ensure that the question of endorsement and membership of the party will be determined by the party. Nobody can ignore the substance, irrespective of the degree of belief in that substance. There is substance there, and that is substance which I as an individual will not ignore, that I as a father will not ignore, and I as a political leader. I am sure that view is felt by many members opposite, despite the fact that the honourable member for Campbelltown wishes to be cynical and smart and laugh at the suggestion.

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

Mr Whelan: On a point of order: the question sought an assurance from the Premier that the processes and procedures of the Niland inquiry will not jeopardise action against the former Minister. The Premier is not answering the question.

Mr SPEAKER: Order! The honourable member for Ashfield well knows that I ruled on a similar point of order taken by the Leader of the Opposition. He is fully aware also of the traditions of the House in regard to the answering of questions. The Premier may answer the question in whatever fashion he chooses. That has long been a convention of this House. I have no authority in the matter.

Mr Whelan: Mr Speaker -

Mr SPEAKER: Order! I am not prepared to take anything further on the point of order. I have ruled on the point of order.

Mr Whelan: On another point of order: Mr Speaker, in my first point of order I said that the Premier's answer was not relevant to the question. He has an obligation to be relevant to the question.

Mr SPEAKER: Order! I would have thought that the circumstances surrounding this matter make

the Premier's statements directly relevant. The matter has a wide ambit, and what the Premier has said is directly relevant to the question. I call the honourable member for Smithfield to order.

Mr FAHEY: The type of question that comes from members opposite never ceases to surprise me. I suppose if one had been in the Labor Party for a long time - in the case of the honourable member for Ashfield, for too long - one might believe that someone in authority, someone in the ministry, even a Premier, had the capacity to interfere with the inquiries of the Director of Public Prosecutions or the Independent Commission Against Corruption.

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

Mr FAHEY: As I indicated to the House yesterday, I rightly referred the report to those bodies and indicated that they should examine the report and take whatever steps are necessary. Nothing that I could do could interfere with any steps that they take; nor should it; nor will it.

CASTLEREAGH TOXIC WASTE DEPOT

Mr RICHARDSON: Can the Minister for the Environment inform the House of progress in addressing community concerns about the operation of the Castlereagh waste depot?

Mr HARTCHER: I acknowledge that, while the Castlereagh regional waste facility is located in western Sydney, no-one in the ranks of the Australian Labor Party has the slightest interest in asking a question about it. The honourable member for Blacktown may be jumping but I am quite sure she will not be asking any question about western Sydney, because it is not an area of concern to the Australian Labor Party. After all, they have got 21 per cent.

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

Mr HARTCHER: When we hear about that figure we are reminded of the other great figure in the 20s: Bob Carr's approval rating. It is soaring to about 28 per cent. So we should talk regularly about the 20s.

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

Mr HARTCHER: The honourable member for Heffron should get her figures right.

Mr SPEAKER: Order! As I ruled yesterday, loud and constant interjection, whether from the Opposition or the Government benches - though yesterday and today most of the interjections emanated from the Opposition benches - is unacceptable behaviour in the Parliament and is not regarded with any level of approval by observers of the Parliament. Such behaviour lowers the dignity of the Parliament. All members should be reminded that at the moment the dignity and conduct of members are very much in the public eye. It would well behove members to reconsider their behaviour in this Chamber and to consider the setting of an example for others to follow. I will not tolerate such interjection. If members wish to stay in the Chamber for the rest of the day, I suggest that they heed my advice.

Mr HARTCHER: There has been community concern about Castlereagh regional waste depot since it started operating in 1974, and rightly so since the handling and disposal of liquid and toxic waste is of concern to the community. The concern must be addressed, and is being addressed by this Government. It has cut back the operations of Castlereagh to one-fifth of what they were six years ago. We have established an aqueous waste treatment facility to treat toxic waste and are monitoring the area and the people to accurately determine whether there is a serious health problem. All studies so far have found that there is no evidence of contamination leaking off the site. There is no evidence of airborne contamination and there is no evidence linking the depot to any health concerns in the area.

The stage-two audit was completed in March this year. It was one of the largest and most comprehensive environmental audits undertaken in Australia.

Mr Gibson: It was a fraud.

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

Mr HARTCHER: It found that no toxic waste had leached off the site. We will come to the honourable member for Londonderry later.

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

Mr HARTCHER: The honourable member for Londonderry should not worry: he will get his mention. In relation to health concerns about the preliminary findings of the human health study, it must be stressed that those findings are only preliminary. Further investigations are now under way to find out where the people actually lived, how long they were in the region, their employment -

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

Mr HARTCHER: - and medical records and their health prior to the diagnosis of brain tumour.

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

Page 4672

Mr HARTCHER: What is known for sure is that medical experts say that toxic waste has never been found to be responsible for brain cancer anywhere in the world. As the honourable member for Londonderry conceded earlier today in his radio comments in between his statements about Labor's new policy, which is to erect incinerators for the destruction of toxic waste - but we will deal with that later too - the problem at Castlereagh is not new. But prior to 1988 it was a very different problem. There are a number of questions that have to be answered about Castlereagh. Who extended the Castlereagh tip?

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

Mr HARTCHER: Who turned the short-term facility into a megatip? Who greatly increased the size of Castlereagh and did not know what was going into Castlereagh? Mr Speaker, you guessed it: it was Mr Twenty-Eight Per Cent himself.

Mr SPEAKER: Order! I call the Minister for Land and Water Conservation to order.

Mr HARTCHER: It was none other than Bob Carr who, as environment Minister, allowed 200,000 tonnes of unknown and potentially dangerous toxic waste to be dumped at Castlereagh every year. It was his short-sighted approach to Castlereagh which created the problem now being tackled by this Government. Let me quote the honourable member for Blacktown, who did have something to say about the environment once, on a rare occasion. This is what she had to say about Labor and Castlereagh: "The [depot] was operating the whole time we were in government and we did virtually nothing about it".

Mr Photios: She could do our radio advertisements.

Mr HARTCHER: Yes, we might have her do radio advertisements. for the Liberal Party.

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

Mr HARTCHER: The honourable member for Blacktown also said, "There is no doubt that before 1988 -

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

Mr HARTCHER: - poor decisions were made about its continuing and future operations". Who was making the poor decisions about its continuing and future operation? None other than Bob Carr. As the honourable member for Londonderry said, not last year, not last week, but this morning on radio:

> The first person to take any notice of it was the present Minister for the Environment, Chris Hartcher. He said that an audit would be carried out at the toxic waste dump and we are up to stage two of the audit now. I asked for a health survey to take place at the same time and it was granted.

One thing about the honourable member for Londonderry is that he tells the truth -

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

Mr HARTCHER: - a rare quality in members of the Australian Labor Party. Most interesting has been the development of a new environmental policy for the ALP. The new environmental policy, along with mining in national parks, includes the development of a toxic waste incinerator. As was said by the honourable member for Londonderry this morning, "We should have enough gumption somewhere as a government, somewhere in this State, to put a toxic waste incinerator in" - Labor's new policy for 1995 is a toxic waste incinerator for every marginal seat -

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

Mr HARTCHER: - "somewhere it won't affect people and it won't affect the water system . . .".

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

[*Interruption*]

Mr SPEAKER: Order! I have already given a number of warnings to members on both sides of the House. I seriously suggest that members heed that advice.

Mr HARTCHER: Having quoted the honourable member for Blacktown, let me quote that well-known authority and great friend of the right wing, the honourable member for Campbelltown.

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

Mr HARTCHER: When the honourable member for Campbelltown was speaking about his leader he said:

> I can remember going to annual conferences for years in the Labor Party and being abused for wanting to save the rainforests. [A band of us] were berated and attacked and abused. And Bob Carr used to sit there putting up his hand for the logging of the rainforest, conference after conference.

Conference after conference, putting up his hand for the logging of the rainforests, and no less an authority than the honourable member for Campbelltown was there to watch him and to recount it. This latter-day conversion to the environment on the road to Damascus by this little Hitler, Bob Carr -

Mr SPEAKER: Order! I call the honourable member for Port Stephens to order for the second

time.

Mr HARTCHER: Bob Carr thinks that Parramatta was the battle for France and Hitler won the battle for France -

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

Page 4673

Mr HARTCHER: - and he thinks Cabramatta was the battle for Greece, and Hitler won the battle for Greece.

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

Mr HARTCHER: Bob Carr is now running headlong into his Stalingrad. Stalingrad is coming up for you, Mr Twenty-eight Per Cent, maybe on 25 March.

Mr SPEAKER: Order! I am not altogether certain why the member for East Hills was standing. It was impossible for me to hear what he said. I presume he rose on a point of order.

Mr Rogan: On a point of order: I thought this question related to waste disposal. The Minister is talking about rainforests and the Opposition - everything except the question that was asked. I ask you to bring him back to the question that was asked.

Mr SPEAKER: Order! I am sure that the Minister for the Environment is about to very clearly demonstrate the relevance to the Chamber.

Mr HARTCHER: Waste is an environmental issue, of course. Environmental matters are of great concern to the Government, but not to the Australian Labor Party. While the rest of society is rejecting toxic waste incinerators the Australian Labor Party is now looking at them for its new environmental policy. I assure the residents of western Sydney that this Government is determined to make sure that their health is properly protected - unlike the previous Labor Minister for the Environment. I want to assure those residents that the Government has in place the most extensive and intensive monitoring program ever for Castlereagh; that it covers both human health and animal health; that the Government will continue to release the findings, as they become available, to the relevant community working party and interest groups; and that it will take the appropriate remedial action, if any causal connection is properly established between illness and the operation of the toxic waste facility. It is this Government that cares about the health of the people of western Sydney. It is this Government that has an interest in the health of the people of western Sydney. It is this Government in whom the people of western Sydney can place reliance.

SYDNEY SHOWGROUND REDEVELOPMENT PROPOSALS

Ms MOORE: In the light of recent announcements about a film studio proposal for the showground, will the Premier assure the House that a regional environmental plan for the whole of the area will be prepared by the Department of Planning and that a plan of management for the showground as part of the Moore Park and Centennial Park complex will be prepared in accordance with my gazetted Centennial Park and Moore Park Trust (Macquarie Sydney Common) Amendment Bill?

Mr SPEAKER: Order! Before the Premier answers the question - which he has indicated he is prepared to do - I warn honourable members that questions that are lengthy and of many parts, though they may be related to the one subject matter, are in danger of being ruled out of order.

Mr FAHEY: Because of the length of the question I am not sure that I have all of the arms to it. In general, the showground legislation that has been gazetted is clearly the law. The Government supported the bill and proceeded to its gazettal and will honour it, naturally, as it must. I refer to the film studios. I spoke to the honourable member for Bligh last week and indicated to her that I had received information only that morning about an announcement made in Adelaide by the head of News Corporation Limited to the effect that it wished to invest some $20 million in a film studio. It was quite clearly stated that the preferred site was Sydney, particularly the showground and its pavilions. It has amused me somewhat to see the amount of publicity this announcement has generated.

I welcome any investment in New South Wales, and there has been significant investment in this State in the past two years. Several billion dollars has been invested, particularly in the areas of communication and technology. That investment is a vote of confidence for the New South Wales economy and for the leadership demonstrated by my Government, which created a climate that encouraged people to invest in this State. The actual dollar amount announced by News Corporation Limited was fairly small when compared with many other investments, but it generated a lot of interest.

My colleague the Treasurer is having discussions with officials from News Corporation Limited, and those discussions are progressing well. When there is a degree of certainty in this proposal, I will speak to the honourable member for Bligh. I will value her views on the subject, as this proposal affects her electorate. As to plans of management and regional environmental plans, a strategy has to be developed, but strategies are not enough when it comes to planning. We need to ensure that there is wide consultation; we must ultimately deliver what the community wants. This proposal will be dealt with at the earliest possible time, bearing in mind that a number of processes must first occur.

CENTRAL BUSINESS DISTRICT CAR PARKING LEVY

Mr DEBNAM: My question without notice is directed to the Minister for Transport, and Minister for Roads. Is it a fact that the central business district car parking levy has raised millions of dollars for new interchanges and commuter car parks around Sydney? Has the Federal Government indicated whether it will contribute to this program to deter motorists from bringing their cars into the city?

Page 4674

Mr BAIRD: I thank the honourable member for Vaucluse for his question. He is a great asset to this House and I congratulate him on his election to the seat of Vaucluse. There is no doubt that the introduction of the $200 a year car space levy has been a great success. The scheme generates about $7 million a year. That money can be used to build new public transport facilities, such as interchanges and commuter car parks. The first projects to be constructed using levy funds are soon to become available to the public. We have a 400-space car park at Sutherland, a 338-space car park at Gordon, and a 250-space car park at Hornsby. I am sure honourable members will welcome the decision to use funds raised by this levy to build new interchanges at Campbelltown, Hurstville and Katoomba in the current financial year. These facilities will encourage people to switch to public transport; they will be able to drive to these railway stations.

Most importantly, the scheme sends a signal to car users that there is an environmental cost when they bring their vehicles into the CBD. The legislation had wide support, even from honourable members opposite. The honourable member for Kogarah said that the $200 levy was not high enough. He threw his support behind a Greenpeace proposal to charge $1,000 per car space, not just in the CBD but in regional centres as well. The honourable member for Wyong agreed. He said that the levy of $4 a week was not even enough to buy a round of drinks. The honourable member for The Entrance came straight to the point, saying that the $200 levy is insufficient. He said that a more realistic figure to achieve the goals set would be $1,000. He said, "If the Government is sincere about achieving the

objectives of its bill, it should not merely introduce a levy of $200, but should impose a higher levy". Given these calls from Labor members opposite, one would assume that we would have support from the Federal Government in Canberra. Mr Keating has written to us in regard to the levy.

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

Mr BAIRD: In a letter dated 20 September 1994 Mr Keating stated:

> I refer to your letter of 3 August 1993 concerning the Parking Space Levy Act 1992. The Commonwealth does not accept that its departments or statutory authorities should be liable for this tax.

The $200 levy applies to every car space in the commercial areas of the CBD. Labor Party members are always talking about encouraging people to use public transport. This is a great opportunity to do something, but what do they do? They say that everyone can pay it, but not the Federal public servants or the Federal members of Parliament. They believe that they should be exempt.

For instance, Chifley Tower is built on Commonwealth land under a 125-year lease. Because it is on Commonwealth land, Mr Keating is arguing that it is exempt from the parking space levy. There are 400 spaces under Chifley Tower. That means that this State will have to forgo $80,000 that should be going towards new public transport facilities. That is just the tip of the iceberg. The Department of Transport has supplied me with a list of more than 50 sites within the CBD which will be exempt from the parking levy. It includes places such as Garden Island Dockyard, which has 500 spaces, and the Prime Minister's Department in Phillip Street. Several thousand parking spaces in the city will be exempt from the levy, and we will miss out on $200 for every one of those places. Mr Keating will rob this State of hundreds of thousands of dollars which should go towards building parking stations and railways. Worst of all, it sends a message to some people that they do not need to worry about pollution because they are using one of Mr Keating's car parking spaces.

Honourable members are aware of the Labor Party's hypocrisy about this program. Organisations such as Telecom and Australia Post have already paid the levy, but the Federal Labor Party will not pay it. The figures compiled by Professor Philip Laird of the University of Wollongong emphasise this point even further. They indicate that over the last 20 years the Commonwealth has outlaid $31 billion on roads but just $3 billion on railways. There is a great imbalance. The Labor Party says it is in favour of public transport, but when it comes to the reality the figures are $31 billion versus $3 billion. The Labor Party has an opportunity to pay the levy on car parking spaces and to encourage people not to bring their cars into the city - to leave them at home or park them at the railway station - but Mr Keating says, "We should be exempt. We should not have to pay that levy".

The Government has just received advice from the Crown Solicitor that the fact that buildings such as Chifley Tower are on a long-term Commonwealth lease may not exempt the Federal Government from the parking space levy. The New South Wales Government proposes to take up the issue with the Commonwealth with the aim of having this policy reviewed. If honourable members opposite are serious about this program, they should speak to their Federal colleagues. It is clear that the program is working well; it is providing parking stations at railway stations located around the city. It is designed to encourage people to leave their cars and use public transport. The Government is committed to the program, but the attitude of Mr Keating towards the program shows his contempt for this State.

HONOURABLE MEMBER FOR BLUE MOUNTAINS

Mr KNIGHT: I address my question to the Premier. Has a witness told police that the honourable member for Blue Mountains attempted to compromise a Blue Mountains councillor by planning to set him up with a prostitute in a motel room? Did he also conspire to have a tow truck operator enter the motel

room to assault the councillor? Are police investigating this matter?

Page 4675

Mr FAHEY: I think the final words just spoken by the honourable member for Campbelltown answered the question quite appropriately. Yes, police are investigating matters relating to the honourable member for Blue Mountains. They have made those investigations and have taken the issue a step further by bringing the matter before the court. All investigations should be made by the Police Service. It is certainly not my right to know what those investigations are about, and I would have thought -

Ms Allan: You said that about Terry Griffiths.

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

Mr FAHEY: The honourable member for Blacktown has interrupted. I might add that if the honourable member for Blacktown were the subject of investigations by police -

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

Mr FAHEY: - I should not know about that, either, nor should any member of this House. I have confidence in the police.

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

Mr FAHEY: They have already brought the matter before the court, as honourable members know, and that is where the matter should be.

INTEREST RATE VARIATION EFFECTS ON FARMERS

Mr RIXON: My question is directed to the Minister for Agriculture and Fisheries, and Minister for Mines. Can the Minister inform the House what effect the rise in interest rates promoted by the Federal Government will have on farmers already savaged by drought and abandoned by Labor?

Mr CAUSLEY: The honourable member's question is obviously important at this time, given the crisis in the rural sector and the imminent hike in interest rates. It is important for honourable members to understand that the fiscal policy of the Federal Government is causing concern. If honourable members listen to such experts as Terry McCrann, who is a respected economist, not only will we have -

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

Mr CAUSLEY: I have to say that he is better than Professor Walker, who represents a number of unions throughout the State. Terry McCrann has made it very clear - and this is the opinion of experts in the economic field - that interest rates could rise by a further 3 per cent in the next 12 months.

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

Mr CAUSLEY: That will have a devastating effect, not only on farmers throughout the State but on business in general, and on the Australian economy. For some time honourable members opposite and their colleagues in Canberra have been talking about their efforts in respect of the present drought - their feeble efforts, I would have to say, because the New South Wales Government is still calling on Canberra to provide some support for farmers. Obviously, the latest interest rate increase will make it worse. In this House I warned of the situation that has developed in respect of the $164 million farmers' support

package guaranteed by the Federal Government, by the Prime Minister. It has been shown that that support is not available. It has been fairly clearly spelled out by farmers across the State that they cannot get the money that was promised by the Federal Government. The Federal member for Page, who is the chairman of the Prime Minister's task force on primary industries, when addressing members of the farming community in his own electorate, said, "Well, of course, we are now concerned about the fact that I told people from my office that they were entitled to these benefits, and then withdrew it. We are concerned about that, so we are going to look at this on a case-by-case basis". I might say that I approve.

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

Mr CAUSLEY: But we have heard no more about it. The Federal Government is all talk. We have heard nothing and the Federal Government is doing nothing to ease the plight of New South Wales farmers. The results of the survey conducted by the Department of Agriculture will be available tomorrow. I am sure the people of New South Wales will then realise the extreme plight of farmers across the State, and the effect of the drought on the economy of this State and on the economy of Australia as a whole. When the Federal Government was approached about the cost to farmers of increased interest rates, the Federal Treasurer claimed that farmers are protected by the rural assistance scheme. The ineptitude of these people never ceases to amaze me, because only a fortnight earlier Senator Collins had estimated that 1,500 farmers would be eligible for rural assistance.

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

Mr CAUSLEY: There are 65,000 farmers in New South Wales. How could the Federal Treasurer possibly claim that they will be supported by the rural assistance scheme? Obviously many farmers fall outside that net. At present the indebtedness of the rural community is very high. I have told this House that I have heard of instances of farmers being $300,000 to $5 million in debt, depending on the nature of their enterprises. The effect of these two interest rate rises - 0.75 per cent and 1 per cent - on the farming community will be that it will have to pay $314 million in additional interest. The Prime Minister's offer of $164 million pales into
Page 4676
insignificance because the cost to the farming community of those two interest rate rises will be almost double that figure. If McCrann's projections are correct, the cost to farmers will be in the vicinity of $600 million. In total, more than $900 million will be added to farmers' costs because of these interest rate rise. That will have a devastating effect upon the farming community of New South Wales.

If honourable members thought the Federal Government's package was in any way generous, let me remind them of the action of the Federal coalition Government in 1982-83 to try to support the farming community, the economic base of this country. The Fraser-Anthony Government spent $341 million in 1982-83 dollar values on the drought that was affecting the country at that time. If that figure is projected into present-day values, one realises that that Government spent more than $600 million supporting rural industries throughout Australia during the devastating drought in 1982-83. The present drought is far worse, and it is having extreme effects not only on the farming community but on the whole of rural New South Wales. Undoubtedly it is only a matter of time before the effects of the drought seep through to the cities.

I exhort honourable members to watch the balance of payments figures, the figures that the Prime Minister loves to ignore. In the next few months the balance of payments will blow out because Australia is not earning any income from one of its basic industries, the rural industry, and is importing more and more rural products. The importation of grain into Australia will increase dramatically, and that will have serious effects. The Federal Government is certainly not living up to its responsibilities. It has not been taking the drought seriously. I intend to again raise with the Federal Minister the issue of extra support for the farming community and, more particularly, the additional burden placed upon that community by the increases in interest rates.

HONOURABLE MEMBER FOR GEORGES RIVER SEXUAL HARASSMENT INQUIRY REPORT

Mr WHELAN: My question without notice is directed to the Premier, and Minister for Economic Development. Did he say yesterday that the endorsement of the honourable member for Blue Mountains would not be withdrawn because of his right to proclaim innocence until guilt is proven? How is this status different from that of the honourable member for Georges River? Why is the Premier applying double standards?

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

Mr FAHEY: The honourable member for Ashfield is only half right. I was applying standards, and I will apply standards in respect of all matters. I do not recall even discussing the honourable member for Blue Mountains yesterday.

SOFTWOOD PLANTATION TENDER

Mr GLACHAN: My question is addressed to the Minister for Land and Water Conservation. Has State Forests undertaken a tender for major softwood projects in regional New South Wales? Will the Minister advise the House of the outcome of that tender?

Mr SOURIS: State Forests sought expressions of interest for two large parcels of softwood plantation logs: 380,000 tonnes of logs per annum from radiata plantations around Bathurst, and 200,000 tonnes per annum from plantations at Bombala. CSR Limited has won the tender and the right to negotiate and finalise contracts with State Forests to buy the logs. This will mean a return to State Forests of $15 million per annum for the next 10 years. CSR will process logs through an upgraded medium-density fibreboard mill at Oberon. Total investment in Oberon will be $200 million, and 320 jobs will be created. CSR is also pursuing the reopening of the rail line from Oberon to Tarana, and the construction of a new research and development centre. At Bombala CSR plans to invest about $85 million in an oriented strand board mill to process 200,000 tonnes per annum. The new facility will employ more than 80 people, as well as provide additional work in harvesting and haulage operations.

This investment will provide a major boost to the economies of the Bombala and Bathurst districts and is a clear example of the Government's determination to pursue regional development opportunities in New South Wales. I am not surprised by the lack of interest of those on the other side of the House. The tender process has included supervision by an independent review committee. I had no involvement in the tendering process until a few days ago, when I was briefed on the recommendation made to me by State Forests, a recommendation I approved. CSR offered a significantly more competitive package than other applicants for the purchase of logs from both areas. The investment represents an $800 million asset, which has been created by State Forests over the last 40 years. The way the asset has been created and managed over that considerable period of time is a credit to State Forests. It has now resulted in a substantial dividend to the people of New South Wales.

BLUE MOUNTAINS CITY COUNCIL BOMBING

Mr SCULLY: My question without notice is to the Premier, and Minister for Economic Development. Is the major crime squad still investigating the bomb attack on the Blue Mountains City Council chamber? Has the honourable member for Blue Mountains been assisting police with their investigations?

Mr O'Doherty: On a point of order: the most recent edition of *Decisions from the Chair* quite clearly indicates that matters before the court are therefore sub judice and this House should consider carefully whether any such question is in order or whether it may prejudice the proceedings before the court.

Mr Whelan: On the point of order: Mr Speaker, I am sure there is no need for me to remind you that the criminal investigation does not concern the bombing; it concerns the member for Blue Mountains. No sub judice rule applies to the question of investigations by the police into the Blue Mountains City Council.

Mr SPEAKER: Order! I do not need to be reminded by the member for Ashfield of the parameters of the sub judice rule. The question was fairly simple and did not relate to evidentiary matters before the court. I rule the question in order.

Mr FAHEY: Matters for police and police investigation should remain with the police.

INTERSTATE BUSINESS RELOCATION

Mr D. L. PAGE: My question without notice is directed to the Minister for Small Business, and Minister for Regional Development. Can the Minister inform the House what success the Government has had in attracting interstate business to relocate to New South Wales?

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

Mr CHAPPELL: This is a matter of significant importance to the economic development of this State. There are indeed a number of successes worthy of note. For instance, I refer to the National Safety Council of Australia, which made a decision a few months ago to accept assistance from the Government to relocate its head office from Melbourne to Sydney. That move is now under way and should soon be completed.

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

Mr CHAPPELL: The National Safety Council of Australia employs more than 200 staff nationally and has 5,000 members. It is a non-profit, mutual benefit and member-based group which assists Australian workplaces to eliminate and reduce risks to the health and safety of people in workplace activities. The National Safety Council of Australia joins a growing list of companies that have relocated their national headquarters and their Pacific rim regional headquarters to Sydney. It has cited as its key reasons for moving: favourable economic indicators for New South Wales - which, of course, have followed prudent financial management by this Government over a number of years - and assistance from the Government offered by the Department of Business and Regional Development.

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

Mr CHAPPELL: Its selection criteria for the move from Melbourne to Sydney also included the proximity to national headquarters of other large corporations, the cost efficiency of communication with members and branches, the cost of travel by directors to board meetings, and the cost of accommodation. The national chief executive of the organisation wrote to the Department of Business and Regional Development last November inquiring about any assistance the Government may provide in the appraisal of several different sites by the National Safety Council of Australia, including Melbourne and Brisbane, before deciding to settle in Sydney. The department was able to offer a subsidy totalling some $75,000, with assistance from the Industries Assistance Fund and relief from stamp duties.

With support from the office of the Treasurer, the Hon. Peter Collins, and the Minister for Industrial Relations and Employment, an attractive package was put together to entice the organisation to relocate to Sydney. This is a practice that occurs behind the scenes with this business-minded Government every

day. In fact, the department is working on more than 100 such cases as I speak. The practice will have significant economic ramifications for the State as businesses are locked into investment in New South Wales.

Other recent and current examples include the glass division of Pilkington (Australia) Proprietary Limited relocating a division from Melbourne, a laminating plant worth $12 million being established at Ingleburn, creating 40 jobs; Pirelli Cables Australia Limited relocating its South Australian plant to Campbelltown, expanding and consolidating its operations in Sydney's west; and Bakehouse Emiros, which supplies fresh pizzas to Coles Supermarkets, moving from Melbourne to Sydney, spending $2 million and creating 60 jobs. I can also highlight the firms of Gordon and Gotch Limited moving to Albury, Braemar moving to Albury and Border Smash Repairs moving from Queensland to south of the border.

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

Mr CHAPPELL: As well, major companies such as Cathay Pacific and Vodafone Proprietary Limited are relocating their regional headquarters for the Asia-Pacific to New South Wales. They join the growing list of companies, small and large, which have recognised the potential that New South Wales offers and the generous assistance programs offered by the Government. The Government expects a continuing run of successes in attracting new industries to New South Wales. In particular, an increasing number of inquiries are already being received about relocation to country New South Wales following the release of the State Government's regional development statement in September.

Mr Whelan: On a matter of privilege. The Premier has indicated that he does not recall the question I asked.

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

Mr Whelan: The matter of privilege is that the Premier has misled me and the House in that he said there was no issue raised about the member for Blue Mountains. Page 4 of *Hansard* indicates that the Deputy Leader of the Opposition, Dr Refshauge -

Page 4678

Mr West: On a point of order: it is clear that the honourable member for Ashfield in speaking to a matter of privilege should be establishing to the House the nature of the matter of privilege rather than stating to the House a question that was asked in the House yesterday that probably did not attract the answer that he liked.

Mr Knight: On the point of order: it may well be the case that Government backbenchers and Ministers believe the Premier does not know what the question is -

Mr SPEAKER: Order! The member for Campbelltown will resume his seat; he is already on three calls to order. After my warning to members yesterday about spurious points of order the member for Campbelltown can thank the Chair for its indulgence and charity that he is still in the Chamber. There is substance in the point of order of the Leader of the House. No matter of privilege has been established by the honourable member for Ashfield. Whether something said in the House is misleading or truthful does not establish a matter of privilege. It should not even be the basis of a point of order. Other forms of the House can be used to make counter allegations.

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[*Notices of Motions*]

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

PETITIONS

Faulconbridge Railway Station

Petition praying that Faulconbridge Railway Station remain fully manned in order to provide customer safety and deter vandalism and graffiti, received from **Mr Langton**.

Springwood High School

Petition praying that student pedestrian safety outside Springwood High School be improved, received from **Mr Morris**.

Forest Protection

Petition praying for an immediate and permanent moratorium on the logging of all native old growth and wilderness forests, and for legislation to change present forest management practices, received from **Dr Macdonald**.

Warilla Police Station

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

Rozelle Hospital

Petitions praying that Rozelle Hospital be retained to provide asylum for the mentally ill, received from **Ms Nori**.

Bulli, Coledale and Port Kembla District Hospitals

Petition praying that the present level of services be retained at Coledale, Bulli and Port Kembla district hospitals, received from **Mr Sullivan**.

Wyong Hospital

Petition praying that Wyong Hospital be provided with a fully functioning obstetric and childbirthing facility, received from **Mr Crittenden**.

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**.

BUSINESS OF THE HOUSE

Reordering of General Business

Motion by Mrs Grusovin agreed to:

That General Business Order of the Day (for Bills) No. 18, HomeFund Mortgages (Reviews and Appeals) Bill, be reordered to take precedence on Thursday, 27 October 1994.

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Collation of Evidence of Acting Commissioner Mant

Mr Kerr, as Chairman, brought up and laid upon the table of the House a collation of the evidence of the Acting Commissioner, Mr John Mant, of the Independent Commission Against Corruption on general aspects of the commission's operations, dated 3 August 1994.

Ordered to be printed.

MINISTER FOR INDUSTRIAL RELATIONS AND EMPLOYMENT, AND MINISTER FOR THE STATUS OF WOMEN

Consideration of Urgent Motion

Ms ALLAN (Blacktown) [3.19]: I move:

That this House condemns the Minister for Industrial Relations and Employment, and Minister for the Status of Women for failing to protect the interests of working women particularly women working as ministerial staffs.

We heard only two weeks ago the Leader of the Opposition outline the defence by the Minister for the Status of Women of the member for Georges River. It is all there in *Hansard*. The Leader of the Opposition said during that particular debate:

Once again we see loyalty between Cabinet colleagues, past and present. She will not give him [the Member for Georges River] up.

There is also evidence of her failure to protect female ministerial staff. I am going to talk about that a little later. It was confirmed in the days following the resignation of the honourable member for Georges River as Minister for Police. The Premier told us that the honourable member's behaviour was

unacceptable but refused to tell the public precisely what the Premier knew. Ten days later and three weeks before the Niland inquiry was announced the press gallery confronted the Minister for the Status of Women seeking her views of the Griffiths crisis. This was her response. She said that the circumstances surrounding Mr Griffiths' resignation had been "canvassed as much as needed to be". The Minister said the matter was "up to him [Griffiths] to live with". But what about the women, the alleged victims? Was it simply a matter of their having to live with the consequences as well?

The Minister went on to say that she was unaware of a loophole in the State's antidiscrimination laws as they related to ministerial staff. A spokesman later clarified her statement by advising that precedents set by the Anti-Discrimination Board and the equal opportunity tribunal were likely to cover staff of Ministers - likely, but not certain. Only last week during the estimates committees, when asked by a member of the Opposition whether the ministry was conducting courses for ministerial staff members on sexual harassment and sexual assault, the Minister prevaricated and said that she did not see it as the role of the ministry to conduct such programs. There was no announcement from the Minister that she would close the loophole in the State's antidiscrimination laws to make a likelihood a certainty. The fact is that the Minister did nothing to protect the women concerned. She is only a token woman herself.

She is a 40-carat failure as the Minister for the Status of Women. She has that nervous glimmer in her eye as I speak, just as she had a couple of weeks ago when the Leader of the Opposition -

Mr SPEAKER: Order! During this debate, which seems primarily to be between two of our lady members of the House, I would like an outstanding example to be set for all members in the conduct of debate. I do not want interjections from either side of the Chamber.

Ms ALLAN: She is a 40-carat failure as the Minister for the Status of Women. I have said it once and I have said it twice. I know that the Minister for Industrial Relations and Employment and Minister for the Status of Women likes horse riding. I advise her that in her preparation for next week's Melbourne Cup activities she should get rid of that glimmer and that little nervousness in her eye because she will not be a success next Tuesday if she does not start to settle down, calm down and get on top of these very pressing issues that are concerning her at the moment. I can think of only two reasons why the Minister for the Status of Women would not perform to protect abused and humiliated women: one, she is prepared to leave the loophole in place to protect her colleagues; two, and most damning of all, she simply does not care.

The Minister cannot claim ignorance about the problems of harassment of ministerial staff. Five months ago, the day after the police Minister resigned, the *Sydney Morning Herald* detailed the problems in the former Minister's office. The newspaper reported that some of his female staff had resigned and some had complained but nothing had happened for more than a year. So allegations of sexual harassment by a Minister against his staff were ignored for more than a year. I would have thought that revelation would have been enough to get this Minister moving. But five months and the Niland report later she has still done nothing. On page 128 of the Niland report the Premier's senior media adviser, Martin Debelle, confirms that everyone in the Government knew there were problems in the former Minister's office. According to the report, Debelle said "everyone knew" of the high staff turnover in the Minister's office. And elsewhere in the Niland report it states that there was a gross staff turnover in the office - 143 per cent in just 12 months. But while everybody from the Premier to the Minister for the Status of Women knew that there were serious management problems at the former Minister's office, no-one chose to act. This lack of action continued for an entire month until the Premier was shamed into ordering an inquiry.

No press articles carry any mention of the Minister's expressed concern for the victims or a plan of action taken by her on their behalf. She made no mention of counselling for the women. There was no question of the Minister exploring the possibility of the Government taking legal proceedings. In fact, the Niland report indicates that the reverse was true as far as the alleged victims were concerned: they did not take action and they were not seeking to take action. Where were the counselling and the educative programs for the alleged victims who had been complaining of their problems for more than 12 months? There was no statement that the Minister would review procedures to ensure that the Griffiths affair would never be repeated. There was not one word, not one decision, from the Minister for the Status of Women. I remind the House that this was all well before the Premier, under Opposition and media pressure, announced the Niland inquiry.

From the resignation of the former Minister to the Premier's announcement of an inquiry - a whole month - there was not one initiative taken by the Minister, not one example of leadership or decisive action; just blind support of the Premier. If the Niland report had not been forced on this Government, where would female ministerial staff stand now? What justice would have been afforded the alleged victims of the Griffiths affair? The Niland report makes sweeping recommendations to overhaul administrative procedures to protect women working on ministerial staffs. It provides ample evidence of the breakdown in procedures and guidelines that had occurred prior to the resignation of the former police Minister. But we are still waiting for a response from the Minister for the Status of Women. No opinion was uttered as to the effectiveness of the Niland proposals. There were crazy statements from the Minister about alleged conspiracies going on out in the New South Wales trade union movement and the New South Wales labour force. On 24 August in a media release she alleged that the Labor Council, in

association with the Labor Party, has drawn up a plan to halve the number of public sector employees in this State.

Yesterday there was a brilliant performance from the Minister in which she alleged there would be a series of politically motivated industrial stoppages over the next 12 months. That is the sort of hysterical and half-baked action we see from a very poor-performing Minister for Industrial Relations and Employment and Minister for the Status of Women. In the estimates committees, and since, the Minister defended the performance of her Ministry for the Status of Women. She has certainly been preoccupied by that. Even the allegations in the estimates committees about the management within her ministry should not have distracted her from the very serious allegations and concerns flowing from the Niland report. Yesterday in this House the Minister continued her stonewalling. In response to a question from me about what she intended to do about the issue she said, in effect: I will act if the Minister in charge of me, the Premier, allows me to act - I am more than happy to do that if the Premier allows that to occur. As a woman in this House I am appalled by the Minister's submissiveness on this issue.

