LEGISLATIVE ASSEMBLY

Tuesday, 15 November 1994

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

Mr Speaker offered the Prayer.

ASSENT TO BILLS

Royal assent to the following bills reported:

Public Finance and Audit (Amendment) Bill
Royal Commission (Police Service) Bill
Independent Commission Against Corruption (Commissioner) Bill

OMBUDSMAN

Mr Speaker laid upon the table a copy of the report of the Ombudsman for the year ended 30 June 1994.

Ordered to be printed.

PUBLIC ACCOUNTS COMMITTEE

Report

Pursuant to section 57(1) of the Public Finance and Audit Act 1983, the Clerk announced receipt of the report of the Public Accounts Committee for the year ended 30 June 1994.

PETITIONS

Newcastle Rail Services

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

Marijuana Prohibition

Petition praying that legislation be enacted to give effect to the Law Society's recommendations on reform of marijuana prohibition laws relating to the use, possession and cultivation of marijuana for personal use, received from **Mr Mills**.

Hamilton Police Station

Petition praying that Hamilton Police Station continue to be a 24-hour station, received from **Mr Gaudry**.

Warilla Police Station

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

Part-time TAFE Teachers

Petition praying that the salaries and conditions of part-time TAFE teachers be improved, received from **Mr Mills.**

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

Routine of Business: Notices of Questions

Mr SPEAKER: Order! I wish to remind honourable members of recent amendments to the sessional orders changing the sitting hours of the House and other consequential changes as outlined in the memorandum to members of the Legislative Assembly distributed on 9 November 1994. I particularly want to draw the attention of members to the new routine of business and remind them of the terms of Standing Order 80, namely:

> Notices of Questions . . . shall be handed to one of the Clerks at the Table before Formal Business is entered upon.

This means that *Questions and Answers* closes before the commencement of question time. The cooperation of all members and Ministers is sought in complying with the standing order to facilitate arrangements for the timely production of *Questions and Answers*.

QUESTIONS WITHOUT NOTICE

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PLANNING POLICY FORMULATION

Mr CARR: My question is directed to the Premier. What safeguards has the Premier put in place to guard against political pressure on public servants to rezone land? Has a senior officer of the Department of Agriculture, Mr Bob Smith, resigned from his post after pressure by the Minister to rezone north coast land at the request of the honourable member for Murwillumbah?

Mr FAHEY: Clearly the Leader of the Opposition, as is his usual practice in this House, does not want an answer when he asks a question. He simply wants to fire the question. The Minister for Agriculture interjected quite clearly, no. I am sure the Minister will establish that when the matter comes on for consideration later today.

INTERNATIONAL YEAR OF THE FAMILY CELEBRATIONS

Mrs SKINNER: My question without notice is addressed to the Premier, and Minister for Economic Development. Will the Premier advise the House what action the Government is taking to assist families in New South Wales as part of the International Year of the Family celebrations? Could the Premier provide details about Family Week 1994?

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Mr FAHEY: I am pleased to advise all honourable members that today in Martin Place, with my colleague the Minister for Community Services, I launched Family Week 1994. Family Week is the culminating point of our celebrations for the International Year of the Family in New South Wales.

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

Mr FAHEY: It is obvious that the honourable member for Hurstville is not interested in the family because he is interjecting. Family Week is a special week of activities organised to focus on the importance of families to our society and to provide inexpensive opportunities for families to celebrate together.

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

Mr FAHEY: I am pleased that the one person on the Opposition benches who supports families is the honourable member for Ashfield. I thank him for his cooperation. Perhaps he could get the rest of his party to be a little interested in something that might be of importance. Let me say again, a special week of activities has been organised to focus on the importance of families to our society and to provide inexpensive opportunities for families to celebrate together. Family Week is about highlighting the vital link between strong families and caring communities - the building blocks of our communities. As such it is important to recognise the changing and complex needs of families in the 1990s and to provide them with the support they need to fulfil their essential role in our society.

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

Mr FAHEY: International Year of the Family and Family Week celebrations provide us with that opportunity. The Government initiated Family Week last year because it wanted to celebrate the concept of family and to reflect on the value of the family within the community. For the same reasons, the United Nations declared 1994 as the International Year of the Family. Throughout the year the Government has strongly supported the International Year of the Family with an extensive program of activities and initiatives. I am pleased to inform the House that today at the Family Week launch I announced other IYF initiatives. The Government is funding a range of innovative pilot projects that provide practical assistance to families to help them address common issues and problems. Examples of those projects include a cultural transition training package, which I understand is based at Fairfield, to help migrant and refuge families cope with the impact of migration, exile, cross-cultural conflict and torture and trauma suffered by family members; a children's access centre to provide a safe environment for families for whom access visits are a source of conflict, tension and even danger; and the family visiting program to help prisoners and their families cope with the often intimidating experience of attending prisons for visits.

Other projects include parenting workshops for fathers, helping parents cope with difficult children, and making urban parks more family friendly. This year the Government has also established a community advisory committee, which has done an excellent job consulting widely with families, community and church groups and business about issues of concern to families. The committee's report

will be presented to the Government on Thursday of this week, and I look forward to seeing the results of its valuable community consultations throughout the year. As I said earlier, Family Week is the culminating point of the International Year of the Family. Following the success of last year's Family Week, other States have this year followed our lead and are having their own Family Week. A national Family Week will coincide with our Family Week from 20 to 26 November.

I am delighted by the high level of community support and enthusiasm this year for Family Week. It has received overwhelming support from local communities, church and business groups, and local councils throughout the State. Religious leaders including the Archbishop of Sydney, Reverend Harry Goodhew, the Bishop of Grafton, Reverend Bruce Schultz, the Chair of the Islamic Council, Ali Roude, and the President of the Jewish Board of Deputies, Michael Marx, have endorsed Family Week. The private sector has been tremendously supportive, with many companies coming forward with sponsorship ideas and initiatives in their businesses. Government departments have joined with community organisations in providing a wide range of cultural activities, entertainment and information. The week will be opened this Sunday with a major event in the grounds of Panthers Leagues Club which is expected to attract about 30,000 people.

Ms Allan: What marginal seat is that in?

Mr FAHEY: The honourable member for Blacktown and her colleagues are welcome to attend. I look forward to seeing them there.

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

Mr FAHEY: Many of Sydney's families will be able to enjoy this family fun day of concerts, exhibitions and demonstrations, all aimed at celebrating and strengthening family life. A range of other activities and special celebrations have been organised throughout New South Wales to ensure families from other cities and country centres may participate.

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

Mr FAHEY: During Family Week I will be releasing the Government's family policy statement, which will detail a range of initiatives the Government provides to families and outline the Government's commitment to strengthening the family unit in New
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South Wales. This Government proudly supports the important foundation of our community, which, of course, is the family. It also proudly celebrates what strong families can achieve for our entire community. We must recognise the needs of families today and provide the support, encouragement and recognition that they deserve to fulfil their essential role in our community. I urge all honourable members to join with me in making Family Week 1994 a great success.

PLANNING POLICY FORMULATION

Mr WHELAN: My question without notice is directed to the Premier, and Minister for Economic Development. Do Department of Agriculture records show that Mr Bob Smith was ordered to co-operate with developers and north coast members of Parliament on planning matters? Will the Premier support the reference of this matter to the Independent Commission Against Corruption?

Mr FAHEY: If the honourable member for Ashfield has any matters he believes should be referred to the Independent Commission Against Corruption, he does not need to raise them in this House. He is perfectly at liberty, as he has been on other occasions, to put pen to paper, draft a letter and send it to the

commission.

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

Mr FAHEY: If he has any information, he should refer it to the commission because this Government has nothing to hide.

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

Mr FAHEY: This Government is quite clear about the standards it will abide by with regard to public administration.

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

Mr FAHEY: If any matter requires further investigation, the honourable member should stop playing little games in this House and have the matter referred to the Independent Commission Against Corruption. Further, if the honourable member wants detailed information about the matter, he should direct his question to the Minister responsible.

BALANCED BUDGETS

Mr ZAMMIT: My question without notice is addressed to the Treasurer, and Minister for the Arts. Are you aware of recent statements by the Opposition finance spokesperson regarding the Government's plans that would require future governments to operate within a balanced budget? What progress has the New South Wales Government made in developing this proposal?

Mr COLLINS: I thank the honourable member for Strathfield for his question.

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

Mr COLLINS: The balanced budget proposal has one simple intent behind it. It is a discipline that will ensure -

Mr Whelan: On a point of order: last time the Parliament sat I prefaced a question with the phrase "Is the Minister aware", and it was ruled out of order. As the same phrase prefaced the question asked by the honourable member for Strathfield, surely that question too should be ruled out of the order.

Mr Zammit: My question sought information.

Mr SPEAKER: Order! Was the question prefaced with the words, "Are you aware"? The honourable member for Strathfield might re-state the question.

Mr ZAMMIT: My question commenced, "Are you aware of recent statements".

Mr SPEAKER: Order! In accordance with my previous ruling, which referred to a longstanding convention of this Chamber, I rule the question out of order.

PLANNING POLICY FORMULATION

Ms ALLAN: My question without notice is to the Premier, and Minister for Economic Development. Did the public servant selected to replace Mr Smith write to the regional director on 9 June stating, "I hear

I am to be the bagman in the Kelly affair. Thanks"? What action will the Premier take against his Minister -

Mr O'Doherty: On a point of order: the purpose of question time is for members to elicit information, not to give information. I ask that the question be ruled out of order.

Mr SPEAKER: Order! The question is badly framed and I rule it out of order.

DAMS UPGRADING

Mr W. T. J. MURRAY: I address my question without notice to the Minister for Land and Water Conservation. Is it a fact that upgrading work on several dams in New South Wales has been completed? If so, will the Minister tell the House what this means in terms of dam safety?

Mr SOURIS: I thank the honourable member for Barwon for his question and I commend him for his continuing interest in this issue. If any reminder were needed, the current drought has emphasised yet again the extent to which we in this country are dependent on water resources. Proper maintenance and upgrading of our dams are vital. Fortunately, Australian dams have an excellent safety record, but we must be mindful that the average age of the 125 dams in New South Wales higher than 15 metres is between 35 and 40 years. Oversighting of dam safety in New South Wales is undertaken by the Dam Safety
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Committee, which was established in 1979, the annual report of which I tabled today. The committee ensures that the safety of all prescriptive dams is regularly reviewed and that there are continuing records of their conditions. It also identifies dams in need of maintenance or upgrading work.

As a result, with Government support work has been undertaken on 26 dams since 1979. In the past year, major work to bring Burrinjuck Dam to current world standard has been completed. The water storage capacity of Pindari Dam has been greatly enlarged to safely handle design floods. On a smaller scale, essential work to complete the safety of Tilba Dam has been completed. The report contains an updated list of 20 dams with notes on the measures being undertaken. It notes that the Sydney Water Board is currently finalising an environmental impact statement for the upgrade of the flood capacity of Warragamba Dam - a project which will have a major flood mitigation capacity to significantly reduce natural floods in areas downstream adjacent to the Hawkesbury River. In addition, the board has now finalised its investigation at Prospect Dam and it intends to proceed with a $16 million works program to strengthen the upstream face of the dam. Upgrading work on Lyell Dam by Pacific Power and on Rydal Dam by the Public Works Department is also well advanced. Extensive and detailed investigations have proceeded rapidly at Hume Dam to provide a basis for required work.

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

Mr SOURIS: The Dam Safety Committee is also responsible for regulating the extent of coalmining under and adjacent to dams and storages. In past years 1,580,000 tonnes of coal were mined from the vicinity of dams and storages under the committee's oversight. The public rightly expects dams to be as safe as is humanly and technically possible. The Dams Safety Committee has received, and will continue to receive, adequate government support to ensure that New South Wales remains not only the national leader in this field but also at the forefront of international standards.

MANLY DAM RESERVE KOALAS

Dr MACDONALD: My question without notice is addressed to the Minister for Land and Water Conservation. Was there a recently confirmed sighting of a koala at Manly Dam Reserve?

Mr SPEAKER: Order! I will hear the question in silence.

Dr MACDONALD: Will the Minister now call for a land assessment of adjacent Crown land as required under clause 3 of the Crown Lands Act prior to its sale for residential housing?

Mr SOURIS: I am not aware of the sighting to which the honourable member for Manly has referred. I am sure that I can be relied upon to discharge all obligations under any Act.

BALANCED BUDGETS

Mr ZAMMIT: My question without notice is addressed to the Treasurer, and Minister for the Arts. Do recent statements by the Opposition's finance spokesman regarding the Government's plans require future governments to operate within a balanced budget? What progress has the New South Wales Government made in developing this proposal?

Mr COLLINS: The balanced budget proposal has one simple intent behind it. It is a discipline that will ensure that future governments will live within their means. Since the in-principle decision by Cabinet two months ago the Government and New South Wales Treasury have done extensive work on the proposal. I expect to bring the detail of that work before Parliament soon. It should be made clear from the outset that this proposal has the full support of the New South Wales Treasury. It is designed to ensure that future governments do not squander the gains of the past six years. It will ensure that governments do not borrow money to fund deficits.

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

Mr COLLINS: It will ensure that governments do not leave future generations with an untenable burden of debt. Victoria and South Australia have already witnessed the legacies of governments that embraced debt for short-term goals. This legislation will be designed to ensure that such a situation is never allowed to develop in New South Wales. In short, the proposal is to control the State's budget sector debt through legislating for balanced budgets.

Mr Carr: Make it apply for this year.

Mr COLLINS: The Leader of the Opposition, who has just interjected, also claims to be interested in debt control. Two months ago, in an interview with Andrew Olle on Australian Broadcasting Corporation radio, he said:

> The key test is not whether the Budget is imbalanced in any one year but whether your ratio of debt to state economic activity is under control.

Let us put the Leader of the Opposition to his own test. Gross budget sector debt as a percentage of gross State product is now about 12 per cent. In 1984, under the previous Labor Government, it was about 16 per cent - one-third higher. He fails his own key test. But there is more. The Leader of the Opposition, in the same interview, said:

> It is the level of debt as a proportion of the state economy that is the key economic indicator . . . in terms of the State Budget the level of the Budget that is required in debt servicing.

So how does Labor stack up against its nominated key economic indicator? This financial year about 8 per cent of budget receipts will be used to service budget sector debt. In 1988, when the coalition came to office, the figure was about 12 per cent. Put simply, a greater proportion of budget receipts is now available for core services such as hospitals, schools and roads than was available under Labor. This is the

criteria on which Labor wants to be judged - this proud record of debt control! Even when the Leader of the Opposition sets his own tests, he flunks them.

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

Mr COLLINS: And if honourable members think that Labor has changed its ways, they should look at the New South Wales branch of the Labor Party. Now there is an example of debt control - $10 million in debt after some bad property investments!

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

Mr COLLINS: Restructuring deals are falling over every day.

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

Mr COLLINS: People are wondering how the Australian Labor Party will be able to afford to contest the next State election. Imagine what these people would do if they were let loose on a $20 billion budget! They cannot run a Labor Party branch yet they want to run this State. I think everybody has a right to be very afraid of what Labor is about. All of this may explain the hysterical, irrational and unbalanced response from the Opposition to the balanced budget proposal. When the Premier and I first announced the Government's intention for balanced budget legislation the Opposition finance spokesman said flatly that the ALP would oppose the legislation. The fiscal giants on the other side then went into a huddle and came up with a better plan. The Leader of the Opposition said, "We will support the legislation".

Had the Opposition seen the fiscal light? Not quite! You see, the Leader of the Opposition does not want to be seen to be opposing responsible, financial reform in this Parliament. He is hoping that the people of New South Wales might be tricked into doing it for him. So he says that he will let the legislation pass and then ask the people of New South Wales to vote no at a subsequent referendum. The ultimate cop-out! He is asking the people of New South Wales to make decisions that he is too scared to make. Some leader! These are extremely bizarre tactics for a man who says he can balance the budget in the next financial year, though he has yet to detail just where he would slice half a million dollars in core services to achieve this. He has yet to identify which schools he will close, which hospital programs he will axe and which road black-spot maintenance programs he will eliminate.

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

Mr COLLINS: This man, who says he can balance the budget next year, does not want to commit himself to ongoing balanced budgets because the ALP in Victoria, South Australia and, historically, in this State, are notorious debt addicts. In the middle of last month, during the joint estimates committee hearings, the Opposition finance spokesman was champing at the bit to see the balanced budget legislation. He demanded that it be introduced in time to be dealt with in this current session of Parliament. But now the Opposition is backing away. Last week members of the Opposition signalled that they might oppose holding a referendum if they do not like the referendum question. Bear in mind that they have absolutely no intention of supporting a yes vote at the referendum. They just do not want the question to be too good. Now members of the Opposition are backing away at a million miles an hour when only four weeks ago they were jumping up and down to see the legislation. Maybe they saw the *Sydney Morning Herald* Saulwick poll which found that 58 per cent of people supported the proposal to require future State governments to balance their budgets. Maybe they read the column in the same paper just a few days later which stated:

> Even more interesting was that there were strong majorities in favour of the balanced Budget

amendment in all political parties. So for Labor to oppose the referendum next March 25 will probably cost it votes.

Just last week the Opposition finance spokesman said that State governments should balance their budgets but that we did not need legislation to achieve that. Members of the Opposition are asking the people of New South Wales to take them at their word. The question is: which word? In two months the Opposition has gone from opposing the legislation to supporting it, to maybe supporting it, to supporting it as long as there is a Labor-friendly referendum question, to indicating there is no need at all for legislation. That is the deceitful word of the Labor Party in this State. On the other hand the Government is saying that future State governments should balance their budgets, and it will enshrine that commitment in legislation. The Opposition is not prepared to make any such commitment. The Government is saying that future State governments should live within their means. Why is the Opposition against so simple a concept?

The proposal is about accountability and credibility of government finances. The Government has done extensive work on this proposal and is totally committed to it. The gimmick is coming from the other side of the House from a man who wants a bob each way, who changes his story according to the audience to whom he is speaking. I put this challenge to the Leader of the Opposition: if you think that governments should live within their means, put your politics aside and when the legislation is introduced support it and the referendum; if you do not think that governments should live within their means, oppose the legislation and show the electorate your true colours.

PLANNING POLICY FORMULATION

Mr KNIGHT: Can the Premier inform the House whether, on 13 April, Mr Smith was informed by senior officers that, on the direction of the Minister, he would be relieved of his land assessment

duties? Does a departmental file note written by Mr Smith state that in relation to the Kelly land he was "not prepared to corrupt this assessment"?

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

Mr FAHEY: It is extremely difficult for me to take seriously any question from the honourable member for Campbelltown, having listened to him on the radio this morning telling the listeners about his journey through the river caves in the past.

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

Mr FAHEY: I was not sure whether he was referring to the river caves in the old Luna Park or Gorky Park.

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

Mr FAHEY: But one thing is for certain: if Labor ever got into government in this State it would take the people of New South Wales on a merry-go-round, going round and round in circles, never getting anywhere. It is clear that members of the Labor Party are relics from an old ghost train.

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

Mr FAHEY: If the honourable member for Campbelltown really wants an answer to his question, I suggest he direct it to the Minister for Agriculture and Fisheries.

LEAD POLLUTION

Mr RICHARDSON: My question without notice is directed to the Minister for the Environment. What is the Government doing to address problems associated with lead in the environment?

Mr HARTCHER: I thank the honourable member for The Hills for his interest in lead.

[*Interruption*]

The honourable member for Blacktown interjects. Last week she addressed a meeting of the Wilderness Society at Parramatta and spoke about gardens of stone, an area that the honourable member for Bathurst has an interest in. She said, "Can I just say that I am sad about gardens of stone".

Mr Knight: On a point of order: as the Minister for the Environment well knows - and the smirk on his face confirms he is certainly aware of it - the track down which he is travelling has absolutely nothing to do with the question he was asked. He cannot even relate his response to an interjection from the honourable member for Blacktown because she did not make an interjection.

Mr SPEAKER: Order! The point of order of the honourable member for Campbelltown was somewhat precipitate; the Minister for the Environment had not developed any matter very far. The Minister for the Environment is well aware of the rules and conventions of this House as they relate to the answering of questions, and I am sure he will observe them.

Mr HARTCHER: She went on to say, "We are talking about the worst example of our policy, the gardens of stone", but surely -

Dr Refshauge: On a point of order: the Minister is totally ignoring the question. His response has nothing to do with the Government's intentions with regard to lead contamination and why it withheld information from the committee that has been inquiring into this issue. The Minister should be brought back to the leave of the question, which is about lead.

Mr W. T. J. Murray: On the point of order: Mr Speaker, you have ruled, as previous Speakers have ruled, that if a person interjects in this House -

Dr Refshauge: There was no interjection.

Mr W. T. J. Murray: You are lying, as the honourable member for Campbelltown is lying, because the honourable member for Blacktown clearly interjected.

Mr SPEAKER: Order! It is a time-honoured convention in this House that responses to interjections need not be directed solely to the member from whom the interjection emanated. The best and most elementary advice I can give to members, if they do not wish Ministers to prolong their answers by responding to interjections, is not to interject. I call the honourable member for Murwillumbah to order.