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

Ms ALLAN: In this Chamber we must be concerned about recommendations -

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

Ms ALLAN: If you accept the title of Minister for the Status of Women you work to earn it. [*Time expired*.]

Mrs CHIKAROVSKI (Lane Cove - Minister for Industrial Relations and Employment, and Minister for the Status of Women) [3.29]: Mr Speaker -

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

Mrs CHIKAROVSKI: I am absolutely appalled by the performance that we have just seen from the shadow minister, who is supposedly interested in women's affairs. We should start from the premise that I, as the Minister for the Status of Women, together with this Government, absolutely condemn sexual harassment, and I do not care whether it occurs in ministerial offices, backbencher offices, fruit shops or anywhere else in this State. Sexual harassment is entirely unacceptable. Women and men have the right to work in an environment of mutual support and mutual trust. They have a right to work in an environment in which they are supported by their employers. I reject any suggestion at all that I have somehow abrogated my responsibilities as both Minister for the Status of Women, and Minister for Industrial Relations and Employment, in relation to looking after the interests of women in this State. I remind the shadow minister, who I must say has come to this debate very late, having only recently found an interest in women's issues - she has not spoken to me and she has not raised an issue in this House in relation to women's issues in almost the entire time that I have been here -

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

Mrs CHIKAROVSKI: She comes to this extremely late. I remind her that it is at my instigation that we have introduced flexible work practices, so that women can take opportunities in the workplace. It is at my initiative that we introduced the task force on occupational health and safety in relation to women in the clothing industry. I take my responsibilities as Minister for Industrial Relations and Employment, and Minister for the Status of Women, extremely seriously and I reject any suggestion by the so-called shadow minister for women's affairs that somehow I have ignored these issues. I point out the hypocrisy of the honourable member for Blacktown bringing this motion to the House. This is the member who, in

18 months, has shown no interest in women's issues, has made no statements in relation to women's issues, and has not raised an issue of concern to the women in New South Wales in this House.

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

Mrs CHIKAROVSKI: She was so interested in women's issues that she did not even bother turning up to the estimates committees. Where is her interest in women's issues that she does not even bother coming to the estimates committees to ask questions concerning the portfolio for which she had shadow responsibility? In the last few weeks she has attacked the ministry itself. I cannot believe that she is not ashamed about raising such an attack in this House. She has attacked the ministry, through her cohorts, the honourable member for Port Jackson and the honourable - though honourable is probably not a word I would use to describe her - Meredith Burgmann in the other place. They have attacked the integrity of the ministry of government established to work for the interests of women in this State.

The ministry was established by this Government to give a higher focus and a higher profile to the interests of women in this State. The honourable member for Blacktown has spent the last two weeks attacking the ministry, but that is nothing compared with the absolute and total harassment that she has shown in relation to the director of that ministry. She has attacked her personal integrity; she has called her a liar; she has attacked her family; and she does it in a way so that the director cannot respond. She is a public servant and she does not have the right to come into this House and argue in her own defence. You talk about harassment! What you have done to that woman in absolutely despicable.

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

Page 4681

Mrs CHIKAROVSKI: The people of New South Wales, the women and the women's groups in New South Wales from whom I have received letters - including the Rape Crisis Centre, the Reclaim the Night women, and the National Council of Women - will judge the shadow minister for what she has done to the ministry and to Jane Bridge. The hypocrisy of the Labor Party goes further than that. In the Leader of the Opposition we have a man whose great contribution to women's issues in this State is to call the Minister for Consumer Affairs a silly bitch, and then refuse to apologise. That is what he thinks about women in this State.

Let us ask the honourable member for Blacktown: maybe she would like to ask the Leader of the Opposition what he did when questions of harassment by electoral staff were raised with him. What did he do to protect the interests of those women when questions of harassment were raised with him by electoral staff? What did he do? What did he do when staff complained to him about harassment by their Labor bosses? I would like to know. Perhaps she would like to tell us, because he is totally hypocritical. Perhaps the honourable member for Blacktown, or one of the other members of the sisterhood in the Labor Party, could tell us: which is the male member opposite that they had to speak to about his harassing one of their own? Which of the male members opposite has been harassing one of the members on that side to such an extent that you have had to go and tell him to back off? If you are going to be talking about harassment, I suggest you get your own house in order.

Mr Scully: Be careful.

Mrs CHIKAROVSKI: The honourable member for Smithfield tells me to be careful. I suggest that the honourable member for Smithfield look to his own behaviour. If the honourable member for Smithfield is going to make remarks about harassment, I suggest he think about remarks he has made to members of my staff and consider whether they are questions of harassment. Would he like on the record the sorts of things he has said to my staff - he knows they constitute harassment. If he is to speak in this debate, he needs to be very careful about what he says. I would like to move an amendment to this motion, which is totally outrageous in terms of the attack on me personally.

Before I do that I want to say something about my behaviour in relation to the women concerned in the Griffiths affair. I place on record that at no time did the women working in Mr Griffiths' ministerial office approach me. I put that on the record, and those members who have read the report will understand that when those allegations came to light they were dealt with entirely appropriately by the head of the Premier's Department. Dr Gellatly advised the women of the appropriate procedures that they were entitled to take in relation to the complaints that they were raising. That was an entirely appropriate approach. It was not appropriate for me, as the Minister for the Status of Women, to interfere in the procedure. That was a conclusion reached by Ms Niland who said:

> Once the matter was brought to the Premier's attention he acted swiftly, and enforced his standards of behaviour on his Minister . . .
>
> The Premier acted appropriately in ensuring that the women involved were informed of their legal rights, helped to find alternative employment and offered appropriate counselling.

I confirm that Ms Niland stated that she received total support and substantial input to the inquiry from me in my capacity as Minister for the Status of Women. I wrote to Ms Niland about certain questions that she had asked and suggested that it would be appropriate that Ministers, given their high level of responsibility, should have an induction procedure and should be properly briefed to understand all of the implications and procedures.

Ms Allan: It was backdated.

Mrs CHIKAROVSKI: I seek leave to table the letter, dated 14 September 1994.

Leave granted.

Before I move my amendment I conclude by saying that it is entirely inaccurate - and I believe the honourable member for Blacktown has quoted selectively - to say that I approved in any way of the behaviour of the honourable member for Georges River. I am on the public record. I spoke to the press and I said that such behaviour was totally unacceptable. In the circumstances I said that it was particularly unacceptable in a ministerial office. Such behaviour would not be tolerated in my office. It is my view that the conduct of Ministers should be absolutely exemplary at all times. Ministers should exceed the requirements of law, particularly in relation to the area of sexual harassment of staff. I seek to amend the motion. I move:

> That the question be amended by deleting all words after the word "That", with a view to inserting instead, "this House condemns all acts of sexual harassment and sexual discrimination in the workplace and supports the rights of any oppressed staff to report incidents to the appropriate authorities".

I am appalled that Labor members, women members, have taken the opportunity to try to oppress women in this State by trying to undermine the work of the ministry, and by trying to attack the integrity of the director. The honourable member for Blacktown is probably aware - and if she is not, she should be - that members from her own side have taken the trouble to ring me to tell me that they are appalled by the behaviour of certain Labor women in attacking and harassing the director of the ministry.

Mr SPEAKER: Order! I call the honourable member for Blacktown to order for the third time. I call the honourable member for Port Jackson to order for the second time.

Mrs CHIKAROVSKI: I suggest you listen to the adjournment debate in the upper House in the next few days and you might understand who I am talking about. I acknowledge that there are some women of integrity in the Labor Party; they are not in the House at the moment. [*Time expired*.]

Mrs LO PO' (Penrith) [3.39]: It is with reluctance that I join in this debate. It was never my intention to censure a woman in this House. I am much more comfortable censuring men because they tend to fall into the traps. I never thought that I would be censuring a woman in this House. I am driven to participate in this debate because of the inaction of the Minister for Industrial Relations and Employment and Minister for the Status of Women. It should not be necessary for anybody to have a set of guidelines for ministerial behaviour. We have just seen someone who was an officer, but clearly not a gentleman, acting in the most inappropriate way. This Minister has done nothing. There are no guidelines.

The Minister for the Status of Women does not appear to have the clout that is necessary to implement any changes. When the Labor Party was in office the Minister with responsibility for the status of women was the Premier. The reason for that is that the Premier has the clout to implement anything, but this Minister does not have the clout to implement anything. When the Labor Party was in office it had a legislative program that has never been matched by the coalition Government. It has done nothing for women. The Premier's Department should be responsible for the status of women so that the Premier can pressure recalcitrant Ministers into compliance. This Minister cannot pressure anyone into anything.

The Minister for the Status of Women has said with great pride that no-one approached her. Why did they not approach the Minister? Why did they feel that this Minister, who is responsible for the status of women, is unapproachable and would not be on their side? She should hang her head in shame. The women who work for Ministers should see the Minister for the Status of Women as an ally and advocate for their issues. Instead, she has said with pride that she was not approached.

The Minister has naively talked about support in the workplace. That does not happen naturally. If the Minister had kept her ear to the ground, she would know that sexual harassment is part and parcel of many workplaces. The Minister has naively said that there should be support in the workplace - we also believe that, which is why we are raising this issue. But the Minister has to do something to orchestrate it. She is the Minister for the Status of Women. She has done nothing to orchestrate support for women in the workplace. Had she done so, we would not have the situation we have today.

The Minister is unapproachable; she is not involved in women's issues - otherwise these women would have approached her and asked her for help. The Minister has to redress what she is doing. She has no clout or effect. She should be putting things into effect to protect women in all offices. She has not done so. Women working in other offices do not see this Minister as a champion of their cause. They probably see the honourable member for Blacktown as more of a champion because at least she is doing something about this matter.

Labor does not own the women's movement, but it has done more for the women's movement than this Government has ever done - as honourable members will see if they refer to the legislative program of the previous Labor Government. Domestic violence was addressed and the Child Protection Council was established. This Minister did not invent that; the Labor Government did. The Minister needs to be more active and she needs to set down guidelines. She needs to protect women in the workplace. She has failed miserably.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [3.44]: Let us be clear about what this debate is about: it has nothing to do with any concern the Australian Labor Party might have about what happened to the staff in the office of the former Minister for Police. This is probably the most bitchy and catty debate I have seen in my nine years in this House. This debate is not about an issue; it is a personal attack on the Minister for Industrial Relations and Employment and Minister for the Status of Women, as

evidenced by the remarks made by the last two speakers from the Labor Party. Those comments do not come to the core of the issue about which the Parliament is concerned this week, and about which it should rightly be concerned.

I am very disappointed that an issue such as this has been politicised in such a nasty way. We should be working together, as women and as members of Parliament, to ensure that such situations do not occur in any office in the future. The honourable member for Blacktown made a personal and nasty attack on the Minister. Such remarks show the politics of this debate, not the substance. Yesterday the honourable member asked her first question in this House with respect to women's affairs. Yet she stands in this place and tries to tell us that she has a mortgage on women's affairs. The honourable member for Penrith tried twice to be elected - she was not endorsed by the Australian Labor Party the first time around. She should look in her own backyard with respect to how women are treated before she makes personal attacks on my colleague.

The truth is that the Labor Party hates how much the Minister for the Status of Women has achieved. It is jealous that this Government set up the Office of the Status of Women. This Government, under this Minister, has increased the staff of the Women's Co-ordination Unit from 14 or 15 to 51. The Minister gets out into the community like no other Minister responsible for the status of women ever did. It is interesting to refer to the track record of the Australian Labor Party. As I have said, the shadow minister has asked only one question relating to women. I was called a silly bitch by the Leader of the Opposition because, as Deputy-Speaker, I would not let him stray beyond the bounds of a debate. He said at a press conference, "I had all these great lines, but that silly bitch would not let me use them". He then said that it was off the record, that he really did not say it.

Page 4683

Mr Scully: I don't believe it.

Ms MACHIN: It is on the record.

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

Ms MACHIN: That is the attitude of the Leader of the Opposition to women. He was asked to apologise, but he refused. I am still waiting for that apology. I would be interested to hear from women opposite as to why he has not apologised. Do they think that is acceptable behaviour towards women? I refer to other examples of the attitude of the ALP to women. When I had a child the ALP candidate in Port Macquarie suggested that it was not my right to choose where I had my baby. I was personally attacked, as was my family. That is a terrific approach to women's affairs! Another issue that is extremely pertinent to this debate is the way the ALP reacted when these issues arose - issues of grave concern in regard to what happened in the former Minister's office. They were on the phone constantly, harassing the women involved. People from Bob Carr's staff were ringing up saying -

Mr Whelan: You condoned it.

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

Ms MACHIN: I did not condone people from Bob Carr's office ringing those women who were under enough stress from the outrageous behaviour they had been the recipients of.

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

Ms MACHIN: The staff of the Leader of the Opposition got on the phone and said, "Bob Carr would love to help you. Just tell us the story". How do honourable members think those women felt about that? I know how they felt. How many Labor members have spoken to those women in a genuine way?

ALP members just want to politicise this debate for their own ends. They believe it is a damaging issue. I think, frankly, they are doing a lot of damage to themselves. The real question relates to standards of behaviour in this place. Let us face it: there is an old saying about people who live in glass houses. They ought to be very careful.

The Minister alluded to a number of other concerns that members opposite may like to take on board. The real issue is this: is the Leader of the Opposition, Bob Carr, prepared to demonstrate standards of propriety similar to those of the Premier? The Premier found out about this situation on the Friday, and by the Monday the then Minister for Police was gone. The Premier acted over the weekend. Does the Leader of the Opposition stand by those standards in regard to the treatment of women? If so, we expect him to lift his game. I am very sorry about the tone this debate has taken. This issue relates to the rights of staff to ensure that they have a decent workplace; it is not about a thinly veiled excuse to attack the Minister for the Status of Women, just because she is achieving a lot for the women of New South Wales.

Ms MOORE (Bligh) [3.49]: I must say that I am feeling agitated today - and I probably will not be very coherent because I am terribly upset about what is in this report, the substance of which should concern the 11 female members out of the 99 members of this House.

Mr O'Doherty: What about the men? It concerns us too.

Ms MOORE: I am pleased to hear from the honourable member for Ku-ring-gai that this issue concerns the men too. This morning I opened the *Sydney Morning Herald* and saw a Moir cartoon which has a teacher sitting in the gallery of this House describing its members to her students. She is saying:

> . . . these are the leaders of our community . . . that one allegedly made bomb threats, that one allegedly sexually harassed staff . . . that one allegedly received but didn't pass on a cheque . . . the grey one is awaiting tax charges . . . so is that one . . . the one in brown is said to have . . .

What must the people of New South Wales think about this Parliament when they witness a spectacle such as honourable members have witnessed in the last 20 minutes? The spectacle we have seen this afternoon has been disgraceful. What is in this report is disgraceful. This report is all about the powerful versus the powerless. That is what I believe the Office for the Status of Women is about. There is no doubt - and no-one would disagree in any debate about the role of women in the workplace, in the home, on the street - that in 1994, in relation to the men in our society, women are disadvantaged; there is no argument. This is what we listened to when we were launching the "Reclaim the Night" march in front of Parliament House earlier today.

I do not believe that the Minister for Industrial Relations and Employment and Minister for the Status of Women has been active enough in her portfolio in helping those women who most need it. I was interested to hear her outline her policy. She mentioned travelling around New South Wales and talking to women lawyers, for example. I would like to say on the record that I think that this Minister's role is to help those women who need our support. That is why I came out in support of the women in the Government Cleaning Service, and this Minister did not. It is not the educated, middle-class, Anglo-Saxon women - like Minister Chikarovski and me, and the other women sitting in this place - who need our help and support; it is the women from non-English speaking backgrounds, it is the young women, it is the women who were in former Minister Griffiths' office, those young, female members of staff who were dependent upon him for their employment.

They are the ones who suffered, they are the ones who have had to move house, they are the ones who have suffered economically; not former Minister Griffiths, who is able to defend himself, probably at taxpayers' expense. My understanding is that $100,000 of taxpayers' money has gone towards his legal aid and probably went towards his brilliant speech yesterday. The honourable member for Gladesville said it was the best speech he had heard in

the House. I was humiliated when I listened to his speech, and I am humiliated when I read this report, on behalf of those women who have suffered as they have suffered. I think we should start introducing into this debate a bit of statespersonship. I will not support what has been proposed by the Opposition spokeswoman on women's affairs today, because I think she is trivialising the very important issues that are before of us. I will support what has been moved by the Minister for the Status of Women, but I do not support what she has done as Minister. I would like to think that the Minister's role could have been more pro-active. What did she do? The women did not approach her. She made some media statements. I did, too.

Mr Hazzard: How on earth was she supposed to know?

Ms MOORE: She had input into the Niland report; as I did and as did those other members of Parliament who received letters from Carmel Niland. She said that such behaviour is unacceptable and would not be tolerated in her office. It goes without saying that it would not be tolerated in the office of any person who has even a minuscule understanding of human rights and the dignity of the human being, and what women in this State suffer from. It is for male members of society to recognise that human dignity is what women are all about. It is about time that women were able to work safely in the workplace; to be in their homes safely without being abused by relatives; and able to walk the street without being violently assaulted. That is what this debate should be about. There has not been enough debate in this Parliament.

Mrs Chikarovski: That is right. That is why I support Reclaim the Night. That is why I put the money in.

Ms MOORE: Yes, you did. You have received those requests from the Reclaim the Night organisation.

Mrs Chikarovski: I am giving them money, Clover.

Ms MOORE: You are giving them money to help the march, but let us make sure that the requests that were made by us this morning are implemented by you and that you take a much more active role on behalf of those women. Do not nod your head and smile. I am not referring to the middle-class, Anglo-Saxon women who are lawyers, who are in Parliament and who are educated. They are not the ones who need your help and support; it is women such as the ones working in Terry Griffiths' office who need your help and your support, in a very pro-active way, not in a reactive way.

Mr O'DOHERTY (Ku-ring-gai) [3.54]: As a man in this place, I cannot disagree with what the honourable member for Bligh has just said. It is important for me to be able to place on record - as a male member of this Chamber - that other male members in this Chamber also agree that it is on behalf of the women who are powerless, who do not have access to the same levels of action in our society as articulate, middle-class males like myself have, that we must have our strongest action in this place and elsewhere. We must stand up on behalf of those women and, as a man, I particularly want to -

Mr SPEAKER: Order! I apologise to the House for making the error of giving the call to the honourable member for Ku-ring-gai. I was looking at the provisions for debate. I regret that I have to ask the honourable member to resume his seat.

Mr Whelan: On a point of order: for the benefit of the Minister for Industrial Relations and Employment and Minister for the Status of Women, I seek leave to move suspension of standing orders to enable the honourable member for Ku-ring-gai to complete his remarks and the honourable member for Port Jackson to speak for five minutes and conclude the debate.

Leave not granted.

Ms ALLAN (Blacktown) [3.56], in reply: I would like to return to the motion before the Chair, following the last contribution and part contribution. I am disappointed that the Minister for Consumer Affairs did not see fit to grant either her colleague the honourable member for Ku-ring-gai or my colleague the honourable member for Port Jackson an opportunity to conclude the debate with their measly five-minute contributions. In contrast to what the honourable member for Bligh said, I would like to re-emphasise that the motion condemns the Minister for Industrial Relations and Employment and Minister for the Status of Women for failing to protect the interests of working women, particularly women working as ministerial staff. The honourable member for Bligh ranged over a number of issues of concern to many women in our community, but she strayed from what is the essential theme of this debate, that is, the Niland inquiry and its outcome, and the circumstances around which that inquiry developed.

I want to emphasise that the Opposition was not particularly interested in scoring political points in this debate, but it was interested in reminding the Government and this Minister in particular that, as the Minister responsible for the status of women; she had a duty to ensure that women working on ministerial staffs did not get themselves into the situation that this quite lengthy report - this report that so alarmed the honourable member for Bligh - documents. Yesterday, when the Minister for Industrial Relations and Employment and Minister for the Status of Women responded to a question I asked about her reaction to the Niland recommendations, and her action, she said:

> I have made it perfectly clear that it is appropriate for authorities within my control to be part of the process of developing those recommendations . . .

That is, to avoid a similar issue happening in the future. The Minister continued:

Page 4685

> If it is appropriate for other agencies within my control to prepare and assist the development of guidelines, they will be absolutely entitled to do so. I will do so at the request of the Premier . . .

That statement shows an appalling lack of initiative by this Minister. As has already been outlined in debate by the honourable member for Penrith and by me, and also by the honourable member for Bligh, this Minister has shown a lack of initiative in other areas. But in the particular area of the care of people who work on ministerial staffs it is appalling that, despite the fact that, for more than 12 months, there were suggestions of problems with mismanagement of the staff of the former Minister for Police, this Minister - who was running around the State apparently talking about the needs of women in our community - failed to perform her duty of care in relation to these particular women.

The Minister has been joined in this debate by her honourable colleague the Minister for Consumer Affairs, who as a Minister has also been part of a Cabinet that has shown negligence in this regard, and who has come into this Chamber this afternoon completely unapologetic and taken no responsibility whatsoever for the Government's lack of action. In fact, she has attempted to defend the Minister for Industrial Relations and Employment and Minister for the Status of Women. Of course, last week in the debate about the honourable member for Georges River, other Ministers, such as the Minister for the Environment, even alleged that the women that Carmel Niland interviewed and documented her concerns about are not victims. One Minister has failed in her duty of care. Another has defended the actions of the lacklustre Minister for the Status of Women. Others have shown how little they care. Obviously, I suppose, true leadership of a particular team comes from the Premier.

Mrs Chikarovski: That is right.

Ms ALLAN: That is right. The Minister for the Status of Women continues to maintain that she cannot take the initiative without the Premier's endorsement. What is she here for, as a woman in the

Parliament, if she cannot look after the needs of her sisters who are employed by her colleagues, who, according to Carmel Niland, are abusing their opportunities? The Minister's colleagues are languishing in the Chamber, hoping for ministerial portfolios - perhaps under her leadership as the Leader of the Opposition or Deputy Leader of the Opposition after next March. That is why the honourable member for Davidson is here.

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

Ms ALLAN: The Minister has failed in her duty of care to those women. [*Time expired*.]

[*Interruption*]

Mr SPEAKER: Order! The honourable member for Blacktown will resume her seat.

Amendment agreed to.

Motion as amended agreed to.

DEFAMATION LAW REFORM

Matter of Public Importance

Mr HATTON (South Coast) [4.02]: I move:

That this House notes, as a matter of public importance, the High Court's judgment on defamation law and the cost to individuals and the court system of restrictive defamation law in New South Wales, and its gross interference with free speech.

I welcome the High Court decision on defamation law announced last week. The decision highlights the failure thus far of the Government to reform defamation laws, despite agreeing to do so in the charter of reform signed by the non-aligned Independents. The failure by politicians over many years to reform defamation law has left a gap, which to some degree has now been filled by the High Court. If political inaction continues, the courts will continue to fill the vacuum. That is not good law-making. Some would argue that the High Court, an undemocratically appointed body, has made a political decision. I welcome the decision, but not the process. Initial reaction is that the High Court decision does not amount to a public-figure test, but provides a further defence, that is, political discussion. It is no lay-down misère, however, because a special type of case is required to test where the High Court decision fits in.

The legislatures of Australia have brought this upon themselves by their own activity. Defamation is a $12 million a year industry for lawyers in New South Wales. It is too expensive for the vast majority of citizens; it is riddled with injustice; and it is not a test of truth, as I shall show, but a tactical battle by lawyers as to how best to use the complex law. The Carson and Fairfax case is illustrative in that regard. In that case the plain truth was not tested, even though it took 14 days of Supreme Court time, two days of Court of Appeal time and at least one day of High Court time - all at vast cost not only to the litigants but to the public purse. The pivot of the case was the complaint by a solicitor, Nicholas Carson, of Blake Dawson Waldron about reports in the *Sydney Morning Herald* in April 1987 and May 1988 of his conduct of the litigation in the long-running case of Tectran and Raybos. Mr Carson claimed he was defamed. What really happened was that he wanted to stop reports of his conduct of the Tectran and Raybos litigation seeing the light of day. One of those reports said that in that litigation he had, first, attempted to intimidate a witness in proceedings in the Commercial Division of the Supreme Court by threatening to sue a witness - a psychiatrist, Dr William Metcalf - for defamation; and, second, that he had driven the opponent's solicitor, Mr Arthur Carney, out of the case by threatening to sue him for defamation also.

It was alleged that the *Sydney Morning Herald*, in the second article in May 1988, had imputed that

Carson was involved in an illegal conspiracy with Moshe Yerushalmy to obstruct the course of justice by evading service of criminal process and, therefore, was party to a criminal conspiracy. The jury accepted that the article contained the imputation, although it

was not directly stated. Mr Carson ended up with a settlement less than the $1.3 million awarded by the jury, but a very large sum indeed. I am reliably informed that it was in the vicinity of $800,000. What has passed unnoticed in this process is the actual conduct of Mr Carson. This conduct was never examined in the defamation proceedings - neither in the original five-day hearing in June 1989 nor in the nine-day rehearing on damages, which concluded on 29 April 1994. This is the great problem with the defamation law as it is now.

Documents show that on 7 April 1987 Mr Carson informed Dr Metcalf that he would be required to be in court the next day to be cross-examined on his report. The next day Mr Carson had Dr Metcalf informed that he would not be required in court. But Mr Carson not only changed his mind; the same day he also prepared a draft letter threatening Dr Metcalf with a defamation action. In other words, Mr Carson crossed the crucial boundary between the tough but acceptable course of cross-examining Dr Metcalf in court on his report and the improper and reprehensible course of threatening to interfere with a witness. The threatening letter drafted by Mr Carson was prepared, typed and sent to Dr Metcalf by Murphy and Moloney, the solicitors representing Mr Carson and his partners at Blake Dawson Waldron. The threat in the letter was this: withdraw allegations against Blake Dawson Waldron and apologise within two days or be sued without further notice.

Mr Carson was the driving force for pursuing the course of action against advice. On 20 April 1987 Mr Carson conferred with a defamation barrister, Mr Henric Nicholas QC. I quote from notes taken at the meeting: "Chances of establishing a prima facie case against Metcalf are very slim", "D. Waldron must expect criticism that its action has been taken to stifle a witness", and "Dawson Waldron gives Metcalf a fright but what else". At the same meeting consideration was given to having Blake Dawson Waldron require an "undertaking from Metcalf not to publish further material to the court without our approval". A powerful legal firm, or one of its partners, thought it could decide what a witness should say in court. This is not only arrogance; it is contempt of court. The defamation law allowed this to happen.

Mr Carson pressed on and caused another threatening letter to be written to Dr Metcalf's solicitors on 29 April 1987. The letter was sent on 1 May 1987. In the end the defamation action did not proceed. However, it caused Dr Metcalf great alarm. It was aimed at preventing Dr Metcalf from telling the court about the affect of Mr Carson's conduct on Dr Rajski's health. The intimidation was serious professional misconduct. Mr Carson was not punished, as he should have been. Instead, he was awarded damages from the newspaper that later exposed the truth about it. So truth is not what the defamation law in this State is all about. Even more damaging is the fact that documents show that in the same litigation the solicitor Nicholas Carson negotiated with the Legal Aid Commission in an attempt to take away legal aid from Dr Rajski. This legal aid was to pay Rajski's solicitor, Carney. Documents also show that the Arunta group, which was a client of Carson, was advised by Carson to sue Rajski. In other words, but for Carson's direct involvement, the firm Blake Dawson Waldron was unlikely to have been in the least interested.

Mr Carson thought that it was his right to try to deprive Dr Rajski of legal aid. The Court of Appeal, however, did not approve. In a judgment on 7 December 1988 Mr Justice Kirby and Mr Justice Hope said it was open for a jury to find that Mr Carson and his partners had acted improperly in writing to the Legal Aid Commission to secure an early victory for their clients, and "to coerce the appellant [who was Dr Rajski] into surrender by the actuality or threat of the loss of his legal aid". Mr Carson had advised his clients on 24 February 1986 that "without legal aid, Rajski will flounder. We will begin to get judgments in our favour". At that stage the Legal Aid Commission had refused to terminate the legal aid. So Mr Carson, on behalf of his clients, took action in the Supreme Court against the Legal Aid Commission.

To cut a long story short, Mr Carson's tactic worked, because at the same time Mr Carson kept

threatening Carneys. The Legal Aid Commission did withdraw Dr Rajski's legal aid. It did so only after Mr Carson had succeeded in driving Carneys out of the case. First, Mr Carson took defamation proceedings against Carneys on behalf of his clients. Later, he embellished the defamation action with a wild allegation that because of a letter Carneys had written to the Stock Exchange Mr Carson's clients, Scitec Corporation Proprietary Limited, were losing about $25,000 a week. This was pure intimidation. It was a $25,000-a-week frightener, clearly stated in a letter drafted by Mr Carson on 11 March 1986, but it had no basis and was never substantiated. In fact, when he was challenged about it, Mr Carson brazenly tried to pretend he had never made such a claim.

On 29 March 1986 he made another claim against Carneys for costs. This time the threat to sue Carneys was not only made by Mr Carson on behalf of his clients, but also on behalf of himself and his partners. Once Carneys withdrew their services from Dr Rajski as a result of these various threats made by Mr Carson, no matters were followed up. That is particularly significant. Mr Carson was able to use the defamation laws and other threats to knock Carneys out of the Tectran and Raybos case and so procure the termination of legal aid to Dr Rajski and his company and, in turn, coerce them to abandon their rights in that case. This was an attempt to pervert the course of justice and the action was in contempt of court.

The hallmarks of this case show that the court process can be used by powerful legal firms to provide unfair advantage to their clients, and that Carson himself was involved, yet at the same time successfully claimed damages as if he was in no way responsible. The document shows that Mr Carson

took unusual steps, unsuccessfully as it turned out, to have a perjury prosecution against one of his clients halted by seeking that the matter be no-billed even before a summons had been served. He did this knowing that his clients had admitted to the police that he had lied on oath and that the judge in whose court the offence had been committed had given leave to prosecute for perjury. Something needs to be done about defamation law and the $1.3 million award for damages in the Carson and Fairfax case when the evidence shows that Carson acted deviously, if not dishonestly.

Mr KERR (Cronulla) [4.12]: The House should be reminded of the wording of this matter of public importance: That this House notes the High Court's judgment on defamation law and the cost to individuals and the Court system of restrictive defamation law in New South Wales, and its gross interference with free speech. The honourable member for South Coast spoke at great length about one particular case. The motion refers to the recent High Court decision, and the House should be reminded of the judgment in that particular case. Basically, it would be fair to say that the judgment dealt with qualified privilege in relation to defamation.

The High Court held, in answer to certain questions reserved in the case, that in the Commonwealth Constitution there is implied a freedom to publish material, first, relating to government and political matters and, second, concerning the performance of Commonwealth members of Parliament and their suitability for office. Given that implied freedom, a publication will not be actionable under defamation law if the defendant establishes that it was unaware of the falsity of the material; that it did not publish the material recklessly, not caring whether it was true or not; and that the publication was reasonable in the circumstances. It would then attract qualified privilege and a certain freedom, and could be described as "a publication on an occasion of qualified privilege, regardless of whether or not there was a Federal election imminent". I await with interest to hear the views of Opposition members, because the plaintiff in that matter originally was a member of the Labor Party.

Mr Hazzard: Was he in the Left or the Right?

Mr KERR: He was a member of the Left, but I am afraid he has been left right out by the High Court. A member of the Labor Party sought to avail himself of what has been described in this motion as the restrictive defamation law. In fact, the High Court removed one of the restrictions. The honourable member for South Coast has welcomed aspects of the judgment of the High Court, but I am interested to

learn the view of Opposition members about the actions of their Labor Party colleague in this matter. I shall refer now to what the honourable member for South Coast said about truth in defamation. According to the comments of the honourable member for South Coast, it would not be appropriate for truth to be an absolute defence in an action for defamation. Honourable members would no doubt be aware of specific instances that show the inappropriateness of an absolute test. Imagine, for example, that the honourable member for Ashfield was called to give evidence in a case involving child pornography.

Mr Whelan: Leave me out of it.

Mr KERR: The honourable member wants to be left out of it but I am putting a hypothetical example. For the purposes of this example, the honourable member for Ashfield had no involvement in any criminal activity. However, I ask honourable members to assume that he came across certain information that would be of assistance to the prosecution and he was called as a witness. Picture the following newspaper banner headline, "Whelan in Court - Child Pornography Case". That banner would be literally true. However, it would be ridiculous if the reputation of the honourable member for Ashfield were sullied without any remedy being available to him merely because that banner was literally true.

Mr Whelan: You are incorrect.

Mr KERR: The honourable member says I am incorrect. I am interested to hear what he has to say about this matter. If literal truth is considered a defence, considerable injustice could be occasioned. I shall now deal with the history of defamation law reform in this State, an issue to which many members of Parliament, including the honourable member for South Coast, have devoted considerable effort in recent years. It might be useful for me to provide a brief chronology of defamation law reform over the past couple of years. In June 1990 the Attorneys General of New South Wales, Queensland and Victoria met to work towards identifying legal issues which needed to be addressed in defamation law reform. They did so by identifying key substantive issues where agreement might be reached, namely, in relation to the defences of justification, qualified privilege, correction orders and forum shopping.

The unstated impetus for the exercise was the desire of three Attorneys to settle a legislative scheme which would bring Victoria closer to the legislative scheme operating in New South Wales and the code in Queensland. Victoria's continued adherence to the common law, which in a number of recent reviews had been found wanting in many respects, had highlighted the lack of consistency between the States following the New South Wale Defamation Act 1974. The colleague of the honourable member for Ashfield availed himself of the Victorian law. A joint discussion paper was released by the three Attorneys General on 26 August 1990. The paper elicited a wide-ranging response. Submissions were received from media interests, bodies representing sections of the legal profession, various organisations including the Australian Press Council and the Free Speech Committee, individuals within the legal profession practising in the area, academics, several government sources and individuals interested in the subject.

A second discussion paper was released on 15 January 1991. It also received a wide-ranging response, and submissions received on the various proposals were taken into account in formulating draft legislation. The Defamation Bill of 1991 was introduced into the New South Wales Parliament on 14 November 1991. On the same day bills in substantially similar terms were introduced in Queensland and Victoria. The Australian Capital Territory Government introduced a bill in like terms a few days later. Following its introduction, the bill was referred by the former Attorney General to a legislation committee comprising members from both sides of the Parliament and the crossbenches to enable a public evaluation of its provisions. There was unanimity in the committee on that bill. The bill that had been introduced into this House was deeply flawed. In May 1992, after the bill had been reintroduced and re-referred, that committee issued a discussion paper canvassing the principal issues raised in

submissions made to it, and its final report was tabled in the Legislative Assembly on 14 October 1992.

Mr Hazzard: It was an excellent report.

Mr KERR: As the honourable member for Wakehurst says, it was an excellent report. Subsequently, the committee delivered its final report, the recommendations of which were unanimous. That report has been forwarded on to the Law Reform Commission, whose expertise is available. We have heard much about privacy and matters concerning individuals. If truth were a pure defence, then the process of what is loosely termed "outing" with regard to people's sexual proclivities and private lives would be protected. Would that be in the interests of the general community? Members on this side of the House answer in the negative. People have certain rights under this Government. [*Time expired*.]

Mr WHELAN (Ashfield) [4.22]: There is no doubt that the recent decision in *Theophanous v The Herald and Weekly Times Limited* is of great significance. I would like to discuss briefly the principles which emerge from the majority judgment before considering the implications which flow from those principles. I listened to what was said by the honourable member for South Coast and therefore know the gravity of the matter that he has raised in this place. Indeed, it is a matter that warrants further examination and investigation. To understand the context of the decision in this case we must refer to two other High Court decisions.

In the political advertising case, the High Court found an implied freedom of political communication in the structure and terms of the Australian Constitution. Essentially, this means that all Australians have a constitutional right of free speech when it comes to discussion of political matters. This right is not an absolute one. It is not a personal right in the American Bill of Rights sense. It can, however, override government legislation, as it did in the political advertising case. In the Theophanous matter, the court fleshed out other aspects of the implied guarantee. I would like to briefly summarise what the judgment might mean in practice.

In short, the decision means that a new defence may be available in defamation actions. However, the limits of the decision should be kept fairly in mind. The defence relates specifically to discussion of government and political matters of and concerning members of Parliament. The defence may protect statements about such persons if they relate to either performance of their duties or, alternatively, their suitability for office. There are further limits. These concern the reasonableness of any publication and whether the publication was reckless. The matters published do not need to be proved to be true. If in fact the matters published are shown to be false, the publisher need only establish that she or he was unaware of the falsity of the material.

From this brief summary it can be seen that the judgment has certainly broadened the range of defences available to a defamation action. There has been in the media a great deal of discussion about this judgment. The decision has been described as a landmark in this area of the law. There is no doubt that freedom of speech is an integral part of the democratic process in this nation. I remind honourable members that the decision of the court was split: Justices Brennan, McHugh and Dawson were in the minority, and of those in the majority Chief Justice Sir Anthony Mason has indicated that he intends to resign in March 1995. If a like case comes before the court, there might be a similar delicate balance against the decision of the High Court.

However, it also must be said that a delicate balance must be achieved in these matters. I believe that this judgment provides the impetus for defamation law reform. The decision demonstrates the need for uniform defamation laws. It is ironic that after this case we now have one uniform defence to a defamation action. This is contrary to the situation relating to most other matters pertaining to this area of the law. It is hoped that this decision can be used as a springboard of cooperation between the States on this matter.

As honourable members may recall, almost a year ago I raised in this Parliament the issue of a child

molester. Subsequently I was served with a writ of defamation by the person concerned. This was a deliberate attempt to curtail my freedom of speech and my duty as a parliamentarian. It also enabled that person to hide from the threat of legal action. It should therefore be apparent that I am acutely aware of the difficulties inherent in the current law. Consequently, I would support any steps to rationalise and simplify the law of defamation. I thank the honourable member for South Coast for raising this matter in the House.

Mr HATTON (South Coast) [4.26], in reply: I thank all honourable members for their contributions to the debate. The honourable member for Cronulla missed the point. I emphasised one particular case, that is true. However, I did so to show that in that case there was a large legal firm and senior counsel against an ordinary citizen, Lezjek Rajski, who has been desperately trying to get justice before the court

for many years. He has been persecuted by a system that allows persecution to the extent that moves were made by his powerful enemies to deny him legal aid. In that case a medical witness was intimidated by threats of defamation to prevent that witness from giving professional evidence before the court. So there was also interference in the court process.

The honourable member for Cronulla said that the High Court was considering government and political matters and said also that there was an implied freedom under the Constitution to do so. The honourable member referred to the defence that the author of the statement complained of was unaware of the falsity of that statement and did not publish the material recklessly, or that the material was not unreasonable in the circumstances. The honourable member missed the point. If the parliaments of Australia had acted to introduce defamation law reforms that Opposition parties all over Australia have been promising for many years, the High Court would not have had to intervene. The High Court should not be a law-maker. This Parliament is the law-maker. All over Australia there has been a push for defamation law reform.

There have been many excuses used by people in power - politicians and others - not to introduce defamation law reform and to simplify that law. In Sweden defamation is not an issue because low defamation awards ensure there is true freedom of speech. However, there is protection for the reputation of the person. Compare the damages awarded in the Ettingshausen case, which related to a blurred photograph of exposed genitals and which attracted an award of $300,000, to the award of about $180,000 to the relatives of a person killed in a motor vehicle accident. In another case as a result of a person, whose job it was to sample the wares of restaurants as a critic, criticising a restaurant after consuming a lobster meal, damages in the sum of $100,000 were awarded to the restaurant - and its business increased. There is no cap on damages. There is no relativity in damages between these sorts of civil damages and cases involving compensation and loss of life. There is no onus on the prosecution to prove economic loss. There is no reference to negligence as a basis for defamation law.

There is a defence of privilege, a defence of due care and the question of aggravated damages. The defamation law has become so complex that the ordinary citizen is up for tens of thousands of dollars just for the lawyers to clear the ground on which they are going to fight. That is why many defamation cases are settled out of court: because the process by interrogatories is so painful and expensive. If we wait for national uniformity, those who are powerful in the system - lawyers, powerful law firms and the rich - will have their way. The defamation law reform proposition we are putting to the Government is that if the court determines that the material is capable of carrying the imputations claimed by the plaintiff, the court answers in the affirmative; there is a role for the jury to decide whether the imputation arises from the material and, if it does, whether it is defamatory.

The court then hears and rules on any defences, which could be quite complex. That is a job for a judge. The court then assesses the quantum of damages, taking into account the quantum of damages awarded in personal injury cases. That is the defamation law reform proposition that we are putting to the Government. The honourable member for Cronulla mentioned the Law Reform Commission. It will not report until next March, there will be an election, and there will be no defamation law reform in New

South Wales. That is the tradition around Australia. The Independents have a charter of reform which compels defamation law reform and I invite the Government to take action on it. [*Time expired*.]

Motion agreed to.

ROYAL COMMISSION (POLICE SERVICE) BILL

Third Reading

Mr HARTCHER (Gosford - Minister for the Environment) [4.32]: I move:

That this bill be now read a third time.

Amendment by Mr Kerr agreed to:

That the question be amended by leaving out all words after "That" with a view to inserting instead the words "the bill be recommitted for reconsideration of the whole bill".

Amendment as amended agreed to.

In Committee (Recommittal)

Recommitted clause 38

Mr HATTON (South Coast) [4.33]: I move:

Page 18, clause 38, line 13. Omit "must" and insert "may".

In giving full support to the Police Royal Commission it is important that we recognise the overriding public duty that the commissioner has in looking at the structural problems which have caused corruption to flourish in some sectors of the New South Wales police force. One of the problems that members on both sides of the House are wrestling with is: to what extent should a royal commission interfere with the rights of people who have cases before the courts? This has been a subject of discussion between me, the other Independents, Mr Crooke QC, who came to the royal commission from the Fitzgerald inquiry, and Mr Justice James Wood. Clause 38 states:

(2) If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commissioner must, to the extent to which the Commissioner thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:

(a) ensure that, as far as practicable, any hearing or other matters relating to the inquiry are conducted in private during the currency of the proceedings; and

(b) give directions under section 27 (Publication of evidence etc.), having effect during the currency of the proceedings.

(3) Subsection (2) does not apply:

(a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings; and

(b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.

The job of the royal commission is to get to the bottom of corruption. It will on occasion run into problems because in the continuity of its inquiries it will look at matters which are going to impinge on the rights of other people who may be before the court, even on criminal matters. To what extent then should the royal commission proceed with its business uninterrupted when at the same time this may prejudice the rights of the accused before the court? That is the difficulty we face. The royal commissioner has the problem that when hearing an application for him not to proceed because proceedings are afoot in another place he may not have all of the matters before him in context as to whether what he is doing will prejudice the trial; whereas when the trial comes on further down the track, whether it is six months, a year or 18 months, the judge concerned will have all the evidence before him or her and will be able to decide whether the action has prejudiced the case and whether there should be a stay of proceedings.

I feel that is inadequate; nevertheless, the higher public duty must take precedence. However, I am further assured that if the clause is amended by substituting "may" for "must", this particular commissioner, in whom I have the highest confidence, will act responsibly and not impinge on a fair trial unnecessarily. This provision could have resulted from the experience in the Fitzgerald inquiry, which was considerably frustrated and delayed by actions before the court. Corruption involves a person who is being corrupted and a person who is seeking to corrupt. If in this instance a criminal or a cleanskin were seeking to corrupt a police officer, action could be taken by either person in order to frustrate the royal commission. That has been experienced in other States and has caused problems with royal commissions in the past. I acknowledge that considerations regarding the right to a fair trial and civil liberties issues are involved, but my faith in this royal commissioner is such that I believe action will not be taken by him such as to seriously prejudice a fair trial. Nevertheless, he must have the freedom to move to pursue the higher public duty.

Mr WHELAN (Ashfield) [4.41]: The Opposition agrees with the amendment. Our support for it is motivated by the fact that it was the royal commissioner who sought the extended powers from the Government. In the debate last night the Opposition indicated that powers relating to warrant and arrest, and to attendance before the commission and the authorities were inherent in the Independent Commission Against Corruption legislation. There have been a few safeguards. Last night, as a result of a request from the royal commissioner, the Parliament acknowledged that clause 38(2)(c) should be omitted from the second print of the bill. By removing that amendment the Government met its commitment to the commissioner. The concerns of the royal commissioner in relation to the clause that is the subject of the amendment moved by the honourable member for South Coast are understandable. Those concerns are about the desirability of the royal commission's proceedings being heard in public so as to reinforce confidence in the royal commission; to encourage potential witnesses to come forward; and to demonstrate to corrupt police officers who are waiting to be called the futility of giving false evidence. All of this comes under the heading of public ownership of the royal commission. The royal commission will become very much part of the New South Wales public support system. The Royal Commissions Act expressly says that a by-product of the holding of open hearings will be increased public support that will generate a lot more information and evidence for the commission.

Those who are familiar with the early workings of the Independent Commission Against Corruption know that because the hearings of the commission were open to the public a great deal of information was generated that ultimately flowed through to the commission. For the Australian Labor Party it was important to avoid as far as practicable being tied up in litigation challenging decisions made under subclause (2). There is a contradiction in terms about the civil rights of those who may be charged, the right of the Crown and delays that may occur. Having considered the matter, it is our view that 18 months down the track of a criminal trial a judge is in a better position to adjudge whether there has been fairness and equality in a particular criminal matter. For those reasons alone the Opposition supports the

amendment.

The important issue of fairness in a trial, such as the guilt or innocence of a person involved in a royal commission, should be left to the criminal court to decide. No trial will take place if the court is of the opinion that it cannot be a fair trial. The Fitzgerald inquiry revealed that fair trials could still be held after a royal commission. The publicity of the circumstances surrounding alleged criminal conduct is quite often intense. One example is a prominent criminal prosecution in relation to the death of young hikers and backpackers in New South Wales. For those reasons the Opposition supports the amendment. I understand from conversations with Government members that the amendment has been sought by the royal commissioner. If that is so, the commissioner should be empowered to give effect to the royal commission's unfettered discretion that the Parliament gave when it passed the resolution appointing the royal commission.

Mr HARTCHER (Gosford - Minister for the Environment) [4.46]: The Government does not agree to the amendment moved by the honourable member for South Coast. The Government pays the greatest heed to the proposals of the royal commissioner and has embodied them overwhelmingly in this legislation.
Page 4691
Nonetheless, there are occasions when the Government feels that other matters of public interest need to be considered. These are of greater importance than the requests of the royal commissioner. The royal commissioner has been advised that his proposed amendment to proposed section 38 could not be supported. The reasons given by the Government were conveyed in a letter to Commissioner Wood. Essentially, they relate to the paramount concern which the Government has, and the whole community must have, to ensure that individuals receive a fair trial.

The right of an accused person to a fair trial is, and always will be, paramount in the legal system. The Government believes that clause 38 already gives the royal commissioner considerable discretion as to whether to hold his inquiries in public, as set out in the text of clause 38. It is further understood by the Government that, despite the Fitzgerald inquiry not being subject to equivalent safeguards and despite that inquiry hearing evidence concerning criminal activities which were also the subject of concurrent court proceedings, in no case did the court hold that this prevented a fair trial. The Government considers that if a decision by the commissioner to proceed with a public inquiry were to be subject to challenge before the courts, there would appear to be nothing to prevent the commission from continuing with its investigations in private. The commission's work would not be interrupted. Where the rights of the accused person to a fair trial were considered to be jeopardised, the commission would be able to continue in private.

In these circumstances the Government does not believe that a sufficient case has been made out to justify stripping clause 38 of its safeguards - safeguards that are fundamental to our legal system, to protect the rights of the individual. It would not appear unreasonable to require the royal commissioner to have ongoing regard to the maintenance of a balance between the rights of individuals to a fair trial and the public's interest in an open inquiry. While the Government has the greatest confidence in Commissioner Wood - after all the Government appointed him to this important commission - it believes the principle that must be unswervingly upheld is that the rights of an individual to a fair trial must always be protected. Accordingly, the Government does not accept the honourable member's proposed amendment.

Mr HATTON (South Coast) [4.50]: I understand the real and proper concern of the Government, and the Government knows that. There is a measure of trust here. There is a saying in this place that it is not a matter of trusting a person in office; it is a matter of having it written down on paper. I have often espoused that view myself. If a problem arises, the Government can take action to amend the Act. The royal commissioner should be given the freedom to get on with the job.

Mr WHELAN (Ashfield) [4.51]: I listened with a great deal of interest to what the Minister for the

Environment said. I want to convince the Minister that he and I were probably of the same view, but we came to different conclusions. I came to my conclusion because the request came from the royal commissioner. That request was derived not only from the royal commissioner's experience as a former judge of the Supreme Court of New South Wales, but also from the many officers who worked with him and who have been actively involved in commissions of inquiry and royal commissions. One of the failings of previous royal commissions was the fact that people with unlimited resources - the real criminals in the system; who have great assets, lawyers and accountants - were able to, at times, frustrate the will of royal commissions.

There has been an abuse of the process in the past. This clause will ensure that that does not continue. The amendment states that no trial will take place in a court if it is of the view that the trial cannot be fair. Any person who is the subject of a criminal trial can go to the court and say that there is bias, there is prejudice and that evidence given in the public arena is prejudicial to the trial. The decision as to whether it will be conducted in private should not be made by the commissioner when he is considering the matter at that stage - the decision should be made at the time the judge who is hearing the matter considers it. That may be 12 months or later down the track. The balance tipped in favour of supporting the amendment for two reasons: a court will determine whether a trial should take place on a criminal matter; and we have to weigh up seriously the professional view of those who have been involved in royal commissions and believe that this is a flaw in the law, exploited by those who do not deserve the support of this State's law. I support the amendment moved by the honourable member for South Coast.

Amendment agreed to.

Mr HATTON (South Coast) [4.53]: I move:

Page 18, clause 38, line 16. Omit "ensure that, as far as practicable,", insert instead "order".

As the previous amendment was accepted, the clause will now read, "If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commissioner may, to the extent to which the Commissioner thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced: (a) order any hearing or other matters relating to the inquiry are conducted in private during the currency of the proceedings". The word "order" will replace the words "ensure that, as far as practicable". It is important, as is recognised by all parties, that royal commissions be heard in public. It gives the royal commission impetus and effectiveness; it encourages witnesses to come forward; it instils and maintains public confidence; it informs the public. Media access is important, as was the case with the Fitzgerald inquiry.

There may be occasions when it is absolutely necessary for evidence to be heard in private. If people are to follow what the royal commission is doing, it must proceed logically, step by step. Sometimes there might be a complex trail of

corruption in an arm of the inquiry. If part of the picture is public and the other part is private, the public, especially the media, will not be able to follow the sequence. That is another sound reason why, as far as humanly possible, royal commissions must hear evidence in public. However, there will be occasions when the royal commissioner can order that any hearings or matters relating to the inquiry are conducted in private during the currency of the proceedings, to ensure a fair trial. I believe that that is a fair balance.

Amendment agreed to.

Recommitted clause as amended agreed to.

Bill reported from Committee secundo with further amendment, and report adopted.

NATIONAL CRIME AUTHORITY (STATE PROVISIONS) AMENDMENT BILL

Second Reading

Mr WEST (Orange - Minister for Police, and Minister for Emergency Services [4.58]: I move:

That this bill be now read a second time.

The National Crime Authority provides a national response to the investigation of complex areas of organised crime. It was established as a joint Commonwealth-State initiative in 1984, largely as an alternative to the burgeoning number of royal commission-style inquiries which were investigating a range of subjects, most of which were linked in some way to organised crime and criminal syndicates. The NCA operates on a national level with the cooperation of all governments. Its activities are regulated by a series of uniform acts at Commonwealth and State level. Since the NCA legislation was first introduced a number of amendments have been made at the Federal level. Some of these amendments were minor in nature and others were more significant. However, no corresponding amendments have been made to the New South Wales legislation. As a result, the Commonwealth and State Acts no longer coincide in all respects. The purpose of this bill is to restore parity.

The first amendment in the bill relates to section 5. This is the section that allows New South Wales to refer matters to the NCA for investigation. At present the section requires that referrals are in writing and set out certain information. The amendment will broaden the section so as to allow a reference to include information about whether a matter being referred is related to another reference already held by the NCA. The second amendment in the bill relates to section 6(1) of the Act. This section prescribes who the National Crime Authority may pass evidence to. At present evidence can only be given to the Attorney-General of the Commonwealth, the Attorney General of a particular State, or to a law enforcement agency. This section was drafted when the Attorney-General was the central prosecuting authority. As all honourable members will be aware, that situation no longer exists and the relevant prosecuting authorities for both the Commonwealth and the State are their respective departments of public prosecutions. As there is some argument about whether the Office of the Director of Public Prosecutions is a law enforcement agency, it is proposed to include a specific reference to the Director of Public Prosecutions in section 6. This will ensure that the NCA has the authority to pass on relevant information to the primary prosecuting agency of this State.

The next amendment concerns disclosure of information which may prejudice or compromise an investigation or jeopardise the safety of those involved. When a member of the NCA serves a summons upon a witness to give evidence, or issues a notice requiring the production of documents, it may exercise a discretion to include a notation within the summons or notice prohibiting the disclosure of certain information. The proposed amendment will make it an offence, carrying a penalty of $1,000 or imprisonment for six months, to disclose information which contravenes such a notice. While the amendment will make it an offence for the recipient to breach the prohibition, there will be specific circumstances in which disclosure will be permitted. These circumstances include where the notice has been served on an officer of a company and that officer subsequently discloses the information to another officer within the company to ensure compliance, or to a legal practitioner in order to obtain advice. The recipient of the summons or notice will be made aware of these circumstances.

Another area in which the Commonwealth and State Acts no longer coincide is in relation to the power for a Supreme Court judge to issue a warrant of apprehension for a person who fails to answer a summons. At present, a Supreme Court judge may issue a warrant of apprehension under section 20 if a person has absconded or evaded service of a summons. However, there is currently no power to issue a warrant for a person who simply fails to turn up or refuses to do so. The only options for dealing with such witnesses are gaoling or fining. Obviously neither of these options assists the NCA in obtaining

the evidence of the witness and, accordingly, the authority is impeded in its attempts to obtain the information it requires. This situation will be addressed by amending section 20 of the Act to authorise the issue of a warrant to bring a witness before the authority.

Finally, a number of inconsequential amendments will be made. These amendments involve such housekeeping matters as substituting references to "chairman" with "chairperson". This bill was drafted following a request from the chairperson of the NCA that the New South Wales Act be updated to bring it into line with the Commonwealth legislation it underpins. The same request was made of all other States and by the end of this year it is hoped that all jurisdictions will have incorporated the necessary amendments into their respective Acts. I commend the bill to the House.

Debate adjourned on motion by Mr Bowman.

Page 4693

SPORTS LEGISLATION (AMENDMENT) BILL

Second Reading

Mr DOWNY (Sutherland - Minister for Sport, Recreation and Racing) [5.03]: I move:

That this bill be now read a second time.

The purpose of the proposal before the House is to amend the provisions of the Parramatta Stadium Trust Act, the State Sports Centre Trust Act and the Sydney Cricket and Sports Ground Act to permit those trusts to manage and develop sporting facilities. With Sydney's successful bid for the 2000 Olympics, the development and construction of this State's major sporting facilities has to be undertaken. Once completed the facilities will have to be maintained and managed and, accordingly, experienced professional managers will be required. The Sydney Cricket and Sports Ground Trust, the State Sports Centre Trust and the Parramatta Stadium Trust have demonstrated that they have the desirable attributes to manage and develop sporting facilities, yet they are hamstrung by their legislation, which restricts their operations to management of trust lands.

The bill currently before the House has three important elements. First, it will enable any one of the sporting trusts, with the consent of the Minister for Sport, Recreation and Racing, to carry out work in relation to development or management of sporting facilities that may not be located on trust lands. Second, the proposed amendment will provide to the Government the ability to utilise the experience of any of the three sporting trusts with respect to State-owned sporting facilities as a caretaker in the event that either a competitive tender process fails to attract a suitable operator or an existing operator is unable or unwilling to continue in that capacity. Finally, it is obvious that there is a finite number of experienced and successful operators available to manage the number of sporting facilities envisaged for Sydney. The bill opens the way for the existing sports trusts to compete commercially with private enterprise for future management and development of sporting facilities which is currently beyond their legislative boundaries. I commend the bill to the House.

Debate adjourned on motion by Mr Face.

APPROPRIATION BILL

PARLIAMENTARY APPROPRIATION BILL

BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) AMENDMENT BILL

MOTOR VEHICLES TAXATION (AMENDMENT) BILL

ROAD IMPROVEMENT (SPECIAL FUNDING) AMENDMENT BILL

Second Reading

Debate resumed from 25 October.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [5.06]: I welcome the opportunity to say a few words about the budget, firstly, on behalf of the electorate of Port Macquarie, which is my number one priority.

Mr Bowman: What a good girl.

Ms MACHIN: Thank you. It is very nice of the honourable member for Swansea to give me that testimony. I will use it in my election propaganda, "Written and authorised by Don Bowman, ALP". I would also like to talk about consumer affairs and other areas that my portfolio embraces, because a lot of exciting things are happening there that I am enjoying very much. Once again, my electorate has fared very well in the 1994-95 budget under this Government. That is in stark contrast to the administration of the previous Labor Government until 1988 when the coalition came to office. A number of areas on the mid-north coast were very much behind the eight ball. Honourable members need only look at the state of the infrastructure on the mid-north coast and the north coast to see that - the state of our hospitals and roads, and the need for additional school facilities. All of those are now being delivered by the coalition Government and by National Party members, as representatives of the mid-north coast and north coast - and that includes you, Mr Deputy-Speaker, the honourable member for Myall Lakes, and my colleague the honourable member for Oxley, who has been most active as an advocate for that part of the State.

More than $20 million was allocated in the State budget for capital works projects in and around my electorate. As well, more than $68 million was allocated in both capital works, and health and community service funding to the area. This is obviously an area of great importance and great need, and continues to be an area of considerable debate. That significant funding reflects funds for the area health service and district health service that was created two years ago; and the fact that the new Port Macquarie hospital is shortly to come on line. I would like to say a few words about that because I think it is most pertinent to point out that one week from today all the patients from the existing and very rundown Hastings District Hospital will be in the new hospital. They will be moved next Wednesday morning from the old hospital to the new hospital. That is something I am looking forward very much to seeing, for a variety of reasons - apart from anything else, curiosity, to see how one takes all the patients from one hospital and shifts them to another.

The move will involve the use of the services of local taxi and bus companies and, of course, some families will transport patients to the new hospital in their cars. I had an opportunity last Friday to go over the hospital. That was the first time I have been in it since it was fitted out and I was absolutely knocked out at the high standards of the fittings. The only other hospital that I have seen lately which would come close to, or in fact probably supersede, the facilities there is the $390 million children's hospital at Westmead, which is much, much bigger, and

rightly so. But they are comparable in that they are new, wonderful, modern buildings; they show a new style of architecture that has being adopted in the 33 or so new and redeveloped hospitals the Government has been responsible for, as opposed to the five hospitals that Labor was responsible for when it was in office for 12 years.

Many people in the community experience a great feeling of excitement when they visit the new

building and see the layout, the space, the freshness and the expanded facilities. One example of the new facilities is the magnificent hydrotherapy pool. It has been criticised by those who have been genuinely concerned and who have raised valid queries. The narks, the ever-dwindling band of hard-core protesters, complain that the pool is not big enough. In fact, the pool is bigger than most hydrotherapy pools now being built around the State. This wonderful pool will be available for use by the community, as is the existing hydrotherapy pool, as well as by the hospital patients. The pool will be an excellent facility for Port Macquarie and the Hastings district.

The region will have a surfeit of hydrotherapy pools. A private pool is to be constructed in Port Macquarie and the Government is funding the upgrading of the existing pool that was built by the Apex Club some 24 years ago. The number of hydrotherapy pools in the Port Macquarie electorate has increased from one fairly old pool to three. I should point out that many other communities have no such facilities. Funding for these facilities is not allocated by the health department. It is provided in other communities by private organisations, such as happened in my home town of Wingham. Port Macquarie is being well served in health services, particularly hydrotherapy services.

Another exciting component of the health allocation to my electorate is the provision of $232,000 for a mobile breast-screening unit. I have had the opportunity of inspecting the plans for that unit. It is much superior to other mobile units currently operating around the State. Fine needle biopsies will be done on the spot, so that women with suspicious breast lumps will be able to have a needle biopsy done in the van and receive the results much more quickly. The van will also have film processing facilities. The women in my electorate will receive a much higher level of service than that provided by other mobile screening vans. I am not saying the level of service provided in those vans is poor - indeed, it is excellent - but the mobile van to be provided in my electorate is an indication of the continual upgrading of services by the Government.

The electorate of Port Macquarie was a winner in road funding. People continue to speak to me at functions or in the street, as happens to all my colleagues from electorates on the north coast, and comment on how much better the roads are, particularly the Pacific Highway. The budget has provided funding of $100,000 for the beginning of a traffic relief route at Coopernook. Anyone who has travelled up the highway will know that the narrow bridge at Coopernook is fairly awesome. It is surrounded by a box-type frame. Most people who see trucks coming towards them at night in that area pull up, if they have got any sense. That bypass is much needed, and the planning for it will commence shortly. The budget papers for your electorate, Mr Deputy-Speaker, do not show the funding in the way I have tallied it, but that funding certainly has an impact on my electorate because the Taree bypass comes very close to the southern end of my electorate near Coopernook. Funding of $19 million has been allocated for those major works, which have commenced and will be a significant improvement. We only hope the whale gets out of the way at the right time.

Mr Bowman: It is not what you know, it is who you know.

Ms MACHIN: It always happens. I like addressing the House on the budget because members of the Opposition always whinge and carry on about how much funding Government electorates receive. Those electorates have earned their allocations. They deserve them, because they missed out for a long time. I will pass on the remarks of the honourable member for Swansea to the local Australian Labor Party people and the local media. I will remind them that when they complain that electorates on the north coast are not receiving sufficient funding, all that Opposition members in Sydney can say is that the electorates are receiving far too much. However, the electorates are doing extremely well.

As my colleague the honourable member for Oxley knows, a great deal of money - more than $5 million - will be spent this year on improving local education facilities. The construction of the Tacking Point school will begin early in the new year. That school will provide a primary school in a rapidly growing area and take the pressure off the terrific Hastings Public School. That relief is sorely needed. The Port Macquarie electorate has again received significant funding for water and sewerage. The

Hastings district water supply has been allocated $1.2 million for design and construction works on a number of projects. Taree City Council has been allocated $200,000 for the Harrington sewage treatment works. A grant of $75,000 for recreational boating facilities and a number of grants from the Public Works Department will enhance the infrastructure in my electorate.

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

PRIVATE MEMBERS' STATEMENTS

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RYDE HOSPITAL SERVICES

Mr PETCH (Gladesville) [5.15]: I bring to the attention of the House propaganda that is now being circulated in the Gladesville electorate. The election that will occur in about five or six months time has

brought out either the best or the worst in people. I am referring to a document being circulated by the Labor Party that says, "Nothing is more important than the health of you and your family". The Labor Party claims that the Liberal Government is privatising the radiography unit at Ryde Hospital and refuses to rule out the privatisation of the whole hospital. That is sheer and utter hypocrisy on the part of the Labor Party. Let me outline the funding that the Government has allocated to Ryde Hospital in the past seven years. The Government has allocated $1.1 million for additional beds in ophthalmic and orthopaedic areas; $900,000 for expansion of the accident and emergency unit by 50 per cent, and doubling ambulance bays; $500,000 for a day surgery centre; and $950,000 for a child-care centre for children of the staff and patients attending the hospital.

That is certainly not the program of a government that is about to privatise the hospital. Ryde Hospital will serve the people of Ryde and Gladesville well into the future to the ultimate of perfection, as it has done for many years. Mark Latham, the former mayor of Liverpool, was formerly an adviser to the Leader of the Opposition and is now a Federal member of Parliament. He said that under Labor policy Ryde Hospital would be privatised so that the money could be moved to the west. That is on record and was highlighted in the local newspaper, the *Northern District Times*, as a feature story. It is sheer hypocrisy for the Labor Party to now claim that that hospital is to be privatised and that nothing is more important than health. Of course nothing is more important than the health of the community.

The health of the community is being adequately cared for by the staff and management of Ryde Hospital. That will not change, but for some reason the Australian Labor Party is trying to do what it did in relation to the Bedlam Point bridge from Gladesville to Abbotsford. The Labor Party claimed that if the Liberal Party attained office the bridge would be built. Suddenly that theory was dispelled because the houses in the corridor had been sold. The electorate no longer hears about that. The Australian Labor Party is now on another kite-flying exercise relating solely to the health services provided in the Gladesville electorate. The management of Ryde Hospital is attempting to secure the assistance of additional doctors so that the services provided by the accident and emergency unit will be the best of any hospital in New South Wales.

All honourable members know about the difficulties of recruiting doctors. The management's heart is in the right place and it is doing its best. There is no question that the Government is putting the dollars into the hospital. I related the figures a few moments ago. During the past seven years the Government has poured about $3.5 million into Ryde Hospital to improve services. That the Labor Party has told so many lies is an indictment to the staff of the hospital, the people who use the hospital and, more importantly, the residents of the Gladesville electorate. The Labor Party will privatise the hospital, not the Government. I am pleased that the Minister for Health has entered the Chamber because I am certain he will confirm what I have said.

Mr PHILLIPS (Miranda - Minister for Health) [5.20]: When the honourable member for Gladesville raised this matter with me it concerned me that once again we have a brochure from the Labor Party which scaremongers and tells blatant untruths about what is actually happening in the health system. I quote from the document by Labor candidate John Watkins, with the headline "Caring for our community". It further states:

> The State Liberal Government is privatising the radiography unit and refuses to rule out the privatisation of the whole hospital.

The debate over Ryde Hospital took place more than two years ago. It was part of an analysis into the Government's new network of health services for Sydney and 33 new hospitals around the State. This came about when the Government put in place the Concord strategy. The Government made a decision then that Ryde Hospital was a fundamental part of that network. Under this Government the budget at Ryde Hospital has increased substantially from $25 million to $32 million. I say to the Opposition: read my lips. Under no circumstances will this Government or this Minister privatise Ryde Hospital. It is quite clearly a public hospital; it is an important part of the new network of hospitals and health services the Government is providing in this State. The hospital provides excellent services to local communities, and will continue to do so under this Government.

WEBSTER FAMILY PROPERTY RESUMPTION

Mr GIBSON (Londonderry) [5.22]: I bring to the attention of the House the plight of a family in my electorate, the Webster family. They are battlers from western Sydney but through an inheritance they own a property, and that property was their future. The property consisted of 26_ acres that was needed by the New South Wales Government to construct the Penrith Lakes scheme and the rowing course for the year 2000 Olympics. Mr Webster's property had 1.6 million tonnes of sand and soil on it, as well as 1.5 million tonnes of gravel. The property had a working life of 20 or 30 years as a quarry. With sand today selling at $22.50 per tonne and gravel selling at $26.70 per tonne, the estimated profit would have been in the vicinity of $30 million.

The quarry could then have been used for garbage collection or another such purpose. Over 20 to 30 years the profit has been estimated at roughly $20 million. There would have been a profit of $50 million if the family had been allowed to use the property as a quarry. The State Government, through the Department of Planning, wanted this property and made an offer to the Webster family. The initial offer was $850,000. At the time, though the property was not being used as a quarry, it was valued at $8.5 million. The Department of Planning and the State Government increased the offers over a period of a few years and made an offer of $1.65 million for the property. However, the Webster family refused that offer and the property was resumed by the

Government. The case has been recently heard in the Land and Environment Court, where the judge ruled that the family should be paid $2 million for the property. Unfortunately, the legal fees are now $700,000-odd, and any further appeal by the family will absorb the remaining part of the $2 million.

The Department of Planning commenced legal proceedings, then handed the matter to the Crown Solicitor's Office, which had the case for some time before returning it to the Department of Planning. After a few months the matter was given to an outside legal firm, Allen, Allen and Hemsley. It just so happens that the quarries, comprising Pioneer Concrete (NSW) Proprietary Limited, CSR Readymix and Boral Industries, also are represented by an outside legal firm, namely, Allen, Allen and Hemsley. Further, it has been suggested that the brother of the New South Wales Director of Planning, Gabrielle Kibble, works for a legal firm and that legal firm happens to be Allen, Allen and Hemsley. The court case was conducted - and the Government was represented - by three Queen's Counsel and six solicitors to take on the little battler from western Sydney, Elwyn Webster.

I firmly believe that this family has been robbed of its property. I also believe that an inquiry must take place and that the Independent Commission Against Corruption must be given all evidence in this case. Justice must be done for the Webster family. Even the valuer for the Department of Planning is the same valuer for the private Penrith Lakes scheme, Mr Brian Nicolson of Penrith. When the property was resumed, it was given to the quarries to work. All the profits from the sand, gravel and soil went into the pockets of the quarry owners, not to the Webster family. The quarries even started stripping material before the Minister gave consent for it to be removed. About three-quarters of a million tonnes of sand, gravel and soil were taken from the property, and the Websters queried this. Two applications were filed and after only 12 weeks the State Government decided to give approval for removal of the material. I firmly believe that an injustice has been done in the case of the Webster family and that an inquiry must be held into this case to ensure that justice is done and is seen to be done by all parties. The State Government only offered $850,000 for a property that was then valued conservatively at $8.5 million. A terrible injustice has been done in the name of one thing; the Olympic Games and getting votes for the Government in 1995.

MURRAY ELECTORATE ROADS

Mr SMALL (Murray) [5.27]: I wish to outline my strongest objection to two roads in my electorate being considered for downgrading from regional roads to local roads. I refer, first, to Main Road 94 linking Deniliquin and Swan Hill by Wakool, situated in the Murray and Wakool shires. This vital road has only four remaining kilometres to seal, close to Wakool village in the Murray shire. However, the Wakool shire has a large section to reconstruct and seal between Wakool, Swan Hill and Murray Downs on the New South Wales side of the river. I am pleased that the Minister Assisting the Minister for Roads, the Hon. Wendy Machin, intends to visit my electorate on 10 November and will be able to inspect that site. She will also inspect the Cobb Highway, which runs north of Booligal to Mossgiel, and meet with the local action group. The Roads and Traffic Authority and the Government are doing a magnificent job in upgrading the road from a poor surface to a sealed surface.

I am also concerned about Main Road 68, which runs west from Wentworth township to the South Australian border, and on to Renmark. It is the main link road to Lake Victoria in New South Wales. It is totally unacceptable for this road to be downgraded to a local road. Last Sunday I attended a special church service on the shores of Lake Victoria, where approximately 500 Aboriginal and white Australians assembled to dedicate an important burial site for thousands of Aborigines. This was a most historic event. However, tragically on that day two cars overturned due to the loose gravel and stony road surface. Four nuns from Braybrook, near Melbourne, were returning to Wentworth from the service at Lake Victoria when the driver of the vehicle lost control and, unfortunately, lost her life. They were travelling only a short distance behind me and I had an opportunity to speak to the other three ladies involved in this tragic accident. The surface of the road is in very poor condition and has many vehicles traversing it. I strongly object to any downgrading of the road because Main Road 68 joins Wentworth in New South Wales with Renmark in South Australia.

I am aware that the Sturt Highway continues through into Victoria, but any motorist who had to take a route around Wentworth would have to travel about 130 kilometres to reach a sealed road to travel into Victoria. A large number of trucks moving goods and commodities use Main Road 68 to get from Renmark to Broken Hill. There is a large volume of traffic moving between Lake Victoria and Wentworth via Main Road 68. Lake Victoria supplies water to the South Australian Engineering and Water Supply Division. Consequently, it is becoming increasingly important, in these times of drought, that there be access to Lake Victoria to supply South Australian water needs and to ensure that water in the Lake Victoria area is desalinated. So Trunk Road 94 and Main Road 68 should be retained as regional roads. Their downgrading could cause many problems for local shires and local communities.

SCHOOL BUILDING FIRE SAFETY

Mr DAVOREN (Lakemba) [5.31]: I draw the attention of the House to a calamity that took place a couple of weeks ago in the Lakemba electorate. Hampden Park Public School was burnt to the ground. I am unable to verify that the cost involved is a not inconsiderable $6 million. The fire brigade did a marvellous job of saving the school site, which adjoins home units. Eight brigades attended as well as aerial units. In all, about 80 firemen were
Page 4697
involved. It is unverified that the huge blaze was caused by three petrol bombs, apparently thrown by vandals.

I am informed by New South Wales Fire Brigade officers that the Department of School Education no longer sends drawings of new buildings to New South Wales Fire Brigades for examination and recommendations regarding fireproofing. The school, which was built in the late 1970s, won an architecture award. It was a fine school. The only problem was that its resistance to fire was not particularly good. Some years ago a fire destroyed the school library. The school had a cathedral-type ceiling with an insulation of straw. Aesthetically, it was quite magnificent, but the straw fuelled the fire.

To create a fire one needs three elements: heat, fuel and oxygen. The straw provided a great deal of fuel. When the school was refurbished the straw was fireproofed. However, underneath the straw was a tar paper obviously designed for waterproofing. Heat from the fire penetrated the straw and ignited the tar paper. The main problem was that the walls were not fireproof and did not extend right to the ceiling, and this allowed the fire to leap over the walls and create even more havoc. I was told by attending fire officers that if the brick walls had extended to the ceiling, the fire would have been easier to contain.