Mr HARTCHER: Apart from the 100-odd examples of bad Labor policy she went on to say this about the honourable member for Bathurst, "As long as I can see the local member, who happens to be a Labor member, into his seventies, who might stay there as a Labor member, you know that it is going to be hard for us to do - "

Dr Refshauge: On a point of order: the question was clearly about lead. There have been no interjections since you ruled on the previous point of order, Mr Speaker. I ask you to direct the Minister

to answer the question and not to waste the time of the House.

Mr SPEAKER: Order! I do not need any further assistance to rule on the point of order. It seems that members are being deliberately obtuse about the question. Whilst I ruled that Ministers may respond to an interjection, I know of no precedent to support the contention that a Minister's right to respond to interjection is negated by a submission that there had been no interjection since the previous point of order. Such an approach would be completely novel. However, the Minister for the Environment has had reasonable opportunity to respond to the interjection that generated his response and I ask him to return to leave of the question.

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Mr Knight: Are you aware of the question?

Mr HARTCHER: The honourable member for Campbelltown interjects. If he wants me to read out some of his recent utterances - in fact I might.

Mr SPEAKER: Order! I call the honourable member for Port Jackson to order. It may surprise some members of the gallery that the House has exhibited reasonable good humour today, and that does not necessarily go astray in the conduct of the business of the Parliament. However, such humour can get out of hand and I fear it is getting out of hand now. I ask all members to cooperate to allow question time to proceed in an orderly fashion. I have directed the Minister for the Environment to answer the question. Members of the Opposition should cease interjecting to allow the Minister for the Environment to complete his answer.

Mr HARTCHER: Earlier this month on behalf of the Government I released the findings of the interdepartmental lead task force and endorsed its recommendations. The New South Wales State Government is implementing the toughest approach ever undertaken in Australia to alleviate problems associated with lead in the environment. When Labor members were on the Joint Select Committee upon Waste Management they brought down their minority report in which they said, "New South Wales takes the lead on lead. We want New South Wales to take the lead on waste". The announcement included the Government's decision to establish a lead reference centre to coordinate the implementation of the lead management plan and to attack every source of lead in our environment.

Specific strategies are now in place to attack lead in the air, in petrol, in soil, in dust, in Broken Hill, in North Lake Macquarie, in Port Kembla, in paint and in food, and much work is already under way. Many findings from the nine working groups that contributed to the task force were implemented as soon as problems were identified. New South Wales is now firmly at the forefront of lead management in Australia - we are up there with the best. With that in mind, it is worth highlighting that lead as an environmental and health issue has arisen because of ignorance and poor past performances. The vast majority of lead in our atmosphere is from lead in petrol and industry emissions. The Government has assisted in achieving a 60 per cent reduction in lead in the air in the past 12 months and has forced industry to reduce emissions.

What is most conspicuous about lead management in New South Wales is that although this Government, the community and industry are setting about solving problems, those who profited most are contributing the least. This year the Federal Labor Government has increased taxes on leaded fuel by $214 million, and it is not returning a single cent of that money to lead management programs. In February the Federal Labor Government increased the tax on leaded petrol by 1.18c and in August increased it by another 1c. That represents about $214 million a year that the Federal Labor Government and Paul Keating are reaping from extra taxes, but they are not returning any of it to environmental or lead abatement programs. I would be interested to hear what the honourable member for Lake Macquarie and the honourable member for Port Jackson have to say about that.

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

Mr HARTCHER: By contrast, the Fahey Government has put $3.3 million into Australia's first environmental lead centre, at Broken Hill, which I opened in the company of the honourable member for Broken Hill and the excellent mayor of Broken Hill, Peter Black. The Government has assisted Lake Macquarie City Council with funds to establish a lead management plan for the region. The Department of School Education has financed a clean-up of schools in Boolaroo. The Government is also establishing the lead reference centre, which is expected to cost about $2 million. But dollars and cents are not the most important issue when it comes to problems associated with lead in our environment. Children, particularly those under five years of age, are the most important consideration, because they are suffering from lead-associated health problems.

Children are a major and ongoing priority of the Fahey-Armstrong Government; we cannot do enough, and will never be able to do enough, for them. If the Federal Labor Government were to return to New South Wales our share of the extra tax slug that has been forced upon us this year, we could do more for our children. It is worth noting that the honourable member for Lake Macquarie and other Opposition members have recently called on industry to pay more for cleaning-up problems associated with lead. Of course, it is not unusual for the Labor Party to make -

[*Interruption*]

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

Mr HARTCHER: Is that an interjection from my friend the honourable member for Wallsend? There is dead silence from him - no more interjection! The Opposition's spokeswoman on the environment, the honourable member for Blacktown, last week told a public meeting in Parramatta that the Labor Party's answer to the environment is radical change. We are going to hear a lot about that meeting in Parramatta in weeks to come, and I shall give members a small instalment now. The honourable member for Blacktown said:

> [Labor] needs to implement a whole lot of radical policies if we are going to ease some of the environmental problems we have.

Labor's answer is to hit industry, close industry down, close down paint companies, and throw thousands of people onto the unemployment scrap heap. Industry has already paid hundreds of millions of dollars to clean up problems associated with lead. Under the present Government the oil companies, for

example, have undertaken major retooling work at a cost of hundreds of millions of dollars to lower the lead content in leaded petrol. This Government protects the environment and jobs. The Labor Party's short-sightedness on lead is not confined to reckless claims by the honourable member for Blacktown. Last week the honourable member for Ashfield - a well-known exponent on the environment and on health generally! - issued his first local news release in 12 months. He is starting to worry about Morris Mansour. He even wrote a letter to the local paper to say that he deals with complaints speedily. He said that people who go to his office get speedy and competent attention and that he cannot understand why people write to that paper saying that he does not look after them, that he does not give speedy or competent attention. His letter finished by saying that he feels that he has been unfairly and harshly treated by a Miss Lopez.

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

Mr HARTCHER: Miss Lopez went to him for help, and she got nothing at all.

[*Interruption*]

The honourable member will be able to make a personal explanation later.

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

Mr HARTCHER: The honourable member for Smithfield is not in the Chamber but he should note that the honourable member for Ashfield said in his news release of 8 November that compulsory testing for blood-lead levels should be carried out on people in inner-western Sydney. He wants the people of the inner west to line up for compulsory testing.

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

Mr HARTCHER: I shall not read out recent statements made by the honourable member for Londonderry - they all praise me and say what a great job I am doing.

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

Mr HARTCHER: The honourable member knows full well that it was his Labor Party colleagues in Canberra who advised the task force that mandatory testing is not only unnecessary and wasteful but also insensitive to many multicultural families and liable to cause unnecessary public concern. It is obvious that the honourable member for Ashfield is bigger on trying to create fear than on worrying about things such as people's rights, particularly multicultural rights, and people's wishes or health. The Fahey Government is attacking lead problems wherever they exist throughout the State, and will continue to do so. If the Federal Labor Government continues to hold back funding, the Fahey Government will still attack lead problems wherever they are. We have heard nothing from the Leader of the Opposition on this issue, which affects the health of children. Last week in the Blue Mountains he announced his crime policy. An article in the local newspaper, headed "ALP claims crime wave despite falling figures", stated:

> NSW Opposition Leader Bob Carr launched Labor's anti-crime policy last Saturday in Wentworth Falls where he claimed there has been a crime wave.
>
> This was despite the fact that the previous Labor Government closed the Wentworth Falls police station and police figures show a huge downturn in most areas of crime.

In an area in which a police station had been closed by the previous Labor Government the Leader of the Opposition said there was a crime wave.

Mr Price: On a point of order: I question whether the actions of the previous Labor Government are relevant to this debate.

Mr SPEAKER: The Minister has concluded his answer.

PLANNING POLICY FORMULATION

Mr MARTIN: I ask the Premier, and Minister for Economic Development whether a departmental file note written by Mr Smith on 14 April states:

> I find it untenable that my professional assessment based on almost 30 years of experience . . . carries less weight than the representations of individual landholders who wish to subdivide.

Mr FAHEY: If the honourable member for Port Stephens really wanted an answer he would have directed his question to the Minister for Agriculture. I cannot remember his asking the Minister for Agriculture a question about rural matters while he has been the spokesman for rural New South Wales. I was told in Orange and Wellington last Friday that he is laughed at; he has never made any statements

on the drought and he has never shown any concern about it. The Labor Party is devoid of policies on rural matters; when it comes to policies it is bankrupt, just as it is financially bankrupt.

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

Mr FAHEY: A newsletter that is circulating in Coogee shows how desperate the Labor Party is. It is $10 million in debt and has been trying to entice people to attend a trivia night for Ernie. The news circular stated, "Junk day for Ernie". Junk for Ernie! Every day is a junk day for Ernie. The Government could donate a number of things to Ernie. His press releases are guaranteed to be junk. The press releases of a few of his front bench colleagues would also make good junk. The honourable member for Port Stephens is fifth cab off the rank, although he is supposed to be the Opposition spokesman on rural matters. I do not know what he has against the Minister for Agriculture and Fisheries, but for some reason he seems to continually avoid asking him questions. He obviously does not want an answer.

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POLICE SERVICE-ETHNIC COMMUNITIES RELATIONSHIPS

Mr PETCH: My question without notice is addressed to the Minister for Multicultural and Ethnic Affairs, and Minister Assisting the Minister for Justice. Has the Ethnic Affairs Commission produced a report on relations between the New South Wales Police Service and ethnic communities? What measures are proposed by the Government to enhance these relationships?

Mr PHOTIOS: I commend the honourable member for Gladesville for his keen interest in multicultural and migrant issues. He works very strongly and very hard with his local Greek, Italian and Armenian communities and he deserves the acknowledgment of this House. The most recent statistics in the public media on opinion polling in New South Wales show a direct relationship with statistics for Opposition leaders in other States. Too often Opposition members refer to figures for the Federal Leader of the Opposition. In the most recent statistics the leader of the New South Wales Opposition is only one percentage point ahead of the Federal Leader of the Opposition, whom this Opposition criticises.

[*Interruption*]

Indeed, Bob is doing very well indeed - Mr Twenty-eight Per Cent.

Mr SPEAKER: Order! I call the honourable member for Broken Hill to order for the second time. I call the honourable member for Ashfield to order for the second time. I call the Leader of the Opposition to order for the third time.

Mr PHOTIOS: In October last year at an Arabic festival day held at Gough Whitlam Park a riot occurred, regrettably. Following that event I called for an immediate independent assessment by the Ethnic Affairs Commission.

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

Mr PHOTIOS: Broadly speaking, the report found that for a variety of reasons there is a need for better communication between police and ethnic communities. As a consequence of that operational review, the Ethnic Affairs Commission, working with the 100 per cent cooperation of the Police Service, embarked upon a review of the relationship between the Police Service and ethnic communities in New South Wales. Yesterday I was pleased to release the report of the Ethnic Affairs Commission - a report that in every sense will be the catalyst for landmark reform within the Police Service. It was described by the Leader of the Opposition on Sydney radio, in advance of its release, as a complete waste of money.

The report makes 52 recommendations that will result in significant change to the Police Service - described on Sydney television as a sweeping reform of the service - to give it the leading edge among police services in multicultural communities around the western world. The 52 recommendations include significant recruitment measures to increase the proportion of police of non-English speaking background; the development of a multilingual community advice, assistance and information service; the increasing use, indeed the complete freeing up, of interpreters within the Police Service; the formation of community consultative committees and an ethnic advisory council to provide advice to the Police Service on ethnic issues; cross-cultural training for all police beyond the level of constable, and, as an essential criterion for promotion within the Police Service, an understanding of cross-cultural issues; and an educational program for ethnic communities on the role of police in our society.

In short, the Government has embarked upon a significant campaign to enable the Police Service to deal most effectively with its police communities. Yesterday I was pleased to announce on behalf of the Police Service and the Ethnic Affairs Commission a new $480,000 police community training project to orientate police and ethnic communities working in partnership towards achieving a more homogeneous relationship. This platform enjoys the complete and unqualified support of the Commissioner of Police, the Ethnic Affairs Commission, the Police Service, ethnic communities, the leadership of the Ethnic Communities Council, the Police Association, and this Government. The odd man out is the Leader of the anti-migrant Opposition, who has rubbished it.

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

Mr PHOTIOS: I am delighted to endorse these initiatives. The Government is pleased with these sweeping approaches, which will be implemented with the complete support of the Minister for Police and his department. The 52 great recommendations will provide for sweeping change.

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PLANNING POLICY FORMULATION

Consideration of Urgent Motion

Mr CARR (Maroubra - Leader of the Opposition) [3.18]: I move:

> That, pursuant to Standing Order 54, this House orders to be laid before it and made public without restricted access, by noon on Wednesday, 16 November, 1994, all documents relating to Mr Jim Kelly's application to the Department of Agriculture to have his land at Eungella assessed for rezoning together with all documents concerning the events leading up to and including the subsequent resignation of Mr Bob Smith, the officer who refused to support the application.

It is on again. Once again the television news helicopters are speeding up to the north coast to get footage of the land affected by dealings between a National Party backbencher and a National Party Minister. After seven years in Government they are at it again. It is the old story: National Party members elbowing their way in to rezone land for one another. There he is, the bloke who did it last time. They are in it up to their armpits.

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

Mr CARR: This is their rural policy: enrich yourself; rezone one another's land.

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

Mr CARR: No wonder farmers are deserting them around the State. They do nothing for farmers affected by the drought. They are all about enriching themselves. On 6 October the Opposition received a number of New South Wales Agriculture documents under the freedom of information legislation. They relate to a concerted campaign by the Minister for Agriculture and the honourable member for Murwillumbah to overturn departmental advice on a rezoning matter in the Tweed shire. The documents also deal with the actions of the honourable member for Murwillumbah on behalf of a neighbour seeking the rezoning. They detail a systematic victimisation of a good public servant, an officer of New South Wales Agriculture -

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

Mr CARR: - who refused to bow to ministerial and National Party pressure. They reveal that as a result of political pressure Mr Smith's fine 20-year career with the Department of Agriculture ended. They reveal that the public servant they inserted in the job to take his place came down with the same recommendation to refuse the rezoning, because it was wrong.

[*Interruption*]

How does Wal know all about this?

Mr SPEAKER: Order! I have said on many occasions that the cooperation of all members is required for debate to proceed in the proper fashion. I ask Government members to desist from interjecting, and I ask members of the Opposition to listen to their leader in silence. Only one person has the call at the moment, and that is the Leader of the Opposition.

Mr CARR: The need for this documentation is made clear by this sequence of events. On 8 November last year Jim Kelly, a neighbouring landowner of the honourable member for Murwillumbah, wrote to the member complaining that an officer of the Department of Agriculture was opposing a rezoning of his land. If his land were to be rezoned -

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

Mr CARR: - a precedent would be established for the land of the honourable member for Murwillumbah. That is what it is all about. The proposal was to rezone prime lush pasture for housing subdivision.

Mr Beck: On a point of order: if there is going to be a debate on this it would be advisable -

[*Interruption*]

Mr SPEAKER: Order! I was not able to ascertain any point of order in what the member for Murwillumbah said. I remind him that he has an opportunity to speak in the debate, at which time he may raise matters of concern to him. However, matters of fact may be refuted by debate but do not constitute points of order.

Mr CARR: Bear in mind that the two characters involved in this matter were condemned by an Independent Commission Against Corruption inquiry into this same matter - north coast land dealings - in 1990. Commissioner Roden wrote in his report that this Minister's behaviour created -

Mr Rixon: On a point of order: the motion relates to a particular matter. The Leader of the Opposition should not be able to canvass far and wide other matters not connected with the motion. I ask that he be directed to speak to the motion.

Mr SPEAKER: Order! I am sure the Leader of the Opposition was making a passing reference only and will now return to the question before the Chair.

Mr CARR: The emphatic advice from the department did not deter either the member or the Minister. The member's wife, a Tweed council member, agitated on this issue. On 9 March this year the council wrote to the Department of Agriculture requesting a meeting on Mr Kelly's land with, among others, the member. Officers from the department's north coast region drafted a letter for the Minister which stated there was no point in meeting because nothing had changed since Mr Bob Smith's last assessment; that is, the land should not be rezoned. The Minister saw red and became directly involved. This is where we and departmental officers believe corruption of the assessment process began. The Minister wrote on a briefing note, "I don't think Beck would take kindly to this letter". The Minister overrode the advice and wrote his own letter to the council, overriding his department's advice. The letter read, in part:

> I consider it to be most appropriate for all parties to meet to assist council in reaching its final determination.

Unbearable pressure was brought to bear on Mr Smith. Six days later he was summoned to a meeting in the director-general's office, and he was told the Minister had directed that he be relieved of his duties in regard to all agricultural land assessments which involved subdivisions. Bob Smith's own file note of the meeting stated:

> Don Hayman [a senior departmental officer] explained that the Minister, at a recent party meeting, had been confronted about my refusal to attend an on-site meeting with the local member Mr Beck . . .

The file note continued:

> Don Hayman explained that central to the Minister's directive was my inflexibility in dealing with the classification of agricultural land.

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That is why the Minister wanted Smith removed, and why he got him removed. On 14 April Smith drafted a memorandum which said, in part:

> I find it untenable that my professional assessment, which is based on almost 30 years of experience and has withstood scrutiny in numerous Land and Environment Court hearings, carries less weight than the representations of individual landholders who wish to subdivide.

Carve up prime agricultural land for housing and make a fortune out of it! On 21 April the executive director of the department wrote:

> The Minister has asked for a report in response to concerns expressed to him by North Coast MPs, about the role taken by Bob Smith . . . on environmental planning matters.

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

Mr CARR: One of the directions Hayman gave to Smith was to be more cooperative with local National Party members of Parliament and developers. That direction is in the documentation the Opposition got under freedom of information. Mr Hayman concluded with another threat to Smith, that he:

> . . . should address the concerns of the Minister and his parliamentary colleagues. If . . . not, . . .

the Department will take further action.

Mr Smith was transferred to oversee the decontamination of cattle tick dip sites on the north coast - for standing up to the National Party! Martin Bellert, the new officer appointed to take his place, wrote to the new regional director in these terms:

> I hear I'm to be the bag man in the Kelly affair - thanks . . .

Clearly, Bellert knew he was expected to do what Smith would not, that is, approve the rezoning. Eight days later, on 17 June, Smith resigned from the department - after 28 years. In accordance with this Minister's direction a meeting was held on the Kelly property on 6 June - against departmental advice. The member for Murwillumbah, aware of what such a precedent would mean for his own property, attended the site meeting and, according to two file notes from different officers, expressed the view that the site was not prime agricultural land. On 14 June Mr Bellert made an on-site inspection of the Kelly land. His assessment, as the new officer appointed to take over the job, was that the original assessment was right. The department was right, the Minister was wrong. The rezoning was once again refused. All the representations and pressure achieved nothing, except that an honest, incorruptible officer was drawn out of public service for carrying out his front-line responsibility. Like the Ocean Blue development, this proposal faltered on the honesty and integrity of public servants. It is not really surprising that it did, because there are remarkable similarities between the way these members operated in 1988 and again in 1994. [*Time expired*.]

Mr CAUSLEY (Clarence - Minister for Agriculture and Fisheries, and Minister for Mines) [3.28]: The Leader of the Opposition, having delivered an incredible tirade, is leaving the Chamber because he does not want to hear the answer. He is an absolute gutless wonder. He has made allegations that he will not repeat outside the Chamber. He knows only too well that if he does he will go down the same track as the *Sydney Morning Herald*, which lost hundreds of thousands of dollars, to its chagrin. He will go down the same track if he makes those allegations outside this Parliament. Bungling Bob - who is an absolute joke up and down the coast and throughout rural New South Wales - put him up to it. Mr Kelly came to see me about the problems he was having with rezoning his land. He was a farmer who wanted to give two blocks of land to his children. He could not get it rezoned because Tweed Council said it had to abide by Department of Agriculture gradings. That statement by the council is not true. The Department of Agriculture grades the value of agricultural land - according to grading categories one to five, as I understand it. This particular land was graded three, I believe. The Tweed Council hid behind that grading and said it would not even consider an application for rezoning two blocks of land for this farmer's children. Is wanting to give two blocks of land to your children to build on such a terrible thing?

I listened to Mr Kelly's story and I asked whether it would be helpful if he had an on-site meeting with the people involved, that is, the Tweed Council, the local member and, of course, New South Wales Agriculture, which had graded the land. Some arrangement or amicable agreement may have been reached about grading the land, but I wanted the Tweed Council to listen to his story. It could not hide behind the fact that the grading of the land was the issue, as it had nothing to do with the planning process at all. Mr Smith, who was an officer of New South Wales Agriculture, a public servant, had been asked to attend the on-site meeting, not to change his opinion. He refused to attend the meeting. Naturally I asked questions of the department.

Mr J. H. Murray: He knew you put the pressure on him.

Mr CAUSLEY: I know what the member for Drummoyne would do because we are aware of the Gladesville marina matter and what he did. I asked why Mr Smith refused to attend. Many disagreements arise from grading of land by New South Wales Agriculture. For instance, there was disagreement recently about the bypass to the Bellingen bridge where the land was graded three or four -

Mr Martin: Who owned it? It was Matt Singleton's dairy farm.

Mr CAUSLEY: It was not. That is a typical guttersnipe remark from the honourable member for Port Stephens.