The suggestion I put to the House is that the Department of School Education should seriously consider reinstituting a scheme that existed some time ago, when drawings of new buildings were sent to New South Wales Fire Brigades for examination and recommendations regarding the prevention and containment of fires. I have no complaint about security at the school. In that respect everything possible was done to prevent the problem. Of course, with the use of petrol bombs very little could be done to stop the fire outbreak becoming a conflagration. I ask the Department of School Education to restore the procedure of sending drawings of buildings along to New South Wales Fire Brigades for its recommendations.

MOUNT VICTORIA SCHOOL PEDESTRIAN CROSSING

Mr MORRIS (Blue Mountains) [5.36]: I bring to the attention of the House the urgent need for a safer level crossing on the Great Western Highway for children from Mount Victoria Public School. This issue has been handled very badly by the Roads and Traffic Authority. The local parents and citizens association wrote to me about it, and the association and I wrote to the Roads and Traffic Authority. However, it was more than four months before a reply was received to our letter. The school is in a dangerous area of the Great Western Highway at Mount Victoria. The existing level crossing is near the beautiful old stone post office.

The parents and citizens association is asking for a better delineated crossing with flashing yellow lights, because in this part of the mountains there are frequent mists and fogs. We also would like appropriately attired paddle-pop ladies to protect these school children. I do not think this is too much to ask. About 130 students attend the Mount Victoria Public School. We all agree that children are our future and are dear to us and their parents. This matter has been handled badly by the Roads and Traffic Authority. It has not had dialogue with the people concerned, who are saying that the Great Western Highway is a classified road under the full control of the RTA. This poorly signposted and delineated crossing is close to the crest on the east-bound approach.

The parents and citizens association wants the RTA to provide zig-zag markings, sign improvements and a crossing supervisor as well as traffic control signals. This is a matter of grave concern to my constituents. Members of the local community are very unhappy about this matter. They have written to a local councillor. The local traffic authority has had a look at the problem, as I have. I bring this matter to the attention of the House as a matter of urgency because despite representations commenced in August nothing has been done to date. I have been approached by people complaining that the steel direction signs that have been erected in front of the old stone post office are not in keeping with the style of the building and the beauty of the area. We would like something done about those signs.

The speed limit for traffic passing through Mount Victoria should be reduced to about 40 kilometres an hour. The improvements I have mentioned should be made as a matter of urgency. The signs outside the old stone post office should be removed and something more in keeping with the building and more acceptable to the people should be put in their place. The road in the area needs upgrading: it is in very bad shape. The number of rear-end collisions and near misses outside the little local general store are unbelievable. Yet the Roads and Traffic Authority responded to representations with an aggressive letter stating that it did not aim to do much in the area. As I said, it took 4½ months to answer my letter and the letter from local parents and citizens. I bring the matter to the notice of the House. Something needs to be done before there is a tragedy with a youngster being killed in a major accident.

BALMAIN DEVELOPMENT

Ms NORI (Port Jackson) [5.41]: The issue I address tonight is what I believe to be breaches of a code known as the greater metropolitan regional environmental plan No. 1, GMREP1. This REP was implemented as a planning instrument to make the Minister for Planning the planning consent authority on what have become known as the five Balmain sites. As a result of the REP, Leichhardt Council, a duly elected council of the area, has had its ability to make decisions on planning issues in relation to the five sites withdrawn. Ostensibly, the REP was going to allow the urban consolidation of Sydney to go ahead, in particular on the five sites.

If the Minister takes it upon himself to be the consent authority through this REP, I would expect that he, his department, the Government and all government agencies would make it their business to see that proper procedures are followed, the law is adhered to and public safety is maintained. I raise this matter tonight because I believe I have evidence that the REP has been breached on two sites, in particular the Balmain power station site, by Pacific Power, a government instrumentality. This concerns me from a public health and public safety point of view because both the Balmain power station site and the old Monsanto site at 35 Terry Street, Rozelle, now known as the Rozgrove site, are both contaminated sites. It is well known that they have all sorts of incredibly dangerous products there from their former working life. So it becomes doubly important that the new owners or developers of the sites conform to law - and environmental law.

In relation to the Pacific Power site I draw the attention of the House to the fact that at the estimates committees last week I asked the Minister for Planning whether he was aware of Pacific Power's breach on the power station site of clause 22WB, which was formerly in Leichhardt local environmental plan No. 20 and which was incorporated into GMREP1. Clause 22WB(1) makes it an offence to disturb or excavate any land for any purpose or to carry out any land filling. That provision is there for a good purpose: it is there to make sure that when the contaminated sites are worked on it is according to law and with the best interests of public safety in mind so that danger does not arise. My understanding is that Pacific Power did not have the consent of the Minister to conduct trench digging and soil sampling on or around 29 September. Mr Adrian Boss, Manager, Urban Consolidation and Design of the Department of Planning, wrote to Pacific Power as follows:

I refer to a facsimile from Mr P. Hill of your office received in this branch on Thursday 29 September 1994 outlining Pacific Power's intentions to undertake a program of trench digging and soil sampling on the abovementioned site.

The department has received advice that Leichhardt Council is examining the legality of the intended works . . . I wish to draw your attention to clause 22WB(1) of Leichhardt Local Environmental Plan (LEP) No. 20 . . .

The letter goes on to quote clause 22WB(1) and then states:

In view of the Council's advice and a complaint received from a resident . . . regarding the operation of a bobcat on the site, would you please advise as to Pacific Power's position with respect to the consent requirement reproduced above.

My understanding is that the response from Pacific Power to the Department of Planning was, "We have already done the work. No, we are not going to submit a development application. We do not have to. We have done our work, thank you very much, goodbye, end of story". I do not think that is good enough. I am awaiting the response of the Minister for Planning to the question. I look forward to receiving it. However, in the meantime I would like this House to ponder on why, if a Minister takes it upon himself to be the consent authority, he is not taking enough interest in the matter - it is obviously a dereliction of his duty. Pacific Power is in total contempt of the planning laws of this State and the provisions of GMREP1. The Department of Planning, at least privately to me, has admitted that it is convinced that Pacific Power breached clause 22WB. Why is it not being prosecuted? If the Government is going to take away planning powers from local government - [*Time expired*.]

PROVINCIAL TRADER **WRECKAGE**

Mr COCHRAN (Monaro) [5.46]: I raise the concern of scuba diving clubs and the tourist industry in Eden. They fear that the recently sunken tug the *Provincial Trader* is to be moved from its present location at the entrance to Twofold Bay in about 40 metres of water to a location 20 kilometres offshore to be dropped off the continental shelf, presumably so that it will be out of the way of ships entering Twofold Bay. The *Provincial Trader* was sunk in May this year. A sister ship, the *Tasman Hauler*, and the *Henry Bolte* were both scuttled in 1988 in the same area. The wrecks have become popular with scuba clubs in Eden, Merimbula, Wollongong and Sydney. People who have been diving on the wrecks are concerned that the Maritime Services Board has decided to remove the *Provincial Trader* on the grounds that it is a risk to passing ships.

I have it on good authority from the South Pacific Divers Club at Bankstown, the Eden Chamber of Commerce and private individuals who dive on the site regularly that removal of the mast of the *Provincial Trader* would alleviate concerns in regard to the safety of passing ships. I ask the Minister for Consumer Affairs, who is at the table, to approach the Deputy Premier and ask him to consult the Maritime Services Board and the insurance company which has allocated responsibility to the salvage operator to move the wreck from its current position to one off the continental shelf. It would be a crying shame if this prominent tourist attraction were moved to a position in which it would be of no value to anybody.

There are conflicting interests in that the scuba diving club in Merimbula has sought to have the wreck moved from its current site to one close to Merimbula. The honourable member for Bega has a great deal of interest in this. No doubt we would both agree that whatever the result the interests of the divers on the far south coast should be protected and the wreck certainly should not be wasted by its being dropped off the continental shelf. A significant number of representations have been made to me on the issue and despite the fact that concerns are held by the Maritime Services Board I ask the Minister in the Chamber to approach the Deputy Premier with a view to halting plans to relocate the vessel.

I am happy to pass on to the Deputy Premier all the representations I have received so that this issue can be reassessed to enable the people of Eden to

maintain what is, in their view, a very important tourist attraction. In recent years tourism on the far south coast has become an important industry to the local residents. Eden - one of the more beautiful spots on the far south coast - and Merimbula and adjacent areas along the coast provide a great deal of recreational entertainment for people from Sydney and Melbourne. The region is midway between the capitals. This insignificant administrative change and assistance to diving clubs will make a great deal of difference to the future of the tourist industry in my electorate and the electorate of Bega. The honourable member for Bega joins me in asking the Minister for legal advice to help us retain the vessel in its current location, or in close proximity, to be enjoyed by the members of scuba diving clubs.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [5.51]: I am delighted to take this message to the Deputy Premier. As a scuba diver myself - although I have not had much time to dive lately - I fully understand the desire of the local diving clubs to have the wreck remain where it is. Diving and exploring wrecks is very exciting. In some parts of Australia and overseas old boats that have outlived their usefulness are scuttled for the enjoyment of divers.

Mr Cochran: I invite you to come diving with me.

Ms MACHIN: I would be more than happy to go scuba diving with the honourable member for Monaro. In fact, I have dived on the south coast - some time ago in my courting days - in the electorate of the honourable member for Bega. There certainly are nice diving spots in that region. I have also had the experience of diving on the *President Coolidge* which was wrecked off the island of Santo, in Vanuatu. That was a most exciting experience. The honourable member for Monaro, in his usual forthright and active way, has drawn public attention to this issue. I am more than happy to assist him in lobbying the Deputy Premier to leave the wreck where it is for the future enjoyment of many generations of divers.

WYONG ELECTORATE SCHOOL AT WATANOBBI

Mr CRITTENDEN (Wyong) [5.53]: I raise a matter of concern to the residents of Watanobbi, a new residential estate at North Wyong at which 480 lots have been released over the past 2½ years and a further 473 will be ready for release in the near future. Landcom sold land to the people who live there on the basis that a school would be built in Watanobbi. Landcom showed them a site that allegedly was to be used by the Department of School Education for that school. It now appears the school will not be built on that site or any other site at Watanobbi. Two local residents, Mr and Mrs Walsh, have gone to the considerable trouble of conducting a house-to-house survey of existing residents. The surveyed showed that already there are 165 children in the Watanobbi area. Of this number 114 children are aged 5 and under, 48 are of primary school age, and three are in high school. Quite clearly there will be a dramatic increase in the number of primary school-aged children in this area in the next three to five years.

If no other facility is provided these children will be required to attend Wyong Public School. Though this is an excellent school, it is already large, and educationists have pointed out the disadvantages associated with making schools too large. In any case it is difficult for Watanobbi children to get to the Wyong school. The roads they would be required to travel after leaving the Watanobbi estate are undulating. There are few established footpaths. The current state of the roads and the traffic in the area make it unsafe for young children to ride their bicycles to school. I call on the Minister for Education, Training and Youth Affairs to release all demographic data relating to the Wyong area, so that the residents of the area can determine for themselves whether they have been given a fair go, whether the school at Watanobbi has been denied them on the basis of hard, substantive evidence or whether the

decision was based on crass political expediency.

Until that demographic data is made available no-one will know what is the real situation. A further fear is that Landcom will develop the proposed school site for high-density housing. The Watanobbi estate has no dedicated green space. There is no park, even though there are already 165 children in the area. Even if it is decided that a school is not necessary, the residents request that community facilities be developed to provide green space and park area in which their children can meet and play. They seek an assurance that the Fahey Government will not permit Landcom to apply for 2B multiple-density zoning for this area. Already counsellors on Wyong council - people who are not my political allies - have expressed such a concern to the residents of Watanobbi.

Central coast residents are becoming increasingly concerned about urban consolidation. In areas such as the Wyong township of Toukley it is quite common for older fibro homes on large adjoining blocks to be knocked down and replaced by as many as 10 townhouses. This makes sense for older residents who want to be closer to transport links and community facilities such as libraries and shops. It does not make sense, however, for those who came to Wyong shire for their own quarter acre block only to find themselves surrounded by blocks reduced in size so that they are virtually living in their neighbour's backyard. Understandably, people feel they have been betrayed. They have made great sacrifices in many cases to move to the Wyong area: many travel to their jobs in Sydney to help pay off their mortgages. They made the sacrifices because they wanted a traditional Australian house in a traditional Australian suburb. It is not for politicians to shove down the throats of these people what it is that we think is best for them. Politicians must listen to the concerns of such people. Assuming that it is

established beyond doubt that a school will not be needed on this site, I hope that the Government will move to ensure that the green space and park option sought by the residents is adopted.

BURRILL LAKE SILTATION

Mr SMITH (Bega) [5.57]: I speak on behalf of the residents of Burrill Lake in my electorate and their desire to overcome the problem of siltation of the inlet to Burrill Lake - a problem they have been trying to resolve for some years. Burrill Lake is south of Ulladulla, a small but important tourist township in my electorate. Burrill Lake is the reason that people travel to the Ulladulla area during the summer months. The recent Dolphin Point development overlooks the siltation that is occurring at the inlet to Burrill Lake. Tonight I express the concerns not only of the residents but also of the Burrill Lake and District Progress Association and the Ulladulla District Lake Watch Committee, which are represented respectively by Roy McDaniel and Col Parker, both of whom I advised when I interviewed them a couple of weeks ago that I would raise this issue in the House.

Siltation of Burrill Lake has been an issue for the residents of the area since 1973. During that time they have made representations to Labor and Liberal governments and, at one time, an independent local member. They are still fighting to have the siltation problem rectified. In early 1989 the then Minister for Public Works, Wal Murray, engaged the consultants Patterson Britton to examine the causeway where the Princes Highway crosses the lake. The local community believed that the causeway was the cause of the siltation. The Premier was in the Burrill Lake area prior to the 1993 Federal election. He said that there would be a short review of what was regarded to be an unsatisfactory consultancy by Patterson Britton. That review was to be carried out by the Water Resource Laboratories. That independent review is now complete. At the time the Premier said that if the independent review concluded that the causeway was to be removed and was part of the siltation problem, it would be removed. The review states:

> In the discussion of inlet morphology in this review it was indicated that a balance existed between infilling of the entrance channel under tidal conditions and scour during fresh water flooding which has allowed the inlet to stay tidal for about 6,500 years. This balance was shifted towards infilling of the

entrance channel by the construction of the causeway and bridge. The gradual infilling being experienced at present can be expected to lead to further infilling of the channel and subsequent further loss of waterway amenity. The balance could be shifted back towards stability by partial or complete removal of the causeway. Removal of any portion of the causeway would still require dredging the shoals and cannot be guaranteed without further significant study to exclude further maintenance dredging. Longterm infilling of the inlet channel and its waterway amenity could also be reliably managed by an ongoing maintenance dredging and weed removal program, subject to the normal environmental constraints.

That independent review indicates that the causeway should be removed. [*Time expired*.]

BEAUMONT PARK GREYHOUND RACING

Mr FACE (Charlestown) [6.02]: I raise a matter which is of concern to my electorate and to the Hunter region. I refer to the greyhound racing industry and to a situation that is occurring at the Beaumont Park racing track, which is owned and operated by the Newcastle Jockey Club. To my knowledge the Newcastle Jockey Club is the only galloping club which has a greyhound racing licence. Whilst many facilities are located on various tracks, there are separate licences for the individual racing codes. Last Sunday 132 people attended a meeting at the Redhead trial track in Newcastle. The meeting rejected the proposed offer from the Newcastle Jockey Club until such time as prize money is restored to the level existing prior to 15 October 1994. I understand that further negotiations are to be held so that an amicable agreement can be reached.

I should make it clear from the outset that I have a great relationship with the Newcastle Jockey Club, which has not been without its problems. Some people believe that the greyhound clubs are being inappropriately dealt with. I am not taking sides; I am merely placing the issue before the Minister for Sport, Recreation and Racing, with whom I have discussed this issue privately. I believe that he will take an understanding view of what has occurred. There will have to be negotiations, either by conciliation or facilitation, to get greyhound racing at this track at Newcastle back on an even keel. Careful consideration must be given to a course of action.

This is the first indication that there needs to be consolidation of greyhound racing. Things cannot continue as they are indefinitely in all the racing codes. That is not to say that there should be wholesale rationalisation every time someone makes a complaint and wants to save his own skin. What has led to this situation is the reduction in the amount of prize money being offered and only four TAB meetings being broadcast from Newcastle. The jockey club, in my view, cannot continue to spend money as it has in the past, when the turnover is not sufficient in the first place. As I said, the jockey club has not been without its problems. I do not accept the view that has been put to me by some people that the club has an inexhaustible amount of money. The Minister knows that if the club had continued down the track it was on some time ago it would have been technically insolvent within 26 months. There is a very real problem with respect to training facilities at that track. I know the Minister is aware of that.

I want to get some facilitation to get this club and greyhound racing at the track back on an even keel. In the long term it may be necessary to consider selling Beaumont Park, or the park may have to be relocated. I have said that to members of the jockey club. It is as if I had a crystal ball, because I told the club officials some 12 months ago that I thought they would have to determine a long-term strategy for Beaumont Park and greyhound racing. Anyone who knows anything about the industry could

see this coming. A lot of furphies are being thrown around - that money is being taken away by the jockey club, that inappropriate costs are being incurred by the club and that it has not balanced the books. I do not know what is fact and what is fiction. I believe that people on both sides are well intentioned, and I am not casting aspersions.

I understand that the Minister agrees that we need to resolve this situation. I am sure that he will find a mechanism and will be able to tell us the real situation with the Totalizator Agency Board distribution. He has some very competent officers in his department. They will be able to work out where greyhound racing is going. The Totalizator Agency Board is charged with making a profit. It has made a commercial decision that there are greater returns from the various races it is broadcasting than from the greyhound races held at Beaumont Park. That situation cannot continue. To have a stand-off - a race meeting was cancelled yesterday - will not do anyone any good. It is not doing the jockey club or greyhound racing any good. The people at the meeting at the Redhead trial track were irate. A lot of misunderstandings are being spread about this matter. I ask the Minister to have a comprehensive look at this issue.

Mr DOWNY (Sutherland - Minister for Sport, Recreation and Racing) [6.07]: I listened with a great deal of interest to what the honourable member for Charlestown had to say about Beaumont Park and the problems with greyhound racing. I give the honourable member an assurance that the Office of Racing is monitoring the situation closely. I sought advice today from the Totalizator Agency Board. As the honourable member indicated, a commercial decision was made. The simple fact is that average TAB sales at Beaumont Park have fallen by $220,000 - they were over $400,000 when full coverage of programs first commenced. Unfortunately, the TAB made that decision.

Other factors are involved; it is not just a case of TAB coverage. I give the honourable member an assurance that I will get the Racing Advisory Service to establish a financial management plan for the club. The Racing Advisory Service has an excellent record in this State for being able to assist racing clubs in all three codes. Its track record is impeccable in that regard. There will be no charge to the Newcastle Jockey Club for that service. That is the first step that should be taken. The honourable member has asked whether there is a way of providing some sort of conciliator or facilitator. The Racing Advisory Service may be able to offer that role. I will seek advice from the officers of my department as to whether the advisory service is the appropriate mechanism through which to undertake that task. There may be another way. I assure the honourable member for Charlestown that we will do all we can to ensure that greyhound racing is not lost to Newcastle.

Private members' statements noted.

[*Mr Deputy-Speaker left the chair at 6.09 p.m. The House resumed at 7.30 p.m.*]

APPROPRIATION BILL

PARLIAMENTARY APPROPRIATION BILL

BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) AMENDMENT BILL

MOTOR VEHICLES TAXATION (AMENDMENT) BILL

ROAD IMPROVEMENT (SPECIAL FUNDING) AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

Ms MACHIN (Port Macquarie - Minister for Consumer Affairs, Minister Assisting the Minister for Roads, and Minister Assisting the Minister for Transport) [7.30]: I would now like to turn to my portfolio of consumer affairs and discuss a number of exciting initiatives. Again the State budget has acknowledged the important contribution of the Department of Consumer Affairs in realising the Government's goal of a fair and informed marketplace, a marketplace that is characterised by high levels of consumer confidence and business competition - essential ingredients to a healthy and vibrant New South Wales economy.

For the second consecutive year the Government has provided an increase in departmental funding, with a total allocation this year of $32.129 million. In addition to this recurrent funding, capital funds of $2.84 million have been provided. That will enable my department to consolidate and build on the substantial achievements of the last 12 months. I remind the House that the Department of Consumer Affairs remains one of the most customer-focused public sector agencies in New South Wales and, in a review of various facets of the Government's guarantee of service, it was recently awarded the acknowledgment of best practice for its customer service.

Mr Gibson: Well done. Congratulations.

Ms MACHIN: My department can rightly be proud of that and I am pleased that the honourable member for Londonderry agrees. I will certainly convey his sentiments to my staff. Total client contacts are still running at well over two million a year, and customer feedback shows a positive response rate to my department and its activities of 74 per cent. However, the department intends to further improve service delivery in the year ahead. More than $500,000 has been allocated in capital funds for the development and implementation of an optical disk system for public searches of the business name register. That will replace the existing microfiche system and provide a much-improved service to clients. That is a service that is very well used. Work will also be undertaken on the responsibility of providing registration by telephone, lodgments of applications by fax and payment by credit card as additional client services - all things that my department hopes will improve the very good service that is currently provided.

Page 4702

Just under half a million dollars in capital funding has been allocated for the engagement of a tender to develop the client advisory system, CAS, a computer-based work tool to be utilised by Department of Consumer Affairs staff providing advice or information to clients. The most advanced project of its type in Australia, CAS will use leading-edge, knowledge-based technology to increase the speed, accuracy and consistency of advice - and that latter point is very important for us. With a widespread network of offices, it is important that consumers get consistent advice from staff in the department. As well, it will facilitate the collection and retrieval of client data used for market surveillance. The first version of CAS is expected to be operational by the end of the financial year. I am very excited about that development because it will give the Government a better picture of what is happening in the marketplace, and that in turn will allow the Department of Consumer Affairs to further refine the programs it delivers to the public, in order to be ahead of the game and to be very responsive to public trends and public needs.

This year will also see enhancements to the very successful business licence information service, BLIS. BLIS currently provides telephone information on New South Wales, Australian Capital Territory and Commonwealth business licence requirements to people wanting to start or expand a business. This year, in accordance with the recommendations of the Sturgess Red Tape Inquiry, work will commence on the feasibility of including details of local government consent approvals on the BLIS system. In recent times New South Wales has been at the forefront of efforts to develop a strategic National Consumer Affairs agenda as a means of establishing agreed priority areas for attention by fair trading agencies. With the adoption of a strategic national agenda at the meeting of the Ministerial Council on Consumer Affairs in Brisbane in July, the Department of Consumer Affairs is poised to enter a new era of greater cooperation and consistency in the approach of agencies to policy and operational issues.

One of the department's priorities this year will be to contribute to the development of a national work plan which will specify issues to be addressed through a mutually agreed approach. That plan will outline projects and activities, expected outcomes, timetables for achievement and allocated responsibilities. An example of what can be achieved by this new cooperative approach to policy issues is, of course, the reform of credit legislation. I gave notice today of the new consumer credit legislation, which will have its second reading tomorrow and hopefully will be finalised by this Parliament, after some

seven or eight years of negotiation and discussions. Funding has been provided in the budget to enable my department to prepare for the implementation of this landmark legislation which, whilst it probably does not excite great public attention, was far reaching in its content and impact. It is important that we prepare for that and embark upon an education program that will extend the principles of truth in lending to all forms of consumer credit, in what is the most comprehensive credit reform for a decade.

Funding has also been provided to continue the department's ongoing consumer law review program. This will allow finalisation of the review of laws covering the motor trade, pawnbrokers, second-hand dealers and collectors and direct selling, as well as the general review of the Fair Trading Act. My department will release this evening or tomorrow morning a discussion paper from the ministerial council which makes recommendations in regard to the direct mail industry, because significant concerns have been expressed about some of the practices in that industry in recent years - such things as compiling lists of elderly women who live alone and their addresses, in order to on sell those lists to people for various marketing purposes. Of course, there are considerable privacy and security concerns about that practice.

The department will also undertake a general review of the Fair Trading Act. Obviously the impact of the Hilmer report and the pending competition policy and accompanying legislation are also of significance to my department, and we will be looking at those issues closely during the next few months. Work will commence on a review of the Business Names Act and amendment of the Registration of Interests in Goods Act with a view to providing a legislative foundation for the developing national Register of Encumbered Vehicles - again, a very important issue for consumer protection. If consumers are buying a car - and the Government hopes to extend that register to boats and mobile homes - it is important for them to know that they are buying a vehicle that is neither stolen nor has money owing on it. That service is working extremely well.

The Government recognises that informed consumers and traders alike hold the key to a fair and competitive marketplace. To this end, the Department of Consumer Affairs last year embarked on a project designed to increase awareness of consumer rights among disadvantaged communities. The focus of the project has been the development of innovative pamphlets, taking the form of a photo story showing families dealing with consumer issues, using photos and dialogue in a community language. To date, photo stories have been prepared for the Vietnamese and Aboriginal communities and I am pleased to advise that I have obtained funding in this year's budget the allow the development and launch of pamphlets for the Arabic and Chinese communities. The ethnic consumer education project has been complemented by a special compliance program targeted at ethnic traders. After the conduct of a successful pilot project with ethnic business operators in the Bankstown area last year, funding has been allocated in the budget to extend the program to other communities in different localities. The primary purpose of the program is to advise traders of their responsibilities in order to improve compliance with fair trading laws. Trader awareness of fair trading

rules and responsibilities has been facilitated by the department's early warning system, which identifies traders with unusually high levels of consumer complaints.

The compliance program makes particularly interesting reading. If honourable members want to know which stores to watch out for, I will show them the complaints pattern. Companies are often unaware of the level of complaints because their management and information systems are simply not good enough. The Department of Consumer Affairs is taking a pro-active approach by, first, informing such companies of the high level of complaints and, second, providing them with assistance to improve their level of customer service so that the number of complaints decreases. That is proving to be fairly successful. Other areas to receive attention in the compliance program are travel promotions, direct marketing, introduction agencies and, as I said before, the motor trade, particularly unlicensed motor dealers and activities such as odometer windbacks. Not only is that a fraudulent practice and essentially theft from the public, it is also a dangerous practice with significant safety implications.

The compliance program will also fund monitoring of the new jewellery and timepiece industry code and inspections to ensure compliance with bread packing requirements, something I know is of interest to the shadow minister, the honourable member for Mount Druitt. He will appear in my election advertising because of all the nice things he has said about the Department of Consumer Affairs. I have so many endorsements from the Labor Party that my election advertising will not have sufficient room for endorsements from my own colleagues. I am delighted that the Labor Party has turned up in force to hear what the Department of Consumer Affairs is doing in New South Wales this year. I am sure the Leader of the Opposition, who was once Minister for Consumer Affairs, looks with envy at the way things have developed under the Government. The honourable member for Mount Druitt is probably particularly embarrassed about the views expressed by his leader, who has suggested that product safety is mickey mouse stuff. I would like him to express that view to the parents of children who have been injured by faulty products.

Mr Amery: He will not be embarrassed by that.

Ms MACHIN: The honourable member for Mount Druitt endorses those remarks. I will ensure that those comments are placed on the record, together with other Opposition policy gaffes, if the policies can be found. Generally speaking, the Australian Labor Party does not make many policy statements, but it makes plenty of gaffes. The Government will continue to give consumer affairs a prominent place in the activities of government in New South Wales. I am proud of what has been done in relation to consumer affairs and I look forward to being the Minister for Consumer Affairs for many years to come.

Debate adjourned on motion by Mr Beckroge.

INDEPENDENT COMMISSION AGAINST CORRUPTION (COMMISSIONER) BILL

Second Reading

Debate resumed from 15 September.

Mr CARR (Maroubra - Leader of the Opposition) [7.43]: This bill has only one object: the appointment of Mr Justice O'Keefe as Independent Commission Against Corruption commissioner. Let me say, after all due deliberation, that Mr Justice O'Keefe is not acceptable to the Labor Party to be Commissioner of the Independent Commission Against Corruption. The starting principle in this debate ought to be that anyone who holds this important post should have the respect of both sides of politics. I do not believe the ICAC can work unless that is the case. I suggest to members on the other side of the House that if they transposed themselves to this side of the Chamber - and after question time today, that is probably easier than ever for them to do - they would understand our reservations. For that reason, the Opposition is opposed to the appointment of Mr Justice O'Keefe and to the legislation that makes his appointment possible. We oppose legislation that he says is necessary for him to accept the job.

I must ask this question: why is this Government prepared to undermine the ICAC to secure Mr Justice O'Keefe's appointment? The three non-aligned Independents in this Parliament ought to weigh, among other things, Mr Justice O'Keefe's attitude to the capacity of the ICAC to be given power to investigate politicians, Ministers and judges. In the *Sydney Morning Herald* on 20 September the Premier was quoted as saying, "At a very brief meeting I have had with Mr Justice O'Keefe he has expressed reservations about touching section 9". That is section 9 of the ICAC legislation.

If the Independents imagine that by supporting the legislation that will follow this bill and that by supporting this legislation a satisfactory ICAC will emerge, they should think again. This legislation is designed to facilitate the appointment of someone who is not prepared to work with an ICAC that has the power to investigate politicians, Ministers and judges, that is, the power that it had before the Court of Appeal decision in the Greiner case in late 1992. The reason we oppose Mr Justice O'Keefe's appointment is clear from previous debate in this House. Our opposition relates to his behaviour during

the Parramatta by-election campaign when he did something that was blazingly partisan or blazingly indiscreet and ill-judged. Whichever interpretation one opts for, one or the other or a combination of the two, it is not in the interests of a strong and effective ICAC to have this man as its head.

Members on both sides of the House are familiar with the material I am referring to: the letter that was distributed on 19 August, about a week before polling day in the Parramatta electorate. The letter commenced, "Dear National Trust member" and read, "Great news for Parramatta!" There followed

three paragraphs of praise for the State Government. If Mr Justice O'Keefe did not realise that this was a hard-fought and important by-election, if he did not realise that his intervention as President of the National Trust would be regarded as breathtakingly partisan, if he did not realise that there was a case, all things considered, for having someone else in the National Trust send out the letter, he has not the judgment required to head the ICAC. It is as simple as that. When the House considered this matter earlier I said that with the best will in the world the Labor Party could not bring itself to agree that he was an appropriate appointment. In an editorial on this matter on 19 September 1994 the *Sydney Morning Herald* said that letter:

> . . . should have been signed by another office-bearer. Justice O'Keefe has denied claims by the Leader of the Opposition, Mr Carr, that the letter was sent at the request of the Government. That should be accepted without question . . .

The editorial went on to say that the sending of the letter by Mr Justice O'Keefe was a terrible lapse of judgment on his part. In that assessment the *Sydney Morning Herald* editorialist was absolutely right. This bill facilitates the appointment of someone who had a terrible lapse of judgment, having been designated as the appointee to a position that requires, above all else, great judgment. What other post is there that it is within the capacity of the State Government to fill that requires more judgment than the head of the ICAC? It is rivalled only by the post of Ombudsman or Chief Justice in the requirement for sound judgment. The editorial in the *Sydney Morning Herald* continued:

> Mr Carr has now said that with the best will in the world nobody on the Labor side of politics could support Justice O'Keefe's appointment. Without the confidence of both sides of politics how effective can he be as commissioner?

That is the nub of it: how effective can he be? Government members might suggest that Mr Temby was appointed despite in earlier days having been a Labor candidate for a State seat in Western Australia. My reply to that is that he was appointed by a non-Labor Government and he had demonstrated in the period since he was a Labor candidate in Western Australia a ferocious independence from party politics, in spectacular fashion. As the Federal Director of Public Prosecutions he handled prosecutions in the Lionel Murphy case, so reservations about his appointment were from the Opposition side of the House. The Opposition accepted his appointment, but expressed two reservations.

This is an entirely different matter. I have had someone say to me - and I am not going to press the matter because I have not been able to confirm it - that in the last State elections Mr Justice O'Keefe sent a letter of endorsement for two Liberal candidates in Sydney's north shore. I hope that is not the case. If it is the case, it confirms the Opposition's reservations about the validity of this appointment. Any objective observer would accept that the Opposition is entitled to have these reservations. We are happy to accept someone with a conservative background in the position of the Commissioner of the ICAC - someone, yes, with a private school tie and all the inherited prejudices of a true-blue son or daughter of the establishment, if he or she has the judgment to measure and curb any existing political prejudices. In all these considerations I have to say that the appointment of Mr Justice O'Keefe is not acceptable to Opposition members and we will not be able to work with him in government. It is as simple as that.

Mr West: What about in opposition?

Mr CARR: The embarrassing thing about recent trends in by-elections is the exponential growth in the swing to Labor: 5 per cent in The Entrance, 10 per cent in Parramatta, 21 per cent in Cabramatta. Spare us from another electoral test! We will bring you peace of mind, above all else, and you will accept that in Opposition. Over here in Opposition you can luxuriate, month after month, under your blankets and your cushions. I will send the Red Cross ladies in with cups of hot tea and mugs of soup. You will be happy: we will look after you in every sense. The legislation is here for one reason: to facilitate the appointment of someone whose appointment damages the credibility of the ICAC. I happen to believe in this body. I happen to think in handling complaints about police, local government and the public service it has proved its value. The Opposition believes that any sensible government will want an ICAC with appropriate powers, and that the existence of an effective ICAC will be of benefit to a government trying to do the right thing by the people of this State. But you do not help yourself, and you do not help the ICAC, by appointing someone who lacks the judgment and the impartiality to do the job by the organisation and by the people of New South Wales.

Mr WHELAN (Ashfield) [7.54]: It is a most interesting debate when Government members are not defending the appointment of Mr Justice O'Keefe as the commissioner of the Independent Commission Against Corruption. Opposition members know that the Government is sorely divided on many issues but now we realise how divisive the present Government is on this very important matter. I listened with a great deal of interest to the speech of the Leader of the Opposition and one word stood out: judgment. The judgment of the person the subject of this bill is clearly in dispute. That a judge, wearing another hat as chairperson of the National Trust could send a letter that is so politically designed could draw only one conclusion, that is, that his judgment is impaired.

During a recent debate in this Parliament I referred to a well-researched book on ethics in relation to judicial officers. The whole of that professional text stated that judges should not become embroiled in political controversy. Directly or indirectly, judges should not become embroiled in political controversy. When they are appointed as judges of the High Court, District Court or Supreme Court, or magistrates in the Local Court, the people

of this State and, indeed, the whole nation, expect them to exercise at all times impartiality second to none. There can be no bias. One must also ask the question asked so validly by the Leader of the Opposition: why was it that Mr Justice O'Keefe entered into the political controversy in relation to the by-election in Parramatta? There is no other answer -

Mr West: On a point of order: while I understand this bill obviously has considerable relevance to Mr Justice O'Keefe, it will also amend the legislation to provide for a judge of the Supreme Court to take up this office and for an automatic right of reply. The Leader of the Opposition did not refer at all in his speech to the actual terms of the bill. The honourable member for Ashfield is continuing in the same vein. I understand that Opposition members seek to make that attack, and it is not within my province or the province of the Acting-Speaker to stop that. However, there must be some link to the provisions of the bill.

Mr WHELAN: On the point of order: in reply to the Minister's inane point of order, the direct link is a document entitled, "Parliament of New South Wales: Committee on the Independent Commission Against Corruption". I refer also to the resolution of the House that "This House refers the matter of Mr Justice O'Keefe's proposed appointment as Independent Commission Against Corruption Commissioner to the Joint Committee on the Independent Commission Against Corruption for reconsideration". This document has been published and a parliamentary committee is considering Mr Justice O'Keefe's appointment to this very position. No other matter in this State has been the subject of such public deliberations. It is ridiculous for the Minister to try to curb debate and suggest that the commissioner to be appointed by the Government is not Mr Justice O'Keefe, otherwise the Parliament has been misled.

Mr West: Further to the point of order: it is all very well for the honourable member for Ashfield to refer to documents that have been mentioned in relation to Mr Justice O'Keefe, but this bill is about

changing the legislation to provide not only for the term of office of Mr Justice O'Keefe but for future incumbents of this office. I ask that there be some link in the debate between the comments made by Opposition members and the bill.

Mr Hatton: On the point of order: to deny that there is any link between this bill and the appointment of Mr Justice O'Keefe is a straight-out lie. There is no doubt that there is a very strong link. The Leader of the House has a point in this respect, that the bill also provides for any judge of the Supreme Court to be appointed. It should not and must not preclude discussion of the suitability of the appointment of Mr Justice O'Keefe and the financial involvement of the public purse in the provision of the pension. It is true that a link should be established between Mr Justice O'Keefe's appointment and the general provisions of the bill. In my view it is true also that a member should not use this opportunity solely to attack Mr Justice O'Keefe. However, Mr Justice O'Keefe's appointment is inimical to the Opposition's attitude to the bill and therefore forms a substantial part of the debate.

Mr Kerr: On the point of order: the honourable member for Ashfield sought to link his remarks to the bill by producing a copy of a report of a parliamentary committee that was the subject of debate in this House some weeks ago. It is the bill that is under discussion by this House. The honourable member must establish a nexus between his remarks and the bill.

Mr Martin: On the point of order: the object of the bill is to enable a judge of the Supreme Court to be appointed commissioner under the Independent Commission Against Corruption Act 1988 with a right to automatic reappointment as a judge at the end of his or her term as a commissioner and without prejudice to his or her rights to a judicial pension. That measure is designed to accommodate one person and one person only. That is what the debate is about. Therefore members must be able to debate in full the integrity of the person to be accommodated by this bill.

Mr ACTING-SPEAKER (Mr Rixon): Order! I have heard sufficient on the point of order. Those who have spoken in the debate so far have emphasised that the bill is specific in nature. Members should confine their remarks to the subject matter of the bill and make only passing reference to peripheral matters.

Mr WHELAN: As the Leader of the Opposition said, this whole issue is about the judgment of the person to be appointed by this bill. That person has appeared before the Committee on the Independent Commission Against Corruption of this Parliament. Even the report of that committee indicated the sensitivity of the Government on this matter because the committee was forced to make a pre-emptive decision without calling many available witnesses. The Leader of the Opposition, by way of interjection, commented on the appointment of Mr Temby. Mr Temby was a former Labor Party candidate in Western Australia, but his appointment resulted after consultation between the Leader of the Opposition and the former Premier of New South Wales.

That consultation was by way of a simple phone call in which the former Premier said to the Leader of the Opposition, "I am going to appoint Temby. What is your attitude? You can talk to Temby to find out the background about his appointment." There was consultation on the appointment of Mr Temby. But on the appointment of Mr Justice O'Keefe there was no consultation at all. The New South Wales Opposition learned about the proposed appointment of Mr Justice O'Keefe as chair of the Independent Commission Against Corruption - someone who should be fiercely independent - not through consultation with the Leader of the Labor Party in New South Wales but through rumour and innuendo in the press gallery about the likely appointee.

Make no mistake, there were half a dozen equally well qualified persons who could have been appointed as chair of the Independent Commission Against Corruption. Mr Justice O'Keefe was but one of those. As I have said before, it is the view of the Opposition that his judgment in relation to this matter

was impaired. Lawyers and community leaders have written to me expressing concern about the attitude of Mr Justice O'Keefe. Most say that his appointment is inappropriate because of the Government's attitude on this matter. Many say that it is not right that the Government should appoint a judge of the Supreme Court.

When the Independent Commission Against Corruption Bill was first debated in this Parliament one of the strong arguments put was that the person appointed to head that commission should not be a judicial officer. The main reason for that contention was that the most serious case that could be dealt with by the commission is corruption of judicial officers. This bill would exempt Supreme Court judges from appearing before the Committee on the Independent Commission Against Corruption of this Parliament for analysis and cross-examination, privately or publicly, in relation to the investigation of the private activities of judges that may be deleterious to the operation of the law in New South Wales. That is another objection that must be sustained.

The New South Wales Bar Association indicated in a press release its great regard for the fact that judges, particularly Supreme Court judges, should not be appointed to hold the position of chair of the Independent Commission Against Corruption because if that were to occur they would sit in judgment of their colleague judges. Judges stick together like members of an old network. How could members expect a judge to pass an objective test on the examination of a complaint against one of that judge's brother judges. Not only would this bill bring into disrepute the Independent Commission Against Corruption because of the lack of judgment of the person the subject of the bill, but it would bring into question the integrity of the whole of the Supreme Court of New South Wales.

I do not know the attitude of many judges, but I would be horrified if the majority of judges do not believe that one of their kind should not be appointed to be the Commissioner of the Independent Commission Against Corruption in New South Wales. So I strongly support the opposition to this bill. One other thing must be said. Mr Temby's appointment to head the Independent Commission Against Corruption was done expeditiously because it was done with consultation. When the name Mr Justice O'Keefe was first mentioned this dithering Premier and members of his Government, who have been in office so long that they have forgotten what day it is -

Mr Knight: Seven long years.

Mr WHELAN: I thank my colleague for reminding me. I thought it was a lot longer. The dithering Premier and his colleague Ministers have been here so long that they have lost the plot. The essence of the plot is consultation. If the consultation process had been adopted we would have been warned about the appointment of a person to this very important position. We would have been warned also about the personality involved. I repeat, there were half a dozen well-credentialled and eminently qualified applicants that I know of who applied to become the chair of the Independent Commission Against Corruption. Yet, in a shroud of secrecy the Government, for reasons best known to itself, decided to appoint Mr Justice O'Keefe.

The Opposition has its suspicions about the circumstances of this appointment. Those suspicions are confirmed by documents of a political nature that issued from Mr Justice O'Keefe. The Government, without consultation, and because of the dithering of the Premier, has for months kept this State waiting on an announcement regarding the appointment of the new commissioner. The reappointments of Mr Mant and of Mr Justice Holland bear testimony to what I am saying. The proposed appointment has caused a serious erosion of morale and considerable uncertainty within the Independent Commission Against Corruption. I want to know why the Government has taken so long to come to the conclusion that Mr Justice O'Keefe should be appointed. This has been an absolute mess from the time it started. The future of the Independent Commission Against Corruption is put in jeopardy by the Government's lack of consultation. It is offside with the majority of the legal fraternity, who do not believe that Supreme Court judges should sit in judgment of other judges.

Mr HATTON (South Coast) [8.09]: I oppose the bill. I do so after careful consideration. It is well known that I am a member of the parliamentary committee that oversights the Independent Commission Against Corruption. I strongly support the commission as an institution. I strongly supported Mr Temby - until his resignation, when I became heavily involved in bitterly opposing his representing the Police Service and the Commissioner of Police. I was absent overseas on a parliamentary study tour when the committee considered the possible appointment of Mr Justice O'Keefe. The processes behind that proposed appointment were very disturbing.

The bill is outrageous in my opinion for what is does not do. I was outraged that the Government would bring a bill before the House to make provision for the appointment of a Supreme Court judge. The Leader of the House said on a point of order that the provisions apply to all Supreme Court judges. The Premier openly admitted outside the House that pension provisions for a Supreme Court judge will be made, yet the ICAC legislation does not embrace the "great and the powerful" as was envisaged by Premier Greiner. In his second reading speech introducing the Independent Commission Against Corruption Bill, he said:

> The independent commission is not intended to be a tribunal of morals. It is intended to enforce only those standards established or recognised by law. Accordingly, its jurisdiction extends to corrupt conduct which may constitute a criminal offence . . .

Page 4707

He then went on to say:

> The term public official has been very widely defined to include members of Parliament, the Governor, judges, Ministers, all holders of public offices, and all employees of departments and authorities. Local government members and employees are also included. In short, the definition in the legislation has been framed to include everyone who is conceivably in a position of public trust. There are no exceptions and there are no exemptions.

Of course, the way the Act was framed clearly exempted the Premier himself and the then Minister for the Environment, Mr Moore. I believe that it was not intended to exempt them. The first priority of the Government should have been to amend the ICAC Act. Before it worried about giving somebody a pension or making way for a particular class of person to be the Commissioner of the ICAC the Government should have made sure that the commission covered the great and the powerful and that everybody was equal before the law. In June 1993 the ICAC committee made that recommendation. Eighteen months went by and nothing was done. In November 1993 the committee recommended that the Government get on with it and get the appointment process going: Mr Temby QC was going to leave in April and he had expressed the wish of working in partnership with the new incumbent.

The Government did nothing about it and the whole process of appointment has been flawed. I suspect that there has been an arrangement - call it a deal if you like - that Mr Justice O'Keefe would take the job, his pension would be looked after and he would not touch section 9 of the Act. I think that is borne out by the unwise comments made by the Premier as quoted in the *Sydney Morning Herald* and referred to by the Leader of the Opposition: that Mr Justice O'Keefe expressed reservations about touching section 9. As the Premier and the Leader of the House are well aware, the non-aligned Independents have taken a very tough stand, saying that we would not agree to the passage of the bill unless something was done to ensure members of Parliament are covered by the ICAC.

Mr Whelan: Have you got that in writing?

Mr HATTON: We have that in writing from the Premier in a signed letter and we have the form of words. I am satisfied that the Government is doing the right thing, and I thank it for doing the right thing. But it was not an easy process, and everybody now knows why. Premier Greiner would have gone to

the Leader of the Opposition to discuss any proposed appointment so that there could be bipartisan support. This is particularly important in the case of an appointment of a judge. How can a judge do the job and retain a reputation for impartiality if it is known that he will return to the bench with political baggage? That is what is going to happen in this case, and that is another reason I oppose the bill.

When the head of the Cabinet Office at the time, Mr Sturgess, framed the bill he had in mind not having a judge as the head of the ICAC because he did not want the ICAC tainted as a quasi-judicial body, an inquisitorial body, rather than a body which is based on common law. He did not want as the head of it a judge who would return to the bench after making decisions on very sensitive political matters referred to him. We have already seen in the history of the ICAC that when something tough comes up the Parliament refers it to the ICAC for the commissioner to make judgments. Another reason I oppose the appointment of Mr Justice O'Keefe is that I cannot be convinced that the President of the Local Government Association, the Mayor of Mosman, did not have the political acumen to know that as a possible appointee of the ICAC he should not get involved in a by-election. That is totally ridiculous and I do not accept that. There are a number of very sound reasons for strongly opposing the bill. I oppose it in principle. I oppose having a judge as head of the ICAC.

Let somebody convince me that a well-qualified, competent, impartial Queen's Counsel could not be found to do the job for the sort of money that Mr Temby received, even with what QCs earn. Mr Temby was receiving in the order of $240,000 to $250,000 a year plus 32 per cent for a lump sum pension entitlement, which on my calculation would have made him eligible for $400,000. In fairness to the Government, we have taken a strong stand on the issue. I believe the bill will be passed by the House - not with my support, because the Government has agreed to amendments which will be dealt with in the bill to follow this one which will embrace MPs. I congratulate the Government on this. It could not happen in a more important week, with the presentation of the Niland report about the honourable member for Georges River. It will establish a code of conduct and it will have an overarching clause. The ICAC committee has always made its decisions on a bipartisan basis. Over the years it has acted with efficacy and great care and professionalism in handling highly confidential matters. Yet the Premier did not trust that committee to handle this appointment. He torpedoed it. He embarrassed the committee. He hijacked the process. He said, "This is the person we are going to appoint", knowing that he put the committee under great strain.

I wrote to the chairman of the committee expressing my grave concerns about this. I wanted to know whether the committee, as a committee, protested about that. I did not get a satisfactory response - there was reference to the fact that the committee had examined Mr Justice O'Keefe for so many hours. The confidentiality provisions mean that I cannot reveal the process anyhow but I am most unhappy with the process. When the matter was dealt with in the House by way of an urgency motion the ICAC committee could not reconsider the appointment because the statutory period had passed; all we could do was deal with whether it was appropriate to appoint someone with the judgment exhibited in relation to the Parramatta by-election, someone politically partial. I have been a member of the ICAC committee since day one and this is the first time that there has not been bipartisan support - the committee has been split.

That is not good enough. There is nothing more important to this Parliament, or to the heart of John Hatton, than an effective Independent Commission Against Corruption. For that ICAC to be effective the appointee has to come to that appointment with bipartisan support. The appointment must be the result of consultation and the appointee must be beyond question - there should be no division on that. I now turn to the important question of the pension. Mr Justice O'Keefe was appointed to the Supreme Court in 1993. He turned 60 the next day. His salary was $160,000 with no contribution to the pension, as with all judges. The State pays the pension on retirement and he cannot receive a pension if he voluntarily retires as a member of the Supreme Court before he turns 70. Subject to the Act's provisions, if he is retired due to ill health at any time, he gets a pension of either $40,000 or $96,000 - in accordance with

the Act that covers Supreme Court judges. If he dies in office, his widow receives $32,000 or $40,000. If he stays at the Supreme Court, he can retire at age 70 on a pension of $96,000.

If Mr Justice O'Keefe goes to the ICAC without pension entitlements and returns to the Supreme Court, his pension on retirement at the age of 70 will be only $40,000. If he goes to the ICAC with or without pension rights, the pension rights must apply to the replacement judge - so there is an additional cost involved there. If he goes to the ICAC with pension continuance and then returns to the Supreme Court, his salary will not be in the order of $240,000-$250,000 as it was for Mr Temby. By granting, as this bill does, Mr Justice O'Keefe a pension continuance at the ICAC, as opposed to appointing someone without pension rights, the additional cost to the State will be $96,000 less the $40,000 for which he would normally have qualified - and he would not get the $96,000 until he was 70 - leaving an amount of $56,000 per annum. If he retires as a member of the ICAC under an illness provision, he will get the full $96,000.

I am loath to impugn improper motives to a judge, but I am very concerned about this whole process. I am concerned about the way it was bungled, and I am concerned that the Government, because some of its Ministers were stung by the ICAC, did not want the ICAC provisions to apply to members of Parliament or to Ministers unless a code of conduct was determined by members of Parliament and Ministers. That is not acceptable to people generally. If the ICAC determined that a public servant engaged in activity that required his removal from office, the public servant could be found guilty of corrupt conduct and so labelled. However, because of the decision of the Supreme Court, members of Parliament and Ministers were put outside that provision. In terms of the code of conduct, the only way that the label "corrupt" would apply is if the member concerned breached the code of conduct set by the parliamentarians. That is not acceptable to me. The series of events that have occurred over the last 18 months clearly show the careful program this Government embarked upon to undermine the strength of the ICAC and to highjack the appointment process. I hope that the next bill will do something to restore that. [*Time expired*.]

Mr KNIGHT (Campbelltown) [8.24]: This bill is designed to facilitate the appointment of a judge of the Supreme Court to head the Independent Commission Against Corruption. The bill did not just materialise out of thin air; it has been introduced openly at the behest of Mr Justice O'Keefe. Indeed it is a condition precedent to his taking the job. Of course, we find that of itself a remarkable exercise. It is quite interesting to compare what is being done for Mr Justice O'Keefe with this legislation, so he can head the ICAC, and what was not done for Mr Justice Wood to head the royal commission into the Police Service. Perhaps the single most important ICAC style issue to be dealt with by anybody in the next few years will be dealt with by a judge of the Supreme Court on the salary and conditions of a judge of the Supreme Court. This bill is designed to allow a special arrangement for Mr Justice O'Keefe.

Because Mr Justice O'Keefe is the first person that the Government is to appoint under this legislation I will deal first with matters to do with Mr Justice O'Keefe. Later I will deal with other judges that the Government intends to appoint under this legislation. The Australian Labor Party opposes the legislation because it opposes the appointment to the ICAC of Mr Justice O'Keefe. He does not meet the criteria for any person, whether a judge of the Supreme Court or not, to be appointed as the ICAC commissioner. The first and most obvious criterion is honesty. One would expect the ICAC commissioner to be honest. That is a necessary but not sufficient condition. After all, we expect all members of the police force to be honest, we expect all judges to be honest, and we expect members of Parliament to be honest, but that would not qualify each and every one of those people to be the ICAC commissioner.

The second criterion is that the person must have ability, indeed extraordinary abilities because it is a complex and difficult job. It requires intellect, the capacity for hard work and a range of forensic and analytical skills. Again, it is a necessary but not sufficient criterion for the job. The third test that needs to be met is the test of judgment. Judgment is an important issue in the ICAC because most of the matters that come before the ICAC are not black and white. They are not simply matters where

somebody is accused of taking a big brown paper bag full of money. The cases against Nick Greiner, the Treasurer, the honourable member for Barwon and the honourable member for Maitland did not involve buckets full of money - although one came fairly close to it. They were much more complex cases.

The ICAC commissioner has to determine what is the contemporary community standard. The community standard about what is corrupt is changing. It is a bit like community standards on obscenity; it is not a fixed and static concept. What
Page 4709
Nick Greiner did may well have been regarded as acceptable politics 10 years ago. However, what he did in the context of a few years ago was widely regarded by the community and by the ICAC commissioner as corrupt. But that involves a question of judgment. Mr Justice O'Keefe fails abysmally any test on the criterion of judgment because the letter that he wrote, ostensibly on behalf of the National Trust, perhaps on behalf of the Liberal Party, during the Parramatta by-election showed a gross error of judgment. It showed an error of judgment that nobody who is fit to hold the ICAC commissioner's position should be able to show. Mr Justice O'Keefe is not some neophyte who knows nothing about the political process. He is not somebody who could say, "I did not know how it all works. I have nothing to do with politics, I am just a judge of the Supreme Court. This is a terrible shock and surprise to me".

Mr Justice O'Keefe is a longstanding politician on the Mosman Council; he was mayor of Mosman for a number of years. He was actively involved in politics in the Local Government Association, a level of devious, tough politics that often makes the parliamentary Labor Party and National Party look like a teddy bears picnic. He was a longstanding practitioner within the political process. If anybody knew the implications of that letter, it was Mr Justice O'Keefe. For him to write such a letter shows that his judgment is awry and he is not suitable for the job.

The fourth criterion is that the person has to be seen to be fair. It is not enough just to be fair; it is essential to be seen to be fair in this job. That is why Nick Greiner, when he was appointing the first Independent Commission Against Corruption commissioner, Ian Temby, telephoned the Leader of the Opposition and said, "I want to appoint Temby. What do you think about that?" Nick Greiner was looking for bipartisan acceptance of the appointment because he knew, to his credit - and it may have been to his detriment, subsequently - that the job was untenable unless the commissioner had bipartisan support and was seen to be fair. If Mr Justice O'Keefe heads the ICAC, his position will be seen as unfair and, worse than that, it will be seen as illegitimate.

I ask honourable members to consider a hypothetical situation. It is the middle of next year and the new Leader of the Opposition, Peter Collins, has made an allegation about a Labor government Minister. Leaders of the Opposition do that from time to time; it is part of the business of being in Opposition. Sometimes those allegations are true; sometimes they do not have the substance it was first thought they had. The allegations of the Opposition in recent times have increasingly been seen to be true, particularly in the case of Government Ministers and members. Let us assume that in the middle of next year the new Leader of the Opposition, Peter Collins, makes an allegation. The Premier, Bob Carr, will say, "I will send this allegation to the ICAC".

What will Mr Justice O'Keefe do? If he finds against the Minister, everyone in the Labor Party will say, "We told you so. He is not impartial, he is a rort for the Liberal Party and he is exercising partisan judgment". His decision will be seen to be illegitimate. Conversely, if Mr Justice O'Keefe finds in favour of the Minister and against the allegation made by Peter Collins, members of the Liberal Party and the National Party, the community and the media will be saying, "Barry O'Keefe has bent over backwards for the Labor Party because he did not want to look like he was partisan. It looks like he has been intimidated by all the speeches Bob Carr and other people made in the Parliament".

The bottom line is, whatever Mr Justice O'Keefe does, no-one will accept his decisions as legitimate and impartial. His appointment will be tainted from day one. Maybe he will say, "I will not deal with any

of the allegations about members of Parliament. I will flick that off to an assistant commissioner or a temporary commissioner". That would make a joke of the system if the head of the ICAC has to disqualify himself from dealing with any of the major allegations that might come before the commission. Even if he flicks the issue off to another commissioner, he will still be the head of the institution and, in some ways, will be seen to have his imprimatur on the decision, whatever it might be.

I wish to address a few words, through the Parliament, to Mr Justice O'Keefe. I am sure that he is following this debate with a great deal of interest. I say to Mr Justice O'Keefe: I have met you, but I do not know you well. You seem to be a reasonable sort of bloke on the limited contact that I have had with you. I do not think you are a spiv. I think you are a suitable person to be a judge of the Supreme Court. I am not even sure whether in your private life you are a raging supporter of the Liberal Party. But, what I know and what you must know is that you cannot take this job. You cannot do this job effectively as a result of not only your actions but the subsequent events that have happened in the Parliament, in the media and in the public life of New South Wales.

Why would you take the position? Sure, this legislation will pass through the Parliament because the Government has done a deal - some would say a fairly sleazy deal. Why would you bat on with it, knowing that you cannot take the job and do it effectively? Is it ego? Is it money? Are you seeking some form of vindication? When this bill passes through the Parliament, you will have two choices. First, you can be sensible and not take the job - you would have your vindication as a result of the legislation going through, but you would know that your position was so compromised by the process that got you there as to damage the institution. Second, you could say that you will take the job until the Government finds a replacement and do a very short term in the position and get out.

Knowing that you cannot do the job, if you take the job it will be very damaging to your self-respect; it must be appalling for your dignity; and, above all,

it will damage the future of the ICAC. Nothing will turn the ICAC into an illegitimate institution in this State more than appointing Mr Justice O'Keefe. It would be an illegitimate appointment; a tainted appointment. If it is the Government's intention to weaken the ICAC, that is exactly the sort of appointment that should be made. If, like the Labor Opposition, the ICAC is to be strong, viable, independent, impartial and fair, Barry, for God's sake, show some common sense and do not take the job.

Mr RICHARDSON (The Hills) [8.36]: As we have heard, the bill before the House seeks to change the Independent Commission Against Corruption Act to permit a sitting judge with the Supreme Court - not just a retired or resigned judge - to become the ICAC commissioner. Despite what the honourable member for Campbelltown has just said, I would have thought that most members of this House would regard that as being entirely appropriate. It will allow judges to take on the challenging task of running the ICAC, without prejudicing their pensions or entitlements, and to return to the bench after serving their term. One would think that a judge of the Supreme Court would be a suitable person to take the appointment and that these amendments would receive bipartisan support, to ensure the short- and long-term future and stability of the ICAC. It is clear from the events of the past few weeks and what we have heard tonight from the honourable member for Campbelltown and the honourable member for Ashfield, that is not the case. We have heard that the appointment of a judge from the Supreme Court will weaken the Independent Commission Against Corruption; that his appointment would be tainted. I refer to *Hansard* of 15 September, when the Leader of the Opposition stated:

> In the middle of all this, on 19 August, the President of the National Trust, Justice Barry O'Keefe, sent the following letter to National Trust members - not to the whole body - in Parramatta. I am told that the mailing list was expanded to include people whose membership had been defunct for several years.

It sounds like the Labor Party bringing out the dead vote. The Leader of the Opposition continued:

Hundreds of copies of this letter were sent out. It was not approved by the executive of the National Trust. It was sent out only in Parramatta.

I remember the Leader of the Opposition standing here, gesticulating to the video camera, talking about the fact that it was sent out only in Parramatta. He repeated his assertion. It is the Goebbels maxim: if the lie is big enough and you tell it often enough, people will believe it. The Leader of the Opposition continued:

. . . he should engage in undisguised electioneering, only to National Trust members in Parramatta . . .

The honourable member for Ashfield stated in *Hansard* of 15 September:

Is it coincidental that all the other groups in the Parramatta National Trust, but only those in Parramatta, got the letter? In the electorate of the honourable member for Granville none of the members of the National Trust got the letter, though they were in the Parramatta National Trust area.

I am here to say that that letter did not go only to members of the National Trust in Parramatta. To say it did would be a complete fabrication of the truth, an absolute falsehood. The honourable member for Ashfield may be guilty, as he often is, of not getting his facts right, but the Leader of the Opposition is guilty of deliberately misleading this House. I have a statutory declaration from my mother, who is 76 years old. She has been a guardian at old Government House attending every second week, religiously, for the last 20 years. The statutory declaration states:

On August 20th, 1994 (or thereabouts) I received a letter from The Hon. Mr Justice Barry O'Keefe regarding a Government grant of $675,000 for work on Old Government House, Parramatta, where I have been a Guardian for the past 20 years. I was delighted at the news, as I had been lobbying my son (and MP) Michael since last year about the sorry state of repair of the building. The original letter is attached to this declaration. I am not and never have been an elector of the State seat of Parramatta.

That statutory declaration is signed by Edith Margaret Richardson of 24 Finlay Avenue, Beecroft - miles outside the electorate of Parramatta. My aunt, who lives in Marsfield, is a member of the National Trust and she received the letter. I have received representations from constituents in Castle Hill and Kenthurst who also received it. I seek leave to table the letter.

Mr ACTING-SPEAKER (Mr Hazzard): Order! Only Ministers are able to table documents.

Mr RICHARDSON: My understanding is that the letter was sent to a total of 2,500 people, 800 of whom were in Parramatta, and that it was in accordance with National Trust practice. Honourable members heard the Treasurer say, on 15 September, that a letter had been received from the President of the National Trust, Mr Justice O'Keefe, addressed to the Director-General of the Cabinet Office, Robert Wilkins. He quoted from that letter as follows:

The letter accords with the practice which I have adopted in relation to events which touch upon a particular branch or geographic area in which the Trust operates. An example of this is a letter which I sent to the Blue Mountains Branch members concerning the resolution of a problem at the Trust property.

Mr Justice O'Keefe was referring to a trust property known as "Everglades" at Leura. The latest letter was sent to a wide range of people. Obviously, people in the Parramatta electorate received it because they have an interest in Old Government House at Parramatta. Old Government House is one of the most important historic buildings in Australia. The first building on the site was erected by Governor Phillip in 1790. It was wattle and daub which did not last. The existing building was constructed by Governor Hunter and finished in 1799. It was extended by Lachlan Macquarie in 1812. The extensions

were designed by John Watts and supervised by Richard Rouse. The front portico and offices of the house were ascribed to Francis Greenway. The house was used by a number of Governors - Brisbane, Darling, Bourke, Gipps and

Fitzroy. Governor Brisbane's two children were born there. It remained the country seat of government for the colony of New South Wales until 1857.

Mr Knight: On a point of order: I am surprised the Minister for Police, and Minister for Emergency Services has not jumped up. I presume he has fallen asleep. He was very quick on his feet to complain that members of the Opposition were talking about Mr Justice O'Keefe, and questioned whether that was within the ambit of the bill. Members of the Opposition argued quite persuasively that it was, but I am surprised that the honourable member for The Hills appears to be somewhat preoccupied with the architecture of Old Government House and intent on a long liturgy on that subject, rather than dealing with the substance of the bill.

Mr ACTING-SPEAKER: Order! Before I address the point of order I advise the honourable member for Campbelltown that standing orders provide that members who seek the call should wait for acknowledgment from the Chair before commencing their contributions. Members should not move to the lectern and commence speaking before that acknowledgment.

Mr RICHARDSON: On the point of order: I am attempting to delineate for honourable members the importance of the building and the reason the letter was sent. I believe that is germane to the bill.

Mr ACTING-SPEAKER: Order! It would seem that some latitude has been given to all members who have participated in this debate. I suggest, however, that perhaps the member is approaching the limit of that latitude. He should return to the ambit of the bill as soon as possible.

Mr RICHARDSON: It is arguably the most important building in New South Wales, outside Macquarie Street. The problem was that though the building had been renovated at the beginning of this century, it had been poorly done. Replastering was necessary, and the paint would not adhere to the old plaster because there was too much salt in it. Cracks were appearing in all the walls. Members of the Cabinet attended Old Government House in March and saw that for themselves, and very properly agreed that some money should be put into restoring the building. I might add that, given the number of years that the building had been in decay and the strong feelings of members of the National Trust for it, it was not surprising also that when $675,000 was granted to restore the building, the President of the National Trust, Mr Justice O'Keefe, should have written to National Trust members who were interested in it. The letter was actually a cry of exultation. It was like Premier John Fahey jumping when Sydney won the Olympic Games bid. The piece of literature that most resembles the tone of the letter is Jabberwocky:

> And thou hast slain the Jabberwock?
> Come to my arms my Beamish Boy.
> Oh frabjous day, calloo, callay!
> He chortled in his joy.

But there were no mythical monsters slain by the posturing, preening and grandstanding of the Leader of the Opposition in front of the video camera a few weeks ago. He merely impugned the integrity of a Supreme Court judge. Let me refer to Mr Justice O'Keefe's career. He is the Chief Judge of the commercial division of the Supreme Court of New South Wales; a member of the legal profession disciplinary tribunal; President of the Bar Council; Mayor of Mosman - as honourable members have heard; President of the Local Government Association; lecturer and teaching fellow; a member of the Law Faculty; President of the National Trust since 1991; and a Queen's Counsel since 1974.

Mr Justice O'Keefe is a man of impeccable credentials as the ICAC commissioner and also,

obviously, as a justice of the Supreme Court. Murray Tobias, President of the New South Wales Bar Association said of Mr Justice O'Keefe, "But he will do what he feels is right at any cost. He has no association with any party and is extremely impartial and impervious". Let me contrast that with what the Leader of the Opposition had to say about him: "At the very least, Mr Justice O'Keefe has been guilty of a serious error of judgment. With the best will in the world, nobody on the Labor side of politics could support his appointment after this error of judgment, or alternatively, this demonstration of partisanship".

Who would the Labor Party seek to appoint as an alternative? Chris Murphy, perhaps? Tim Robertson? Perhaps it would seek to reappoint Ian Temby? Do these people exhibit all the characteristics that the honourable member for Campbelltown mentioned - honesty, integrity, judgment and a sense of fair play? Ultimately, Mr Justice O'Keefe's letter should be seen for what it is: the ingenuous act of an apolitical person; not the disingenuous act of a political animal. There is no person currently available more suitable to take on the role of commissioner of the Independent Commission Against Corruption. The bill makes that possible. Safeguards are involved in the appointment, which would mean that, if Mr Justice O'Keefe were to be reappointed, the instrument appointing him as commissioner must expressly declare that the provisions of the bill are to apply, and the judge must consent in writing to the application of those provisions. The bill is fair and will enable a very worthy candidate to accept the role of ICAC commissioner. I support the bill.

Mr GAUDRY (Newcastle) [8.48]: This bill is a travesty. It continues the travesty this Government put in place with its whole approach to the ICAC and to the commissioner of the ICAC. I find particularly distasteful the manner in which it has been brought to this House. This bill and the Independent Commission Against Corruption (Amendment) Bill have been joined in an attempt to ensure Mr Justice O'Keefe unimpeded passage to the position of commissioner of the ICAC.

The Independent Commission Against Corruption (Amendment) Bill was introduced at the insistence of the Independents, who would not support this bill
Page 4712
unless there were some significant changes made to the Independent Commission Against Corruption Act. I am amazed that honourable members have not been shown those proposed amendments to the Act prior to debating and voting upon a bill that should more correctly be entitled the Barry O'Keefe pension bill. This bill is the result of negotiations between Premier Fahey and Mr Justice O'Keefe. Let us not beat about the bush, this bill has nothing whatsoever to do with any other justice of the Supreme Court; it is clearly and unequivocally linked to the nomination of Mr Justice O'Keefe for the position of ICAC commissioner.

Mr Justice O'Keefe made it clear that he would not continue to seek the position unless he could be assured of returning to his position of Chief Justice of the Commercial Division of the Supreme Court. As has been pointed out by the honourable member for South Coast, he would have to serve continuously as a Supreme Court judge until he was 70 years of age before he would be entitled to his full pension rights. That meant that if he was appointed ICAC commissioner, he would be disadvantaged. He negotiated with the Government in relation to his appointment. Parliament should not enact law on the basis of an individual's need to secure his position. In its desperation the Government obviously felt itself pushed towards the decision it has made. I say "in its desperation" because undoubtedly the Government was determined to approach the replacement of the commissioner in a way that would weaken the ICAC.

As I said in a previous debate, the Government did not take the necessary steps to ensure that Mr Temby was replaced as ICAC commissioner within due time. A previous speaker mentioned that Mr Temby, when reporting to the ICAC committee in November 1993, made it clear that he was concerned that no steps had been taken by the Government to ensure the effective appointment of a replacement commissioner at the conclusion of his term on 13 March 1994. It was not until January that the Government decided to advertise the position. No due process was followed, although the Premier knew, because of his involvement for the seven long years of the Government's term of office, that Mr Temby

would retire on 13 March. He could have and should have set in train a process to nominate a replacement commissioner. The nomination should have been placed before the ICAC committee so that the committee could, if necessary, exercise its power of veto or, after discussion with the Leader of the Opposition, as was done in relation to the appointment of Mr. Temby, ensure the bipartisan appointment of a commissioner who would effectively lead the ICAC in a non-political fashion.

The Government prejudiced the whole process from the beginning. The process was also prejudiced by the Premier's announcement of Mr Justice O'Keefe as the nominee before the committee had the opportunity to consider the nomination and, if necessary, exercise its power of veto. I was most concerned by the processes followed by the committee at its confidential meeting. The significant event of August was the letter containing the great news for Parramatta. The sending of that letter by Mr Justice O'Keefe in his position as President of the National Trust was either an extremely naive decision or an extremely political statement. Whichever is the case, the sending of the letter by Mr Justice O'Keefe seriously called into question his capacity to lead the ICAC with the unqualified bipartisan support of this House.

The Opposition makes no bones about the fact that it was grievously offended by the release of that letter so close to the Parramatta by-election, a by-election that was pivotal to the chances of success of both the Labor Party and the Liberal Party at the 1995 general election. The by-election was a litmus test, and in that highly sensitive situation Mr Justice O'Keefe, for one reason or another, thought it was reasonable for him to introduce into the by-election campaign a letter praising the Government for allocating the unprecedented amount of $675,000 to the electorate. That process had been set in train some time before when the Minister for Planning, during visits to the area, made it clear that he would look favourably at funds flowing to the marginal electorate of Parramatta.

Within one week of a crucial by-election the "great news for Parramatta" letter was sent either by an extremely naive person or by a person behaving in an inexplicably political fashion. In the opinion of the Opposition that calls into question the fitness of Mr Justice O'Keefe for the role of Commissioner of the Independent Commission Against Corruption. Following a reference from both Houses of Parliament the ICAC committee was called upon to make a judgment. The meeting of the committee caused me and other Opposition members of the committee, as well as the honourable member for South Coast, a great deal of concern. We felt strongly that the matter was not fully canvassed and that another process should have been available. The report of the committee reveals that the committee deliberated for more than two hours before the confidential hearing with Mr Justice O'Keefe took place. The Opposition members of the committee could not support the motion moved at the end of the deliberative meeting and, because of the letter to the constituents of the Parramatta electorate, voted against a full endorsement of Mr Justice O'Keefe.

The Government has been tardy and negligent in reviewing the Independent Commission Against Corruption Act. The necessity for that review was raised by Mr Temby in the 1993 annual report of the ICAC. He made it clear that he was greatly concerned that the Government had not acted on the unanimous recommendations made by the ICAC committee for substantial changes to the Act. The Government did not send to the Law Reform Commission the references that were unanimously called for by the committee. However, the Government has managed to bring together this trifling piece of legislation and to insult the committee and members of this House by deciding that in order to facilitate the appointment of Mr Justice O'Keefe it

will deal with changes to the Independent Commission Against Corruption Act, changes about which the committee was unaware, as I am sure were most honourable members. The 1994 Annual Report of the Independent Commission Against Corruption, tabled in this House today, refers to the Government's approach to changes to the Independent Commission Against Corruption Act. The new acting commissioner at page 6 of the foreword said:

> In last year's Annual Report Commissioner Temby welcomed the prospect of amendments to the

Act in a manner generally consistent with the May 1993 report by the Parliamentary Committee on the ICAC.

In concluding, it is necessary for me to note that notwithstanding the May 1993 report there had been no apparent progress at 30 June 1994 in adopting or implementing its recommendations. At the time of furnishing this Report it is noted that the matter is under consideration in the Parliament.

That is an indictment of the Government and its whole approach to the ICAC committee, and the commission, and to dealing with the issue thrown up in the Greiner-Metherell affair about the Independent Commission Against Corruption Act not having application to Ministers of the Crown, the Premier or members of Parliament. The Government is absolutely determined to have the bill pass through the House following some deal made about changes to the Act which have not had the benefit of full discussion, expert witnesses, committee discussion or debate in the House. That is a disgrace. I cannot understand how honourable members, particularly the Independents, can treat the processes of the House in that fashion. While the Opposition is committed to a strong, effective ICAC, it is also committed to the view that the person nominated for the position should have the confidence of both sides of the House. As a result, the approach taken by the Government has compromised Mr Justice O'Keefe in all aspects of his representation to this House - [*Time expired*.]

Mr KERR (Cronulla) [9.03]: After listening to the debate I am able to point out to all honourable members that this is not an unprecedented action. Mr Justice Stewart was appointed to a Federal royal commission.

Mr Nagle: Tell the truth about the entire appointment.