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

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Mr CAUSLEY: It was prime agricultural land and New South Wales Agriculture graded it three or four. They are experts, are they not? They are real experts! If Mr Smith gets on his high horse just because someone questions whether he is right or wrong, who knows what he might write on his file! Of course he was disappointed. He refused a direction by his senior officer to attend the on-site meeting. Obviously his senior officer with New South Wales Agriculture was not impressed by that attitude.

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

Mr CAUSLEY: Mr Smith had developed a keen interest in other matters, such as acid sulphate soils. After this confrontation over his refusal to attend the meeting Mr Smith requested that he be relieved of his position to concentrate on the issues of land contamination, cattle tick dip sites and acid sulphate soils. On 11 May the director-general approved the appointment of Mr Smith to a specialist support position in the beef cattle program. The new position was located at Wollongbar, at Mr Smith's existing grade and salary. He did not change position, he was still at Wollongbar, he was working on a different issue after he had been asked to do a different job, and he was still on the same salary. Is that a terrible thing?

On 13 May Dr Sheridan approved the relocation of Mr Martin Bellert, the agriculture environment officer, from Dubbo to Wollongbar to fill the position that had been left vacant by Mr Smith. On 2 June 1994 Mr Smith tendered his resignation from New South Wales Agriculture effective from 17 June 1994 - he voluntarily resigned. He indicated that he would be associated with the centre of coastal management, Southern Cross University, Lismore, and that if New South Wales Agriculture wished to use his services in the future he would be happy to discuss suitable arrangements. He really left in a huff! He got a better job with the university and said he would be willing to do some work for New South Wales Agriculture if he got it.

Mr Smith left the department on amicable terms. On 27 June Mr Martin Bellert commenced his duties as agriculture environment officer at Wollongbar. Mr Bellert attended the on-site meeting and decided that he would uphold Mr Smith's grading of the land. Smith only had to do exactly the same thing but, of course, that would not do for the gutter rats opposite. They have to peddle this information. They got the information by virtue of the Freedom of Information Act, yet the Leader of the Opposition has moved this motion under Standing Order 54. What for? It is grandstanding. That is all it is: absolute grandstanding on an issue that has no significance.

It is interesting to look closely at some of the land dealings of the Leader of the Opposition when he was Minister for Planning in New South Wales. I was involved with one of them as he implied in his statement about Bayside Brunswick. At that time the Leader of the Opposition appointed a planning administrator who changed the zoning of a particular development in which I had a declared interest. The changed zoning destroyed the development, but some four or five years down the track the zoning reverted back to what it was when I was interested in the development. Do members know who bought the land when it went into receivership?

Mr Fraser: Tell us?

Mr CAUSLEY: A gentleman who used to work for Neville Wran. If we start talking about some of

these things, members will understand what used to go on with Labor in New South Wales and the paper bags that used to get passed across. One of the Ministers used to rub his fingers on a paper bag and say, "$30,000 will do it" and that related to planning decisions.

Mrs Lo Po': Prove it.

Mr CAUSLEY: We can prove it all right. The Leader of the Opposition was involved in grubby deals with the mayor of Drummoyne, whose name I cannot recall at the moment; he was the mayor of Drummoyne and also worked on the staff of the Leader of the Opposition. He was involved in these issues. It is interesting that members declare pecuniary interests, but when Labor was in power it changed zonings; when the mates of members opposite buy the land the zonings are changed back. The matter the House is dealing with involved an honest assessment of land of a battling farmer who wanted to give two blocks of land to his children.

Many battling farmers at present would like to divide off a poor piece of land on their property to give to their children and on which they might build a house. I assure the House that that is what this matter is about. The allegations by the Leader of the Opposition about land deals and the Independent Commission Against Corruption are nothing but stunts. He is an absolute liar. I challenge him to repeat some of the things he said this afternoon outside the House. He has not got the guts to do it. He stands here and lies his head off. He will not say these things outside the House so that people can test whether he is telling the truth - because he is not. In this instance it is a beat-up, and it is a beat-up by bungling Bob. [*Time expired*.]

Mr MARTIN (Port Stephens) [3.38]: This motion really highlights it all. National Party members have been caught with their hands in the till again - north coast revisited. The Roden report in 1988 told them what they should and should not do. What did they do?

Mr Cochran: On a point of order: the terms of the motion are specific. They do not relate to the Independent Commission Against Corruption and the Roden report. The honourable member well knows he is bound by the terms of the motion.

Mr SPEAKER: Order! When debating a motion pursuant to Standing Order 54, which is for the production of papers, there is no latitude to canvass matters that are not contained in the papers members seek to be produced.

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Mr MARTIN: This whole sleazy episode is reverberating round the north coast and it ropes you all in.

Mr Cochran: On a point of order: the honourable member quite obviously has taken little heed of the warning just given and is about to go through a tirade of similar accusations. I ask you, Mr Speaker, to draw him back to the motion.

Mr SPEAKER: Order! No point of order is involved at this stage. The member speaking may well indulge in a tirade, that is entirely a matter for the member, but he did say, "This matter is reverberating round the north coast". I presume he is talking about a matter that is the subject of a direction pursuant to Standing Order 54. Provided the member stays within that leave, he is perfectly in order.

Mr MARTIN: Members on this side of the Parliament asked for the papers under freedom of information but we did not get all the papers and consequently we are seeking under standing order 54 to obtain those papers. A lot of dishonesty has been going on in this whole process. During the north coast inquiry the honourable member for Murwillumbah -

Mr SPEAKER: Order! I have already directed that members cannot canvass matters outside of the subject of the motion, which seeks the production of papers.

Mr MARTIN: In response to what was said by the Minister for Agriculture and Fisheries, and Minister for Mines, I assure honourable members that some papers that the Opposition requested under freedom of information were missing. The sequence of events and the way Mr Smith was pressured to get out of this job are nothing short of scandalous. This has been a sleazy scandal in which the Minister, the honourable member for Murwillumbah and others have been involved. We have to get to the bottom of this.

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

Mr MARTIN: The Minister told the House that this officer had asked to move from his job to study acid sulphate soils. I will tell members about this officer: for 18 years he was in that job and he was the model officer for the job.

Mr Causley: He was a beef cattle officer.

Mr MARTIN: He has been the departmental liaison officer for 18 years. The Minister has the audacity to say that he was a beef cattle officer. For 18 years he did the job and the whole State held him up as a model. What did the Minister do? He finished his employment in that capacity for life, because he would not bow to the Minister's sleazy deals on the north coast.

Mr W. T. J. Murray: On a point of order: the honourable member is making personal accusations against members on this side of the House. If he makes those accusations he should substantiate them by moving a motion of censure. If he does not, he should be called to order.

Mr SPEAKER: Order! I am concerned about the level to which debate has degenerated. The motion seeks the production of papers and the honourable member for Port Stephens should confine his remarks to that matter. He has reiterated his concerns which might be worthy of investigation. I suggest he leaves it at that. If he wants to attack any member, he should do so by way of substantive motion.

Mr MARTIN: This man left the job because he was pushed out. He was a fine officer. The Minister has cruelled the morale of his own department because of the way that officer and others have been treated. To that end we want the papers and we want them delivered today.

Mr Cochran: On a point of order: again, the honourable member has deviated from the relevance of the debate. The motion has nothing to do with morale in the department.

Mr SPEAKER: Order! The member was making only a passing reference. No point of order is involved.

Mr MARTIN: Mr Speaker - [*Time expired*.]

Mr ARMSTRONG (Lachlan - Deputy Premier, Minister for Public Works, and Minister for Ports) [3.43]: I participate in this debate mainly to respond to the lies and distortions presented by the Leader of the Opposition and the honourable member for Port Stephens. It is a travesty that the Leader of the Opposition has been allowed to get away with lying to the Parliament. He lied to the Parliament when he claimed that Mr Kelly was a neighbour of the honourable member for Murwillumbah. That is blatantly and factually incorrect and I challenge him to prove his allegation. Mr Kelly's property is in excess of 10 kilometres from that of the honourable member for Murwillumbah. The property in question has been in Mr Kelly's family for upwards of 100 years. That country was classified by the Department of Agriculture, which has classified virtually the entire agricultural land mass of the State, as categories 1 to 5. That has nothing to do at all with the question of zoning and planning. The classification is for agricultural

purposes.

The Leader of the Opposition endeavoured to establish a case by saying that an officer of New South Wales Agriculture, Mr Smith, had objected to the rezoning of lands. The fact is that, since the end of 1988 neither Mr Smith nor any other officer of the New South Wales Department of Agricultural has had the capacity to object to rezoning. That was a complete and utter lie. The honourable member for Port Stephens is condemned for supporting a lie, and I challenge him to prove his statement. The honourable member is a clown and the few friends he has know it. In 1988 the powers of the New South Wales Department of Agriculture to formally object to or support matters related to planning or zoning was taken away. The department was and is still required to give objective advice when called upon, as are a number of other government departments.

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Much was made by the honourable member for Port Stephens about the officer in question, Mr Smith. As the Minister said, Mr Smith was a regional officer and a beef cattle officer. His qualifications were those of a beef cattle officer and the New South Wales Director-General of Agriculture returned him, after discussion, to his original position; unlike the honourable member for Port Stephens, a former horticulturalist who acted unsuccessfully as the manager of a fisheries research station; he was not returned to his right classification. He started as a rose pruner and finished as a failed fisheries research station manager. Yet he has the temerity and the tenacity to try to pass judgment on other departmental officers. The only reason he got anywhere was because his father was in the department helping him along the track.

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

Mr ARMSTRONG: He probably leaked a couple of documents at the same time. There is no credibility at all to these allegations. They are totally spurious and a pack of lies. Incorrect information has been recorded in the Parliament and I expect that the Leader of the Opposition will have the *Hansard* corrected in the appropriate manner on the next day of this sitting. The Leader of the Opposition has been misled by one of his own shadow spokespersons, the honourable member for Port Stephens, who by any criteria is a bumbler, a collector of misinformation, and an incompetent person, and whose presentation was contradictory. He ought to hear what his mates say about him behind his back. They give him heaps. They reckon that the honourable member for Port Stephens is one of their greatest liabilities coming into the election. They are all saying, "We hope that he works hard in his electorate because that is where we want to keep him. We do not want to see him out of Port Stephens". They know that wherever he goes he will do nothing but cause them harm. The failed fisheries station manager, a former horticulturalist, is a failure. The Leader of the Opposition has returned to the Chamber. I hope he has come to apologise for the lies he has told this afternoon. His assertions, innuendos, and barefaced lies about the Kelly farm being a neighbouring farm of the honourable member for Murwillumbah are unacceptable.

Mr WHELAN (Ashfield) [3.48]: The most interesting aspect of this debate is that today five questions about the Minister for Agriculture and Fisheries were addressed to the Premier, his leader, and not once during his 10 minute contribution to this Parliament did the Minister refute or deny any of the allegations - and it is no wonder. He cannot deny that the information obtained through freedom of information on a briefing note from the Minister reads, "The Minister has requested a briefing on the department's role in a proposal by Mr Kelly to have portion of his land near Murwillumbah rezoned by the Tweed City Council". This is what the Minister's own staff said, "We have not been advised of the specific reason for Mr Kelly seeking this rezoning although we would presume it is to permit him to undertake subdivision for rural residential purposes". The Minister for Agriculture and Fisheries, and Minister for Mines says that the farmer has done this for his poor little children.

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

Mr WHELAN: A Minister of the Crown wants to intimidate the local council. Imagine if I went to Ashfield Council and said, "I want to subdivide my house to enable my four children to get a quarter of the land I own at 183 Victoria Street". It is not a question of whether or not I want to give the land to my children. Government members have not learnt anything from their appearances before the Independent Commission Against Corruption. The Minister for Agriculture and Fisheries, and Minister for Mines is not a facilitator for land rezoning or redevelopment; he is a Minister of the Crown and he should not get his dirty hands -

Mr Causley: On a point of order: never at any time have I been a facilitator for land rezoning. The honourable member for Ashfield has accused me of being a facilitator. I am not.

Mr SPEAKER: Order! As I said earlier, matters of fact, which may be disputed by any member, may be refuted in debate but they cannot form the substance of a point of order.

Mr WHELAN: In essence, this motion concerns the responsibility of the Premier and the Minister. That is why questions were directed to the Premier. The Minister was involved and he has responsibility.

Mr Rixon: On a point of order: questions that were asked during question time have nothing whatsoever to do with this motion. Mr Speaker, I ask you to bring the honourable member for Ashfield back to the motion. I ask you to tell the honourable member for Ashfield to stop wasting the time of this House by canvassing a range of matters which have nothing to do with the motion before the House.

Mr SPEAKER: Order! There is no substance to the point of order that matters raised during question time cannot be referred to in subsequent debate. The Chair has ruled on numerous occasions that matters may be raised during question time for the purpose of eliciting facts that may be used in subsequent debate. If that were not in order, questions would have to be ruled out of order as infringing the rule of anticipation. The honourable member for Ashfield is in order.

Mr WHELAN: The Minister's own departmental briefing note obtained under freedom of information states that the Minister requested a briefing. Did the Minister tell us what motivated him to ask for a departmental briefing when he knew that there were other motives behind this? The Minister knew because his staff gave him away when they wrote, "We have not been advised of the specific reason for Mr Kelly . . .". The Minister came into

this Chamber and gave us the most unbelievable excuse since someone said, "The dog ate my homework". He said that the farmer had done this for his children. Thank God he does not have 10 children or he would have subdivided his property into 10 blocks! I have never heard of such a stupid reason. A Minister of the Crown has become a facilitator for a proposed redevelopment or rezoning.

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

Mr WHELAN: This has all the hallmarks we heard about in regard to the Ocean Blue development, the Independent Commission Against Corruption report, this Minister's personal involvement and the fact that members of the National Party have had their hands in the till. No wonder members of the Government are objecting!

Mr Rixon: On a point of order -

Mr SPEAKER: Order! I call the honourable member for Barwon to order for the third time. I am extremely concerned about the degenerating standard of debate. I hold some fears for the honourable member for Ashfield, who has built up a level of vigour which might be dangerous to his health. I suggest that the only way debate can proceed is on the basis that members may contribute what they

wish provided they observe the standing orders and precedents of this Parliament. Continual interjection and points of order that are not capable of being sustained do not assist in the progress of debate. In light of debate that has taken place today I cannot uphold the point of order.

Mr WHELAN: Mr Speaker - [*Time expired.*]

Mr CARR (Maroubra - Leader of the Opposition) [3.53], in reply: The first point I wish to make is that the attack on Mr Smith by National Party members is rebutted by the department for which he worked. I refer to one of the official memos that we released today which says this about Mr Smith, "Bob is the department's most experienced officer in relation to environmental planning and assessment matters". So the idea of his being some horticulturalist or cattle tick expert, out of his place in this realm, is wrong. The department said, "He is our most experienced officer in this matter". The second point that demands underlining is the purpose of the subdivision. Government members say that it was an innocent subdivision to provide a habitation or two for the landholder's family. If that was the purpose why was it not put to the department? I will quote from one of the other documents released -

[*Interruption*]

The Minister should settle down. He is getting too agitated for his own good. The document states, "We have not been advised of the specific reason for Mr Kelly seeking this rezoning . . .". The department is stating that it has never been advised; the reason has never been put forward; and it has been left open. This debate was remarkable because of the intervention of the former leader of the National Party. One would have thought that he would have given up on north coast developments after the Independent Commission Against Corruption report into his own behaviour in that area. But he was back again, contributing to the debate. He cannot resist it.

Mr Cochran: On a point of order: Mr Speaker, I again draw your attention to the matter I referred to previously. The matters being canvassed by the Leader of the Opposition bear no relevance to the motion before the House. I ask you to bring him back to the motion.

Mr SPEAKER: Order! The difficulty that the Chair faces is that to some extent debate has been widened by speakers from both sides of the House. I have endeavoured to restrict the debate, as it should be, to reference to the papers sought to be produced. The Leader of the Opposition, who is in reply, should address only those matters raised in the course of debate and not introduce new material. He should restrict himself to debating the motion he moved, which refers to the production of papers.

Mr CARR: There was no attempt by National Party members to rebut any of the specific allegations made in these documents. For example, there was no attempt by them to rebut the fact that the bloke who replaced Smith reinforced Smith's own assessment of this land. He looked again at the data and he said to Causley, "Hands off". He said to Beck, "Hands off. This is prime agricultural land". He said with alarm - he wrote this and the document is publicly available -

Mr Cochran: On a point of order -

Mr SPEAKER: Order! The honourable member for Monaro should ensure that his point of order is valid. His previous point of order was not valid.

Mr Cochran: The Leader of the Opposition has just suggested that the Minister for Agriculture and Fisheries, and Minister for Mines, who is in the Chamber, refused to refute the fact that allegations were made.

Mr SPEAKER: Order! There is no point of order. The honourable member for Monaro is wasting the time of the House. I caution him against attempting to take a similar point of order.

Mr CARR: The public servant who replaced Smith wrote, "I hear I'm to be the bagman in the Kelly affair - thanks . . .". Was there any rebuttal of that statement? These public servants are outraged. In attempting to protect that great valuable resource - prime agricultural land - they were overridden by political intervention. Look at the implications for that bloke's own property of rezoning agricultural land in this valley - a precedent for his own property.

[*Interruption*]

The honourable member for Murwillumbah cannot help himself.

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

Mr CARR: He is up to his old behaviour which was revealed in the ICAC report. He has learnt nothing. This Government will go out as it came in - tainted and corrupted by the behaviour of National Party backbenchers and National Party Ministers on north coast land dealings. No wonder - [*Time expired.*]

Motion agreed to.

PROTECTED DISCLOSURES BILL

Second Reading

Debate resumed from 21 April.

Mr WHELAN (Ashfield) [4.00]: The bill has been the subject of a great deal of input from both the public and a select committee of the Parliament. Honourable members should be aware that the bill, formerly the Whistleblowers Protection Bill, will provide guidelines for the protection of whistleblowers. Public interest demands that, where there is the opportunity, public servants should be given the opportunity to blow the whistle. The bill just dealt with by this House is an example of a dissatisfied public servant blowing the whistle, although I do not suggest that a public servant provided the initial information - it was provided through freedom of information. This bill will encourage and facilitate disclosure in the public interest of corrupt conduct, maladministration and serious and substantial waste in the public sector.

Sections 8 and 9 of the Independent Commission Against Corruption Act define corrupt conduct. Maladministration and serious and substantial waste in the public sector are new areas of law. Leaving aside the judicial uncertainty that may occur as a result of the inclusion of the words "maladministration and serious and substantial waste in the public sector" - most people would acknowledge their real meaning - the bill will enhance and augment the established procedures for making disclosures concerning such matters, protect persons from reprisals that might otherwise be inflicted on them because of those disclosures, and provide for those disclosures to be properly investigated and dealt with.

The bill contains important definitions that need explanation. Maladministration is defined to include conduct of the kind that may be investigated by investigating authorities such as the Ombudsman. Is that definition too wide? Will it bring into the net cases of potential maladministration that would not normally be defined as maladministration? Clause 11(2) states that conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature contrary to law; unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on improper motive.

Corrupt conduct is already defined in section 8 of the Independent Commission Against Corruption Act. The bill will extend that definition to include conduct that involves action or inaction of a serious nature that is contrary to law; unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on improper motives. What is unreasonable maladministration? What are practical examples of the maladministration referred to in the bill? Is it failure to comply with a written request? Is it breach of a civil obligation? Is it failure by a member of Parliament? I note that "public official" is defined in the bill to include the Governor, a public servant or a Minister of the Crown. As honourable members know, they are covered by the Independent Commission Against Corruption Act. Those are matters to which I take objection.

Clauses 7 to 15 describe the disclosures that will be protected by the proposed Act. A disclosure must be a voluntary disclosure by a public official. It must be made to an appropriate investigating authority in connection with a complaint concerning corrupt conduct, maladministration or serious and substantial waste. It must be made to the principal officer of a public authority or an officer who constitutes a public authority concerning an allegation of corrupt conduct, maladministration or serious and substantial waste by the authority of any of its officers. It must be made to another officer of the public authority to which the public official belongs in accordance with the internal procedures established within the authority for reporting such matters.

A disclosure will be protected by the proposed Act if it is referred by an investigating authority or public official to whom it is made to an investigating authority or to a public official or public authority considered by the investigating authority or public official to be the appropriate person or authority to deal with the matter. The bill provides that a disclosure is not voluntary if it is made by a public official in the exercise of a duty imposed on the official by or under any Act. The head note indicates that a disclosure made by an officer under a duty to report to the Independent Commission Against Corruption Act under section 11 is not a voluntary disclosure. Everyone has a positive obligation if they know that there is corrupt conduct. The corrupt conduct definition is wide. If anyone knows of corrupt conduct, and he or she is a public official - that is, a member of Parliament or a public servant - he or she has a positive obligation to report that conduct to the Independent Commission Against Corruption.