Mr KERR: I will tell the truth about the entire appointment. The appointment related to the royal commission into the *Age* tapes and Mr Justice Stewart sought to retain his judicial office. He came into conflict with the Chief Justice and a number of judges of the Supreme Court of New South Wales, who believed it was inappropriate for him to retain judicial office while exercising executive and investigative powers. However, the then Labor Government in New South Wales saw no conflict and the then Premier supported the appointment of Mr Justice Stewart. Further, when Mr Justice Stewart resigned his judicial commission in New South Wales he was immediately given a commission in the Federal Court in the Australian Capital Territory by a Labor Federal Government. So that matter went much further -

Mr Nagle: In the Australian Capital Territory, not the rest of Australia. Do not mislead the House.

Mr KERR: The honourable member for Auburn reminds me that it was in the Australian Capital Territory, as I told the House earlier, and it was endorsed by a Federal Attorney-General. In this case Mr Justice O'Keefe is prepared to resign his judicial office. He is prepared to cease being the Chief Judge of the Commercial Division, but as the bill states, upon his return to the bench that position may not be available. If the truth be known, he is making considerable financial and professional sacrifices to serve the people of New South Wales.

Mr Nagle: No problem with that.

Mr KERR: The honourable member for Auburn says he has no problem with that. Mr Justice O'Keefe is also a man of integrity.

Mr Nagle: No problems.

Mr KERR: The honourable member for Auburn says that he has no problems with that. Further, Mr Justice O'Keefe has served the community. I refer to a book that was written in relation to a series of murders that occurred in Mosman. Mr Justice O'Keefe was then the Mayor of Mosman and he caused a number of public meetings to be held in order to help the community. The book states that Mr Justice

O'Keefe offered the task force every facility and that the Mosman Town Hall and the Mosman police station became the outpost for the Chatswood based investigation. He and his colleagues found themselves working long into the night to administer the safety systems that they established.

Mr Nagle: On a point of order: I appreciate what the honourable member for Cronulla is saying about what happened in the Mosman area but it should be clarified -

Mr ACTING-SPEAKER (Mr Hazzard): Order! Is there a point of order?

Mr Nagle: Yes.

Mr ACTING-SPEAKER: The honourable member might address the Chair on the point of order.

Mr Nagle: Yes. The honourable member for Cronulla is misleading the House in regard to the letter that was written by Mr Justice O'Keefe in regard to the member for Willoughby -

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

Mr KERR: I believe that Mr Justice O'Keefe, given his commitment to the community, his ability, and his undoubted integrity, is suitable for the appointment of Commissioner of the Independent Commission Against Corruption. The bill, which enables a wider field to be available for appointment to that important office, should receive the support of all fair-thinking members of this House.

Page 4714

Mr SCULLY (Smithfield) [9.07]: I am astounded at the honourable member for Cronulla. He must have been speaking tongue in cheek this evening because even he could not seriously be putting to this House that Mr Justice O'Keefe is an appropriate appointment as Commissioner of the Independent Commission Against Corruption. Clearly this amendment is the O'Keefe amendment; in fact, it ought to be called just that because that is specifically what it is designed for - to facilitate the appointment of Mr Justice O'Keefe to head the Independent Commission Against Corruption.

The parliamentary Labor Party is firmly opposed to this legislation for reasons which have been enunciated by a number of my Opposition colleagues. I actually see disappointment as another milestone in the path of the Government's incompetent management of the Independent Commission Against Corruption. One need only consider the initial appointment and setting up of the Independent Commission Against Corruption, which the honourable member for Cronulla would concede has been a boomerang for this Government. I do not need to list the litany of characters and victims from the Government who have had to be paraded before the Independent Commission Against Corruption. However, this saga of appointing a new commissioner has gone on for months and months. I am astounded that the Government could not properly prepare for the latest appointment.

I can only assume that gross incompetence is behind this appointment or that something sly is afoot. I know we have had seven years of mismanagement of this State, but I happen to think that this is not an instance of gross mismanagement. However, those who look at it closely could be excused for thinking that gross incompetence is the most obvious explanation for the Government not being able to fill the position of Commissioner of the Independent Commission Against Corruption. I wonder whether something more sly is afoot. Was the Government having trouble finding a person to do its bidding on the Independent Commission Against Corruption?

I posit this question: are the Minister and the Chairman of the Committee on the Independent Commission Against Corruption seriously suggesting that there were not appropriately qualified people to take on the position of commissioner at a salary of $250,000 a year? Are they suggesting that after months and months of searching and heartache they were able to find only Mr Justice O'Keefe? I do not

believe that. I think we in the Opposition are entitled to ask: why was Mr Justice O'Keefe selected? Why is he the only person put forward after months of due search and diligent inquiry? I can only assume that there is heartache in the Government over the appointment of Ian Temby.

I think the honourable member for Cronulla would regard Ian Temby as possibly the John Kerr appointment of this Government. They may have seen Mr Temby as a person who was friendly to the Government and therefore suitable for appointment to investigate so-called wrongdoings by former members of the Wran and Unsworth administrations. However, Temby did the wrong thing. He investigated members of this Government. I think the Government is concerned to ensure that with this new appointment it gets someone who is friendly to the Government. I believe the Government considers Mr Justice O'Keefe a person friendly to this administration. One has only to read the press release of 14 June 1994 issued by the Premier:

> Through his public and professional career he has gained an understanding of the structure and processes within the New South Wales public sector, including the State Government.

He is probably not a member of the Liberal Party and I do not know whether he parades as an undisguised devotee of the Liberal Party, but I do know that as an independent mayor of Mosman he could be nothing but a supporter of the Liberal Party. This Government knows that. The crux of the concern of the Opposition is what Mr Justice O'Keefe did just prior to the Parramatta by-election. He used his position to positively harm the election chances of the parliamentary Labor Party. We therefore are well justified in making strong complaint. Are we expected to sit back and remain silent after what he did?

Mr Justice O'Keefe used his position as head of the National Trust to try to endear 800 voters to the Government, in the hope that they would possibly vote for Wendy Jones and defeat the working women of Parramatta. Are we supposed to feel that that had nothing to do with the Parramatta by-election? Are we supposed to accept that this action by a judge of the Supreme Court, on the eve of a by-election of crucial significance, was pure coincidence? He must have known the significance of that by-election. One does not have to be a political genius to realise the import of a win for the Government. The result would have been government in its own right - no more Peter Macdonald, no more Clover Moore and no more John Hatton. A by-election victory would have enabled the coalition to govern in its own right. That was the significance of the Parramatta by-election.

The Government got Mr Justice O'Keefe to send a no more Peter Macdonald, no more Clover Moore and no more John Hatton letter. If members on the Government side are suggesting that it was coincidental that he sent that letter a week before the by-election, they must be acknowledging that Mr Justice O'Keefe had a serious lapse of judgment. Are they really suggesting that Mr Justice O'Keefe's political acumen is minus 50? If they are, he is not competent for the job. His judgment so lapsed on that day that I am left to wonder whether or not he has the professionalism to properly fill the position of Commissioner of the Independent Commission Against Corruption.

I suspect that something more sinister occurred - that the judge was acting under riding instructions. He either wished to ingratiate himself with the

Government or he had been asked to write the letter. Either way, he is a person not fit to hold the position of Commissioner of the Independent Commission Against Corruption. An incompetent political campaign or a deliberate attempt to undermine the parliamentary Labor Party is good reason to oppose this legislation. We will not abide Mr Justice O'Keefe being the Commissioner of the Independent Commission Against Corruption. I say to Mr Justice O'Keefe: while we have some respect for you as a judge, stay where you are. You dared tread on the ground of politics; and, having trod there, you will have to accept the consequences. Having trod there and participated as an ally of Wendy Jones, you will have to accept that we will not tolerate you as Commissioner of the Independent Commission Against Corruption. We are happy for you to continue as a judge, withdrawing to the cloistered rooms of the

judicial system, but do not venture into the world of politics because you must accept the consequences for what you did.

As a lawyer I recall - as Mr Acting-Speaker and the honourable member for Cronulla would appreciate - the honourable member for Cronulla talking about the separation of powers. I am a little intrigued as to how he would explain his support of the principle of the separation of powers while wanting to second a judge as Commissioner of the Independent Commission Against Corruption. He would know that in the debate on the appointment of Mr Justice Stewart there was furious argument about the separation of powers. The honourable member for Cronulla, being brighter than Joh Bjelke-Petersen, would understand what I am talking about.

It is unfortunate that he has already participated in the debate because I would have liked to hear him explain later his inconsistency of views on the separation of powers vis-a-vis the appointment of Mr Justice O'Keefe. I do not suggest hypocrisy; legalistic inconsistency is about the kindest way I can put it. The Labor Party will not provide bipartisan support for the appointment of Mr Justice O'Keefe. If he is forced upon us, then he must bear the consequences of having his opinions, decisions and judgments being viewed as those of the parliamentary Liberal Party and the parliamentary National Party. For those reasons, the Labor Party opposes the bill.

Mr NAGLE (Auburn) [9.17]: I had the great privilege as a member of this Parliament to sit in on the lengthy investigation of the appointment of Mr Justice O'Keefe arising from the infamous letter which began with the words, "Great news for Parramatta!" That letter was distributed just one week before the Parramatta by-election. Unlike my colleague the honourable member for Smithfield, who also is a lawyer, I give his honour the benefit of the doubt: maybe his actions were not for the purpose of supporting the Government's campaign to elect Wendy Jones, although it is hard to come to grips with those infamous words, "Great news for Parramatta!"

Concerns about Mr Justice O'Keefe's actions led to a committee of this Parliament examining the matter. That examination started at 6.15 p.m. - which I am sure the honourable member for Cronulla will verify - and for the first two and a half hours committee members argued over the legal niceties of what was to happen regarding the procedure of that committee. That resulted in great debate. I would not suggest that a lawyer would ever delay issues; in this instance it was important that the committee got the issues clear before His Honour came before it. Ultimately, Mr Justice O'Keefe did come before that committee and he explained his position.

I remember the words of His Honour but I cannot tell the House what he said because the proceedings were in camera. The honourable member for Cronulla nods his head in agreement, indicating that if I do not tell the House what was said I will not be prosecuted. I am the only alderman in the State of New South Wales who has ever been prosecuted under ordinance 1, clause 48 of the Local Government Act in regard to disclosing confidential information to the committee of a council - when I was 26 years of age. Tonight I am going to tell the House at least one question I asked and the answer I received from His Honour, then the committee and the Parliament can decide whether I can be prosecuted for such a transgression.

The question was, basically and in sum, "Judge, if you look at the letter that was written and the basic situation in regard to what occurred in retrospect, do you not believe that you should have thought very clearly and concisely about writing that letter because of the political consequences of what occurred?" I cannot read to the Parliament exactly what the question was because then there would be definitely something to prosecute me for but I think I can put that as being the basic question. The honourable member for Cronulla has not jumped up to object. The answer from His Honour was, "In retrospect I would say this, that yes, in retrospect and in hindsight, yes it was wrong that I wrote that letter".

Mr West: Hear! Hear!

Mr NAGLE: The Minister for Police, and Minister for Emergency Services said, "Hear! Hear!" I will not talk about Christopher Skase and the rest of the answer except to say that there was a very sensitive situation at the time that his appointment was under consideration. His Honour knew that he was going to be a candidate, if not the candidate, for the position. He knew that the Opposition was concerned about one important area: his being a Supreme Court judge and problems which could be caused by his becoming commissioner of the ICAC and then going back to the Supreme Court. Correctly, the honourable member for Cronulla had talked about Mr Justice Stewart's appointment. When Mr Justice Stewart was reappointed he was reappointed not to the Federal Court in the sense that we understand it - for Western Australia, South Australia, Queensland, New South Wales and the Northern Territory - but to the Australian Capital Territory, that small thing with

about 280,000 people. It was a mechanism used by the Federal Government to get him appointed so that he would not lose his position as a justice of the Federal Court.

I had basically persuaded my colleagues, including the Leader of the Opposition, that we should forget about the problem. It was an important principle that maybe His Honour would have inside information but we accept that Mr Justice O'Keefe would exercise his discretion in not sitting on any matters relating to the Independent Commission Against Corruption. It was unkindly said by one of his fellow lawyers, a QC, "They will probably make him a bail judge or the judge for adjournments". Be that as it may, he could be reappointed. I had nearly persuaded my colleagues to agree to the appointment. Then one day I walked into the office of a colleague who held up to my nose a letter referring to great news for Parramatta. This caused me great consternation in view of the efforts and time I had put in to helping His Honour. The honourable member for Smithfield was very angry about the situation.

However, I raise a more serious matter, a matter of grave concern. It has come to my attention that a deal has been done for certain people to support the next bill to be debated if certain people support the Government's appointment of Mr Justice O'Keefe. In normal times that would be part of politics and no-one would worry about it. But yesterday a Government member put a folded piece of paper under my nose and said, "This is the code of conduct that you will now have to face because the Independents are demanding it". I was gravely concerned not so much because of the code of conduct which the Independents wish to have introduced but because it was put under my nose as if I had made a mistake.

Has a deal been structured to get the passage of the bill and the acceptance of a code of conduct which the Parliament has not seen? It would be a shame if this were the case. Perhaps the way to deal with these bills is to debate first the Independent Commission Against Corruption (Amendment) Bill, which reforms section 9 of the Act, and then to debate the appointment of Mr Justice O'Keefe. I do not take kindly to having pieces of paper stuck under my nose and being told that a code of conduct is being introduced. It is a code of conduct that I have never seen. It has never been discussed with me.

Mr Hatton: They dudded you.

Mr NAGLE: I have been dudded. I have had a lot of dealings with the honourable member for South Coast. I am thankful for the good things that he has done over the last four years. If I have been dudded, the truth will come out in the final vote on the other bill. I will be very interested to see what people have to say about it. I heard the honourable member for South Coast inform the House that he would vote against this bill for the reasons he set out. He and I understand that extensive investigations have been done. I am indebted to him. If a code of conduct in relation to wheeling and dealing within the Parliament is to be introduced, what is the situation in relation to such wheeling and dealing being an effective part of government? If the vote on the next bill will be decided on the Mr Justice O'Keefe matter, where do we stand on the issue? Will the code of conduct allow no flexibility?

If in the end the ICAC decides that I, the honourable member for South Coast or the honourable member for Cronulla have somehow breached a code of conduct of the Parliament and we should be

expelled from the Parliament, should we be expelled from the Parliament or should the matter be left in the hands of the three bodies that have decided such matters for a century: the people of New South Wales, the Parliament and - as was exemplified by what happened in the Parliament yesterday on allegations made against the honourable member for Georges River - the media? I do not mind there being a code of conduct for Parliament. The honourable member for Manly may object. The honourable member for South Coast and the honourable member for Cronulla will verify that I have attended committees and I have looked at codes of conduct elsewhere. I have looked at codes of conduct everywhere. I have raised the matter within the ICAC committee.

Mr ACTING-SPEAKER (Mr Hazzard): Order! I do not want to interfere with the free flow of comments to the House by the honourable member for Auburn but his addressing the rear of the Chamber is causing Hansard difficulties which could be resolved by his directing his comments to the Chair.

Mr NAGLE: Mr Acting-Speaker, being a great friend and supporter of Hansard, I would never want to do that.

Mr Kerr: They are great people.

Mr NAGLE: Indeed they are. The honourable member for South Coast said this was a tough bill. Both bills are tough bills but government in this State has to work somehow. Let us assume for the purposes of dealing with the appointment of His Honour Mr Justice O'Keefe that there was a trade-off in regard to this bill for support of another bill. Assume that the Government decided to persuade people to vote for a particular bill on the basis that it would support a bill in regard to a code of conduct. That would create enormous problems for this Parliament. There is no doubt that Mr Justice O'Keefe is competent to be the Independent Commission Against Corruption commissioner. That is an issue that has never been disputed. The ICAC Annual Report 1994 states:

> Acting Commissioner's Overview
>
> In March 1994 Commissioner Ian Temby QC, the founding Commissioner, completed his five year term of office. Under his guidance and leadership the Commission rapidly developed into a vigorous and effective organisation. Staff and facilities were acquired and an organisational capacity to undertake unusual and difficult work was achieved. While the experience and advice of other individuals and organisations has been of assistance in that process, the Commissioner has largely had to establish its own strategic and operating processes.

Page 4717

> It has been particularly unfortunate for the State of NSW that the Commission has been without a permanent Commissioner since March. Despite the delay the Commission has continued to energetically pursue its responsibilities. However, the delay has been undesirable and not without adverse impact.

Later, in the same report it is stated:

> One of the key features of the Commission's specialised role is its ability to consider matters rapidly and efficiently. In September 1993 the Commission received Terms of Reference from the Parliament for an investigation into circumstances surrounding a defamation action between the Treasurer of New South Wales and a public servant. The Commissioner released the investigation report in January 1994.

The reason I extracted this from the report is significant. The Government knew for five years that it needed an ICAC commissioner. Late in 1993 the commission sought to find a new commissioner. Why

has it taken so long to get a new commissioner? Why is it that at the end of October 1994, nearly one year after the Government sent out its head-hunters to find a person to be the commissioner, that this Parliament is debating this important issue? The reason is that the Government blames the Labor Party, but in real terms it did not want an ICAC commissioner to investigate many matters brought before this Parliament.

Dr MACDONALD (Manly) [9.32]: I had not intended to speak in this debate but I feel compelled to do so in view of some of the implications put around by the Labor Party; and I resent it. I really resent the fact that they are talking of deals having been done between the Independents and the Government. In a sense these two bills have travelled together and have a cognate nature about them but I believe - and I speak for myself - that it is an attempt by the Independents to use the balance of power in this House responsibly. I support the bill. I do not intend to undermine the process of the appointment of Mr Justice O'Keefe. I may have views about the suitability of Mr Justice O'Keefe, but we have a due process in this Parliament relating to that appointment. In this case I believe that, despite the fact that Government members were tardy in the way they went about it, the matter did go to the ICAC committee for proper consideration. I do not see it as my role in this Parliament - and the use of the power I may have - to either endorse him as an individual or not. I regret the character assassination that has occurred. I see this as evidence that the ALP is determined not to see this commissioner succeed.

I also add that I saw this bill as a golden opportunity to correct a wrong; that is, the question of amending the Independent Commission Against Corruption Act, specifically section 9, to bring politicians within the ambit of the Act. We all know that one of the outcomes of the appeal on the Greiner matter was that it was seen that politicians were dealt with differently from other public officials. Perhaps that was a fair judgment by the Court of Appeal. The committee on the ICAC recognised that section 9 needed to be amended. That recommendation was made 15 months ago, however, the Government has done absolutely nothing. This was a question of political opportunity, of using our positions in this place to try to correct a wrong, namely, that politicians were not covered by the ICAC. The direction taken by the Labor Party in this debate is quite unfortunate. The bill that is about to follow this bill is long overdue. The fact that it is coming after this bill, rather than before it, is of no importance. It is important that we are going to correct that wrong, that we are to bring politicians under the ambit of the ICAC. I make no apology for that whatsoever.

Mr WEST (Orange - Minister for Police, and Minister for Emergency Services [9.36], in reply: On behalf of the Premier I thank all honourable members for their contributions to this debate. It is clear that the Labor Party set out in this debate - [*Quorum formed*.]

I repeat that it is quite clear that the Australian Labor Party entered the debate on this bill with one clear objective: to continue its character assassination of Mr Justice O'Keefe. What criteria will satisfy the Labor Party in this Parliament? That is clearly the message that we heard tonight. We heard suggestions of conspiracy. We heard suggestions about letters sent to the National Trust. We heard all sorts of complaints about why we cannot have a judge appointed as commissioner, let alone one individual judge whose character stands well in the community. The process of finding an Independent Commission Against Corruption commissioner to replace Mr Temby commenced formally early in December of last year. The intention was for the successor to work in concert with Mr Temby, as was referred to by the honourable member for South Coast. Because of the process involved and the demands of the job, the sorts of people who would fulfil this role were not those who were jumping through the doors of this Parliament. It was a long and painstaking exercise; it was frustrated by the Labor Party every step of the way.

It became clear that this bill was necessary. The bill has been introduced ostensibly under the guise of a request from Mr Justice O'Keefe. There was also consultation with the Chief Justice of the Supreme Court, where there is acknowledged to be a considerable pool of prospective appointees to the position of commissioner. These people hold Supreme Court positions; they are eligible and well suited to the job. However, not one of them would take on the job of ICAC commissioner if they were placed in a position of

having to act partially towards the government of the day to secure their return to the bench. When they are elected to the bench it is a privilege and a right that they enjoy; it is bestowed on them for a long time. This bill will ensure that the ICAC has access to a pool of people of the calibre of those on the Supreme Court bench. The ALP has said that it has no confidence in Mr Justice O'Keefe; that it will not work with Mr Justice O'Keefe. That is incredible. The ALP believes that in order for someone to be an ICAC commissioner, they must

have some connection with the ALP. It has been stated by members of the ALP - it is on the record - that Mr Temby was formerly a Labor candidate in Western Australia. That was of considerable concern to members of the Government.

A number of Government members were equally concerned about the appointment of Mr Temby. There are members in this House today who were concerned about the decision which was made. Mr Temby was appointed the ICAC commissioner because we believed that he had the ability to do the job. He proved beyond fear and favour that he could deal with matters impartially. There are members of this House who were hurt - and one of those members has just walked out of the Chamber. There are members who do not support, and who have not supported, Mr Temby's role. The Labor Party should give Mr Justice O'Keefe the same opportunity to prove himself in the role of the ICAC commissioner. He should not be damned before he has that chance. I ask the Labor Party to seriously consider that. The Labor Party condemned Mr Justice O'Keefe right from the beginning. Mr Justice O'Keefe has been labelled for having some misjudgment with respect to a letter he sent out on behalf of the National Trust. As a private member of the National Trust, I have the greatest respect for Mr Justice O'Keefe in his position as president of that organisation. The people of this State would respect the way in which he conducts himself as the President of the National Trust. He has carried out his actions without fear or favour.

It has been convenient for the Labor Party to highlight an occasion when Mr Justice O'Keefe sent out a letter indicating something the Government might have done. If honourable members read through the National Trust magazines, they will find occasions when he, as president, has questioned the Government. He has called on the Government to support something that has been near and dear to the heart of the National Trust. Mr Justice O'Keefe is well suited to this task. His actions in that position will prove to be so. The ALP said that some deal has been stitched up in this regard, as was referred to by the honourable member for Manly. I also find that suggestion to be incredible. Quite clearly and unequivocally, there is a concern and a perception in the community that members of Parliament and Ministers of the Crown are not subject to the same requirements of the ICAC as members of the public and other public servants. Clearly, as a result of negotiations - some of which were painful - we have arrived at an agreed set of amendments to section 9. Those amendments will clearly deliver that result; a result which has not been without some pain. I believe it will be proved with the test of time: it will either work in the way in which it is designed or it will require modification. I do not believe it will require modification. I am prepared to give it a go; to give it a chance.

Tonight some honourable members have raised the issue of a code of conduct. Labor Party members obviously have not read the amendments to the legislation that we are going to deal with next, which are on the table. There is no code of conduct at this stage. The amendments provide for a mechanism to establish a code of conduct. That code of conduct will be reviewed in 12 months time after an ethics committee has considered and formulated a code of conduct for this House and the Legislative Council to consider, adopt and/or reject. Clearly, that is the option and the prerogative that this Parliament will have. If we deny that process at this stage, we will suffer public criticism for not being prepared to take that step.

This bill will provide measures whereby an enormous pool of considerable talent from within the Supreme Court can be eligible and available for this and for future appointments to the ICAC. The Government does not hide the fact that it will also provide the way for Mr Justice O'Keefe to take up his appointment. I challenge the ALP - in the same way members of the Government did when Ian Temby

took up his position as the ICAC commissioner - to give Mr Justice O'Keefe the chance to sit in the position and see whether he can act impartially. If the Labor Party does not give him that chance, it is prepared to play politics to destroy the ICAC, contrary to its comments about supporting it. This bill and the following bill are the most important measures the House will consider this session, apart from the State Bank legislation. I ask all honourable members to support it.

Question - That this bill be now read a second time - put.

The House divided.

Ayes, 44

Mr Baird	Mr W. T. J. Murray
Mr Beck	Mr O'Doherty
Mr Blackmore	Mr D. L. Page
Mr Causley	Mr Peacocke
Mr Chappell	Mr Petch
Mrs Chikarovski	Mr Phillips
Mr Cochran	Mr Richardson
Mrs Cohen	Mr Rixon
Mr Cruickshank	Mr Schipp
Mr Debnam	Mr Schultz
Mr Downy	Mrs Skinner
Mr Fraser	Mr Small
Mr Glachan	Mr Smith
Mr Hartcher	Mr Souris
Mr Hazzard	Mr Tink
Mr Humpherson	Mr Turner
Dr Kernohan	Mr West
Mr Kinross	Mr Windsor
Mr Longley	Mr Zammit
Dr Macdonald	
Mr Merton	*Tellers*,
Ms Moore	Mr Jeffery
Mr Morris	Mr Kerr

Noes, 41

Ms Allan	Mr McManus
Mr Amery	Mr Markham
Mr Anderson	Mr Martin
Mr A. S. Aquilina	Mr Mills
Mr J. J. Aquilina	Mr Moss
Mr Bowman	Mr J. H. Murray
Mr Clough	Mr Nagle
Mr Crittenden	Mr Neilly
Mr Face	Mr E. T. Page
Mr Gaudry	Mr Price
Mr Gibson	Mr Rogan
Mr Harrison	Mr Rumble
Mr Hatton	Mr Scully
Mr Hunter	Mr Shedden

Mr Iemma	Mr Sullivan
Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan
Mr Knowles	Mr Yeadon
Mr Langton	*Tellers*,
Mrs Lo Po'	Mr Beckroge
Mr McBride	Mr Davoren

Pairs

Mr Armstrong	Mr Carr
Mr Collins	Mr Doyle
Mr Fahey	Mrs Grusovin
Mr Griffiths	Ms Harrison
Ms Machin	Ms Nori
Mr Photios	Dr Refshauge

Question so resolved in the affirmative.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ROYAL COMMISSION (POLICE SERVICE) BILL

Bill read a third time.

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL

Second Reading

Debate resumed from 22 September.

Mr WHELAN (Ashfield) [10.01]: I am delighted to speak to the Independent Commission Against Corruption (Amendment) Bill. I regret to say that the Opposition believes that the bill is seriously flawed and unworkable. The bill is a sham, and it will give no-one any confidence that Ministers and members of Parliament will be subject to the Independent Commission Against Corruption. I intend to move an amendment in Committee, and I take this opportunity to read the amendment, because honourable members should give it serious consideration.

Mr SPEAKER: Order! There is too much audible conversation in the Chamber. I am sure that those members who wish to listen to the debate would prefer to listen in silence and not against a background of conversation. The honourable member for Ashfield has the call.

Mr WHELAN: The amendment provides that a report under section 74 of the Act can make findings of fact about the conduct of a Minister of the Crown or a member of either House of Parliament. In other words, the Independent Commission Against Corruption will be a fact-finding body only. The amendment then seeks to limit the power of the Independent Commission Against Corruption by providing:

> . . . but cannot include a finding or opinion as to whether that conduct constitutes or involves or could constitute or involve corrupt conduct.

The amendment expressly excludes the Independent Commission Against Corruption from finding that a member or Minister from either House of Parliament is guilty of conduct that constitutes or involves or could constitute or involve corrupt conduct. I cannot understand why Government members are so shy about supporting this amendment, which has more validity than any of the other many amendments. The bill's most obvious defect is the absence of a code of conduct. In those circumstances no-one could possibly suggest that the bill is other than meaningless. How can the Government place a bill before this Parliament that provides that a code of conduct will be established by regulation? The bill provides that the Independent Commission Against Corruption Act is to be amended by inserting at the end of section 9(1)(c) the following:

; or

(d) in the case of conduct of a Minister of the Crown - a substantial breach of a ministerial code of conduct prescribed or adopted by the regulations for the purposes of this section and applicable to that Minister; or

(e) in the case of conduct of a member of a House of Parliament - a substantial breach of a code of conduct adopted by resolution of that House for the purposes of this section and applicable to that member.

The bill proposes that the Parliament use its regulation-making powers to introduce a future code of conduct for members of this Chamber. Those who have been members of this Chamber for long enough will know that regulations can be disallowed. However, honourable members must be aware also that a code of conduct introduced by regulation cannot be amended or rescinded. Honourable members can vote against the regulation, but no member can move that the code of conduct be amended. Government members should remember that when the code of conduct is introduced they are stuck with it. The only way to amend the code will be to change the legislation. The Opposition's amendment proposes that the ICAC will become what it is supposed to be, that is, a body to determine questions of fact. It will have no right to find that the conduct of the Minister or member of Parliament constitutes or involves or could constitute or involve corrupt conduct.

If a finding is made by the ICAC, it will then be for both Houses of Parliament to determine, bearing in mind the gravity of the facts found against a Minister or member, what action, if any, will be taken against that Minister or member as a result of his or her conduct. The argument has been put to me that if a member of a party with a majority in both Houses is corrupt, that party could ignore the corrupt conduct and the finding of fact by the ICAC. To that argument I say that a government with a majority in both Houses that did such a thing, would do so at its peril. The amendment also provides that a copy of any report of the ICAC is required to be tabled for consideration in each House of Parliament within seven sitting days of the report being received by the Presiding Officer, as referred to in section 78 of the Act.

The matter must be considered by both Houses of Parliament within seven sitting days. There can be no running away by a government that has a majority in both Houses of Parliament. The amendment I have moved will make it mandatory for the Parliament to consider the matter within seven sitting days of the finding. The suggestion that a majority in both Houses would mean the end of the Independent Commission Against Corruption finding against a member of Parliament, does not stand up. No government would tolerate a member who had been found guilty of corrupt conduct, and either House of the Parliament would decide on the course of action.

The purpose of the bill is to expand the jurisdiction of the Independent Commission Against Corruption in relation to Ministers and members of Parliament. The bill seeks to overcome problems exposed in the case of *Greiner v The Independent Commission Against Corruption*, that is, in relation to

similar conduct Ministers and members of Parliament are less susceptible to the jurisdiction of that commission than are public servants. The Greiner case uncovered flaws in the Independent Commission Against Corruption Act. It was always the intention of the Government, as stated in the Minister's second reading speech in 1988, that members of Parliament and Ministers would be subject to the Act in the same way as the rest of the public sector. The aim of the bill is to remedy this defect by bringing additional grounds within section 9 so that conduct would be deemed corrupt conduct if it also amounted to breach of a ministerial or parliamentary code of conduct.

This bill is so seriously flawed that it is unworkable. Without the codes of conduct for Ministers and members of Parliament the bill can have no effect. Honourable members should consider the anomaly that would arise if the upper House decided it did not wish to have a code of conduct. That House does not have to agree to the legislation; the bill might be amended in the upper House. If the bill was not passed by the upper House, members in this House would have an onus placed upon them different from the onus placed on members of the upper House. New subsection 1(d) states:

(d) in the case of conduct of a Minister of the Crown - a substantial breach of a ministerial code of conduct prescribed or adopted by the regulations for the purposes of this section and applicable to that Minister; or

(e) in the case of conduct of a member of a House of Parliament - a substantial breach of a code of conduct adopted by resolution of that House for the purposes of this section and applicable to that member.

We could effectively have four codes of conduct, one code for a Minister, one for an ordinary member of Parliament - a backbencher - a code for the Legislative Assembly and a code for the Legislative Council. Those codes will then be subject to regulation. However, the disallowance regulation-making powers of this House are different from those that are available in the upper House. A regulation can only be disallowed; it cannot be amended, rescinded or changed. Once the regulation is passed in the Parliament, there is only provision to disallow it and even then only within 15 sitting days. That means that there would be only 15 days within which to disallow four codes of conduct.

What will happen in the future? The stated purpose of this legislation is to remove a flaw, but it will introduce untold additional flaws to the Independent Commission Against Corruption. I urge honourable members to read my amendment. It is very simple; it confines the role of the Independent Commission Against Corruption to that of determining questions of fact and requires the Houses of Parliament to decide whether the facts of particular finding warrant the suspension, disciplining or expulsion of a member of Parliament from this House. The bill depends entirely upon the goodwill of the Government to ensure that such codes are brought into existence. If the Government intends to bring in such codes, why is it not prepared to do so now and have them incorporated into the Act. If the codes of conduct are available, they should be part of the Act. I will not refer to the inherent disabilities involved in regulating powers and the inability of Parliament to properly supervise regulation-making powers of government.

This measure contains a serious flaw. I do not know whether Government members were privy to drawing up the document to be titled the Code of Conduct. However, I remind honourable members that former Premier Greiner introduced a code of conduct for Ministers about which a later Premier said it was not worth the paper it was written on. Many people subscribe to that view. The code of conduct introduced by the Government, and probably one introduced by the Opposition, had no legal effect. It was an expression of intention by a Government to do something about trying to regulate the conduct of Ministers and the propriety and probity of members of Parliament. It had no legal efficacy whatsoever and achieved very little.

We are aware of the case of *Greiner v The Independent Commission Against Corruption* and of what Mr Temby said on pages 15 and 18 of his report. He said that all that was necessary was to make ICAC a fact-finding body. I shall read his exact words at the appropriate time. The bill does not address the

problem it purports to solve. Even with a code of conduct it would be possible for Ministers

and members of Parliament to remain outside the jurisdiction of the ICAC for behaviour which would bring a public servant within the jurisdiction. It depends entirely upon the content of the to-be-created code. Nothing in the bill prevents a ministerial code of conduct being so weak as to permit behaviour which would amount to a disciplinary offence for a public servant. In other words, there will be further different standards. I thought all politicians would hop into the same basket and be subject to the same code. This bill will do exactly what Mr Temby said we should not do: create different standards and different codes of conduct from those that apply to other public servants.

It means also that Ministers and members of Parliament will be less susceptible to the jurisdiction of the ICAC than public servants in relation to similar conduct. The bill fails to solve the problem. The Minister's second reading speech makes it clear that under the bill it is the responsibility of each House to separately develop a code of conduct. How ridiculous is that? Upper House members will have a different code from that which applies to lower House members. It is not suggested that the same regulation passed by upper House members would be passed for lower House members. That luxury may not always be available; it will depend upon the success of this measure. However, it will not be successful because it will not undo the harm to which Mr Temby referred in his September 1992 report.

It could mean that certain conduct could be regarded as corrupt for an upper House member but not for a lower House member, either because the Houses have different codes of conduct or because one House does not have a code. I understand that the Independents have been negotiating with the Government. Perhaps one of the Independents will inform me whether the Government has guaranteed that the upper House code will be the same as that for the lower House members and whether the same regulation-making power will be available in each House. Have the Independents received a guarantee that the Government will not renege on its commitment? Have the Independents examined the regulation-making power of disallowance in the New South Wales upper House?

Ms Moore: What commitments are you making?

Mr WHELAN: If the honourable member for Bligh votes for my amendment, she will realise that the ALP supports a cure for the ill referred to by Mr Temby. He suggested that the ICAC should become a fact-finding body. I refer honourable members to pages 15 and 18 of his report.

Dr Macdonald: It makes politicians separate.

Mr WHELAN: It does not make politicians separate. The Government's bill is seriously flawed. It will not do anything to enhance the role or rights of the Independent Commission Against Corruption on behalf of the public to ensure that members of Parliament are accountable. It will do the contrary. My suggestion is that the ICAC become a fact-finding body only and that it be required to report to the Parliament. Under my proposal it will not be able to make a finding of corruption against a member of Parliament. That is a proper matter for the Parliament to determine.

Ms Moore: If Labor has a majority it will do nothing.

Mr WHELAN: Let me explain the matter for the benefit of the honourable member for Bligh. Clearly, in March 1995 Labor will have a majority, given the commonsense of the electorate; but it will not have control of the Legislative Council in this State. I am glad that the honourable member for Bligh interjected, because she reminds me that the regulation-making power proposed by a Labor Government might not be approved by the upper House. So a code of conduct would be applicable for members of the lower House but that code of conduct would not be applicable to or approved by members of the upper House. So there could be two sets of codes.

Ms Moore: If Labor has a majority it will vary the code.

Mr WHELAN: That is a ridiculous comment. If the honourable member for Bligh read my amendment she would know that it will do nothing more than enhance the role of the Independent Commission Against Corruption and provide for automatic reference of a matter, for consideration by the Parliament within seven days of receipt of the reference by the Parliament.

Mr ACTING-SPEAKER (Mr Glachan): Order! I remind the honourable member that he must address his remarks through the Chair. Private conversations across the Chamber are precluded by the rules of debate.

Mr WHELAN: It would verge on dereliction of duty for a parliament to pass legislation providing for separate standards of conduct for members of this House and those of any other House. I want to raise another point. Under section 117 of the Act the regulation-making powers allow the creation of offences punishable by a penalty not exceeding five penalty units. The ministerial code of conduct, which under this bill would be set by regulation, would not necessarily be limited to such a relatively small penalty. Has that provision been thought through? No-one has suggested to me that some other penalty will apply.