The Protected Disclosures Bill was the subject of a great deal of work by a parliamentary select committee, and discussion papers have been issued by various organisations in relation to it. The bill is a refinement of the original whistleblowers legislation. I should like to refer briefly to the report of the select committee, the recommendations of which gave rise to the substance of the bill. Opinions have differed on the rights of an individual to obtain some protection and the question of defamatory rights of individuals or of newspaper proprietors. Though the committee considered that issue, the Parliament should seek to resolve it. I am pleased that the bill has reached its proper status on the parliamentary agenda. When the

bill goes before the Committee of the Whole House the Opposition will move a series of amendments, which I shall now outline. The first amendment relates to clause 4 and seeks to insert the following after line 15 on page 3:

> **"journalist"** means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media;

Amendment No. 2 relates to clause 4 at lines 21 to 23 on page 3 and seeks to omit all words on those lines and insert instead:

> **"public official"** means a person employed under the Public Sector Management Act 1988, an employee of a local government authority or any other individual having public official functions or acting in a public official capacity, whose conduct and activities may be investigated by an investigating authority;

Amendment No. 3 concerns clause 8 at line 18 on page 4 and seeks to insert the following:

; or

(d) to a journalist.

The fourth amendment seeks to insert the following after line 9 on page 8:

Disclosure to a journalist

19.(1) A disclosure by a public official to a journalist is protected by this Act if the following subsections apply.

(2) The public official has made substantially the same disclosure to an investigating public authority, or officer of a public authority in accordance with another provision of this Part.

(3) The investigating authority, public authority or officer to whom the disclosure was made or, if the matter was referred, the investigating authority, public authority or officer to whom it was referred:

(a) must have decided not to investigate the matter;

(b) must have completed the investigation of the matter but not recommended the taking of any action in respect of the matter.

(4) The public official must have reasonable grounds for believing that the disclosure is true

(5) The disclosure must be true in all material respects.

The fifth amendment seeks to insert the following in clause 20 after line 11 on page 9:

(4) Despite this section a public official who makes a disclosure to a journalist under section 19 is not protected against proceedings for defamation in respect of that disclosure.

I hand those amendments to the Clerk in order that he might permit their circulation. Any further comments I have about those amendments or about the bill should wait until the Committee stage.

Mr D. L. PAGE (Ballina) [4.13]: I support the Protected Disclosures Bill in its current form. I note that the Opposition has foreshadowed amendments to be moved in Committee and I understand that there is support from Independent members in relation to disclosure to the news media. The Government does not agree in general terms with the concept of whistleblowers having the right to go to the news media after a matter has been properly investigated by the appropriate investigating authorities, and I shall elaborate on that matter shortly. The aim of the bill is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and substantial waste in the public sector. In other words, this bill is about protecting whistleblowers.

The appropriate means for protecting whistleblowers has undergone considerable debate in this Parliament. In fact, this is the third bill of its kind to be introduced in the past two years. This most recent bill comes from the Whistleblowers Protection Bill (No. 2) Legislation Committee, which I had the privilege to chair. The committee examined the second Whistleblowers Protection Bill, and I wish to take this opportunity to thank other members of the committee for their input. The legislation is technical and is fairly difficult. For the most part, the committee did a very good job of turning somewhat ordinary legislation into a fairly good bill. In the time available to me I intend to examine how the legislation will work in practice; what protections will be afforded to the whistleblower; possibilities for the misuse of the legislation; disclosures to the media, even though a protected disclosure has been made to an

investigating authority; and the way in which the legislation will improve public sector management. In so doing, I shall highlight features of the bill that go to achieving balanced legislation.

It is worth mentioning that the bill applies only to public officials making disclosures. It does not protect private sector employees. To gain protection under the legislation a public employee must make a voluntary disclosure to either: an investigating authority - the Independent Commission Against Corruption, the Ombudsman or the Auditor-General; the principal officer of a public authority; or another officer of a public authority in accordance with internal procedures. This must be a disclosure of corruption, maladministration or substantial waste of public money. In the development of the bill it was recognised that any proposal to provide legislative protection to whistleblowers had to take account of current administrative mechanisms for the investigation and prevention of corruption, maladministration and substantial waste.

Whistleblowing was not considered to be an end in itself; rather, protection of this kind necessarily required incorporation into the existing structures and operations of the named investigating authorities. Consequently, a disclosure must be made to an existing authority: the Independent Commission Against Corruption in the case of corruption, the Ombudsman in the case of maladministration, or the Auditor-General in the case of substantial waste of public funds. Those disclosures will be protected. The bill requires that a disclosure be made voluntarily. During the deliberations on the bill by the legislation committee the question arose of whether a public official making a disclosure in accordance with a code of conduct was making a voluntary disclosure. That point was raised earlier by the honourable member for Ashfield. Codes of

conduct and other rules or regulations governing staff practices are developed and implemented to improve the operation of public bodies. The committee therefore considered it illogical to deny protection to a public official making a disclosure in accordance with a legal duty to make such disclosure.

As mentioned, one of the principal objectives of the bill is to utilise existing accountability structures, thereby avoiding the unnecessary creation of a new administrative body to deal exclusively with matters relating to whistleblowers. I note that similar legislation being prepared at Federal level will create a new bureaucracy concerned with whistleblowing. The legislation committee did not believe, and I do not believe, that it is necessary to do that, and the bill therefore will not establish new bodies to receive and investigate complaints made by whistleblowers. The bill will, however, establish a system of protection for whistleblowers. This is an often misunderstood aspect of whistleblower protection. The point is that whistleblowers are not making disclosures about matters outside the jurisdictions of the three investigating authorities.

The bill does not, however, rely solely upon external mechanisms of disclosure for whistleblowers, which was the situation with an earlier draft of the bill. As a result of general criticism of the earlier draft of the bill, amendments were made to incorporate provisions for internal disclosures within a public authority as well as disclosures to the investigating authorities. There was an option for an internal or an external approach. The ICAC put this issue sharply into focus before the committee at a seminar, and stated:

> [A] sensible scheme for whistleblower protection ought provide no less protection to the person who blows the whistle internally, than to the person who goes outside the institution.

The ICAC concluded that a wrong message would be sent to management and staff of public authorities as to their responsibilities for detecting and dealing with corruption, maladministration and substantial waste if only disclosures to external investigating authorities were protected. With these comments in mind, the strength of the Protected Disclosures Bill is apparent. The bill incorporates provisions for protected disclosures to be made to the principal officer of a public authority or to another officer in accordance with established internal procedures for the reporting of such matters. The committee considered it equally important to protect disclosures made within a public authority as well as disclosures

made to an external investigating agency. The principal concern was to incorporate disclosures by whistleblowers into the management and ethical practices of public authorities.

This concern was based on the belief that improving overall management practices would strengthen public accountability, thereby reducing corruption, maladministration and substantial waste of public money. Each of the three investigating authorities nominated in the Protected Disclosures Bill is principally governed by its own Act. Under their respective Acts their functions and jurisdictions are laid down. The bill recognises that whistleblowers are often not familiar with these functions and jurisdictions. A whistleblower may make disclosure to the first investigating authority that comes to mind. The bill therefore provides for the referral of disclosures from one investigating authority to another and for those disclosures still to be protected.

The bill will provide protection to whistleblowers. There are two main forms of protection for whistleblowers who have made a disclosure. Firstly, the bill creates an offence for any person taking detrimental action against another person that is substantially in reprisal for the other person making a protected disclosure. Detrimental action includes action causing, comprising or involving injury, damage or loss; intimidation or harassment; discrimination, disadvantage or adverse treatment in relation to employment; dismissal from, or prejudice in, employment; or disciplinary proceedings. A person found guilty of this offence can be imprisoned for up to 12 months.

Secondly, the whistleblower is not subject to any liability for making a protected disclosure, and no action, claim or demand may be taken or made of or against the person for making the disclosure. Examples of this kind of protection include a defence of absolute privilege in a defamation action in respect of the publication to an investigating authority or public official; an exemption from a duty to maintain confidentiality; an exemption from any obligation by way of oath, rule of law or practice to maintain confidentiality; and an exemption from any disciplinary action because of the disclosure.

I shall speak briefly about potential abuses and misuses of this legislation and how the committee tried to make the legislation work effectively. A difficult issue arose during the deliberations of the legislative committee on possible abuses of the legislation. The bill does not impose upon a whistleblower a requirement that his or her disclosure be actually true. It is important to realise that the fact that the substance of a whistleblower's disclosure turns out to be false will not deny him the protection of the bill. The protections in the bill, as previously discussed, are wide in their compass, providing, for example, absolute defences against defamation and breaches of confidentiality. The legislation committee therefore considered it necessary to examine the possible misuses of the Act. In the political sphere an obvious example arises with regard to an opportunistic individual who may seek to subvert the provisions of the bill to his or her own ends. During local government elections, for example, candidates have made allegations of corruption against each other to the Independent Commission Against Corruption. The fact that a complaint has been made to the ICAC is then used to cast doubt upon a rival's integrity. [*Extension of time agreed to*.]

If the bill were in force, even if the disclosure were found to be lacking in truth, the whistleblower would still be entitled to protection from, for instance, an action for defamation. Some opportunistic

individuals therefore may use the provisions of the legislation to take a free shot at a competitor, whether in the political sphere or in the public sector. The ICAC, in its submission to the committee, highlighted the possible misuse of the legislation when it stated:

> The Bill should encourage and protect the genuine whistleblower without providing a cover for those who make trivial, wilfully false or misleading disclosures for ulterior motives.

Mr John McNicol, who also appeared before the committee, made a strong point when he said:

> I believe that protection only should go to the genuine whistleblowers and I believe that anyone

who makes a malicious or vexatious complaint should be dealt with to the extent of the law. I believe they are wasting time which departments cannot afford and they should be totally judged and I also believe it should be a criminal offence.

The committee, therefore, has included in the legislation penalties for making false, frivolous and vexations complaints. Finally I deal with disclosure to the media. Professor Paul Finn of the Australian National University, director of the project entitled "Integrity in Government", has defined four interests involved in whistleblower protection. In summary, these include the interests of the whistleblower, the interests of the public authority involved, the interests of the person or persons impugned by the disclosure of the whistleblower, and the public interest.

The interests of the public authority and/or persons impugned by the disclosure of the whistleblower are often neglected in the discussion and development of policies for the protection of whistleblowers. Objectively speaking, the rights of the whistleblower cannot be said to be more important than the rights of the person or public authority accused by the whistleblower. The bona fides of the whistleblower and the accused person or public authority should be the same until proved otherwise. This point is often overlooked in the discussion of whistleblower protection.

A majority of members of the committee regarded the media as a forum not well suited to the reception and investigation of serious allegations concerning corruption, maladministration or substantial waste. Realistically, the priorities of the media are not solely with the public interest. The media naturally takes into account other factors such as profit and expediency. This is not wrong in itself but it does affect whether it should be relied upon to impartially investigate serious allegations of this kind. Under the bill the disclosure is not subject to a test of accuracy or truth. An incorrect disclosure made to the media and then published could do irreparable harm to a person's career or reputation or to the integrity of a public authority.

In recognising this fact, the bill promotes certain channels of disclosure over others. The bill protects disclosures made to the ICAC, the Ombudsman and the Auditor-General, because these authorities have the primary function of, and are experienced in, examining the merits of complaints about corruption, maladministration and substantial waste of public money. This cannot be said to be the case with the media. Internal disclosures within public authorities are also afforded protection because this allows senior management to accept responsibility for dealing with and preventing the occurrence of corruption, maladministration and substantial waste of public money within their organisation.

On balance, the only protection available to persons or public authorities implicated in disclosures is to have the disclosure properly investigated through internal procedures or by the investigating authorities. The issue of protecting disclosures to the media, looked at carefully and realistically, shows that persons or public authorities implicated by a disclosure will never be able to demand the same publicity to clear their names as the publicity given to the original allegation. The allegation will appear on page 1, but the rebuttal or apology will appear on page 17 - if they are lucky.

A legislative policy endorsing disclosure to the media would affect the right to the presumption of innocence of a person accused by a whistleblower. The rights of an impugned person or public authority therefore need to be balanced against a whistleblower's entitlement to protection. The bill therefore requires disclosures to be made in a certain manner if the whistleblower wishes to avail himself or herself of its protection. The bill does not penalise a whistleblower who chooses to make a disclosure to the media. In this case a whistleblower will have all the normal rights available at law, but not the extra protection offered in this legislation.

People are not being denied the opportunity to make a disclosure to the media. If the disclosure has been made properly and in accordance with the bill, if it has been referred to the ICAC, the Ombudsman or the Auditor-General and has been properly investigated, a whistleblower should not have the right equivalent to that of parliamentary privilege if the same disclosure is made in the media. I

understand that is what is mooted by the Opposition, and that was the opinion of the minority of members of the committee.

If a whistleblower had the equivalent of parliamentary privilege it would be a recipe for many miscarriages of justice. The Opposition is saying it does not have any faith in the ICAC, it does not have any faith in the Ombudsman to investigate maladministration, and it does not have any faith in the Auditor-General to investigate substantial waste of public money. The amendments foreshadowed by the Opposition and the Independents provide that despite an investigation and a judgment that there is no case to answer, that the allegation is groundless, a public official will, with the immunity of parliamentary privilege, be able to repeat the disclosure to the media. That is a highly dangerous precedent for any law-making body to embark upon in a system essentially based on the foundation principle that a person is innocent until proven guilty.

There is a need to put whistleblower protection into the overall context of public administration. Thankfully, in the committee's experience, disclosures

of serious corruption, maladministration and substantial waste are not regular occurrences. In New South Wales and other States sophisticated external mechanisms of accountability have been established in the form of bodies such as the Independent Commission Against Corruption, the Auditor-General and the Ombudsman. All public authorities are under continual scrutiny by these bodies and many others, but whistleblower protection is but another cog, albeit an important one, in the public accountability machine. If whistleblowers are integrated into internal management practices through adoption of whistleblowing procedures, authorities might find that managerial control and oversight is enhanced rather than diminished.

The bill provides that all public authorities will develop appropriate internal procedures. Rightly viewed, if genuine cases of corruption, maladministration or substantial waste are disclosed by an employee, that person is assisting rather than obstructing proper public administration. Of course, malicious, frivolous or vexatious disclosures that seek to disrupt the operation of a public authority should not be tolerated, and the bill prohibits them. The bill offers substantial protection for the genuine whistleblower and ensures that disclosures will be properly investigated either by the public authority or by an independent external agency. Public administration should welcome rather than fear whistleblower protection of the type set out in the bill.

Ms NORI (Port Jackson) [4.32]: I concur with the comments of the honourable member for Ballina about the committee and the way it worked. It was my pleasure and privilege to be a member of the committee, and I enjoyed the work very much. All members worked together in a spirit of cooperation and bipartisanship. The only disagreement was about a recommendation that a whistleblower should be able to use the media as a final port of call, as it were. The objects of the bill are rather complex and difficult. The bill, an attempt to protect public servants who seek to whistleblow, touches on issues such as public accountability in a democratic society and the difficulties of public administration in the 1990s. In the past decade much legislation, including the Ombudsman Act 1974, the Freedom of Information Act 1989 and the Independent Commission Against Corruption Act 1988 - all examples of attempts by the Parliament to deal with public administration - has touched on these issues.

The bill, in providing for public servants who wish to expose maladministration, official corruption or serious or substantial waste, goes beyond mere public administration to the heart of open government. We are not talking just about a legal process, we are talking about a change in government procedures and processes. Potentially, a whistleblower draws attention to many issues and much information that the public may not necessarily always have access to, and in so doing increases public scrutiny of government behaviour. I would imagine and hope that such scrutiny would make government more sensitive and accountable to the public, and perhaps more concerned about the public interest. Opponents of whistleblowing expressed concern that it would become somewhat of a sport, that good management needs confidentiality, and that whistleblowing is inherently a bad thing that will impede good

government, management and administration. Governments, the public service and public authorities could not continue if everyone tried to score points off each other in the media. I refer to the comments of J. G. Starke QC reported in the *Australian Law Journal* of 1991, volume 65, page 213:

> Whistleblowing is in the main treated as an exception to the maintenance of the duty of confidentiality . . .

That is how I see the spirit of the proposed legislation, which recognises that all public servants have a duty of confidentiality and responsibility to the government of the day. In exceptional cases a public servant who comes across maladministration, corruption or substantial waste has a right and duty to draw it to the attention of superiors to ensure that it is either corrected through exposure or brought to an end by the implementation of proper procedures. In that way whistleblowing will contribute to the improvement of public administration in the 1990s.

The definition of public interest was one of the difficulties the committee had to address and resolve. It is a bit like terrorism: one person's terrorist's is another's freedom fighter; one person's whistleblower is another person's traitor. The committee resolved that difficulty, as evidenced in its recommendations. In recent times there has been evidence of the dangers of lack of accountability. In different States, not necessarily in New South Wales, the results of cultural secrecy have led to corruption and cover-ups. In the past, public servants who attempted to whistleblow have been sent off to psychiatrists of their boss's choice, and have been victimised and intimidated in all sorts of ways. That practice is highly unacceptable. In 1972 police officer Arantz was sacked for demonstrating that the then Commissioner of Police had falsified crime statistics for New South Wales. Mr Alan Barry, who worked for the Department of Motor Transport, exposed the scams of examiners of driving licence applicants.

In all these cases there has been intimidation, social isolation and a conspiracy or culture of silence in which, tragically, victims to some extent police their own victimisation because they are too frightened to speak up and do not challenge the authority that is tacitly, explicitly or overtly aware of corruption. If people do not speak out, the process is allowed to continue. Sadly, fear begets fear, silence begets silence, and corruption becomes entrenched, with consequent abuse of process and power. These processes should be eradicated as far as possible, and the proposed whistleblower legislation goes some way towards doing that. We are not the first to be going down this path. In 1978 the Civil Service Reform Act was enacted in the United States. I believe this was the first legislation of its kind in the world. While the committee did not draw completely from this model, it was useful to study as a guide for the procedure we would follow and the recommendations we would make.

That Act established a number of things: a merit system of protection for employees who disclose illegal or improper conduct, an office of personal management and a merit systems protection board. The aim of the Act was to prohibit reprisal against any United States federal government employee or applicant for employment for disclosure to the special council of the merit systems protection board. The special council could receive and investigate any allegation of prohibited personnel practice to determine whether there were reasonable grounds for the allegation, while protecting the anonymity of the whistleblower. The special council could recommend corrective action and so on.

After a while the bill was not working as properly or efficaciously as the Government would have liked, and further reforms were introduced. We have benefited from the United States experience and we have adopted some of the principles in our proposed legislation. The Whistleblower Protection Bill of 1989 was introduced to remedy many problems. One indicative problem for such legislation is the need for a deadline by which whistleblower complaints should be prosecuted. Whistleblower legislation should not become a tool for fobbing off the whistleblower, to not investigate a complaint but put it into the too-hard basket.

It is important that a reasonable deadline be set for the completion of all investigations. That does not mean that investigations must be completed to the prosecution stage, but the complainant should at least be given an answer: yes, we believe there is something in your case, we will investigate it further with a view to prosecution; or no, we have examined this complaint to the point where we believe no further investigation is required. At least then whistleblowers will know where they stand. My limited experience with two or three whistleblowers reveals that they cannot stand not being listened to, being punished, and not knowing what has happened to their complaint, whether the person receiving the complaint has taken the matter seriously, or what stage the investigation has reached. One can well understand this attitude. It is not only their job that is on the line; very often it is their individual or professional integrity. They feel they have put their heart and soul on the line, let alone their job and professional integrity and credibility. They do not know what is happening with the matter.

It is important that the whistleblower be kept informed, not only because that is good public administration and investigative procedure but because it is kinder to the whistleblower. The psychological effect on the whistleblower must be taken into account. In reaching its conclusions the committee had to establish procedures, mechanisms and, indeed, reasonable parameters under which whistleblowers could make complaints. Obviously the committee held public hearings and called for submissions. Many submissions were received, though not all from government agencies. I should like to quote from some of them. A submission was received from the Public Service Association, whose obvious interest in this matter is clear, as it is essentially its membership that will benefit from this legislation. In its submission the PSA made a couple of important points, and I should like to quote a few of them. [*Extension of time agreed to*.]

The PSA said:

> Any attempt to strike out corrupt practices or corrupt maladministration by investigation must be done in a manner that protects the anonymity of those making the allegation as well as persons central to the allegation.
>
> Any legislative change that is contemplated should be exercised in a manner that would link the provisions of the New South Wales Industrial Relations Act of 1991 and the relevant provisions of the Government and Related Employees Appeal Tribunal Act 1980 No. 39 under such change.
>
> The PSA believes that the process by which a complaint may be lodged is open to abuse, as has been highlighted in the past. Government departments and departmental heads have been found to be wanting in this area and thus should not be involved in the initial process. It is of paramount importance that the process be totally independent of departmental and parliamentary influence.

I am not convinced that the PSA is correct, but the committee recommends giving potential whistleblowers the option of making the complaint to the department in which they work or going direct to an investigating authority, that is the Auditor-General, the Independent Commission Against Corruption, or the Ombudsman. The PSA also said:

> Parties found to be making vexatious complaints against an individual should be dealt with in the same manner as those found guilty of corrupt practice or maladministration.

I am pleased that the PSA included that provision in its submission as I felt very strongly, as did all members of the committee, that making a complaint is like going to court. You go with clean hands. If vexatious and malicious complaints are made without foundation and waste public time and energy, perhaps in an attempt to destroy an individual's career, the full force of the law should be brought upon such persons. The PSA is cognisant that, unfortunately, in some circumstances people may make totally vexatious complaints, and even if they are members of the PSA the full force of the law should be brought against them. I am sure the Parliament would agree. A submission was received from the Australian Press Council. Speaking about whistleblowing being based on the principle of freedom of expression,

the council noted:

> Although there is no express guarantee of freedom of speech in Australia, the democratic system adopted in Australia implies that freedom of speech is one of the fundamental rights of the Australian people. However, the council accepts that freedom of speech is not an absolute right.

We do not want people slandering people via the media, thus creating further injustice. People who want to comment about another person must be clear about what they are doing; they must believe that their actions are truthful, accurate and are not done maliciously. The media submission asked that whistleblowers be given the right to go to the media. It said:

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> The protection of whistleblowers is based on freedom of expression which should not be merely lost because that disclosure is made to the media.
>
> The media are already subject to many statutory and common law restrictions in the exercise of freedom of speech in Australia.
>
> The media operate under a code of ethics which ensure responsible reporting.

That is probably true most of the time, but I am sure we have all had experiences in which the media could have reported a little more accurately. It is interesting that the media support the right of a whistleblower to go public, as it were, and still enjoy the protection of whistleblower legislation. While I do not believe the media are the be-all and end-all when it comes to whistleblower legislation, their submission was interesting and the points contained in it were welcome - it reinforced my own predilections.

I refer now to some of the committee's recommendations. I should first refer to the controversial one, the right to go to the media as a last resort, upon which the honourable member for Wyong, the honourable member for Bligh and I put forward a dissenting recommendation. In essence, we proposed at the time that if whistleblowers had reasonable grounds for believing that the reports they made were true and accurate, if they had exhausted all possible avenues, in other words if they had reported to one of the investigative authorities and if at the end of the day the allegations were true in all material respects, then if they went to the media they would have protection from defamation. We also spelled out clearly in our recommendation that the protection from defamation did not extend to the media, which may or may not choose to publish a whistleblower's allegation. I felt that that was quite a reasonable compromise between protecting a whistleblower and protecting the rights of third parties.

By the time a whistleblower decides to go to the media, either there has been a complete institutional failure whereby for some inexplicable reason the ICAC, the Ombudsman or the Auditor-General has somehow failed to investigate the matter thoroughly, and has not exposed the corruption or the waste that the whistleblower was trying to expose, or the whistleblower has totally lost it, as it were. As a balance, I feel strongly that whistleblowers should be given the right to go to the media if, after all avenues have been exhausted, they still believe that their allegations are correct. If, in reality, their allegations are proved to be correct in all material respects, the added protection as I see it is that the media has the ultimate responsibility and, if you like, legal liability. If they print something that is not right or defame someone, they will suffer the full consequences of the defamation laws. That gives protection to all people.

I would not like to see a situation where a third party against whom an allegation is made has no recourse. That is why I am opposed to any amendment that absolves the media from the ordinary laws of defamation. Equally, if whistleblowers reach the point where they have tried everything, yet they are correct and the issue still has not been exposed, what avenue is left to them? The dissenting report on

this aspect makes the only possible balanced recommendation. The only other matter I wish to address is whether a vexatious whistleblower should be penalised. As I said earlier, I strongly believe that people who whistleblow in a vexatious manner deserve to face the full force of the law. The committee had to decide whether - [*Time expired*.]

Mr KINROSS (Gordon) [4.52]: I, too, am pleased to speak to this hallmark legislation, having served as a member of the parliamentary select committee into, as it was originally titled, the Whistleblowers Protection Bill. That committee reported in June last year, almost 18 months ago, and it is only now that we are debating this bill, which was introduced by the Premier earlier this year. A number of the recommendations of the committee have been incorporated in this bill and I will not take too much time going through them. However, I should like to spend some time commenting on the more important aspects, such as the right of last resort and the protection afforded the media. Rather than speak to some of the clauses now, I will deal with them in more detail in Committee.

This bill follows the general principles of the original Whistleblowers Protection Bill. The primary intention, of course, underlying that bill is to provide for public officials who make disclosures concerning corrupt conduct, maladministration or substantial waste of money in the public sector. The committee deliberated to some extent on whether the legislation should govern aspects of allegations of similar conduct in relation to the private sector, but that was rejected. Nevertheless, some interesting comments were made about that type of conduct.

Whistleblowers and their families generally, as many of those who made submissions to the committee said, suffer enormous emotional trauma, and, indeed, substantial financial loss from losing their jobs, as frequently happens. I think it was Mr McNicel of the Whistleblowers Anonymous Association who said that some 84 per cent of whistleblowers in his survey had lost their jobs after making disclosures, some of which proved to be justified in a number of respects. I, of all members of this House, have had many discussions with Vince Neary - I would not like to call him the archetype whistleblower, but he certainly achieved considerable notoriety as a result of his allegations about the State Rail Authority signalling system. He did not give oral evidence, but the committee took on board some of the matters he raised in his written submission. Public officials who make disclosures in accordance with this bill will receive protection from reprisal. However, this bill varies from the original bill in a number of respects.

It has been recognised by the Government that an external disclosure mechanism ought to be put in place to protect individuals who wish to make disclosures from within the investigating authority. The Independent Commission Against Corruption, the Auditor-General and the Ombudsman have been

listed as the three reporting entities, if you like, to whom complaints can be made, with an overriding view by the organising or co-ordinating body, a "whistleblowers panel" chaired by the ICAC. As I said earlier, one of the difficulties that whistleblowers have had has been the decision to go public. The committee spent some time on this matter, and as other members who have spoken in the debate have said, the only matter on which we substantially differed was recommendation 4, which deals with the right to go to the media. I always believe that whistleblowers should take the most appropriate alternative. If they are acting for the right reasons, on a matter of principle, they should not be concerned with media notoriety and publicity arising from their allegations.

It is a sad fact that all too frequently many people have raced to the media and the public interest has not been served, because the allegations made have been without foundation or, alternatively, have been the subject of remedial action by the relevant department. It is equally open to the public to suggest that there can be institutional difficulties and potential failures. When people make allegations without foundation the institution suffers as well, and a lot of unnecessary public money is wasted in defending those allegations.

The bill will authorise the Independent Commission Against Corruption to investigate and report on

disclosures which allege that the Ombudsman or his officers have engaged in conduct involving maladministration. Similarly, the Ombudsman's jurisdiction has been widened to enable him to investigate certain disclosures in respect of the ICAC and the Auditor-General. It will also be an offence for persons to wilfully make false or misleading disclosures. Because of other public interests and merits, that is well deserved. We do not want unnecessary public expense in following up false, misleading or unnecessary disclosures. This legislation will act as a shield to protect the public from individuals who, rather than make disclosures in the public interest, are motivated by self-interest or the desire to seek revenge on an opponent or supervisor. However, it will not apply to an individual who, even though motivated by malice, makes a disclosure which is true.

A person must have wilfully made a disclosure which is false or misleading for it to constitute an offence. The Government recognises that it is important for individuals who make protected disclosures to be given feedback concerning the treatment of those disclosures. Accordingly, officers or authorities to whom a disclosure is made or referred will be required, within six months of a disclosure being made, to advise the individual about the action taken or proposed to be taken in respect of that disclosure. I think that is a fair time within which an investigating authority should report back. Some members of the committee expressed concern about this. Those members dissented and made comments in their minority report because they believed there could be institutional failure. That may occur, but I do not believe it will be overcome by the amendments that have been foreshadowed.

I believe that the six-month period is reasonable for an authority to investigate the nature of a complaint and to provide some report to the complainant concerning alleged corrupt conduct, maladministration or substantial waste. Under the previous bill a disclosure had to be made in good faith if a whistleblower was to be protected. A disclosure had to consist of information which the individual suspected, on reasonable grounds, showed or tended to show misconduct. This linkage of protection to an individual's motivation or state of mind was criticised by people who made submissions to our committee. It was observed in one submission that the public interest lies in the truth of disclosures made rather than in the subjective mind of any individual who makes them.

I distinctly recall raising this issue during the course of committee hearings. I am not sure whether that is apparent from the report. I raised the issue to establish whether we had a subjective or objective test. It is quite clear that there are limitations in anything other than an objective test in relation to accountability and so forth. In light of the comments that were made and the submissions that were received, the requirements concerning good faith and reasonable suspicion were removed from the Whistleblowers Protection Bill. The primary test to secure protection in this bill is purely the objective test: namely, a disclosure by an individual must show, or tend to show, that there has been misconduct. That will be assessed on reasonable grounds.

That is reflected in recommendation 11 on page 36 of the report of the committee. The Queensland Electoral and Administrative Review Committee, in its report on the protection of whistleblowers, advocated the adoption of the objective test. However, the committee considered that the wording used in that test would not necessarily reflect the full intent of the bill. As I have said, objectivity is by far a better rationale when dealing with these types of complaints. That test is reflected in the notion of reasonable grounds. A number of minor changes have been made to provisions contained in the previous bill. It is the intention of these provisions to address specific comments made about the previous bill and to clarify and improve the workings of the present bill. [*Extension of time agreed to*.]

The proposal to legislate to provide protection for public officials who make disclosures in the public interest has received much attention. I envisage that the honourable member for South Coast and members of the Labor Party will move a number of amendments to the present bill. This bill is one of the tenets of the charter of reform between the Independents, the Government and the Opposition. The charter recognises that individuals who make these types of allegations, with proper foundation, should be protected. That is in tandem with the Government's philosophy on accountability and building a better justice system generally. It also flows from many government reforms relating to economic issues and

accountability. During question time today the Treasurer, and Minister for the Arts

referred to balanced budgets. This legislation shows that this Government is responsible when dealing with important matters of public principle. The committee was concerned about disclosures to the media. The ICAC supports the emphasis placed by the bill on effective non-public channels for disclosure. It submitted:

> The public interest is not served by media attention on every allegation of corruption, maladministration or waste, especially where those allegations are being properly dealt with. There are several reasons for this:
>
> •Premature public disclosure can hamper proper investigation;
>
> •Public disclosure can unjustifiably damage reputation where allegations subsequently are proved to be groundless or inaccurate; and
>
> •Distorted, unbalanced or sensational media reports, where these occur, may actually work against what should be an important objective of a whistleblower regime: to ensure appropriate action follows. Furthermore, media attention inevitably tends to focus on the allegations rather than on measures later taken, for example systems improvement in response to deficiencies revealed by the allegations.

The media in this country are fascinated with allegations. Nick Greiner used to describe the interest of the media as "Man bites dog". The media are not interested in correcting the system; rather, they are interested in allegations and then totally fail to report the fact that an allegation might have been without foundation. It is not only the media, sometimes it is members of this House. I remember a couple of members on the other side of the Chamber raising allegations about certain public officials who, following an investigation by John Nader QC, were totally vindicated.

Honourable members of this House and the media frequently use unbalanced and unfair reporting of allegations but fail to make a concomitant retraction when those allegations are found to be totally unjustified and when the main issue, as the Independent Commission Against Corruption recognised and as is documented in the committee's report, is the necessity to correct with appropriate remedial action the concerns of the whistleblower. That should be the principal focus; not the headline-grabbing story, not the one-liner, not the short quick fix. If true justice is to be served, surely the focus must be to solve the problem and to conduct a proper investigation, rather than to go for the headline-grab. It is to be hoped that in Committee all honourable members will give careful consideration to the amendments regarding disclosure direct to the media, without proper accountability and examination of the issue in detail before whistleblowers race off to gain media publicity about an allegation, which may lack substance and may not have been sufficiently examined by one of the investigating authorities.

Mr HATTON (South Coast) [5.12]: I support the legislation and I foreshadow an amendment. From my experience of accountability, corruption and mismanagement, openness in government is the most important thing. I base my strong support for this bill on the following principles: first, the main duty of a public servant is to the public, to act with probity and efficiency and to act impartially; second, information brought into existence by the public service at the public expense belongs to the public, not to a government, not to a department, not to an officer or officers and not to a group; third, information submitted to government for the purpose of gaining benefit from the public purse or from government or departmental action fundamentally belongs to the public; and, fourth, there is a fundamental right of freedom of speech and an obligation on a public official to exercise that right of speech in the greater interest of the public.

Public officials have an obligation to serve the higher interest, the public interest, above the narrower personal group, department, political party, or any other sectional interest. Occasionally there are good

reasons why information cannot be made public - but I would need a lot of convincing that there are sound reasons why public information should remain secret indefinitely - for example, pre-budget information, which can advantage sectional interests at the public expense against the public interest; police investigations; personal information of a private nature; and medical information. There may be other examples, but in most areas other than the ones I have listed the need for secrecy is doubtful. The dice are heavily loaded against the public's right to know, the whistleblower's right and obligation to speak out without suffering, and the release of documents and information by a public servant. In some circumstances I question the secrecy of Cabinet documents. I am solidly opposed to the denial of access by the Auditor-General, for audit purposes, to Cabinet documents.

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

PRIVATE MEMBERS' STATEMENTS _____

BYRON BAY AND BALLINA POLICE STAFFING

Mr D. L. PAGE (Ballina) [5.15]: I raise a matter concerning police strength in my electorate, particularly in Byron Bay and Ballina. I believe that it is an appropriate time to be raising this issue because, as I understand it, 100 new police officers will come into the system in February next year, which will provide a window of opportunity for active local members to lobby the Government about areas that need additional police strength. Whilst police numbers have doubled in both Byron Bay and Ballina since I have represented the electorate, the north coast is growing at three times the rate of the State average and at twice the rate of metropolitan Sydney. Not only is population growth an important factor when one talks about additional pressure on police resources, but the nature of the industries in my electorate, particularly the predominance of tourism, means that invariably towns like Byron Bay or Ballina have increased populations during holiday periods.

One of the disturbing features of tourism in Byron Bay in recent years has been the propensity for young people to come down from Queensland and misbehave during New Year's Eve celebrations. Byron Bay is a popular tourist destination and its resources are always stretched during peak tourist times. It is becoming so popular that rather than difficulties occurring only on New Year's Eve, at Easter time, the June long weekend and other public holidays, the resources of Byron Bay are under tremendous pressure every weekend. In 1988, when I first became the member for Ballina, Byron Bay had 10 police officers, and it currently has 21 officers - its numbers have more than doubled.

I would like the Byron Bay police station upgraded to a permanent 24-hour station, which would necessitate an increase in the number of officers to 27. Therefore I am requesting the appointment of an additional six or seven officers to make Byron Bay a permanent 24-hour police station. At the moment the police station operates as a 24-hour station during the Christmas and New Year period, through January, with additional police resources from other areas, and that is very welcome. I reiterate that additional police numbers are needed at Byron Bay and that I am keen that the police station there be made a permanent 24-hour station. The Government has an excellent record in increasing police numbers. I have a very high regard for the present Minister for Police, who inherited a difficult portfolio at a difficult time - not that there is ever a good time to have the police portfolio. The Minister is sensitive to the needs of growing areas such as those which I represent.

I point out to the Minister that there is a problem in Ballina also. One promise I made before being elected to this Parliament was that the police station at Ballina would be made a 24-hour station. That occurred four months after I became the member for the electorate. Police numbers there have

increased from about 15 to about 28. The problem at Ballina is similar to that in Byron Bay. It would be appreciated if another six or seven police officers were stationed there. I encourage the Minister to think seriously about providing increased police strength at Ballina and Byron Bay. The police there deal not only with problems that arise during holiday weekends. Additional police numbers would provide the patrol commander with increased flexibility to move resources into neighbouring smaller towns such as Mullumbimby, Lennox Head, Alstonville, Brunswick Heads and Ocean Shores. Those in the smaller towns are also concerned about police strength.

AUTISTIC CHILDREN

Mr RUMBLE (Illawarra) [5.20]: The matter I wish to raise concerns children who are autistic but are unable to attend an appropriate school. Recently the regional State members of Parliament in the Illawarra met parents, students, teachers and certain office-bearers of the autistic school in the Illawarra region. We were given first-hand information in respect of the severe problems, including funding problems, being faced, especially by children who are unable to enrol in the autistic school. Each year in New South Wales the Autistic Association has to raise 40 per cent of its $7 million budget. The budget of $7 million just keeps the association afloat. It is estimated that 130 children are diagnosed with autism each year and that the families of those children do not receive any help.

Demand for the services of the Autistic Association has increased by more than 300 per cent in the past five years. At present the Autistic Association is assisting approximately 500 families. There are 200 families on the waiting list and each year another 130 children are diagnosed with autism. Autism is not recognised as a disability, unlike blindness or deafness. The Illawarra School for Autistic Children has 24 students; Corrimal school has 17 and the two State primary schools have seven. The only specialist resource for people with autism in the Illawarra is the Illawarra school. Any needs in addition to school placement are unfunded. Family counselling, consultancy services for other professionals working with people with autism, and early intervention needs are met in a minimal way by school staff taking extra roles outside their school duties.

There are 16 children on the official waiting list and at least five children will be added to the list in the next few months. Ten of those children will be of school age in 1995. There is no specialist early intervention for preschool children with autism; because of the waiting list the school rarely gets children until they are of school age. Some preschool children with autism have up to four different placements, which is extremely stressful for the children and their families. The parents and friends of the Illawarra School for Autistic Children have been so distressed by the large waiting list that they have funded, with money they have raised themselves, a half-time teacher to run workshops for 10 weeks for parents of preschool children with autism.

When children with autism leave the Autistic Association school they often have to move to a less appropriate or inappropriate setting. There are no specialist post-school options for people with autism, who have high support needs. Those people may end up at home. There is no specialist respite care and there are no residential or work options for people with autism. The staff at the limited facilities available have major problems with people with autism, as they say that they have no expertise. The school in the Illawarra has an unfunded family support worker for only two days a week, and the worker has a caseload of at least 40 families. Those are some of the problems being experienced by the Autistic Association of New South Wales in general and the Illawarra School for Autistic Children in particular. I ask that these important matters be referred to the Minister for Community Services as a matter of urgency.

DEE WHY RETURNED SERVICES LEAGUE CLUB LIMITED

Mr HAZZARD (Wakehurst) [5.25]: Before commencing my statement, I should like to support the honourable member for Illawarra in his concerns about those with autism. I advise honourable members that tomorrow at 6.00 p.m. there will be an autism presentation, to which I am sure all honourable members would be welcome, which will detail a possible new program on autism. I wish to bring to the attention of the House the endeavours and good work of the Dee Why Returned Services League Club Limited in the community of Wakehurst. The Dee Why RSL Club is situated on Pittwater Road, in the heart of Dee Why. Because of its location and because of the heart in each of the members and directors of the club, the club carries out a great deal of good work in our local community.

The Dee Why RSL Club Limited was established some 49 years ago with an original membership of 12. Membership has now increased to 12,000. One of the 12 original members who met in an old tram shed is Mr Edward Walter Jackson, Ted Jackson, who is currently President of the club. Mr Jackson has been president of the club for 14 years, a director of the club for 17 years and a club member since the club's initial meeting. Ted Jackson, like many who undertake voluntary community work, has extended his work into a number of different areas. He is involved in the neighbourhood centre, which provides great services to many people in our area. My mother worked as a volunteer at the centre for 17 years. Ted Jackson is also a life member of the Dee Why RSL Bowling Club, an honorary life member of the Dee Why Surf Life Saving Club and chairman of the Warringah-Pittwater meals on wheels service.

Notable contributions are made by other members of the club also. Stanley Norman Jeffery - Stan Jeffery - is the treasurer of the Dee Why RSL Club. The week before last I sat next to Stan at the club's annual general meeting. He fielded questions from the floor very capably. In the past six years Stan has put in a lot of hard work to bring the club up to its present position. In that time a great deal of development has been undertaken. Peter De Gioia has been a director of the club for five years and a club member for 28 years. Christopher Crego Olive is another director of the club who also served as treasurer. He has been a club member for 26 years.

Harold Brown was made a life member of the Dee Why RSL Club at the club's most recent annual general meeting. That is an honour of which he is very worthy, having been a club member for 33 years and a director for 24 years. In that time Harold has made major contributions to the club and has been involved in many different aspects of club life. I heard the attestation accorded Mr Brown at the annual general meeting. Certainly he is worthy of the honour of being made a life member. William Clifford Gee has been a club member for 14 years and a director for four years. He is also a life member of the Dee Why Surf Club, a Royal Humane Society bravery medal holder and a past president of the Warringah Lions Club. He also has been actively involved in the local community.

Sidney Peter Bryant has been a club director for three years and a club member for 14 years. He is involved in the Legacy Committee of the Dee Why RSL Club and was a delegate for the Warringah Lions Club. He is another member of our local community who has contributed a great deal. I should also like to bring to the attention of the House Mr Gordon Douglas Boyd, who has been a club director for two years, even though he has been a club member for only four years. He has contributed a great deal in that short time. He is the club's liaison officer to Legacy and was an RAAF pilot in Bomber Command. Those men make up the current board of directors of the Dee Why RSL Club. The club deserves its recognition in the local community, for it supports many aspects of local community life, including the local surf clubs.