What will be the penalties? Are they set out in the amendments proposed to be moved in Committee? What penalties are to be provided should a person breach this yet to be created code of conduct? Does anyone know what those penalties are? Will the penalty be expulsion? Is it to be a pecuniary penalty? Someone might enlighten me on what the penalties might be. If I am under a false impression and the Government intends to amend section 117 of the Act, then I apologise for the comments I have made. But I repeat, what are the penalties to be? Will they be expulsion, suspension or pecuniary in nature?

Page 4722

Dr Macdonald: It is a matter for the government of the day to determine.

Mr WHELAN: Then what happens if a breach occurs now? This is supposed to be legislation to cure an anomaly.

Dr Macdonald: You are being negative.

Mr WHELAN: I am not being negative at all. I am concerned that the intent of the Opposition amendment will be thwarted by a 12-month delay in determining a code of conduct which might have no force or effect in either House and which might not provide penalties for breaches of it. I would like to know whether it is intended to amend section 117 of the Act. Is the answer yes or no? As I said, the bill is a sham. It will give no-one confidence that Ministers will be subject to the Independent Commission Against Corruption. It is simply an attempt to ensure that Ministers are protected from investigation by the Independent Commission Against Corruption. I now want to talk about the alternative amendment. The amendment proposed by the Government cannot be supported as it stands. I have prepared what I think is a constructive, alternative amendment. It proposes that the ICAC be empowered to investigate the conduct of members of Parliament. I want to read on to the record the amendment that I will move in Committee:

Page 2, clause 3, lines 9-19. Omit all words on those lines, insert instead:

3. The Independent Commission Against Corruption Act 1988 is amended by inserting after section 9 (2) the following subsections:

(2A) Despite any other provision of this Act, a report under section 74 can make findings of fact about the conduct of a Minister of the Crown or a member of either House of Parliament, but cannot

include a finding or opinion as to whether that conduct constitutes or involves or could constitute or involve corrupt conduct.

(2B) Despite section 78, a copy of any report referred to in subsection (2A) is required to be tabled, for consideration and debate, in each House of Parliament within 7 sitting days of that House after it has been received by the Presiding Officer, as referred to in that section.

However, with respect to those holders of constitutional office, the ICAC should not have power to make findings of corrupt conduct but only the power to make findings of fact. It would be for the Parliament to decide whether the facts found by the Independent Commission Against Corruption justified the dismissal from the ministry or from the Parliament. This would prevent the ICAC from having to take over the constitutional role or function of the Parliament. The ICAC's role in making findings of fact would assist in the depoliticisation of allegations about members of Parliament and Ministers. It would ensure once and for all that there is an independent fact-finding body reporting swiftly to the Parliament, but it would also ensure that Parliament is the body to which Ministers and members of Parliament are ultimately responsible. The Labor alternative amendment has the following advantages. It brings Ministers and members of Parliament clearly within the ICAC's jurisdiction. It does not rely on the cumbersome process of developing a code of conduct, a process which may never occur - or may never occur with any substantial validity. The code of conduct is fraught with enormous difficulties. A code of conduct may have in it different provisions for Ministers -

Mr Jeffery: What are you frightened of?

Mr WHELAN: I am not frightened of anything. I understand that the Government will be successful with its amendment, but I am putting my point. As I said, the Opposition proposal was specifically recommended by the former ICAC commissioner, Mr Temby, in his second report on the Metherell affair in 1992. It is simple to apply and retains the existing constitutional functions of Parliament. It retains the right of the ICAC to make findings of fact and recommendations and to speak frankly in relation to conduct which it views seriously.

I was assisted in my contribution to the debate on this bill by a purposeful interjection of the honourable member for Bligh, and I thank her for it because it reminded me of Mr Temby's arguments set out in his Second Report of the Independent Commission Against Corruption of the Investigation into the Metherell Resignation and Appointment dated September 1992. It is a short report but it makes very good reading. Mr Temby emphasised that under the existing Act the Independent Commission Against Corruption is obliged to determine whether corrupt conduct has occurred. I will read his suggestion set out on page 15 of the report under the heading "ICAC to find facts only":

The Commission is obliged to conduct its investigations with a view to determining whether corrupt conduct has occurred. Whether it receives a parliamentary reference or conducts public hearings, it must report to the Parliament. Accordingly, findings of corrupt conduct have been made in many reports against a large number of individuals whose conduct ranges from obvious criminality to a departure from appropriate standards.

I pause to remind honourable members that this is very important:

A possibility worth considering is to change the ICAC Act so as to make the prime function of the Commission, when investigating matters, to find facts rather than to try to fit conduct into a particular definition.

That is what the Opposition amendment would do. That is what Mr Temby said should be done. Why run away from the proposals of a man who has had considerable experience in the matter and saw the difficulties with a code of conduct? I want to talk about conduct as well. What has been forgotten by many in this debate is that the Independent Commission Against Corruption will have jurisdiction over

members of Parliament if there is a code of conduct. The definition "code" includes neglect, failure and inaction. For argument's sake, take a member who does not follow up correspondence and there is a valid complaint that the member has not followed up a housing commission matter by sending off correspondence, or there is some other complaint
Page 4723
alleging inaction, neglect or failure of a member of Parliament to do something. What must the Independent Commission Against Corruption do? It will have to find that there has been conduct resulting from the member's neglect, or the member's failure to act or that he or she is guilty of inaction.

What is going to happen then? The member of Parliament is guilty prima facie of a breach of the code of conduct under that definition. There is a host of examples of members of Parliament who, through pressure of work, have made a mistake. But the mistake is not worth getting hanged over. The mistake would not justify being drawn and quartered. But the way the political system runs in New South Wales, and the way the party system runs, a finding by the august body, the Independent Commission Against Corruption, that someone has been guilty of that conduct is a very serious matter which we have to look at. That is why I come back to my proposed amendment. Mr Temby was correct in his proposal to change the Independent Commission Against Corruption Act. On page 18 of the same report he said:

> It seems axiomatic that the ICAC Act should apply the same standards equally to all in the public sector. The Parliament has enacted legislation which confers special powers in relation to public servants and other public sector employees. Most of these ordinary citizens accept the Commission and its powers, although some complain when those powers are used against them as individuals. Nobody can expect general acceptance of the Commission to continue if the "great and powerful" are beyond its reach.

On the same page he also said that there are sound reasons why MPs should be treated differently in a procedural sense. He said:

> So far as Members of Parliament are concerned, they again must be free from Executive control, and the notion of sovereignty of Parliament requires that that institution have control of its own Members.
>
> It may be the Commission should be entitled to investigate everybody in the public sector, from the Governor down, but with respect to those who hold constitutional offices the Commission should not have power beyond reporting its findings and recommendations to the Parliament.

It is understood that the Parliament should be the body to take the process further. It is a simple and, I must say, an elegant solution and one which we embrace. The proposal is that there be a positive requirement for all such reports to be tabled and for debate on the findings to occur within seven days of the tabling. I would be happy if someone moved an amendment to make it compulsory, to make sure that the standing orders applied so that a government one day could not filibuster on the bills and members could be sure of matters being genuinely debated. Time limits could be provided.

Ms Moore: And what would be the outcome?

Mr WHELAN: If the Independent Commission Against Corruption makes a finding against a member of a serious nature under the definition of "corrupt" and under the definition of "conduct" it would be on the head of the Government.

Dr Macdonald: It would all be buried.

Mr WHELAN: No, it will not be, because within seven days of the tabling of the report, under the amendment, there has to be discussion within the Parliament.

Ms Moore: At 4 o'clock in the morning it will get buried.

Mr WHELAN: No, it will not get buried because it would be on the head of the Government. There is a classic example here. Do you think the Government is going to have smelly carcasses sitting in here - it has a few here now - while there is such a dramatic electoral downside? No government of whatever majority would do that. Not even Askin would have got away with it. It does not happen in reality.

Ms Moore: Oh, come on!

Mr WHELAN: No, not at all.

Dr Macdonald: They are past masters.

Mr WHELAN: I am trying to reply to the interjections. People who live in glass houses should not throw stones in here. It should be noted that the ICAC would be able to act both on the basis of a reference from Parliament but also on its own motion. I have foreshadowed an amendment. I come back to representations I have received on the bills. I received a document from the New South Wales Bar Association under the heading of the two bills relating to the Independent Commission Against Corruption. Many of the issues raised I have mentioned but a different phraseology is used. I want to talk about the ministerial code of conduct. The matter has been put very succinctly. The document reads:

> In particular, the ministerial code of conduct is to be prescribed or adopted by regulation. A government which controls the Parliament is therefore in a position to dictate the contents of the regulation. Such regulation can only be disallowed. It cannot be modified and, in particular, it cannot be added to. The disallowance power therefore is a toothless tiger upon the basis that some code is better than none. The same comment no doubt applies to the proposed members' code of conduct to be adopted by resolution of each House of the Parliament. Again, the party that controls each House will control the content of the code.

Many other issues are raised in the document. It concludes by supporting the legislation, but there are some criticisms of it. I look forward to hearing the views of the Independents. I hope the Government and the Independent members will be sensible about the quality of the amendment. If they think there is a political conspiracy, they would have to say that I am involved in a political conspiracy with Mr Temby. Clearly I am not. All I am doing is proposing what Mr Temby suggested in his report. It is worth while for everybody to read the document: it provides a solution. The amendment I have suggested provides that Parliament will be the master of the destiny of the future of parliaments. There is a weakness because of the code of conduct and the definition of conduct under the Independent Commission Against Corruption legislation. I have highlighted the serious flaw under section 117. I have also highlighted the very serious flaw in relation to the regulation-making

power and the fact that a government with control of both Houses could remove regulation-making power, making it virtually impossible for anybody to change the regulation-making power. The bill is so seriously flawed that it should be rejected, but I will move my amendment and hope members will support it.

Dr MACDONALD (Manly) [10.38]: I am impressed by the negative attitude of the Opposition. If this is a sign of the times ahead with a future Labor government, I despair. Opposition members are backing away from a code of conduct trying to bring politicians within the ambit of the Independent Commission Against Corruption. They are a slippery lot if that is the case and I am really disappointed. I think the honourable member for Ashfield has misled us in the sense that there is only to be one code. It is to be approved separately. There is talk of four codes with Houses having different codes but that is just a nonsense. I certainly take some responsibility for the bill and, indeed, I would argue that the bill would never have happened if it had not been for the Independents. There was only one bill proposed originally - the commissioner bill. It was at the insistence of the Independents that this bill was brought

forward. Indeed, it relates back to the need for the bill arising out of the Supreme Court appeal in the Greiner matter, and the ICAC committee in May 1993 recommended that there should be an amendment to the ICAC Act. It recommended that section 9 should go out altogether, but in discussions we had with the Government it was felt that it should remain in because the exposure, particularly of Ministers, if only section 8 was the threshold, was unacceptable.

There is a need for this bill on the basis of the public expectation, quite apart from the appeal decision, that politicians must be dealt with in the same manner as all other public officials. Clause 9 states that corrupt conduct can be determined if it constitutes a substantial breach of a code of conduct. The proposed amendment includes the reasonable person test. This was clearly required for two reasons: first, until the code of conduct is developed; and, second, there may be occasions when certain behaviour falls outside the code of conduct. It was necessary to have a catch-all reasonable person test. That reasonable person test was the subject of lengthy discussions with the Government and the form it now takes is different from what was originally contemplated. There could be a contravention of the law, so it gives a double threshold.

Another important element of the bill is that the preparation of the code of conduct entails some external involvement through the establishment of a standing ethics committee, which I will discuss later. It is important for public confidence that there be community participation; that is provided for in the bill. The Government was resistant to this provision initially but it came around to understanding that it is consistent with what is happening elsewhere. We need a code not only because of clause 9 but also for public confidence. Public confidence in politicians is at an all-time low. The standard of behaviour of politicians is under constant scrutiny. The lists of casualties that have occurred in this coalition Government is lengthy; I shall not name all of them. A sad litany of mistakes and misdemeanours has eroded public confidence in politicians to its present level. Perhaps it is not coincidental that this matter should come before the House at the same time as members are dealing with the Niland report.

Governments are moving into new areas of contracting out much of their public responsibilities to the private sector. This is a future direction that must be catered for. The trend towards private funding and public infrastructure and the role of lobbyists makes the code of conduct even more important. The involvement of private sector infrastructure in the areas of health and roads indicates that we are charting new territories. A clear direction as to how members of Parliament and Ministers behave should be entrenched within a code of conduct. We only need to look overseas to see what happened in the House of Commons recently where lobbyists worked on the Harrods issue and enormous amounts of money changed hands for asking questions. Clearly members of Parliament and politicians are exposed to temptations. It is proper that those ethics be debated and codified in some form. It has been said that voters want members to be good, to do good and to look good. That is what we must seek to achieve out of this process. What is meant by a code of conduct was put very well by Commissioner Niland in her report. At page 28 the report states:

> A Code of Conduct formally establishes standards of expected behaviour. It delineates obligations, provides a guide to ethical responsibilities and sets out a framework for appropriate conduct in a variety of contexts. A Code may be either a statement of broad principles which offer guidance over unforeseen circumstances that may arise, or it may be a specific attempt to deal with prospective situations and to provide a mechanism for action in those situations. In all cases, however, a Code of Conduct should provide consistent, authoritative and relevant guidance on expected standards of conduct according to ethical rather than legal imperatives.

I have no argument with those wise words of Commissioner Niland. Setting a code of conduct is not about legislating for morality but about recognising the particular pressures and responsibilities of public life. The Niland report at page 38 states:

> The Queensland Electoral and Administrative Review Committee Report on *The Review of Codes of Conduct for Public Officials* distinguishes between personal ethics and public ethics. It refers to the

type of ethics with which it is concerned as "a*dministrative ethics*", ie:

> "socially constructed standards in accordance with which elected and appointed officials are expected to use the powers, influence and resources of their official positions, and the duties and obligations characteristic of various categories of public official in the context of a democratic and responsible system of government".

So we have this constant tension between personal ethics and public ethics. Personal ethics is the individual pursuit of self-interest, self-promotion and survival of the fittest. On the other hand the concept of public ethics is very much about self-sacrifice,

guiding the public purse and no personal gain. Clearly this is an important distinction that needs to be made. We are not pioneers in this field; similar action is being taken elsewhere. The Niland report also talks about the experience in Queensland where a recent report was made by the Queensland Electoral and Administrative Review Commission. That report stated:

> . . . it is crucial to the legitimacy and authority of all levels of government and to responsible government itself, that the integrity of those who govern is ensured. Consequently it is inescapable that for government to work effectively, the ethical standards expected of those elected should be stated publicly.

It is important to note that Victoria has addressed this issue but is mainly focusing on pecuniary issues, and has no committee. In the United Kingdom there is a select committee on members' interests. Ontario, Canada, has a conflict of interests commissioner. In the Fitzgerald report on page 133 the scope was widened to include ethical education. He said:

> Legislative changes or changes to the mechanics of public administration cannot, of course, be the complete answer to misconduct and inefficiency. Propriety and ethical behaviour are difficult to encapsulate in legal and structural terms . . . Codes of conduct . . . must be amended to deal satisfactorily with such important things as the correct relationship between such people as public servants and Ministers. Ethical Education must also play a role in long term solutions to problems.

Indeed that was the first reference I saw to including ethical education. The American experience is worth looking at; ethics committees have been set up everywhere across the United States. In 1972, in Washington, a citizen-dominated public disclosure commission has become a national model for the Legislature's oversighting of legislative lobbying. That was 22 years ago. In 1977 an independent state-level ethics commission was developed in Rhode Island. That was 17 years ago. We may be leading Australia but we are not leading the world. One of the things I want to emphasise about this particular standing ethics committee that is to be developed is community involvement. I have done research on this and brought some information to the debate between the Independents and the Government. One of the leading states in America is Alaska which now has an ethics committee of nine members, five of whom are citizens and four are politicians - a different balance to what is contemplated in the amendment to this bill. That committee holds educational seminars, it produces a newsletter and produces advisory opinions on ethical law. The argument is that public involvement strengthens that process. I quote from a comment by the former Executive Director of the National Conference of State Legislatures who said:

> It's like plugging the public back into the legislative process. It sends a very strong signal to the public, to the legislature and to legislative agents that this is a serious matter and one that is going to be handled fairly and on the merits . . . If something even appears to be inappropriate, then it is inappropriate. The appearance factor has opened it up . . . and this feeds public cynicism. The public has the idea that everybody in politics is a crook, and that's just not true.

We can look to examples elsewhere which show that this is an effective process - that is, the involvement

of the community in an ethics committee to try to introduce contemporary standards into a code of conduct against which politicians can be measured. We are debating this issue at a time when, no doubt, there has been a breach of standards in this place. I called for the establishment of an ethics committee some two years ago, following the Packard issue. I acknowledge the advice I have received in this regard from Dr Elaine Thompson from the University of New South Wales. She sowed the seed in my mind with respect to the need for an ethics committee. This ethics committee will initially develop the code of conduct. That is clearly set out in the amendment to the bill.

The ethics committee will not have an inquisitorial or Star Chamber role. That has to be made clear; it needs to be said to satisfy the concerns of all politicians who feel intimidated by the prospect. The ethics committee will have a pro-active educative role; it will be advisory; there will be public participation. This is landmark legislation. Politicians will be treated the same as all public officials under the Independent Commission Against Corruption Act. Politicians will come within the ambit of that Act and they will be measured against that code. In turn, the code will be prepared by an ethics committee and ratified by both Houses. The code will be prepared by the community and the Parliament. This is a great stepping stone.

Those who are nervous about a code of conduct - I note that Labor Party members seem to be running away from this - can be reassured that the proposal will receive enormous support in the community. The trouble is that we are in a goldfish-bowl when we are in this place and we forget what the community thinks. We forget the low esteem in which politicians are held. We need to make every effort to bring about change to raise public confidence. I can guarantee that when honourable members wake up tomorrow, especially Labor members who seem to have some doubts, they will realise what this Parliament will gain from this bill. Their concerns will go away. There is public demand for a code of conduct. The bill will receive enormous public support. I support the bill.

Ms MOORE (Bligh) [10.53]: The bill before us tonight is the result of the determination of the Independents to implement recommendations of a Government-dominated Independent Commission Against Corruption committee going back to May 1993. Those recommendations had the support of the previous commissioner. It was recommended that we amend section 9 in order to bring members of Parliament within the Independent Commission Against Corruption Act. Neither the Government nor the Opposition has worked towards that outcome. If there had not been a window of opportunity, which the Independents seized upon, this bill would not be before us tonight. If members of the major parties were honest, they would admit that they do not want to see this bill in place. One of the valuable outcomes of this hung Parliament is that this bill will be put in

place. I believe that we would never have got it if there were a majority government situation. What we are doing tonight is in keeping with community expectation. The community expected the Parliament to amend the ICAC Act following the Metherell and Greiner resignations so that we would no longer have one rule for members of Parliament and another for the community.

Following the decision of the Court of Appeal in *Greiner v The Independent Commission Against Corruption*, there has been a community perception that Ministers are beyond the reach of public accountability unless, of course, they have been involved in criminal activity. As far back as April 1991 the former ICAC Commissioner suggested that Parliament consider developing a code of conduct for its members. It is now October 1994 and we are coming towards the end of the fiftieth Parliament. This is an historic moment. This bill will be a valuable legacy of the fiftieth Parliament. It has been difficult to develop the mechanism to produce a code of conduct. I congratulate the honourable member for Manly for coming up with the ethics committee proposal. He and his staff have put a lot of work into bringing the proposal before the Government. I commend the Minister for Transport, and Minister for Roads, the Minister for Police, and Minister for Emergency Services and the Minister for Energy, and Minister for Local Government and Co-operatives for assisting in reaching the stage we have tonight.

I refer to the Opposition amendment. We have heard tonight that it is based on a recommendation

of the former commissioner. I am concerned because in my years as an elected representative it has been disillusioning to watch the parties when they have full control of the proceedings. We might have the ICAC developing fact-finding reports and we might have parliamentary debate after seven days. During the 1980s under Labor governments most legislation passed through this House in the early hours of the morning - with no notice and the outcomes were buried. One of the greatest legacies of the fiftieth Parliament will be the change in the culture of this place. Members who have come into this place since 1991 and subsequently will expect to continue to be involved in the proceedings. They will probably still expect to be able to ask those questions during question time, to not have debate gagged and guillotined, to be able to have estimates and legislation committees, and to be able to be involved in the process which has been the direct result of the charter of reform - it did not occur previously. I hope the culture of this place has changed. I have fears and worries that, if one party has a majority government, we will reach a situation where debate could occur in the early hours of the morning, the matter could be buried and there could be no action.

In negotiations with the Government the Independents have tried to develop an outcome which will be effective in meeting community expectations, to establish standards of behaviour for members of Parliament and Ministers, and which will be actionable if those members and Ministers do not act in accordance with the code of conduct. That code of conduct will be established by a bipartisan ethics committee. An important breakthrough is that that committee will have members of the community on it - I think the Government called them civilians. They will make a contribution to the process of developing a code of conduct for members of Parliament. I believe that is the way it should be. I believe in participatory democracy. I believe in involving the community in the process. I do not believe that we should have separate rules. The community certainly does not believe that we should have separate rules. I commend the Government for introducing this bill.

Mr HATTON (South Coast) [10.58]: I do not know whether members of Parliament realise that this is a unique piece of legislation in Australia, and possibly the world - at least in the Westminster system. I do not know of an ethics committee anywhere in the world that has involvement from the public in developing a code of conduct which is actionable by a body independent of Parliament - in this case the Independent Commission Against Corruption. When we put all of those things together, we have something that is breaking new ground in the Westminster system, in Australia, and possibly in the world. It is a tribute to my colleagues; it is a tribute to the Government; and it is a tribute particularly to the honourable member for Manly - as was mentioned by the honourable member for Bligh - who has put a lot of work into this issue.

This bill would not have been introduced without the Independents, but the Government, and in particular the Cabinet, has some very real concerns. The major concern is that a parliamentarian acting as a private member or as a Minister, in the nature of his or her work, must be partial. I must favour my electorate or I will not be re-elected. Certainly there is an obligation on a Minister in some circumstances, because of party policy, party association and party support - perhaps in the case of the Liberal Party, partiality to big business; in the case of the Labor Party, partiality to trade unions; and in the case of the National Party, partiality to rural interests. The question of partiality and the possibility that members could be labelled as corrupt because they were carrying out their public duty in a partial manner and found to have done so by the Independent Commission Against Corruption, is a very serious and understandable worry that the Government has.

Honourable members know the genesis of this bill - the Greiner-Metherell case. In that case the facts were not examined but the jurisdiction - using the word in the widest sense - was examined, and the fact is that two of the three judges found that Temby could not apply the label "corrupt conduct" because he could not, in effect, second-guess the action of a Government or of a Parliament in sacking a member of Parliament or a Minister. It was not an offence for which an employee could be sacked, as that applies to public servants. It is certainly not an easy matter and I am quite sure that it occupied a lot of the time of the Cabinet. It certainly occupied a lot of the

Independents' time in discussion with the three Cabinet Ministers. The fact is that the ICAC must cover all public servants and members of Parliament, and that has been adequately covered.

Section 8 lists the conduct which constitutes corrupt conduct, and section 9 adds to section 8 further conditions which apply for a person to be found guilty of corrupt conduct. The very real question has been raised about whether the ICAC should be compelled to make a finding of corrupt conduct, especially against a member of Parliament. I think there is a very real problem there. The honourable member for Ashfield raised the question whether an ICAC body should simply find matters of fact. However, the approach of the Australian Labor Party in its amendment is flawed. The Labor Party has said the bill is flawed; I would like to counter that by saying that its approach is flawed in that its amendment says that, under section 74, the ICAC can make findings of fact about the conduct of a Minister or a member of either House of Parliament, but cannot include a finding or opinion as to whether that conduct constitutes or involves or could constitute or involve corrupt conduct.

It goes on to talk about the tabling of such a report in Parliament, and the provisions for debate. I think that is an omission from this bill. It is one the Independents overlooked, and it is not covered. There should be some provision for the report to be debated in the Parliament, and at least presented in a public way, as is the case with reports of the Auditor-General. I am not particularly worried about that, however, because it is up to the ICAC commissioner - as it is up to the Ombudsman and the Auditor-General - to embarrass the government and say, "What happened to that report that criticises member A or Minister A or B, or the conduct of several members? It has not seen the light of day and has not been subject to parliamentary debate and discussion".

As head of the ICAC, that person can do that independently, anyway, and embarrass a government into doing something about it. It is an omission but the flaw in the Labor Party's amendment is that it is quite happy for the ICAC not to find corrupt conduct against politicians but only matters of fact; but quite happy for every other public servant in the land to be subjected to a different set of rules and, because it is an offence that attracts sacking, be found to be involved in corrupt conduct. A worry that I have about the bill, which needs to be examined, is whether members of the senior executive service are covered by the bill. My researcher has pointed to some problems in that regard, of which I am not quite convinced at this stage.

The honourable member for Ashfield said that there is no code of conduct, that the bill is workable. The Independents have never thought and never said that a code of conduct is going to be the be-all and end-all. It will depend on the integrity of the person concerned behaving in a way that he or she feels that a member of Parliament or a Minister should behave. The Independents were wrongly accused earlier in the night of saying, "There is the code of conduct. Take it or leave it". It was said that we say it has to be included in the bill or we will not support the O'Keefe bill. That has never been our position. It would be arrogant of the Independents to do that. A code of conduct should be determined by a committee process involving parliamentarians from both sides with a voting pattern so that neither side can dominate the recommendations; so that at least seven of the nine members have to vote for it; and so that it will ultimately be decided by the Parliament. That is the way it should be - in a public process, so that if the Parliament ducks its responsibilities and deliberately deletes something from a recommended code of conduct which obviously should bind a member of Parliament or a public official to a reasonable standard of behaviour, the public spotlight is going to be on that particular clause and on the Government which decided, by regulation, to omit it.

There is some substance in what the honourable member for Ashfield said: that if New South Wales has a code of conduct that is proclaimed by regulation we cannot amend or rescind that regulation except by voting against it. I suggest that such a public process as has been drafted by the honourable member for Manly does put the acid on the Government and on the Parliament, because the recommended code is available for those outside of Parliament to see what is on the table and what parts of it have been changed or deleted. The honourable member for Manly mentioned that many jurisdictions in the United States in particular have codes of conduct. As a member of the ICAC committee I talked with officers from

the House of Representatives and Senate ethics committees in Washington. I was disturbed that a member's behaviour can be judged by such a committee. This is, once again, something that the Independents strongly resisted.

I have said in the Parliament on many occasions that I would not have a bar of a privileges committee, because it can be used as a kangaroo court by a government. Why would I, as an Independent with no-one to defend me, want to be subject to a kangaroo court which is dominated by the government of the day? There is not and never has been any suggestion from the Independents' point of view that an ethics committee should in any way deal with individual cases. The code of conduct is to be developed by the committee process and will be ratified by Parliament. It is going to be a public process and, if there are glaring inadequacies, they will be subject to the public spotlight. It certainly is going to be subjected to the public spotlight by the ICAC if the behaviour of a member came before the ICAC and the ICAC determined that it could not find corrupt conduct against that person because something was glaringly inadequate about the code of conduct which did not cover that person. It may be that sexual harassment is not a good example in terms of corrupt conduct, but it is certainly an important matter. It may not be covered under corrupt conduct but it would certainly be subject to the light of day and public scrutiny.

A code will develop in the same way as the common law. As weaknesses are shown up, the Parliament will be forced by public pressure to react to them. The code will be strengthened and will reflect the mores of the era. The code may well get out of step with the mores of society, for example in relation to homosexuality. As recently as 10 years ago, and certainly as far back as 20 years ago, a member of Parliament would possibly have been subjected to extraordinary vilification, if not expulsion from the House, merely because of homosexuality. If a member was a practising homosexual and disobeyed the law, that member may well have been expelled from the House by a simple majority vote on the floor of the House.

Mr Nagle: It has never happened.

Mr HATTON: It has never happened, and I suggest it could not happen today, because of the perceived different mores of the society in which we live. The honourable member for Ashfield also asked whether the penalties under section 117 will apply. The fact is that penalties have never been prescribed for members of Parliament. If a member of Parliament is labelled as corrupt, he or she is subjected to the penalty of exposure to an individual electorate - or to the electorate at large in the case of a member of the upper House - censured by Parliament, or dealt with by other appropriate means. I certainly do not want to become involved in the imposition of fines on members of Parliament. That would be a dangerous and difficult situation to deal with. The type of fine to be imposed would certainly involve partiality.

The honourable member for Ashfield then talked about neglect, failure and inaction. He drew a long bow indeed when he claimed that a member could be guilty of corrupt conduct if he or she did not adequately attend to correspondence or to constituents. I certainly have a great deal more faith in the Independent Commission Against Corruption and its judgment than that. I spent some time with officers of the Independent Commission Against Corruption. I noted comments by my fellow members of the ICAC committee that perhaps the ICAC should simply determine and report facts, and let the judicial system take over from there, whether a member of the public or a Minister of the Crown is involved. That approach has much to recommend it. An inquisitorial and investigative reporting approach, rather than a labelling approach, will have to be looked at further down the line. I am confident the bill is a major step forward. I congratulate the Government for introducing the bill. I firmly believe that the Opposition would not have taken this step. If the step had not been taken at this time in this Parliament, it certainly would not have been taken in the future.

Mr GAUDRY (Newcastle) [11.13]: I congratulate the Independents for seizing the day. If the Government had not been put over a barrel in relation to the earlier bill, it would not have moved into a negotiating position. I do not know whether congratulations are due so much to the Government, as the honourable member for South Coast claimed, as perhaps to the Independents for the games of poker they have played in relation to amendments to the Independent Commission Against Corruption Act. All honourable members know that these matters arose from the Greiner-Moore decision in June of 1992 and the subsequent Court of Appeal decision on 21 August 1992 that Commissioner Temby's finding of corrupt conduct was a nullity in law. That set us on a track of reviewing the Independent Commission Against Corruption Act.

The honourable member for South Coast and I are members of the ICAC committee. I found it confronting and concerning that two years after June 1992 and more than 15 months after the committee handed down its report, no action whatsoever had been taken in relation to the committee's recommendations. The committee met on 21 occasions. It took 18 submissions, and heard from expert witnesses about the need to review the Act, and particularly to deal with the Court of Appeal finding that Ministers of the Crown were not caught by section 9 of the Act. As the honourable member for South Coast said, the unanimous recommendation of the committee was that section 9 be repealed. The committee, on both the primary facts and the findings on appeal, asked the Government to refer that matter to the Law Reform Commission. The Government did not act on that request and, in my view, had no intention of acting on the committee's recommendations.

As I have said, until the Government needed to appoint a commissioner to the ICAC and the Independents seized the opportunity to effect some changes to Act, nothing was done. That does not mean that the bill is by any means the ideal way of dealing with such important matters. The fact that the issues are being contemplated at such short notice is indicative of the lack of response from the Government over such a long period of time. A discussion paper of the ICAC committee in relation to a code of ethics for members of Parliament was tabled in the House in April 1994. Once again, until tonight no action whatsoever has been taken in relation to that discussion paper. The hearings of the committee were held on 10 and 11 August 1992, so the House is dealing with a matter on which submissions were taken in 1992.

The discussion paper examined particularly the way in which a code of conduct ought to be developed. The committee took submissions from people with knowledgeable backgrounds. They included Dr Michael Jackson from the University of Sydney; Mr Gerard Carney from Bond University; Ms Elizabeth Moore, the principal corruption prevention officer of the ICAC; Ms Gail Furness; Mr Ted Mack, the Federal member for North Sydney, who has a strong view about codes of conduct; Professor Paul Finn from the Australian National University; and Dr Simon Longstaff from the St James Ethics Centre. I quote from page 42 of the discussion paper:

> It was put to the Committee by many informed persons giving evidence that an effective Code can not be implemented from above. The ethical principles in the Code must be subscribed to by all those who are to be bound by the Code. This means that those to be bound must participate in the development of the Code.
>
> The Independent Commission Against Corruption took a strong view on the development of the Code for Members. The Commission took the view that it was up to the Members of Parliament to work out the nature and the boundaries of any Code.
>
> Dr Michael Jackson, Director of the Public Affairs Research Centre, University of Sydney put it unequivocally that from all his experience in this area Codes can not be developed from above. Dr Jackson believed a Code of Ethics could be more effectively implemented if it was preceded by an ethics audit.

Of course, there is talk of an ethics audit here. Page 43 of the discussion paper stated:

> Dr Jackson concludes from these results that no forum exists in NSW for resolving honest disputes over ethical issues. He therefore supports the process of debating and elaborating a Code of Ethics by NSW Parliamentarians as a stimulant to the raising of their own ethical standards. The importance of Dr Jackson's point is that this process must occur **amongst** the Members **themselves**.

I am not too sure if that is the precise process put forward by the Independents. The way this matter has changed two years after the Greiner-Metherell episode concerns me. The general recommendations of the ICAC have not been touched and it is proposed that an amendment to the Act will not be operative for at least 12 months. It is proposed that a code of conduct for parliamentarians be developed. That would take 12 months, and I assume that during that time Ministers of the Crown and members of Parliament would not be covered by the provisions of the Independent Commission Against Corruption Act. In contrast, the amendment of the honourable member for Ashfield will put into effect the clearly stated recommendation of Mr Temby in the Second Report of the Independent Commission Against Corruption on the Investigation into the Metherell Resignation and Appointment. At page 18 of that report Mr Temby said:

> It seems axiomatic that the ICAC Act should apply the same standards equally to all in the public sector . . . there are sound reasons in principle why Judges and Members of Parliament should be treated slightly differently in a procedural sense. It is important to the functioning of a liberal democratic society that the rule of law prevail, and that is predicated upon an independent judiciary. One of the hallmarks is that Judges cannot be removed from office by the Executive. This can only happen through the Parliament, which is the ultimate democratic institution. So far as members of Parliament are concerned, they again must be free from Executive control, and the notion of sovereignty of Parliament requires that that institution have control of its own Members.
>
> It may be the Commission should be entitled to investigate everybody in the public sector, from the Government down, but with respect to those who hold constitutional offices the Commission should not have power beyond reporting its findings and recommendations to the Parliament. That should not include recommendations for removal from office, if only because the Parliament should not be told what to do by the Commission which is a body of the Parliament's own creation.

In my view that stands with Recommendation 2.7.7 of the Committee on the Independent Commission Against Corruption, which stated:

> The Committee believes the requirement for the ICAC to make statements of opinion about consideration of prosecution, disciplinary action or dismissal under section 74A(2) of the Act should remain in place. However, in relation to constitutional officeholders ICAC reports should not contain statements about consideration of dismissal. Decisions about the dismissal of constitutional officeholders must remain the prerogative of the Parliament.

That seems to fit squarely with the amendment moved by the honourable member for Ashfield. He said that despite other provisions in the Act a report under section 74 could make findings of fact about the conduct of a Minister of the Crown or a member of either House of Parliament, but it could not include a finding or opinion on whether that conduct constituted or involved - or could constitute or involve - corrupt conduct. The honourable member for Ashfield also said that under that section the commission should report to the Parliament on the facts and be required to tabled those findings for consideration and debate, and that the Parliament should determine the fate of members of Parliament upon receipt of that report. There is no doubt that there should be some discussion about ethics and that form of code for members of Parliament should be developed, particularly the need for some form of induction. The parliamentary committee dealt directly this issue during its deliberations. The process could continue, but it may not necessarily be tied directly to this matter. I am concerned that for three years, not two,

members of Parliament and Ministers of the Crown would remain outside the leave of the Act.

Mr WINDSOR (Tamworth) [11.27]: I intend to speak only briefly to this legislation. I have been interested in the concept of a code of conduct for parliamentary behaviour, and as a member of Parliament I have a deep interest in the accountability of members of Parliament, within and without the Parliament. I was an interested bystander to the Greiner-Metherell-Temby-ICAC affair. In my view that matter was incorrectly handled - a matter that resulted in the resignation of the former Premier. I have not been privy to the dealings that have been outlined in the debate. However, it is obvious that dealings have been taking place between the Government and some of the Independent members of this Parliament. This has some significance in that most other members of Parliament are not aware of those dealings.

If Government representatives and Independent members supporting this legislation are sincere, they will support my contention that the dealings that have been going on behind the scenes should be made public so that all members of Parliament can be made aware of why these decisions are being made. We are talking about a bill that will affect individual members of Parliament and their careers. It sets out to provide what impact the ICAC can or may have on their careers as members of this Parliament. I was led to believe that being elected a member of

Parliament brought with it very special privileges in that members of Parliament are elected to represent their constituents. I have concerns about the partiality of the legislation and its effect on the ability of individual members of Parliament to represent their constituents in the way that they see fit. This concern is particularly relevant in this Parliament where neither side has had a majority.