In the past year the club bought a new boat for the Dee Why Surf Club. Last year it bought new oars for the North Curl Curl Surf Club. It provides facilities for meetings. When the Dee Why Surf Club was heading off to the Australian championships in Queensland last year the RSL club provided facilities for the surf club's meeting. I join with John Milford, President of the Dee Why Surf Club, and Steve Heggart, Club Captain of the Dee Why Surf Club, in thanking all the members of the Dee Why RSL Club for the club's ongoing contributions to the community. I am glad there are now 12,000 members doing such a wonderful job in our local area. [*Time expired*.]

SOUTH-WEST SYDNEY POLICING

Mr KNOWLES (Moorebank) [5.30]: I draw the attention of the House to the alarming lack of police in the south-west police region, the Macarthur police district and, in particular, the Macquarie Fields and Moorebank police patrols, which are within my electorate. The south-west police region is currently 105 police officers under strength. I have been advised by a number of senior police officers that of those 105, approximately 70 vacancies occur in the urban parts of the region, where the levels of crime are well above State averages. In the Macarthur police district alone, 20 positions are unfilled. In patrol areas such as Macquarie Fields and Moorebank, police services have been drastically cut. Moorebank police station and others now operate at minimum working requirements.

In some instances street beats have been unable to operate, whilst shopfront police initiatives such as the recently opened Ingleburn policing centre in the Macquarie Fields patrol area have been drastically cut back. On high crime nights, particularly Fridays and Saturdays, police crews have been reduced. In the Moorebank patrol only two police officers and one patrol car are available from the afternoon shift through the night and into the early morning. The Moorebank patrol serves about 10,000 homes. Added to that are the industrial estates, public property,

parks and street-policing requirements. Two police officers and one car allocated to such an area is hopelessly inadequate.

I want more police officers in the local police stations so that residents in my electorate are properly protected. Our existing police do a good job but they cannot be in two places at once. I have had reports of local residents waiting for more than an hour for police to respond to their calls for help. Recently a teenage gang armed with baseball bats and flick knives gatecrashed a well-organised birthday party at the Chipping Norton Sailing Club. They harassed the party and assaulted two of the guests. One guest ended up in hospital after being bashed with a bat, and the other, a young girl, was slashed with a knife. The building was trashed, windows broken and graffiti sprayed all over the walls. The organiser of the party called the police as soon as the gang arrived. The police station is less than five minutes away. Nonetheless, it took more than 30 minutes for the police to arrive at this major incident as they were at the other end of the patrol area and no other police were available.

Chipping Norton needs its own community policing centre to create a permanent police presence in the northern end of my electorate. However, a policing centre would be worthless unless there are adequate police to operate from it. The shameful figures - 105 police officers down in the region - do no credit to the Government and its policing policies. The same policemen who advised me of the lack of police in the south-west region also informed me that, in stark contrast - and contrary to what the honourable member for Ballina said earlier - the north and north-west regions are either at strength or significantly over strength. That is hardly surprising considering the political geography of the State. However, it is hardly equitable and it is certainly not in the best interests of crime prevention and providing safer communities for the people of New South Wales.

The Macarthur police district has 66 per cent more burglaries than occur in any other part of Sydney and the rate of car thefts for the region is twice the New South Wales average. Those crime statistics alone confirm that there is an urgent need for more police as well as the resources that go with them. I am astounded that the Government has allowed my region to slip so far behind in overall police strength. It is now 105 officers under strength, which does not take into account those officers on leave, suspension or transfer. This is an indictment of this Government and its hopeless policing policies.

The Police Service's computer incident dispatch facility clearly shows that of the top five call-out areas in the State, three are in the urban areas of the south-west police region. Macarthur comes in at number three, yet the community has to put up with shortfalls in police numbers and reduced services. I believe there are some things we should be able to take for granted. For instance, when we phone the

police for help we expect a quick response. After all, that is their job. Sadly, in my community that service can no longer be taken for granted or guaranteed. Our existing police do a good job but they cannot be in two places at once. I call on the Minister to urgently reinstate the missing 105 police in the south-west region and provide the services and protection my community expects and deserves.

CRONULLA LAW AND ORDER

Mr KERR (Cronulla) [5.35]: I draw to the attention of the House the adverse effect that Sutherland Shire Council is having on the future of Cronulla by labelling it as "The Bronx".

Mr Nagle: Not Sutherland Shire Council again!

Mr KERR: Even the honourable member for Auburn is upset about the council labelling it "The Bronx". The community and police have worked hard to ensure that any threat to the wellbeing of Cronulla receives an effective response. Despite the tardiness of council, alcohol-free zones have now been established in Cronulla Mall, Dunningham, Shelly and Oak parks, the adjoining esplanade areas and trouble spots at Kurnell and Caringbah. Beat police have been put in place and Chief Inspector Neil Gould and the precinct committees have worked hard towards meeting the challenges of the changing social environment of the 1990s. However, now that work is being undermined by political opportunism. The actions of the Mayor of the Sutherland shire in labelling the suburb "The Bronx", while admitting that she had not contacted the district commander of police before making accusations about community safety problems and the level of crime, is disgraceful. As the honourable member for Auburn would be aware, all of the candidates that are standing for the Labor Party in the Sutherland shire are from the left wing of the Labor Party.

Mr Nagle: Very good people, too.

Mr KERR: The honourable member for Auburn may think the left wing of the Labor Party is filled with very good people.

Mr Jeffery: What about in Auburn shire?

Mr Nagle: We deal with them accordingly.

Mr KERR: The honourable member for Auburn says that they are dealt with in Auburn. I can assure him they will be dealt with in much the same way in the Sutherland shire. The mayor and her Labor colleagues have to explain why they supported Frank Walker's repeal of the Summary Offences Act.

Mr Nagle: She must be hurting you in the Sutherland shire.

Mr KERR: She hurt the people of the Sutherland shire when she supported the repeal of the Summary Offences Act. One of the ways to fulfil the prophecy is to abdicate civic responsibility and declare war on business, the built environment, and recreational opportunities in the shire. Areas of Cronulla such as the Cronulla Plaza car park continue to accumulate rubbish, and the council admits that the

arcade from the station to Cronulla Beach is dirty and poorly lit. If owners of businesses in Cronulla want to put up a sign, it will cost them $350 for the approval process, but after the sign has been installed they may well receive an instruction from council that above-awning signs have to be taken down within seven days. The council's approach would not be out of place in a Gilbert and Sullivan operetta.

Many complaints have been made about the unkempt appearance of the approaches to Captain

Cook Bridge, and despite an agreement that was entered into with the Roads and Traffic Authority to beautify the area since July, council has been unable to fill the position of a landscape architect to oversee the work. It is about time Sutherland council cleaned up its own act before embarking on a ridiculous smear campaign of the shire. Sutherland shire has a large number of residents, including many young people who would like the opportunity to attend dances in the shire. However, there are no facilities in the shire for ballroom dancing. The council civic centre, which was built to provide amenities to residents, is only available at a cost of $1,200 for 10 hours.

Mr Jeffery: How much?

Mr KERR: A cost of $1,200 for 10 hours.

Mr Jeffery: That is outrageous.

Mr KERR: It is outrageous. Surely the council can make available the large area in the auditorium for less than this amount, and I am sure dancing groups would be more than happy with periods of less than 10 hours. Further, there is a great threat to the shire because of air traffic. Kurnell residents now believe the risk of an air crash has been greatly increased because of the added air traffic. Monetary compensation is no answer to the risk that the residents are subjected to. Prime Minister Keating has said the decision to build the third runway was a courageous one by the Labor Party, but where is the courage when the pain and suffering is being borne by the residents of Kurnell? Sutherland Shire Council might well invite Mr Keating and Mr Brereton, the Federal Minister for Transport, to visit Kurnell and experience for themselves what is happening. Those people have been put through hell with what is going on, despite a number of assurances in pamphlets about the effects the third runway. I call on the Federal Government to act in the interests of safety and to ensure that the problems created at Kurnell are rectified.

PARRAHOUSE YOUTH CRISIS CENTRE FUNDING

Ms HARRISON (Parramatta) [5.40]: I bring to the attention of the House and the Minister for Community Services the inadequate funding being made available to Parrahouse Youth Crisis Centre in Harris Park. Parrahouse is a 24-hour, seven-day-a-week crisis refuge for young homeless people aged from 13 to 17 years. It is referred to as a generalist refuge. Between Bankstown and Penrith, Parrahouse is the only crisis refuge of its kind. As of 30 June 1994 Parrahouse had accommodated over 2,133 young people. The staff at Parrahouse take referrals from many welfare organisations, including family services and the Child Protection Unit. In September this year I was approached by the staff of Parrahouse desperately seeking advice as to how they could keep this facility open.

Parrahouse was facing imminent closure because of lack of funding, and closure subsequently occurred. The program under which Parrahouse was being funded is the supported accommodation assistance program, which is administered by the Department of Community Services. I was told by staff at Parrahouse that the Department of Community Services suggested that they should use their own employee accruals to see that the facility remained open. This advice was followed, although it was not satisfactory or legal. Staff at Parrahouse endeavoured desperately to keep this facility open. Letters outlining the urgent nature of their requests were sent to Mr Phin Tang, community project officer for the department. Funding had been made available for four staff to run the service. However, as the refuge offers a 24-hour service, there are many instances when a crisis occurs and staff must be called back to the centre. This is necessary for workplace safety as well on occasions, but overtime costs that are incurred are not covered in the calculated funding.

Difficulties of this kind arose during 1991, 1992 and early 1993. In September 1993 a one-off grant totalling $51,952 was received by Parrahouse to cover service costs. In May 1994, during the lead-up to the Parramatta by-election, not surprisingly, a further one-off grant of $29,004 was awarded to

Parrahouse to enable the service to continue. The Minister handed this cheque to the refuge administrators in person. However, with the service still in jeopardy, the treasurer of Parrahouse wrote to Mr Ken Bourke, area manager of the Cumberland/Prospect area office of the department, to report the situation as it then stood. The refuge cannot survive on the whim of the Minister with one-off grants. It is clear that with the new award for workers more funding is needed to cover increased costs.

As funds were not forthcoming it became necessary for Parrahouse Youth Crisis Refuge to close. From 15 September 1994 Parrahouse became limited to a 9 a.m. to 5 p.m. referral centre. Therefore, between Penrith and Bankstown there was no generalist refuge available to accommodate local homeless youth. Parrahouse reopened towards the end of September. This was only possible because the Department of Community Services allowed the rollover of October funding in September. The advancement of future funding merely perpetuates the problem. The management of Parrahouse has received a 9 per cent increase in their recurrent funding, but, even with that increase, by January 1995 financial difficulties are again expected.

I have been informed by workers at Parrahouse that they will again have to apply to have future funds released to continue operation as they are still
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operating with a shortfall. It is a sad indictment of the performance of this Minister that the situation has become so desperate. It is vital that a city the size of Parramatta has a generalist crisis refuge. The workers at Parrahouse are in the front line battling against poverty, homelessness and abuse. It is unreasonable to expect them to do their jobs without knowing from one day to the next whether the centre can remain open.

RURAL CELLULAR PHONE FACILITIES

Mr COCHRAN (Monaro) [5.45]: I wish to raise the concerns of residents of Delegate, Bombala and the Monaro electorate, in the far south of the State, adjoining the Victorian border, who for many reasons need to use a cellular phone. No cellular phone facility is available in that area. It is regrettable that the local Federal Labor member, Jim Snow, has not been able to convince Telstra Corporation Limited or OTC that such a facility would be a vital communication link for people in the far south of this State. In the event of fire, sickness, car accident or other emergency it is vital that people in remote areas can communicate with the fire brigade, hospital, local NRMA tow truck operator or other facility. The Federal Government and OTC have been negligent in their responsibilities to the community. I ask that this matter be referred to the Deputy Premier and others to ensure that a representation is made on behalf of the New South Wales Government to the Federal Government to ensure that a cellular phone facility is installed.

Many country people and country centres which depend on cellular phone communication are discriminated against by Telstra and OTC. Those bodies claim there is inadequate use of cellular phones in country areas due to diminishing population, and that on economic grounds they are not able to establish viability for such a service in those areas. For example, from time to time stock and station agents are required to travel to properties to be aware of current stock prices, market opportunities and facilities for local land-holders. In this modern communications age it is not unreasonable that a stock and station agent, stock buyer or chemical firm representative should have access to cellular phone facilities in country areas. Drivers of fuel tankers often find it necessary to contact a landowner to establish his whereabouts in order to deliver bulk fuel. Sales staff, travellers and other company representatives need to contact their home base or supplier to place orders on behalf of land-holders.

A facility is available at Delegate Mountain, in close proximity to Delegate and the Victorian border. Delegate Mountain would give adequate coverage for cellular phone facilities in the entire south-east area around Delegate and Bombala. The only way to provide reliable communication for people in emergencies such as car accidents and sickness is to establish these facilities. On my behalf, the

Deputy Premier has taken up the issue of Seaphone, a necessary form of communication for those at sea, which will be placed on Mount Imlay. A cellular phone facility is just as vital for those who travel on land in country areas, and would provide great communication opportunities for them.

Mr Snow, the Federal Labor member for Eden-Monaro, and I would to be able to provide better service to our constituents by being able to respond immediately to their requests for advice, if cellular phone facilities were made available. I have met with residents in both areas and I have a firm commitment from them that they will continue to petition their Federal member and the Federal Government until it is realised that people in rural areas should not be discriminated against. The Federal Government should not be able to say that densely populated areas of the State should have greater preference than country areas. I ask the Treasurer, and Minister for the Arts to take up this concern with the Deputy Premier and ensure it is raised in appropriate channels to ensure equity in the distribution of cellular phone facilities in country areas.

SPECIAL EDUCATION RESOURCES

Mr KNIGHT (Campbelltown) [5.49]: I draw the attention of the Parliament to the appalling lack of resources for children with intellectual and/or physical disabilities in the Campbelltown region and nearby regions. At present three special schools cater for some of the needs of these children: Beverley Park SSP in Campbelltown, which concentrates on children with physical disabilities but has a number of children who also have intellectual disabilities; Mary Brooks Banks SSP in Rosemeadow, which caters for children with moderate to severe intellectual disability, including some who also have physical disabilities; and Passfield Park SSP in Minto, which essentially has the same criteria as Mary Brooks Banks special school.

These three schools cater for approximately 200 children, and enrolments fluctuate from time to time. The Department of Community Services is supposed to provide specialist non-teaching services. In theory it provides a grand total of 2.73 positions to cover the essential roles of speech pathology, physiotherapy and occupational therapy. On any criteria, that is a scandalously inadequate amount of resources for one of the most disadvantaged sections of our community, yet in practice these children do not even get access to the claimed 2.73 positions. For eight months the physiotherapy position has been vacant. For a similar period the occupational therapy position has effectively been vacant because of medical and maternity leave for the incumbent. For all of that time these children have received virtually no occupational therapy or physiotherapy services.

Of course, these disciplines generally suffer shortages and are worse in the western and south-western suburbs of Sydney, but they are exacerbated because the Department of Community Services is an organisation with no career structure. When vacancies occur, people with appropriate qualifications are far more likely, if they take a government job at

all, to take up positions with the Department of Health rather than with the Department of Community Services because the Department of Health has a career structure and the Department of Community Services is effectively a dead end. It is not as if there is an abundance of these services in the Campbelltown area that these children with special needs could tap into in the interim. Campbelltown and surrounding areas are already massively disadvantaged so far as speech pathology, physiotherapy and occupational therapy services are concerned. Indeed, many children in mainstream schools receive pathetically little or no service from these specialist disciplines.

What has been the Government's response? First, the Government moved to reclassify Beverley SSP so that it no longer would receive additional resources from the Department of Health. At present the school has the services of a full-time nurse and a full-time technical aide as well as a small part-time supplement of services in other disciplines, but the Department of School Education moved to reclassify the school so that it would lose its health funding. No arrangements were made to transfer that funding

to the Department of Community Services; it simply transferred responsibility to a department that does not have the resources to meet the present needs. The parents complained and a working party has been set up, but it is working very slowly. A cynical person might suggest that the Government is waiting until 25 March!

Second, the bureaucrats say there is no real need for the ongoing provision of these services. They say there is no big backlog because the number of referrals that are not being dealt with is not huge. The situation is so bad that the relevant medical practitioners no longer refer children with these needs for these services as they know the services do not exist. Third, more than two months ago the three school councils wrote to the Minister for Community Services. Other than a brief acknowledgment, no response has been received from the Minister. We all know the Minister for Community Services likes to parade in the media as a SNAG - one of the caring and sharing sensitive new age guys. His phoney compassion is not worth a sausage to the children most in need in the south-western suburbs.

Fourth, there is the present honourable member for Camden. One would think she would be in a good position - being a member in a marginal seat, in an area the Premier used to represent - to do something about this matter. Camden is a must-hold seat for the Government if it is to have any chance of hanging on at the next election. After the $1.5 billion pork barrel during the Parramatta by-election one would think the honourable member for Camden could get a few hundred thousand dollars to resolve this problem on the eve of the election. In fact, the response of the honourable member for Camden has been a big fat nothing. [*Time expired*.]

Mr COLLINS (Willoughby - Treasurer, and Minister for the Arts) [5.54]: I did not intend to respond to this statement, but one particular comment by the honourable member for Campbelltown warrants correction: the reassertion of a patent lie that was spread by the Opposition during the Parramatta by-election campaign that the Government made spending commitments of $1.5 billion. The Opposition knows the origin of that lie and I will not allow it to stand on the record. It is patently false and totally incorrect to say that the Government made promises worth $1.5 billion in the Parramatta by-election campaign. Any cursory analysis of promises made by the Government since the autumn session of Parliament until the Parramatta by-election would show that the figure referred to has absolutely nothing to do with reality. It is a complete fabrication by the Australian Labor Party. Some of the other matters raised by the honourable member for Campbelltown will be looked at. I remind the honourable member that in the budget brought down about six weeks ago the Government increased the annual allocation to the Department of Community Services by over $40 million a year. That is a realistic figure, and the honourable member knows it.

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

Mr COLLINS: It is a total fabrication and a lie to say $1.5 billion was promised, and this House deserves to have that lie corrected.

ASQUITH AMUSEMENT CENTRE

Mr O'DOHERTY (Ku-ring-gai) [5.56]: Recently I raised with Hornsby Council my concerns and those of many constituents in my electorate about the approval of a development application for a so-called family amusement centre at the Asquith shopping village. I have written to Hornsby Council stating that the proposal is not consistent with providing positive, meaningful, and community and family-based youth activities. The nature of the games causes concern. Many studies link the games with antisocial behaviour. My views on this are already known. My purpose in rising today however is to share with honourable members my concerns about the man who is the developer and will be the operator of the centre. I particularly want to raise a matter that was brought to my attention this week.

Last week at one of the shops of Mr Leo Cerreto cigarettes were sold to minors; not just to teenagers

who may be under the legal age, but to children wearing primary school uniforms. I have a statutory declaration in my possession, sworn by a local business person, that states that she overheard a group of high school students at the bus stop tell two primary school students to go and get for them two packets of Winfield red. There was no discussion about where to go; they went straight to the shop that is operated and owned by the Cerretos. The children picked up some sweets from the counter and then asked for two packets of Winfield red. The statutory declaration states:

> Mrs Cerreto gave them the cigarettes, took the money and the primary children then returned to the High School children and gave them the cigarettes.

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Council's report on the amusement centre development application notes that Mr Cerreto has undertaken to operate an after-dark activity for the youth of Asquith in a safe, family environment. Indeed, part of his rationale for applying to develop such a centre was that there was no safe, family entertainment for youth after dark. That may be the case, but is selling cigarettes to primary school children the kind of safe, family environment that Mr Cerreto will foster at his amusement centre? He obviously believes it is acceptable to sell cigarettes to primary school children. This incident alone raises serious doubts about whether the Cerretos are suitable to be allowed to run a business as sensitive to the impact on our youth as this amusement centre will be. Other matters concerning Mr Cerreto raise further questions about his suitability.

Mr Cerreto is under investigation by the Liquor Administration Board in relation to a wedding and reception centre business he operates in Asquith. One allegation is that he refills empty wine bottles with cheap wine and passes it off as more expensive wine. Another matter concerns the condition of the section of Asquith shopping village from the arcade to Amor Street, which Mr Cerreto owns. This section is poorly presented and is generally run down. Former tenants report that Mr Cerreto is a difficult landlord and does not meet his obligations under leases. Another matter concerns the successful prosecution of Mr Cerreto some time ago under the Clean Waters Act for allowing the contents of a blocked grease sump to flow into the stormwater system.

These matters raise questions about the regard Mr Cerreto has for regulations and rules set by authorities for the benefit of our community. Indeed, Mr Cerreto went ahead with the building of his amusement centre before his building application had been formally approved. The work differed from the development application and he has been required to stop work while he submits an amendment to the development application. These matters are significant because the community must be confident that the person who operates the amusement centre will comply with regulations that require him to ensure that the centre is operated in a safe, family environment. These include regulation of the hours of operation, the number of staff, whether good order is kept both in the centre and in its immediate vicinity, and whether school children are kept out of the centre during school hours - a key aspect raised with me by local parents and citizens. In light of the matter I raised earlier I would be interested in knowing whether cigarettes are proposed to be sold at the centre.