I do not believe that all members of this House understand the full ramifications of the bill. I include myself in that category. I think it is important, before we as individual members of Parliament make a firm decision on this legislation, that we should have a full understanding of its implications. I do not think the passing of this legislation should be decided on some deal worked out by certain members of the Government parties and certain Independent members without making all members of Parliament fully aware of the implications of the legislation.

So in my brief speech I urge all members of Parliament to reconsider their views on this legislation. I ask them to have a closer look at its implications and its impact on their ability to represent their constituents. I am not being critical of the other three Independent members, because I think they are probably genuine in their attempts to arrive at a solution. However, it is critical that all members understand the legislation, and I do not think it is apparent from the debate that all members will have that full knowledge if and when they are asked to vote on this bill. The suggestion of some sort of deal being done to get this legislation through this House has some worrying aspects for me. Those deals should be outlined to the House.

If this legislation is to be voted upon tonight, I will be supporting the amendment to be moved by the Australian Labor Party. I believe the bill raises questions about the role of a member of Parliament, as well the role of the Parliament itself, and whether we require an outside body to determine our conduct within this Parliament. I am not saying that such a procedure is not required. I am saying that the debate that has taken place in this House tonight has not been sufficiently persuasive to lead me to support the legislation as drafted. In conclusion, I urge the Independent members of this House to give serious consideration to the provisions of this legislation and the import of the Opposition amendment before this House moves to a determination. There are grey areas that all of us, if we are to be representatives of our electorates, should take into account.

Mr NAGLE (Auburn) [11.34]: The honourable member for South Coast said that nowhere in the world has this type of proposal ever been adopted. He is probably right. Really, though, did the honourable member think about why that is so? Is it because all politicians throughout the world are corrupt and would never accept a code of conduct of this nature? Or is it to do with the fact that we as

members of Parliament govern the State not only from this House but through the bureaucracy? I have no problem with the code of conduct. I think the honourable member for South Coast would acknowledge that I have always been a person willing to investigate a code of conduct for members of Parliament. But what type of code of conduct are we asked to accept? We are asked to vote on a bill that will incorporate a code of conduct determined by a number of members, not knowing exactly what we will be voting for. I remind the House of my comments made earlier tonight regarding a question put to Mr Jones from the Darling Harbour Authority in regard to the Independent Commission Against Corruption. Mr Jones said:

> Yes, as you are probably well aware the ICAC has generated a certain amount of apprehension amongst all government bodies with regard to commercial dealings.

Is that to be so in respect of members of Parliament? As members of Parliament, must we always be apprehensive about the matters we bring before this Parliament? Must we worry about whether or not we may say or do something that ultimately will be judged on the basis of a code of conduct that we create for administration by the ICAC? I would find such a situation intolerable. I can assure the House that if that were to happen, I would reconsider my role as a member of Parliament. There is no doubt that the Independents in this House are genuine in their attempt to assist the Parliament in coming to a determination on what members of Parliament should do. However, the consequences of that determination worry me. I refer honourable members to the second reading speech of the Minister for Police, and Minister for Emergency Services to remind honourable members what this issue is all about. He said:

> In addition, section 8 sets out specific examples of corrupt conduct. However, the wide ambit of corrupt conduct under section 8 is cut back by section 9, which provides that conduct can be corrupt conduct only if it involves a criminal offence, a disciplinary offence or reasonable grounds for dismissing a public official. Before the Independent Commission Against Corruption can investigate a matter there must be circumstances or allegations that suggest a person may have engaged in conduct as defined by both sections 8 and 9. Clearly, Ministers and members of Parliament can be investigated by the ICAC when there are allegations that suggest that they may have been involved in criminal activity. However, the Court of Appeal decision showed that the other bases for corrupt conduct, namely, disciplinary offences and reasonable grounds for dismissal, could have very little practical operation in relation to Ministers and members of Parliament.

The Opposition's amendment is aimed at alleviating that problem. It goes very close to resolving the problem that the Court of Appeal spoke of. However, what has been included in the bill as a result of negotiations between the Government and Independents goes far beyond the views of the Court of Appeal in relation to section 9 and goes to the very foundation of our ability to function as members of Parliament. Those who rush into legislation of this nature will rue the day that they did so. I refer honourable members to the annual report of the Independent Commission Against Corruption. Let us look at what it suggests to resolve the problems that we face. Page 4 of that report contains this statement:

> The Commission's work in assisting agencies to minimise corruption uses a three pronged strategy:

Remember, we are now talking about what the ICAC is doing in corruption prevention in the public service. We are now dealing with prevention of corrupt conduct by members of Parliament. Surely we are not talking about our morality; we are talking about corrupt conduct which far surpasses the general norms in the community. The three-pronged strategy of the commission to assist agencies to minimise corruption is as follows:

advising government agencies on improvements to procedures and practices;

examining the operations of public sector management systems, then recommending changes to reduce corruption opportunities; and

increasing the public awareness of public officials through seminars, conferences and publications.

The page containing that quote is headed "Minimising Corruption". Can anyone in the Parliament tell me of one ICAC officer who has come to the Parliament to tell us what we should be doing to minimise corruption? Mr Temby as commissioner and Mr Mant as acting commissioner have spoken to the ICAC committee but no-one has come here to set down a program of behaviour for members. A group of members is now deciding what practice should be adopted for the whole of the Parliament. That may not be wrong; it may not be too bad, but the other members of Parliament have not had the opportunity of discussing the proposal. The ICAC committee, of which I am a member, has discussed the matter but there are 99 members of the lower House and 42 members of the upper House and most of them have not discussed the proposal. Officers from the ICAC talked to the Department of Health, the police and other Government employees but they have not bothered to talk to members of Parliament. It may be that before we agree to such a code of conduct we should talk to the ICAC about what we should be doing. On page 7 the report stated:

Evidence suggests more public sector agencies are accepting their responsibility to improve public sector integrity. One indicator is the number and nature of requests from agencies for advice and assistance from the Commission.

Have the Presiding Officers ever asked for assistance? If they have, has the ICAC thought it worth while to come to the Parliament to discuss what is needed? I think the answer is no. One would have thought that the first place for the ICAC to be involved is at the top of the structure of government in New South Wales, the Legislative Assembly and the Legislative Council. The report goes on to state:

. . . Commission in developing their own framework for minimising corruption. Examples include advice to the NSW Police Service on the development of their Corruption Prevention Strategy and Plan and comments to the Department of Health on its Code of Conduct and, later, its Fraud and Corruption Prevention strategy.

A wide range of departments and agencies sought Commission involvement in seminars, workshops and other activities aimed at raising awareness and developing approaches to minimise corruption. An important initiative was taken by the Department of Health . . .

We are now proposing to amend a bill to set up a code of conduct to be administered by the ICAC, a code which the ICAC has not said that we need but which we have been told by other people we do need. There may be a need for a code of conduct but let us establish one in cooperation with the ICAC and members of Parliament, who are elected by universal suffrage throughout the State of New South Wales. Under the heading "Staff Grievance Mediation" the ICAC report stated:

The Commission's grievance mediation procedure allows staff grievances to be aired and resolved in a confidential, non-threatening way. Any aspects of a problem that could affect future working relations may also be addressed.

Why could there not be a similar procedure in the Parliament for mediating a problem concerning a member of Parliament instead of the problem being exposed? Talented people who have put time and effort into the Parliament may be concerned that one day they may be dragged before some type of conduct committee organised and structured in such a way that we do not know -

Mr West: You have not read the bill.

Mr NAGLE: Hang on. The Minister may agree to the proposal but many members of his party do not want it. The honourable member for South Coast talked about Labor members being influenced by big business and trade unions. He also referred to members of the National Party being influenced. I do not mind being influenced by big business or trade unions because that is my function as a member of the Parliament, but I would like to be able to do those things which are necessary. This Parliament should not have a Star Chamber; it should have ways and means of dealing with problems that arise. According to members of the fourth estate, members of Parliament are the most corrupt people on earth. That is not true. Introduction of a code of conduct should be by consensus of all members of Parliament.

I was told by a Minister that the Independents met with the Government and were told, "We will support your amendments to the bill if you will support the appointment of Mr Justice O'Keefe as ICAC Commissioner". I do not know whether that is true. A piece of folded paper was stuck under my nose and it was suggested that it was the code of conduct that would be imposed. I do not know, and I do not really care, whether that is true, but if that is the type of thing that goes on in this House the code should have been introduced by consensus with the support of all members. This rushed piece of legislation should be examined thoroughly. Every member of the House should not try to debate the issues tonight. The Government has sold out to get Mr Justice O'Keefe appointed as ICAC Commissioner. That is not the way things should be done. If we are to have a code of conduct, there should be consensus on it among all members.

Page 4732

Mr WEST (Orange - Minister for Police, and Minister for Emergency Services [11.49], in reply: Two sets of amendments to be considered in Committee have been circulated. One has the code C-O22 and is in the name of the Australian Labor Party. The honourable member for Ashfield clearly indicated he intends to move that amendment. There is another set of amendments with the code C-O26 which will be moved by the Government in Committee. Some members who spoke in this debate did not understand that there were two sets of amendments. Reference was made to the understanding of a deal between the Independents and the Government. I make it clear: as has been the practice in this Parliament since the balance of power changed, there have been lengthy negotiations on numerous pieces of legislation. On occasions the Government introduced amendments which the ALP saw for the first time when they were brought into the Chamber, and there have been amendments which the ALP brought and which the Government saw in the Chamber for the first time and knew it would be rolled on them.

That is the reality of what goes on. The amendments the Government proposes to move have not been rushed up in the last 24 hours. They have been the subject of negotiation between the three non-aligned Independents and three Cabinet Ministers on behalf of the Government. The amendments have been to Cabinet on three occasions and a meeting of the joint parties this morning agreed that the Government would move and support them. That is the commitment I give in this Chamber. Also there is a great deal of hypocrisy on the part of many ALP members who seem to think that as a result of this legislation the Government is adopting a code. The Government is not adopting a code but is setting up a mechanism whereby that code can be developed and brought back to the two Houses of this Parliament to accept or reject. That will clearly be the most important test; that is when all this swill that we have heard tonight about a code of conduct can be vented - in 12 months time. That is when honourable members will see the code of conduct, not at the moment. The code of conduct will be established by a standing ethics committee which will consist of a majority of members of Parliament. The non-parliamentary membership will be agreed to by seven of the nine members of that committee. If that does not give members control of the committee, and the control of its direction to be able to determine the code to be recommended to the Parliament, then I do not know what does.

The ultimate decision will be made in 12 months time, after a code has been developed and

recommended to the Parliament. The concept of a code is not something new; it was recommended by Mr Temby in 1991. That comment was also picked up in the Niland report, which was tabled in the House yesterday. The concept that members of Parliament have been invited to consider a code of conduct is not something that has been brought out of frustration over some alleged backroom deals in the last 24 hours. It was negotiated for some weeks. The Independent Commission Against Corruption committee has put out a discussion paper and also worked down the path towards a code of conduct.

The ALP says that it has not been involved in the process. Where has it been? ALP members have stuck their heads in the sand and wanted to ignore this process. Government members have been accused by the non-aligned Independents of sticking their heads in the sand. At least we have pulled our heads out of the sand, and that is something the ALP members have not managed to come to grips with. One of the concerns expressed tonight is that honourable members will be dragged off before the standing ethics committee or the ICAC in some Star Chamber type role. The Government, as part of its negotiations, changed the amendments so that there will not be a Star Chamber type of process. That will not be the function of the ethics committee. The committee will be there to consider, to formulate, and to review the code of conduct. For those reasons the Government was prepared to agree to make these changes. For those reasons I believe that as members of Parliament we have nothing to fear. Our ultimate test will be when that code of conduct comes back before us in 12 months time and we have to make our decision.

Question - That this bill be now read a second time - put.

The House divided.

Ayes, 43

Mr Baird	Mr W. T. J. Murray
Mr Beck	Mr O'Doherty
Mr Blackmore	Mr D. L. Page
Mr Chappell	Mr Peacocke
Mrs Chikarovski	Mr Petch
Mr Cochran	Mr Phillips
Mrs Cohen	Mr Richardson
Mr Cruickshank	Mr Rixon
Mr Debnam	Mr Rozzoli
Mr Downy	Mr Schipp
Mr Fraser	Mr Schultz
Mr Glachan	Mrs Skinner
Mr Hartcher	Mr Small
Mr Hatton	Mr Smith
Mr Humpherson	Mr Souris
Dr Kernohan	Mr Tink
Mr Kinross	Mr Turner
Mr Longley	Mr West
Dr Macdonald	Mr Zammit
Mr Merton	*Tellers*,
Ms Moore	Mr Jeffery
Mr Morris	Mr Kerr

Noes, 40

Mr Amery	Mr Martin

Mr Anderson	Mr Mills
Mr A. S. Aquilina	Mr Moss
Mr J. J. Aquilina	Mr J. H. Murray
Mr Bowman	Mr Nagle
Mr Crittenden	Mr Neilly
Mr Face	Mr Price
Mr Gaudry	Dr Refshauge
Mr Gibson	Mr Rogan
Mr Harrison	Mr Rumble
Ms Harrison	Mr Scully
Mr Hunter	Mr Shedden
Mr Iemma	Mr Sullivan
Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan
Mr Knowles	Mr Windsor
Mr Langton	Mr Yeadon
Mrs Lo Po'	
Mr McBride	*Tellers*,
Mr McManus	Mr Beckroge
Mr Markham	Mr Davoren

Pairs

Mr Armstrong	Ms Allan
Mr Causley	Mr Carr
Mr Collins	Mr Clough
Mr Fahey	Mr Doyle
Mr Griffiths	Mrs Grusovin
Ms Machin	Ms Nori
Mr Photios	Mr Page

Question so resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clause 3

Mr WEST (Orange - Minister for Police, and Minister for Emergency Services [12.06 a.m.]: I move:

Page 2, clause 3, lines 9-19. Omit all words on those lines, insert instead:

3. The Independent Commission Against Corruption Act 1988 is amended:

(a) by inserting at the end of section 9(1)(c) the following:

; or

(d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament - a substantial breach of an applicable code of conduct.

(b) by inserting in section 9(3) in alphabetical order:
"applicable code of conduct" means, in relation to:

(a) a Minister of the Crown - a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations; or

(b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown) - a code of conduct adopted for the purposes of this section by resolution of the House concerned.

(c) by inserting after section 9(3) the following:

(4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

(5) Without otherwise limiting the matters that it can under section 74A(1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct could also constitute or involve a contravention of a law (apart from this Act) and the Commission identifies that law in the report.

(d) by inserting after Part 7 the following:

PART 7A - STANDING ETHICS COMMITTEE

Constitution of Standing Ethics Committee

72A. There is constituted by this Act a committee, to be known as the Standing Ethics Committee.

Functions

72B.(1) The functions of the Standing Ethics Committee are:

(a) to prepare for consideration by each House of Parliament draft codes of conduct for members of the House concerned and draft amendments to codes of conduct already adopted, and

(b) to carry out educative work relating to ethical standards applying to members of either House of Parliament;

(c) to give advice in relation to such ethical standards in response to requests for advice by either House of Parliament, but not in relation to actual or alleged conduct of any particular person.

(2) The Standing Ethics Committee may seek comments from the public in relation to any of its functions.

(3) Before being presented for consideration by a House of Parliament, the Standing Ethics Committee must:

(a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public; and

(b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice; and

(c) specify, in the notice, the period during which submissions may be made to the Committee.

(4) Any person may, during the period referred to in subsection (3)(c), make submissions in writing to the Standing Ethics Committee with respect to the provisions of the draft code of conduct. The Committee must take any such submissions into consideration.

(5) Within 12 months after the commencement of this Part, the Standing Ethics Committee is to present for consideration by each House of Parliament draft codes of conduct for members of the House concerned.

(6) The Standing Ethics Committee is to review the codes of conduct at least once in each period of two years.

Membership

72C.(1) The Standing Ethics Committee is to consist of 14 members, comprising:

(a) 9 parliamentary members, being the persons who are for the time being the members of the Committee on the Independent Commission Against Corruption; and

(b) 5 community members, being persons who are appointed by at least 7 of the parliamentary members from applicants following public advertisement.

(2) A person cannot be appointed as a community member if the person is a member of either House of Parliament or a member of a party registered under Part 4A of the Parliamentary Electorates and Elections Act 1912.

(3) Community members may, but need not, be appointed for a specific term, but in any case may be discharged from office at any time by at least 7 of the parliamentary members.

Vacancies

72D.(1) A member of the Standing Ethics Committee ceases to hold office:

(a) when the Legislative Assembly is dissolved or expires by the effluxion of time; or

(b) if the member becomes a Minister of the Crown or a Parliamentary Secretary; or

(c) if, being a parliamentary member, the member ceases to be a member of Joint Committee; or

(d) if, being a community member, the member becomes a member of the Legislative Council or Legislative Assembly; or

(e) if, being a community member, the member becomes a member of a party registered under Part 4A of the Parliamentary Electorates and Elections Act 1912; or

(f) if, being a community member appointed for specific term, the term expires; or

(g) if, being a community member, the member is discharged from office by at least 7 of the parliamentary members.

(2) At least 7 of the parliamentary members may appoint a person who is or has been an applicant following public advertisement (being a person who is eligible for appointment in terms of section 72C) to fill a vacancy among the community members.

Chairman and Vice-Chairman

72E.(1) The Chairman and Vice-Chairman of the Joint Committee are Chairman and Vice-Chairman respectively of the Standing Ethics Committee.

(2) A member of the Standing Ethics Committee ceases to hold office as Chairman or Vice-Chairman of the Committee if the member ceases to be Chairman or Vice-Chairman of the Joint Committee.

(3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of Chairman or there is a vacancy in that office, the Vice-Chairman may exercise the functions of the Chairman under this Act.

Procedure generally

72F.(1)The procedure for the calling of meetings of the Standing Ethics Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.

(2) The Clerk of the Legislative Assembly is to call the first meeting of the Standing Ethics Committee in each Parliament in such manner as the Clerk thinks fit.

(3) At a meeting of the Standing Ethics Committee:

(a) except in the cases mentioned in paragraph (b) - 7 members constitute a quorum, of whom at least one must be a member of the Legislative Council, one must be a member of the Legislative Assembly, and one must be a community member; or

(b) in cases where this Part confers functions on at least 7 parliamentary members of the Standing Ethics Committee without the involvement of community members - 7 parliamentary members constitute a quorum.

(4) The Chairman or, in the absence of the Chairman, the Vice-Chairman or, in the absence of both the Chairman and the Vice-Chairman, a parliamentary member of the Standing Ethics Committee elected to chair the meeting by the parliamentary members present is to preside at a meeting of the Committee.

(5) The Vice-Chairman or other parliamentary member presiding at a meeting of the Standing Ethics Committee has, in relation to the meeting, all the functions of the Chairman.

(6) The Chairman, Vice-Chairman or other parliamentary member presiding at a meeting of the Standing Ethics Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) A question arising at a meeting of the Standing Ethics Committee is to be determined by a

majority of the votes of the members present and voting.

(8) The Standing Ethics Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.

(9) The Standing Ethics Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

Status of committee

72G.(1) The Standing Ethics Committee may request the attendance of persons before it and may request the production of papers and records to it.

(2) The Defamation Act 1974 and the Parliamentary Papers (Supplementary Provisions) Act 1975 apply to the Standing Ethics Committee as if it were a joint committee of both Houses of Parliament.

(3) The Parliamentary Evidence Act 1901 does not apply to the Standing Ethics Committee.

Validity of certain acts or proceedings

72H. Any act or proceeding of the Standing Ethics Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

(a) a vacancy in the office of a member of the Committee; or

(b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

The amendment eliminates clause 3 as it currently stands in the bill and inserts new provisions. The amendment establishes a standing ethics committee which has the following functions: to develop a code of conduct for members of both Houses; to carry out educative work relating to ethical standards applying to members of Parliament; and, if requested by either House, to give advice in relation to such ethical standards. It should be noted that the ethics committee is expressly prohibited from giving advice in relation to actual or alleged conduct of any particular person. This restraint has been put in place to ensure that the committee cannot be used as some form of Star Chamber to attack individuals. Concerns were expressed by members during the negotiations and the second reading debate.

The committee is required to present to each House of Parliament draft codes of conduct within 12 months of the commencement of the bill. The committee is also required to review the codes of conduct at least once every two years. Once the committee has developed codes of conduct, it will be a matter for each House to determine whether they should be adopted. It is very important that members of the Committee listen to that very carefully. This is the mechanism that will allow the codes to be developed. It is then up to the Houses to determine whether the codes should be adopted. I refer to the structure of the committee, as proposed in this amendment. The committee shall consist of 14 members, nine of whom will be members of the Committee on the Independent Commission Against Corruption, and five of whom will be chosen from the general community, being persons who are appointed by at least seven of the nine members of the ICAC committee.

I refer to the expanded definition of "corrupt conduct". I indicate that the amendments expand the

jurisdiction of the ICAC in relation to conduct of members of Parliament and Ministers. First, conduct falling within the description of "corrupt conduct" in section 8 of the Act, which could also constitute a substantial breach of a code, can constitute corrupt conduct. Second, conduct by a member of Parliament or a Minister which would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute can also be investigated by the ICAC. However, such conduct will not be labelled "corrupt conduct" under the Act unless the ICAC is satisfied that the conduct could also constitute or involve a contravention of the law.

A number of concerns have been expressed with respect to the introduction of a code. I repeat, for the sake of clarity, that we are not voting upon a code of conduct at this stage. We are merely dealing with the mechanism to establish that process. It will be up to the House, as it is composed at the time - which will be after the election in March next year - to determine the codes recommended to it. I believe that the recommendation put forward in this amendment is indeed a sensible one.

Mr WHELAN (Ashfield) [12.10 a.m.]: I am not a cynic, but I do not believe that what the Minister said earlier is correct.

[*Interruption*]

The honourable member for Bligh probably thinks she is still at the Sydney City Council, but she is not. If the honourable member expects me to believe that there has been no deal between the Government and the Independents about the carriage of the bill, she believes in Father Christmas. Of course there was a deal and I cannot understand why the Government has not been honest and open about it. These are the draft amendments agreed between the Government and the Independents, but it does not matter. That is not the issue, but for the Minister to say that they are the Government's amendments and not the Independents' amendments is totally dishonest. Like the bill, these amendments are flawed.

I will refer to some examples. Tell me, Minister, what is a substantial breach of the applicable code of conduct under these amendments? What is it? This is what we are all going to be subject to. Paragraph (b) of clause 3 as amended proposes that the applicable code of conduct means a ministerial code of conduct prescribed or adopted for the purposes of the regulations. Standing Order No. 113A relates to disallowance of regulations. Do honourable members know what the disallowance powers are in the upper House as opposed to those in the lower House? Do honourable members know that this Parliament cannot amend a regulation, it must reject it? Are we going to change that regulation? That is just one simple flaw.

The amendments will provide prescribed regulations for members of the lower House, for Ministers in the lower House, for members of the upper House, and for Ministers in the upper House. To get an applicable code of conduct it will be necessary to get both Chambers to agree. What happens if they agree one week and disagree after the election? We will have to wait 12 months for this standing ethics committee, which is to comprise 14 members - nine parliamentary members and five community members - to be appointed by at least seven of the members who are members of the Independent Commission Against Corruption parliamentary committee. What will happen if the vote is tied seven all? Where are the details of the functions of this committee?

The amendments propose that the functions of the ethics committee will be to prepare for consideration by each House of Parliament draft codes of conduct for members of the House concerned, and draft amendments to codes of conduct already adopted. What happens if one House rejects them? What happens if the lower House rejects them and the upper House approves them? We would have completely different codes. This is the Government's legislation; it is not the Opposition's legislation. I come back to the simple amendment I moved and it is not negative. The amendments that the Independents have worked out with the Government are worse than

the measures in the Government's bill, far worse. The simplistic answer is contained in what Mr Temby said at pages 15 and 18 of his report on Metherell in September 1992. He said that the Independent Commission Against Corruption should make findings of fact about conduct.

The Independents have this harebrained scheme to bring in a code of conduct and if the Independents believe that the Government will be here in 12 months time, that is also fairyland thinking. Should the Government be re-elected by accident, if the Independents believe that it would introduce a code of conduct, they believe in the fairy godmother. I am not going to destroy the illusion of little fairies and little people. The Government might be able to hoodwink the three Independents. Some of the more important matters should not be forgotten. I raised a lot of them in my contribution to the second reading debate on this bill. I want to draw the attention of honourable members to paragraph (c) of the Government's proposed clause 3, which would insert a new section 9(4), which reads:

> Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

That is a classic example. It is a mixture of criminal standards of proof and civil standards of proof. It states what a reasonable person will do, but when we are talking about corrupt conduct we are talking about criminality and satisfaction beyond reasonable doubt. This is not the Independents' amendment, it is the Government's amendment, but somehow the Independents seem to have a hand in it. That is another flaw in this great piece of legislation that is going to go off for 12 months to an ethics committee to be discussed and may not see the light of day or the form that it deserves. I think it is absolutely, positively ridiculous.

There is more associated with the procedures of the standing ethics committee; it is not going to satisfy the problem. The honourable member for Bligh is the one who should be worried because she is the one out of step with former Commissioner Temby, no-one else. The honourable member is out of step with Mr Temby, not the Australian Labor Party. The ALP adopted what Mr Temby said. My only worry is that the honourable member does not understand the bill, and that is the truth. It is as clear as crystal that the honourable member does not understand the bill and has not read Mr Temby's comments. She has not learned anything from what he said. I want to repeat what he said for the honourable member's benefit, because she was obviously not listening when I said it before. I want to inculcate this into the honourable member's brain so that she will understand it. Mr Temby said that a possibility worth considering would be to:

> . . . change the ICAC Act so as to make the prime function of the Commission, when investigating matters, to find facts rather than try to fit conduct into a particular definition.

That is what my amendment is about. When I talk about the Government and the Independents getting together to work out the amendments, they have always done it. I have worked with the Independents to formulate amendments that have been passed by the Parliament. There is nothing wrong with that. There is nothing wrong with those groups of people - the Independents, the Government or the Opposition - working together and I make no complaint about it. But for members of the Government to say that there has been no collaboration, that these are the Government's amendments, is nonsense and totally dishonest. Because the Government has agreed with the amendments, I do not now have an opportunity to move my amendment. That is why I read it in my contribution to the second reading debate, because it was as clear as crystal that a deal had been done. I urge honourable members to understand that the amendment I proposed, which I am not now permitted to move because the procedures of the House do not permit me to do so, was the essence of this debate. There is a very simple answer. Honourable members should read the 18- to 20-page document prepared by Mr Temby. It is not anti National Party; it is not anti Liberal Party; it is not anti anyone. The fact of the matter -

[*Interruption*]

I am very surprised that the honourable member for Wakehurst has such a cavalier attitude towards the Independent Commission Against Corruption.

Mr Hazzard: Me?

Mr WHELAN: Yes, you. I cannot understand why he is sitting over there when he realises that the legislation that the Government and the Independents have now produced is so seriously flawed. Unless he is cynical -

Mr Hazzard: You know exactly what I am.

Mr WHELAN: I understand, but it does not get away from the simple point that the Labor Party is supporting Temby's recommendations and the members of this House should do likewise. There are a number of other clauses in this bill which relate to membership, vacancies, the chair of the committee, and procedures to be determined. It is free of defamation. It is going to be a terrific committee. The Parliamentary Evidence Act does not apply, the Defamation Act and parliamentary papers will apply to the standing ethics committee as if it were a joint committee of both Houses. There will be 14 people on the committee. What will happen when a person attending the standing ethics committee for the first time, with the same privileges and opportunities as a member of Parliament on the Standing Orders and Procedure Committee, gets up and makes outrageous allegations against a member of Parliament?

Page 4737

Mr West: We will not appoint them.

Mr WHELAN: This is the Minister's bill, but he says he will not appoint them. Fourteen people - 14 potential time bombs - will be appointed. The Opposition accepts defeat but wishes that the Government and the Independents would understand that what they are doing is wrong and that they are creating a problem for the future. However, I am absolutely certain that we are never going to see an applicable code of conduct.

Mr HATTON (South Coast) [12.21 a.m.]: I would make two points to answer that diatribe from the honourable member for Ashfield. The all-party Independent Commission Against Corruption committee unanimously recommended a code of conduct, to be determined by the House. The reasonable-person test - the honourable member talks about the discussions we had with the Government, but we had discussions with the ALP on its amendment - was embraced most enthusiastically by the shadow attorney general, the Hon. J. W. Shaw, who thought the test was objective and had foundation in case law. But when they twisted his arm at the second meeting it was a different story.

Mr NAGLE (Auburn) [12.22 a.m.]: I am curious about the concept in the bill of a reasonable person believing that particular behaviour would bring the integrity of the office concerned or the Parliament into serious disrepute. A reasonable person has been defined in both civil and criminal matters - a person such as the Minister for Transport, and Minister for Roads. How reasonable would the Minister be about a person's conduct? Would the Minister say, "I believe, because of my religious views, this person has done something horrific", whereas other members might describe what happened as neither good nor bad? Is the test of reasonableness that of a balance of probabilities or proof beyond a reasonable doubt to determine this issue? Or is it the test of reasonableness in *Donoghue v Stevenson,* that a person has a duty to a neighbour to take care? What is reasonableness? I am even more curious about the words "integrity of the Parliament". The *Macquarie Dictionary* interpretation of "integrity" is:

> 1. soundness of moral principle and character; uprightness; honesty. 2. the state of being whole, entire, or undiminished: *to preserve the integrity of the empire* -

the Government would love that -

> 3. sound, unimpaired, or perfect condition: *the integrity of the test*.

What does that word mean? How is the integrity of the office or of Parliament determined? The next element is that the alleged behaviour brings that integrity into serious disrepute. The *Macquarie Dictionary* definition of the word "serious" is as follows:

> 1. of grave or solemn disposition or character; thoughtful. 2. of grave aspect. 3. being in earnest; not trifling. 4. demanding earnest thought or application: *serious reading, serious music.* 5. weighty or important: *a serious matter.* 6. giving cause for apprehension; critical: *a serious illness*.

What do the words "serious", "integrity" and "reasonable person" really mean? That is the problem. I said earlier that these matters should not be looked at by the five members of the ICAC committee. Members have already discussed this matter at length, and the general view is that there should be some type of code of conduct. But what about the remaining 90-odd members of this Chamber, who should express their views and have a say about what is happening in this Parliament? What about the ICAC itself sending its corruption-prevention people to discuss a code of conduct? That has not occurred. Not one thing has occurred, yet we will have to interpret such terms as "reasonable person", an integral legal term, and words such as "integrity" and "serious disrepute".

These are matters of great import to the Parliament. The honourable member for Manly said that the Hon. J. W. Shaw, shadow attorney general, advocates using the reasonable-person test. That is fine. Those words have connotations in a court of law, but a court of law is not going to determine this matter. Members of Parliament will be assessing the situation, as will the ICAC, which has its own code of conduct set out in its own legislation, and is not a court of law. That is the problem we are facing. We should not proceed with this legislation or speak to it without really examining it. I have been a member of this Parliament for 6½ years but we have not had a code of conduct. Can the ICAC committee - which has examined this question in some detail but has never reported to the Parliament on its deliberations - be set up to further consider this issue? Why cannot the other 90 members of this Chamber set up their own committee in conjunction with the ICAC to examine a code of conduct? It is important that we all understand it.

Members of Parliament, as an integral part of their functions, enjoy free speech to express their opinions. Those rights are enjoyed by all members - by a member of the National Party who wants to back a farmer on the other side of Coffs Harbour, by a Labor Party member who wants to back the Transport Workers Union in a lorry owner-drivers' dispute, or by the Minister for Health backing up the medical profession in a dispute in the Parliament about what should happen in that profession. It is an infringement of our rights as members of Parliament. We members of the Legislative Assembly are the 99 who have been chosen by the people of New South Wales to govern this State, together with those in the upper House - in the other place, as the old saying goes. If we as members are going to do something that will so enormously change things because of our own behaviour, we need to examine it carefully before that happens. I do not believe that has happened yet.

I have no problem with a code of conduct as long as that code is examined and determined by us as members of Parliament. The Government wants to put five people from the community on to this

committee. Who would be those five people? Can anyone show me where in this brilliant amendment there is provision for electing those five people from the constituency of New South Wales - not appointing them, but electing them - to sit on this committee to make sure members of Parliament have a code of conduct? What is to happen? Is the Government to appoint them? Are the Independents to appoint them? Where are these people? What is the Government to do? How is the Government to get them?

Mr West: Do not tell me the honourable member has taken a brief from me and has not read it.

Mr NAGLE: That is fine, but I would not take the brief unless you paid accordingly. The Government has put a proposal to the House but has given the House no detail as to the implementation of that proposal. Ultimately, who will do it? Will it be the Independents, the Government or the Opposition? In the final analysis, interpretation of the terms "reasonable person", "integrity" and "in serious disrepute" will be problems for the Government, not for the Labor Party.

Mr WHELAN (Ashfield) [12.29 a.m.]: I want to respond briefly to the comments made by the honourable member for South Coast. I do not say this lightly, but I believe he was dishonest when he referred to the comments by the Hon. J. W. Shaw. The Hon. J. W. Shaw would agree with the remarks I have made that there is a dual test: a civil test and a criminal test. The amendment refers to the reasonable person, but the honourable member for South Coast spoke about criminality and conduct under the Independent Commission Against Corruption Act. Sections 8 and 9 of that Act refer to criminal conduct. The Government is talking about two different standards and two different tests. That is its problem and not mine, but of course ultimately it will be a problem for all of us. The honourable member for Auburn made a good point: no-one is afraid of a democratic election. The amendment provides that the members of the Committee on the Independent Commission Against Corruption will select the five community members. Proposed section 72C(1)(b) provides:

> 5 community members, being persons who are appointed by at least 7 of the parliamentary members from applicants following public advertisement.

No general election or franchise is involved. A deal will be done. Three members of the committee will be Liberal Party-National Party supporters, one will be an Independent member of this House, and one will be a Labor supporter. That is how it will work. There will be no election. Why not have an election? I have read the amendment, and it cannot be said that there will be bona fide public participation in the committee. The parliamentary Committee on the Independent Commission Against Corruption will select the five community representatives. Let us have no more of this nonsense about a democratic election.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 42

Mr Baird	Mr Morris
Mr Beck	Mr W. T. J. Murray
Mr Blackmore	Mr O'Doherty
Mr Chappell	Mr D. L. Page
Mrs Chikarovski	Mr Peacocke
Mr Cochran	Mr Petch
Mrs Cohen	Mr Phillips
Mr Cruickshank	Mr Richardson
Mr Debnam	Mr Rixon
Mr Downy	Mr Schipp
Mr Fraser	Mr Schultz
Mr Glachan	Mrs Skinner
Mr Hartcher	Mr Small
Mr Hatton	Mr Smith
Mr Hazzard	Mr Souris
Mr Humpherson	Mr Tink

Dr Kernohan	Mr West
Mr Kinross	Mr Zammit
Mr Longley	
Dr Macdonald	*Tellers*,
Mr Merton	Mr Jeffery
Ms Moore	Mr Kerr

Noes, 40

Mr Amery	Mr Martin
Mr Anderson	Mr Mills
Mr A. S. Aquilina	Mr Moss
Mr J. J. Aquilina	Mr J. H. Murray
Mr Bowman	Mr Nagle
Mr Crittenden	Mr Neilly
Mr Face	Mr Price
Mr Gaudry	Dr Refshauge
Mr Gibson	Mr Rogan
Mr Harrison	Mr Rumble
Ms Harrison	Mr Scully
Mr Hunter	Mr Shedden
Mr Iemma	Mr Sullivan
Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan
Mr Knowles	Mr Windsor
Mr Langton	Mr Yeadon
Mrs Lo Po'	
Mr McBride	*Tellers*,
Mr McManus	Mr Beckroge
Mr Markham	Mr Davoren

Pairs

Mr Armstrong	Ms Allan
Mr Causley	Mr Carr
Mr Collins	Mr Clough
Mr Fahey	Mr Doyle
Mr Griffiths	Mrs Grusovin
Ms Machin	Ms Nori
Mr Photios	Mr E. T. Page

Question so resolved in the affirmative.

Amendment agreed to.

Clause as amended agreed to.

Bill reported from Committee with an amendment, and report adopted.

BILLS RETURNED

The following bills were returned from the Legislative Council without amendment:

Public Finance and Audit (Amendment) Bill
Independent Commission Against Corruption (Commissioner) Bill

MINING LEGISLATION (AMENDMENT) BILL

Bill received and read a first time.

SPECIAL ADJOURNMENT

Motion by Mr West agreed to:

That this House at its rising this day do adjourn until Thursday, 27 October 1994, at 9.00 a.m.

House adjourned at 12.43 a.m.,
Thursday.