I am also concerned about some of the incidents raised during debate on the amusement centre. Petitions were taken from shops in the area by a youth. The window of a shop that had been collecting petitions was smashed. It was one of the shops that had petitions stolen from it. On the surface they may appear minor things, but they do confirm the community's fear that the amusement centre may bring to Asquith activities that we do not want. Even before it is built, it seems those activities have begun. When council's six-month approval period expires, will there be a repeat of that intimidation in an attempt to stifle legitimate community debate and concern? I certainly hope not. The council's report notes that police did not raise an objection to this. I inform the House that I have spoken to the patrol commander at Hornsby and he is concerned. [*Time expired*.]

HUNTER AREA HEALTH SERVICE DENTAL WAITING LISTS

Mr HUNTER (Lake Macquarie) [6.01]: I speak about dental waiting lists in the Hunter Area Health Service and a problem encountered by a constituent of mine, Mr Ware. In his letter to me Mr Ware wrote:

> Dear Sir,
>
> I wish to draw to your attention the long delay I have experienced in receiving dental treatment.

He went on to say:

> I was examined and assessed for new dentures in November 1993 and my name was placed on the waiting list at that time. My existing dentures were fitted 13 years ago and shrinking of the gums has made it essential for me to receive new dentures.

He said further:

> I have contacted the Dental Clinic on a number of occasions to check my position on the waiting list. On 8th August I was informed that it would be a further 18 months to 2 years before my name comes up.

On 30 September I wrote to the Chief Executive Officer of the Hunter Area Health Service, Dr Tim Smyth, and said that Mr Ware had informed me that he had been put on the waiting list dating back to November 1993 but that he had been recently advised of another 18 months to two years wait before he could receive treatment. No-one should have to wait two and half to three years to receive a set of dentures. Mr Ware told me that he was not prepared to wait such a long time, that he needed a replacement set of dentures, and that he had made arrangements to go to a private clinic where he had to pay some $600 for replacement dentures. This man is a pensioner who can ill afford to pay such an amount from the small pension that he receives. On 17 October Dr Smyth wrote to me about a comparison between the Wyong dental clinic and the Hunter Area Health Service dental services, as Mr Ware believed there was a shorter waiting time in the Wyong area. Dr Smyth went on to say:

> As you know, we continue to experience difficulties in recruiting to our dental officer vacancies and we are currently looking at a number of alternatives to provide long term stability for our staffing needs.

He went on to say that he was also making arrangements to speak to Wyong to see if there were any differences in the way Wyong and the Hunter Area Health Service service their clients. This prompted me to undertake some investigations of the situation facing constituents not only in my electorate but right across the Hunter. I found that the dental

service in the Hunter area is really at the point of collapse. Some 10 to 12 dental officers are required in the Hunter and the officers who remain are being placed under a great deal of stress. They are run off their feet trying to service the huge waiting list. In *Questions and Answers* of 26 October 1994 a question asked by the honourable member for Newcastle was partially answered by the Minister's response that 8,383 patients were booked in to receive non-urgent conservative dental treatment in the Hunter Area Health Service, and that a further 3,331 patients were booked in for replacement dentures.

At least six full-time positions and numerous part-time positions have not been filled in the Hunter Area Health Service. All dental clinics are understaffed. At Wallsend, as I said earlier, there is a three-year wait for dentures. Wallsend clinic has more than enough dental chairs to perform routine dental work, and all the associated equipment, but unfortunately it has no dentists to undertake that work. Adamstown has a 28 month waiting list for orthodontic work. Wallsend has an 18 month wait for general dental work. My inquiries reveal that there are vacancies at all dental clinics: four at Royal Newcastle,

two at Adamstown, two at Wallsend, two at Windale and one at Nelson Bay, Maitland and Cessnock. The Government should do something about this, and I request the Minister to investigate it. The Government should be looking at what is happening in other area health services and offering an incentive package for dental officers to encourage them to join the public system. I should like at this point to praise Dr Tim Smyth for adopting a suggestion that I made to him on 31 August to extend overtime at dental clinics. [*Time expired*.]

Private members' statements noted.

[*Mr Deputy-Speaker left the chair at 6.06 p.m. The House resumed at 7.30 p.m*.]

PROTECTED DISCLOSURES BILL

Second Reading

Debate resumed from an earlier hour.

Mr HATTON (South Coast) [7.30]: A number of things militate against openness in government. One of them, which I mentioned prior to dinner, is Cabinet secrecy, even to the extent where the Auditor-General can be denied access to Cabinet documents for the purposes of undertaking a financial audit. For example, in Sweden an all-party constitutional committee has access to Cabinet documents. There is an increasing use by governments, at both the Federal and State level, of commercial in-confidence as the reason why material should not be made available to the general public, often when substantial amounts of money are involved. I did not think the design of Port Macquarie Base Hospital was very complex or novel, but it could not be revealed because it was commercial in-confidence. Under Health Care of Australia the Government is paying Mayne Nickless $4 million a year for the service contract. The formula used to calculate that contract could not be revealed in any detail, even to the Public Accounts Committee, and it could not be analysed. Under the previous Labor Government the Sydney Harbour tunnel was a classic example.

Quite often the terms of contracts are kept confidential. To me, that is wrong, particularly after a contract has been awarded. When I was talking to officers of the Court of Audit at the Hague I discovered that the policy in Holland is that once a contract has been let, even if it involved commercial in-confidence information, it is released after a period of usually only a couple of months. The practical view taken in Holland and in some other European countries is that technology is an ongoing thing, is very quickly superseded, and is subject to industrial espionage. In the spirit of openness the terms of a contract should be made public.

When members consider such things as Cabinet secrecy, commercial in-confidence and contract secrecy in order to determine how that sits with former Cabinet Ministers who can make good use of information to which they, their Cabinet colleagues and senior public servants have access - for example, former Premiers Wran and Greiner and former senior public servants - they might wonder why there was secrecy in the first place. People who leave the Roads and Traffic Authority or the Department of Planning, for example, can make use of that knowledge. In this increasing climate of secrecy and for all sorts of what appear to be sound reasons it is important that a public servant who is unafraid, who will speak out and who, because of higher public duty, will tell people what is going on - whether there are rorts in contracts, whether there is partiality, whether there is wastage, whether there is corruption - should be protected.

It is more important now than it ever was in local government, where senior officers depend on councillors for the renewal of their contracts, and in the public service, where people in the senior executive service depend on the Government for the renewal of their contracts. We know very well where their loyalty will lie. If there is something untoward, they will not reveal it if they believe it will

reflect on their contract renewal. Nothing in whistleblower legislation will overcome that. When I looked at this matter during my Churchill Fellowship tour of Sweden and Canada I discovered that we really cannot protect public servants who speak out. For example, in the United States of America the hotline concept was started about 11 to 12 years ago. The General Accounting Office in the United States of America, which was under pressure to attack fraud, set up a 24-hour a day hotline service, which averaged 7,000 to 8,000 calls a day. Although 90 per cent of those calls were not productive the remainder were so productive as to make it worth while. When I spoke to auditors-general in both countries the following comment was made, to quote from my report:

> Low level fraud can usually be picked up by audit. High level corruption is very difficult as it is hidden by collusion and well covered. Generally speaking, in the opinion of the Auditor General's Office [in Canada] audits may not be as effective at detecting high level fraud as a Hotline.

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> The Canadian Auditor General did research on the USA scene for possible use in Canada [of the hotline] and found out that to establish the system in Canada would cost approximately $600,000 per year. It needs sophisticated people on the phones who can convey credibility and cultivate trust with the informant. However, the stress level is high and to avoid burn out staff rotation would be necessary every month. Six bilingual people were needed, two of whom would answer phones during the day. An answering machine would be used at other times.

My report then goes on to refer to confidentiality and states that it is important to protect those who call in, and that precautions should be taken to protect them. The criminal code in Sweden states that it is a criminal offence for anybody to reveal a source within the public service in matters of whistleblowing, unless it is a matter that has come before the court. Obviously then the source has to be revealed in the giving of evidence. Sweden considers the right of a public servant to speak out and be protected to be so important that it has included that protection in its criminal code. I was quite impressed with that, although at first I thought it was extreme. However, I do not consider it extreme after 20 years in this place, after dealing with a lot of whistleblowers and after seeing the stress and agony that they have gone through and the retribution that they have suffered simply because they have spoken out in their higher public duty.

The person who has worked with me as a research officer for more than 10 years was the first to get the sack after we blew the lid off the then Department of Motor Transport and revealed quite life-threatening situations in that department. A magisterial inquiry under the Wran Government not only authenticated what we had to say but revealed that more corruption was going on within that department. That department was able to heal its wounds, but 11 years later the Independent Commission Against Corruption revealed that the same sorts of things are going on. This legislation is tremendously important. There are considerable incentives for people to say nothing and to misuse information for private gain. Considerable problems are faced by taxpayers in getting information out of the system because of the things to which I have referred tonight. Under freedom of information it costs $30 an hour to obtain information; and one is beholden to public servants to determine the time that is taken to obtain that information and the cost involved. [*Extension of time agreed to.*]

The whistleblowers legislation stems from the Independents' charter of reform. It has been a particular interest of the honourable member for Bligh, and I acknowledge her efforts. It has also been a particular interest of the honourable member for Manly and of mine, as it has been close to my heart for a long time. It is absolute nonsense to say that a whistleblower should not be protected if he or she goes to a journalist or to a member of Parliament. If that were to be so, there might as well be no freedom of information legislation. The argument is that one can go to the Independent Commission Against Corruption or the Ombudsman or the Auditor-General, but it is increasingly evident that the ICAC is bogged down with a vast workload. On many occasions people go to the ICAC, but the ICAC chooses not to investigate, or it does not investigate thoroughly. The Office of the Ombudsman is overworked

and underresourced, and consequently an investigation might not be carried out. The budget for special audits in the office of the Auditor-General is limited, and allegations may not get the attention they deserve.

A public servant might consider a matter that starts out quite small as being important and likely to lead to matters of wider significance; but the investigating authorities might not see it in the same light. Why should not public servants, who are citizens of a free society - Australia - have the right to go to a member of Parliament or to the press and be a protected person under the Act, provided their information is not false, misleading or vexatious, and provided their revelation is not deliberately damaging, without sufficient background in fact? The bill is carefully drafted to ensure that persons who present such information are not so protected. It is important that people's reputations are protected and that in matters of public health and safety we do not facilitate unnecessary scare campaigns that are not based on fact, that are spread by people who want to big-note themselves or have an ulterior political or personal motive.

The bill is an important breakthrough. To my knowledge it is the only legislation of its kind in Australia; so New South Wales will be setting the pace. It is not a radical bill. However, I am concerned that it will give an authority six months to respond. That is too long. If something is important, an authority should be able to investigate it within a month, or two months at the outside. I do not think that the legislation will bring about a change in culture but I hope it does, and I hope that governments of the future will realise that the best thing they can do when they first get into government, as my experience has shown, is to sweep away as many barriers to the exposure of truth as they possibly can. That is a government's best protection, that is a department's best protection and that is an officer's best protection.

If the whole system is opened up there will not be festering corruption or a climate conducive to corruption; there will not be small explosions building into big explosions. It is the ordinary soldiers in the field, the backbenchers, who suffer. When a government loses office because of a major explosion, it is the members in the marginal seats who lose their seats. Because it is in their interests to do so, I appeal to members in marginal seats to support strong freedom of information legislation. It is certainly in the interests of the Opposition to support freedom of information legislation - but I think it is even more in the interests of the bureaucracy and the Government to do so.

There is a residual culture in the public service that is very persistent: first, pretend it has not happened; second, cover it up; and, third, discredit the person who revealed what is really happening. That is really scraping the bottom of the barrel. I

understand that the Labor Party has had a rethink about the amendments I have foreshadowed. It has accepted not only that a public official be a protected person after going to the authority concerned - the ICAC, the Ombudsman or the Auditor-General - and the matter not being investigated, but that the official must have reasonable grounds for believing that the disclosure is substantially true. I believe the ALP has accepted the word "substantially". Who amongst us would know whether it is totally true? One could never be certain that what one was saying was totally true. But if it is shown to be substantially true and properly based, a person who goes to a member of Parliament or to the media should be protected.

The Australian Labor Party initially proposed, but no longer does, that a person cannot be sued for defamation. The law of defamation is the most abused method of cover-up, whether it be in private or public enterprise, across Australia. Under our very restrictive defamation laws one would never get any truth from whistleblowers. I am proud that this legislation is before the House. I am extremely grateful to the Opposition and the Government for their support, but I am disappointed that the Government will not adopt the honourable position of protecting people who comply with all of the provisions of the bill, but who then feel that it is necessary to go to the media or to a member of Parliament.

I share the concerns expressed in this House about the position in which members of Parliament can be placed. Something must be done about it urgently, before Christmas. When as a result of information provided a member of Parliament exposes something in this House, whether in a question on notice, in a private member's statement or in any other form, he or she must be protected from a subpoena that constitutes a fishing expedition by a legal firm wanting to find out the identity of the person who provided the information. That is a gross interference with the exposure of truth and the rights of a member of Parliament. We have to do something about that urgently.

Ms MOORE (Bligh) [7.47]: I strongly support this legislation, which will bring to finalisation a very important element of the agreement signed by the Government and the Independents as part of our charter of reform of the Fiftieth Parliament. I also support the amendment foreshadowed by the honourable member for South Coast, which is in keeping with the dissenting report presented to the committee by the honourable member for Port Jackson, the honourable member for Wyong and me. We argued in that committee and in the dissenting report, as we are arguing tonight, that whistleblowers should be able to go to the media as a last resort.

In our dissenting report we proposed that whistleblowers should be able to go to the media as a last resort and to be protected if the following conditions were met: that the whistleblower had reasonable grounds for believing that the report made was true; that the allegation was substantially true; that the disclosure had been made to an investigating authority; and that the authority had completed its investigations, but had decided not to proceed. The honourable member for South Coast, who is so passionate about this particular issue and who has been involved in it for so many years, has explained why protection is necessary if we are to open up the system. He spelt that out clearly. In our dissenting report we also said that there can be institutional failure; there should not be, but that there can be. This fact was acknowledged by the Independent Commission Against Corruption in its submission. In such circumstances there is no other effective means of ensuring that an allegation is investigated.

We believe that the requirement that a whistleblower make a disclosure to an investigating authority before disclosing to the media compels a whistleblower seeking protection to follow the proper channels of investigation. The passage of this legislation will be an historic event. I welcome the Government's introducing the bill at this time but I regret that the Government is not able to support the amendment foreshadowed by Independent members and supported by Opposition members. I hope, however, that the amendment will find support in the upper House and that this landmark legislation becomes law during the Fiftieth Parliament.

Mr CRITTENDEN (Wyong) [7.51]: I had the privilege of serving on the legislation committee that considered this bill. As the honourable member for Bligh has pointed out, the committee agreed on most issues that came before it. It was in respect of the fourth recommendation only that there was a huge divergence of opinion between Government members on the one side and Labor Party members and the Independent member for Bligh on the other side. There is no doubt that whistleblower protection is needed in New South Wales. The *Sydney Morning Herald* of 28 April reported that a survey carried out by the ICAC found that nearly 75 per cent of New South Wales public servants feared they would suffer if they reported corrupt conduct; 25 per cent of public servants surveyed said that there would be no point in reporting corruption because it was unlikely that action would be taken. That is a sad statistic.

The ICAC survey also found that fewer than 5 per cent of those interviewed perceived whistleblowers as troublemakers. Public servants were saying that although they were not necessarily prepared to take action themselves, they were prepared to accept the courageous action of those who did so. The issue of protection for whistleblowers is not confined to this State. The Federal member for Barton, Mr Gary Punch, who chaired the Federal parliamentary committee that uncovered the customs scandal and said that it was time for both sides of Parliament to consider legislation for whistleblowers, was quoted in the *Daily Telegraph Mirror* of 11 November 1993 as saying that legislation affording protection to whistleblowers would ensure that bureaucrats could reveal wrongdoing without losing their jobs. He blasted "an underlying belief in some sections of the public service that you don't admit your

mistakes".

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Mr Punch spoke out as eight individuals from the former shirtmaker Midford Paramount were told that they would share $25 million compensation for losing money and jobs. It is sad that the Federal Parliament had to pay that amount of money because there was no whistleblower to save the public purse on that occasion. Whilst to my knowledge there is no talk of whistleblowing legislation in Queensland, the Criminal Justice Commission there has certainly taken strong action. A shire clerk in Queensland has retained employment through a court injunction - the first such court injunction - secured by the commission to protect the whistleblower. That case related to a matter in the Whitsunday local government area. Recently the Federal Government, through the Australian Senate, established a select committee on public interest whistleblowing. Several prominent people who, as the Federal Attorney-General said recently, perhaps give governments headaches have come forward to outline their concerns about the need for whistleblower protection.

The former Federal Human Rights Commissioner, Mr Brian Burdekin, told the committee that a fear of losing jobs or having careers ruined prevented many people from coming forward to detail issues and concerns in order to protect the public, the public service and government generally. The New South Wales Ombudsman, Mr David Landa, told the Senate committee that he wanted more power to protect whistleblowers. He said that he should be permitted to order punitive action against those who harass or victimise whistleblowers. Generally speaking, the Senate committee traversed much the same ground as that covered by the New South Wales legislation committee. There was, however, one big difference. The bipartisan Senate select committee reported to Parliament that a fundamental shift in values and ethics in the workplace was required if the stigma associated with whistleblowing was to be overcome.

The select committee saw as its primary concern the need to form a public interest disclosures agency, which would report directly to Parliament, to receive information and arrange for investigation as well as to protect whistleblowers. The chairwoman of the committee, Liberal Senator Jocelyn Newman, said that the committee was saddened and often appalled by the treatment of whistleblowers when they were trying to do what they saw as their duty as citizens, as honourable, ethical, conscientious people in the workplace. I am pleased that the New South Wales legislation committee did not recommend the establishment of a separate bureaucracy to deal with the issue of whistleblower protection. It is understood that the Independent Commission Against Corruption is able to deal with corruption issues, the Ombudsman is able to deal with maladministration, and the Auditor-General is able to deal with matters of serious or substantial waste.

As a member of the committee I was pleased that all members agreed that they did not want to set up more bureaucracy. No matter who I talk to, whether it be to a worker in a pub on a Friday afternoon or the managing director of a public company, it seems that people do not want more bureaucracy when there is no great need for it and it could become only a self-fulfilling prophecy. I have covered the crucial elements, but honourable members need to consider another aspect also: the last resort test. The honourable member for Bligh has just dealt with that matter so I shall not traverse the same ground. The Opposition firmly believes that it is necessary as a last resort for whistleblowers to be able to go to the news media when there is an institutional failure in the system and, in so doing, be protected from defamation action. It is quite possible that institutional failure could arise.

One of my concerns is that whistleblowers need not be public employees. They may be officials of boards appointed by a Minister or a government. I think of people such as the directors of area health services. It is my belief that those people should be given some latitude and should come within the ambit of this legislation. Area health service directors in particular perform an important role in our society. Under existing legislation directors and boards of area health services are caught in somewhat of a legislative limbo. They have neither a management function nor an advisory role. I guess they could be excused for not knowing exactly what their role is. Certainly when a problem arises any decent

director of an area health service would want to take substantial action.

I turn to an issue relating to whistleblowing that has been brought to my attention. On 10 February I wrote to the Minister for Health outlining the appalling treatment of a whistleblower and requested that the Minister take appropriate action to protect the employment status of that person. It was several weeks, if not months, before I received a reply, undoubtedly because of the bureaucracy in the Minister's office and in the department. That is not good enough for a Government that has signed a charter of reform to protect whistleblowers. A Minister is required to take urgent action in a case involving a whistleblower. The Minister for Health wrote to me on 20 December 1991, when he was Minister for Health Services Management. In the penultimate paragraph of his letter he stated:

> At no time have you indicated to either my staff or myself that you wanted special consideration for your question to be answered prior to the end of Parliament.

I gave that indication when I sent the letter on 10 February 1994, but regrettably no action was taken for some time. I will now refer to examples of case studies involving whistleblowers. X, a whistleblower, claims that A said, in relation to the possible outcome of an investigation which X had commenced, "I'll tell you what, if you bring me down I will personally take out a contract on you". The reporting of the incident followed a phone call from A to X at his home on Saturday, 31 July 1993. X's diary note of this phone call records that A was:

> . . . concerned at [Y's] letter to Board. Stressed that he was not threatening, but suggested I [that is X] contact [Y] and try to talk him out of pursuing the issues raised in his letter. If criticisms made public it would adversely affect reputation of himself and organisation.
>
> He also mentioned possible defamation action against me by [two others] . . .

Therein lies the problem. A senior officer, a supervisor, said to a subordinate officer, "Listen, son, you had better be very careful because a defamation action from these other people might come your way". That is a real worry for someone in a junior position, who probably has a mortgage, a wife or husband, and three or four children. [*Extension of time agreed to*.]

The effect on X can be demonstrated by the interview recorded on page 28 of the audit branch report of the Department of Health, which read:

> I haven't taken it terribly seriously although since that date I've refrained from riding my push bike to work. I have a genuine concern about my safety on the road. I have woken at night with ah pains in my back as though it's you know had the feeling of knives in my back. I guess my imagination running wild.

Either that person's imagination was running wild or he was genuinely concerned that a contract may have been taken out on him. When questioned further regarding his interpretation of the threat, X said:

> Well undoubtedly he was going to, well take a contract on my life. As I say I find it hard to take that seriously, that it would go to that extent, but then some of my feelings and I'm still frightened to ride my pushbike to work . . .

That person, either consciously or subconsciously, feared for his safety. To be fair to A, on that occasion A firmly denied having made the threat to take out a contract on X. We will never know the real circumstances, but this whistleblower certainly suffered grievously as a result of either the threat or the perceived threat. When X was asked why he did not consider it appropriate to discuss a certain issue with A, his supervisor, prior to investigation and inform him that he proposed to investigate a certain part

of the Central Coast Area Health Service, X replied:

> Under normal circumstances I would do that. As I say because of [A's] attitude of investigating anything within the Division . . . I felt he would not allow either not allow it go ahead or to take action to see that when we got to the department that there'd be nothing wrong with . . .

Referring to another whistleblower in the Central Coast Area Health Service - the whistleblower the subject of my letter to the Minister on 10 February 1994 - page 45 of the audit branch report stated that in his letter to the chairman, Y described the 4.00 p.m. meeting with A as follows:

> . . . From the moment we entered the room we were subject to a form of intimidation and abuse the delivery of which I found somewhat overpowering . . .
>
> At a point in this meeting something snapped inside of me. I was unable to do anything more than just hang my head and sit there. I wanted to escape from [A's] office but for some reason I was unable to move.

Most people who enter politics are not wilting violets. I am not saying X and Y are wilting violets, but they perceived a real threat to themselves. It is important to realise that, and to understand the difficult situation in which some employees find themselves when they simply try to do their jobs to the best of their ability. The issue was summed up by Mrs Y when she said to the investigator in the audit branch of the Department of Health:

> I know that some of the allegations [Y] brought to you proved to be correct and I understand that one fellow has been allowed to resign and sent on his merry way, meanwhile [Y] is labelled a "Whistleblower" and continues to suffer. It is obvious to me that in the end it is not worth doing the right thing.

This Parliament must do something to protect people like X and Y. They were performing their duties in the public interest, as they saw fit. So far one person has been given the option of either resigning or being sacked, yet Y's health has been seriously affected, perhaps in an enduring way. For that reason whistleblowers must be given full protection. The person referred to as A was the subject of a ministerial appointment. It is all well and good for political parties to have signed the charter of reform all those years ago and to finally bring whistleblower legislation to fruition four months prior to an election, but it is important that the legislation not be flawed.

People who are placed in an invidious position through their employment contracts, their appointments to government boards et cetera must be protected. Ministers who are given information should not simply sit back and hope the problem will go away, because inevitably the problem does not go away. Ministers must be capable of admitting that a problem may exist and investigating it. This report has been with the Department of Health, and presumably the Minister, for two or three months. It was investigated over a period of 11 months. The Minister cannot be criticised for not being a mind reader. However, he was told that a whistleblower needed protection and was not given that protection. The Parliament must think about where it is headed and about the role of Executive Government.

All members, including the Minister for the Environment, his fellow Ministers and non-ministerial colleagues, need to be careful that they do not fall into the trap of accepting the status quo and doing anything to maintain it. Let us come clean and do something about the problem. That is what whistleblower protection should be about, and that is why in the last resort the Government is not prepared to do the right thing to protect whistleblowers. As far as the Government is concerned, the bill is Clayton's legislation. The Government does not have any interest in doing the right thing. I do not often quote *Sydney Morning Herald* editorials, but a recent editorial in that newspaper stated that the State Government particularly needs to redeem its weak record in respect of whistleblower legislation; that admittedly it brought forward the Whistleblowers Protection Bill in 1992, but that the legislation had

the serious fault of offering no protection to whistleblowers who feel compelled to go to the media to get something done. That editorial further stated that the bill was never passed, nor should it have been passed, and that it was inferior legislation designed to create the impression that the State Government was concerned to protect whistleblowers - [*Time expired*.]

Mr NAGLE (Auburn) [8.11]: When does honesty not pay? The Minister for the Environment thinks this legislation is a joke. Countries such as the People's Republic of China are going to extreme

lengths with whistleblower protection. Yet a responsible Minister of the Crown, a member of the New South Wales Government, is behaving in a despicable way about a bill that will protect those who would bring to him, their Minister, information they may have about his department. Environmental departments are a good example of where dishonesty may be a very integral part, and perhaps we need more whistleblowers in that department. An article published in the *Law Institute Journal* under the title "When honesty doesn't pay" told about Jim Leggate and his fight to expose abuse of people who were trying to uncover corrupt conduct in the mining industry. Environmental vandalism was occurring and he decided to expose it. The Fitzgerald report stated that honest public officials are the major potential source of information needed to reduce public maladministration and misconduct, and that they will continue to be unwilling to come forward until they are confident that they will not be prejudiced. In the *Sydney Morning Herald* of 13 May 1994, under the headline "Whistleblower survived shooting, harassment, MP claims", Malcolm Brown reported:

> Two police whistleblowers have survived murder attempts in the past 10 years according to the Independent MP Mr John Hatton.

That is what brings this type of bill before the House. A person who has information about corrupt or grossly improper conduct has a duty to disclose it. That obligation will be one of the main topics at the seventh international anti-corruption conference organised by the Chinese Government. Last year 25,000 public servants in China were placed on trial after other public servants provided information to the Government about corrupt conduct. In April this year an ICAC report unravelled corruption in the public sector. I invite the Minister for the Environment to read that report, which deals in depth with how to track down corrupt conduct. One way to do that would be to study how Clinical Waste Australia - part of his own department - operated and how it received certain environmental permits in the running of its operations. However, to that company's eternal credit, it has rectified all its misdeeds and wrongs of the past.

The object of the bill as set out in clause 3(1) is to encourage and facilitate disclosure in the public interest of corrupt conduct, maladministration and serious and substantial waste in the public sector. That is a very important step to enable the community not only to understand how the legal system works but also to have confidence in the integrity and honesty of the system. Those listening in the gallery would not take too kindly to the behaviour of the Minister for the Environment, and they might perceive some ethical problem in his behaviour. Ethical, legal and organisational considerations are important in determining how to deal with these problems. Over the last 20 years legislation has been enacted on freedom of information, the Independent Commission Against Corruption, the Ombudsman and privacy provisions, and also data protection. The bill offers ways and means by which the public can be alerted to the dangers of corrupt and improper conduct so that they can be provided with information that might not necessarily be obtained under any administration.

The United States Congress, following exposure of much corruption within the federal bureaucracy, passed the Civil Service Reform Act in 1978. That legislation provides that an employee who discloses information which he or she reasonably believes evidences violation of any law, rule or regulation, or discloses gross mismanagement of public funds - I note gross waste of public funds in many Ministers' administrations in this State - abuse of authority or a substantial and specific danger to public health and safety, is protected by disclosing that information to the appropriate authorities for investigation. The danger of false allegations is adequately dealt with in the bill. People who make allegations based upon

malice which turn out to be false can be dealt with. Assessments might be made on what are believed to be true facts, though other facts that later emerge might change first opinions. Information can be disclosed about what is believed to be corrupt or grossly improper conduct by fellow officers.

Jim Leggate's attempt to disclose what happened in the mining industry is outlined in the article "When honesty doesn't pay". Others who tried to do the honest and right thing had to settle a legal action worth tens of millions of dollars for a lesser sum. Other officers suggested to them, "I will tell you what we will do. We will not accept that. If you continue to try to settle the case the way you want to settle it, we will refer you to the ICAC and we will blow the whistle on you". When the court case came to fruition New South Wales had to fork out $20 million when it could have settled for one quarter of that amount. The balancing of interests has to be considered. The community has a right to know, and it must have confidence in the institution of government.

China is going down the track toward whistleblowing legislation to alleviate corruption. At a conference in China late next year one of the prime topics will be whistleblowing and reform of the public service. If corruption exists in Chinese society to the extent that such provision is being made, steps can also be taken in Australian society. The committee looked at the State Government's Whistleblowers Protection Bill (No. 2) 1992, which has never seen the light of day. Those who have read the committee's extensive report will understand, as the honourable member for Wyong said, the difficult problem in reporting.

First, it is a terrible situation when people have to put in their workmates. I do not think anyone can be certain that what they are saying about a person is 100 per cent correct, and that creates the first problem. Another problem is the victimisation of those who blow the whistle on corrupt or gross improper conduct. If such people can be quietly confident that they will keep their jobs and not be victimised, they will be more inclined to expose conduct which is either corrupt or grossly improper.
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When the committee considered this issue, it dealt extensively with the provision of external disclosure mechanisms from within investigating authorities such as the Auditor-General and the Independent Commission Against Corruption. During its intensive inquiries the committee considered the creation of an offence in relation to persons who wilfully make false or misleading disclosures - an important consideration. The committee also looked at feedback on the protection of disclosures, and a lengthy report was presented on the act of good faith. It is interesting to consider whether the whistleblower's state of mind should be evaluated. The committee's report at page 34, referring to the submission of Whistleblowers Anonymous, states:

> It is irrelevant to society whether the person blows the whistle for the best motives, or out of malice. What matters is that the irregularities that they complain of are corrected, and seen to be corrected.

Malice would only come into the scheme of things if there was no truth in the allegation of corrupt or gross improper conduct by the people involved. I refer to the issue of exposing improper or corrupt conduct to the media when all other avenues have been exhausted. This creates more problems than exposing corrupt or gross improper conduct to the ICAC, the Ombudsman or other investigative authority. I refer to the law of defamation. When someone exposes to the media clearly defamatory material, they should not have a right of privilege in relation to defamation action. The right to privilege should be available only when the information exposed is proved to be substantially truthful and is a material fact. [*Extension of time agreed to.*]

On 27 April the Independent Commission Against Corruption conducted an extensive survey about public sector employee response to its questionnaire. The survey focused on two major themes: public sector employee understanding of corruption and factors that hindered public sector employees taking action about corrupt conduct they may witness at work. The large number of findings were very interesting and were summed up in the letter written by John Mant, acting commissioner. Of course, the

Government spent nearly a year trying to find someone to take the position of ICAC commissioner - which also illustrates its incompetence to govern the State of New South Wales. Be that as it may, the survey sample concluded:

- there is diversity in the range of behaviours which public sector employees identify as corrupt;

- stressing the harmfulness of the conduct assists employees to identify behaviour as corrupt; and

- safe and effective reporting mechanisms will be of little use if people do not believe that there is any point in using them.

The only occasions those mechanisms can be used is when people are protected from harassment and vicious attacks for telling the truth about improper or corrupt conduct in their departments. I remind honourable members of the trials and tribulations of Eddie Azzopardi. His story began when a police officer went through a red light and collided with him as he was travelling down the highway. Next thing he knew was that he was charged. For the past 10 years he has fought to prove police corruption. He was victimised, threatened by thugs, and his garage was burnt down, yet he persisted and his claim that police were harassing him was proved correct. We know the result of the ICAC inquiry in regard to the police officers who attacked Eddie Azzopardi. If certain people behave in that way towards ordinary citizens, how do they behave towards public servants who really need protection? Many editorials have been written about this very issue. The *Sydney Morning Herald* on 2 September under the heading, "Whistleblowers need protection" stated:

> The protection of whistleblowers is a critical part of any regime that aims to make the public service open and accountable.

If the aim of government is to make the public service open and accountable, it is essential that whistleblowers are protected. For that reason alone it was important that the Government introduce the Protected Disclosures Bill. The editorial continued:

> The Independent Commission Against Corruption found that nearly 75 per cent of NSW public servants feared for their position if they reported corrupt conduct.

Why should they not be in fear? If a married man or married woman who relies on his or her job learns of corrupt conduct within a workplace, why should he or she be the martyr and put someone in and suffer the consequences while their colleagues reap the benefits of their actions? Honourable members will recall the occasion when the honourable member for South Coast informed the House that two police whistleblowers had survived murder attempts. The extremes to which some people will go! The honourable member for Wyong said that one person who came before the committee had been told that a contract had been put out on him. I refer again to the *Sydney Morning Herald* editorial, which stated:

> Less than 5 per cent of them, though, perceived whistleblowers as "troublemakers".

Very few people within the public service perceive those who tell the truth about what is going on - matters they know to be gross improper or corrupt conduct - as troublemakers. They are people carrying out their functions as public servants. The final passage in the *Sydney Morning Herald* editorial was directed to the Government and the Opposition. It stated:

> The Independent MPs in the NSW Parliament have put forward a Protected Disclosures Bill that deserves support from the major parties. The credibility of Mr Fahey and Mr Carr as careful managers will be measured by their attitude to this legislation.

The flippant and flamboyant behaviour of the Minister for the Environment confirmed his total disregard for the right of members to speak on the issue. One can only conclude that the attitude of the

Government is to try to make the public service accountable so that after seven years of coalition administration the people of New South Wales will have confidence in what the Government does. The *Daily Telegraph Mirror* refers
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to "security for dobbers". I should like to quote the Minister for the Environment, who on 21 April said to this House:

> As was observed in one submission, the public interest lies in the truth of the disclosures made, rather than in the subjective reasoning of the individuals who make them. In light of these comments, both the "good faith" and "suspects on reasonable grounds" requirements have been removed from the current bill. The primary test for now securing the bill's protection is purely an objective one, namely, a disclosure by an individual must "show or attempt to show" that there has been misconduct.

That is what the Minister had to say in this House at that particular time, and it showed that he had some feelings about what was happening. Tonight he has shown he has no feelings in that regard. On 17 November 1992, the Premier and Treasurer said:

> It was suggested that public authorities should be encouraged to accept the primary responsibility for dealing with misconduct where this is appropriate. The view was put that it was incompatible with this objective to provide a greater degree of protection for disclosures made externally, as such a situation might tend to deflect to external authorities disclosure about misconduct which could more appropriately be made internally to the management of an authority.

In 1992 there was some desire to have whistleblower legislation - [*Time expired*.]

Mr HARTCHER (Gosford - Minister for the Environment) [8.31], in reply: On behalf of the Government I thank all honourable members who contributed to debate on the Protected Disclosures Bill. It is always fascinating to hear speeches in this Parliament on such subjects. Who would have thought that a member of this House would seriously hold up the People's Republic of China, the most repressive, totalitarian regime in the world, as a paradigm to be followed on an issue such as this, yet the honourable member for Auburn held up China's protected disclosures legislation as a model to be emulated. I will not canvass the many arguments advanced in support of this legislation. Clearly it has the support of the Government - the Government introduced it - and the support substantially of the Opposition and of the crossbenchers. But the issue of disclosure of last resort will be considered in Committee when the foreshadowed amendments of the honourable member for South Coast and the honourable member for Ashfield are debated.

The Government does not accept the foreshadowed amendments, for the simple reason that the protection of those who engage in this type of conduct must be limited. It cannot be absolute. The Government's intention is to protect the public interest and to ensure that the public system works effectively. That cannot be done by granting total immunity or a high level of immunity to people who are mischievous, vexatious or motivated by malice or ill-will and who have a reckless disregard for the truth. This objective is not achieved by encouraging such people, by providing them with a shield to which they are not entitled. The Government believes that public disclosure of some allegations may unjustifiably and irreparably damage reputations, especially when those allegations are found subsequently to be groundless or inaccurate.

Further, the requirement in the foreshadowed amendments that the allegation be substantially true may be insufficient to dissuade a person making a public disclosure from going to the media when he or she remains convinced of the truth and importance of the allegation, despite the finding by the investigating authority that the allegation is without foundation or is unworthy of investigation. In recent times the so-called disclosures of people in universities and the State Rail Authority have been investigated, properly assessed and found to be without merit, yet these people still insist for some psychological reason of their own on coming forward to demand that they have the right to publicly

ventilate their spurious, ill-founded and often totally untruthful allegations. The Government is cognisant and supportive of the majority view of the legislation committee that the arguments in favour of whistleblowers being able to make disclosures to the media no longer apply after the bill's introduction, as the reason they had to go to the media is removed by the fact that the bill will be law. That will give them the protection they seek, whereas before they had no outlet other than to go to the media.

Nor does the Government agree that last resort disclosure to members of Parliament should be protected under the bill. If such disclosures were to be made to members of Parliament, what investigatory steps could those members then take to establish the veracity or otherwise of the allegation? None. They have neither the powers nor the facilities to make inquiries, and, accordingly, all they can do is act as a post box. At least with disclosures to the media, an innocent party injured as a result of allegations that are published may be able to seek, if they can afford it, some redress through the courts. But this remedy would not be available if those allegations were made by a member of Parliament under parliamentary privilege and the member of Parliament would not have been able to verify the allegations because he or she would have no such facilities at his or her disposal. The Government introduced the bill in accordance with the memorandum of understanding that it signed some time ago. The Government believes that the legislation it has introduced adequately discharges the obligations it undertook when it signed the memorandum of understanding. It commends the legislation as it was introduced and will resist the foreshadowed amendments.

Motion agreed to.

Bill read a second time.

In Committee

Clause 4

Mr HATTON (South Coast) [[8.38]: I move:

Page 3, clause 4. After line 15, insert:

"**journalist**" means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media;

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Mr WHELAN (Ashfield) [8.39]: The Opposition agrees with the amendment, which is in line with a series of amendments that it proposed to move. I foreshadowed some amendments in my second reading speech which, because of agreed changes to the wording, have the same effect. The importance of the definition of "journalist" is evident when one reads clause 19 of the bill, particularly as it relates to the definition of "protection". If there is any criticism of the bill, it should be of clause 19.

Mr HARTCHER (Gosford - Minister for the Environment) [8.40]: The definition of the word "journalist" is not innocuous. The Government rejects this amendment and it does not accept the consequential amendments on which this amendment is based. The definition of "journalist" is extraordinarily wide. It means anyone who, from time to time, might write something or edit something that will be tendered for publication. A journalist may not work for a major organisation or any organisation at all. A journalist might work for a school newspaper or a church magazine. I am surprised that the honourable member for Ashfield has accepted such an amendment. The definition of "journalist" is so wide as to be meaningless. Accordingly, the Government rejects the amendment.

Mr HATTON (South Coast) [8.41]: The Minister for the Environment said that he wondered why anyone would accept such an amendment. He made the spurious comment that a journalist might work

for a church or school magazine. Unless a person blowing a whistle on problems within a government department is deranged - and I am sure such situations are provided for in the Act - or is vexatious or stupid, he or she would not go through the process of reporting problems to the Ombudsman, to the Independent Commission Against Corruption, to the Auditor-General and to the head of a department, and then go to a school magazine or a church magazine to blow the whistle. The Government is worried about the definition of journalist. That is absolutely ridiculous!

Mr WHELAN (Ashfield) [8.42]: I said earlier that one has to read clause 19 in the amending bill to determine what protection will be afforded. The Labor Party supports the amendment moved by the honourable member for South Coast, which will offer protection to whistleblowers who refer matters to members of Parliament and extend this protection to journalists. The bill has to contain a definition of "journalist" for it to be sound and comprehensible. We are wasting a lot of time in this Parliament talking about this matter. If the Government wants to object, it should cause the Committee to divide on the amendment which refers to a disclosure to a member of Parliament or a journalist.

Mr Hartcher: Is that your advice?

Mr WHELAN: It is not my advice; it is what members of the Labor Party will be doing.

Amendment agreed to.

Mr WHELAN (Ashfield) [8.43]: I move:

> Page 3, clause 4, lines 21-23. Omit all words on those lines, insert instead:
>
> "**public official"** means a person employed under the Public Sector Management Act 1988, an employee of a local government authority or any other individual having public official functions or acting in a public official capacity, whose conduct and activities may be investigated by an investigating authority;

This definition, like the previous definition, will further define what a public official does and will include those involved in local government authorities.

Mr HATTON (South Coast) [8.44]: I strongly support this amendment. It is important to have a wide definition of "public official" in order to ensure that people in the senior executive service, heads of departments and people under contract in local government are protected.

Mr HARTCHER (Gosford - Minister for the Environment) [8.45]: Once again the Government rejects this amendment for the very clear reason that the definition, which is extraordinarily wide, goes outside the scope of the legislation, which was designed to protect disclosures by public servants. That is what it is all about. The Opposition is saying that virtually anyone who has contact with the Government and who acts in some capacity - it could be the holder of some office, whether or not a public servant, or a contractor to the Government supplying a service - could be caught by this definition. Their conduct or activities may be investigated by an investigating authority, and that investigating authority could be anyone. The Police Service is an investigating authority. Anyone who has a contract with the Government and who could be investigated by the police could be defined as a public official. This definition is ludicrous and it defeats the whole purpose of the legislation, which is to protect people employed in the public service.

Mr HATTON (South Coast) [8.46]: If it was not made clear earlier in debate by the Minister for the Environment, he certainly made it clear in his comments on this clause that the Government does not want a whistleblowers Act. The Government is bound by the charter of reform, so it is going through the motions. It does not want a wide definition of "public official". The honourable member for Wyong referred to improper activity by the area health board in his electorate. It is important for people in the

senior executive service, for heads of department, for people on area health boards and for people acting in an official capacity - in this case it is limited to people employed under the Public Sector Management Act or an employee of a local government authority - to be embraced by the Act. Those people are responsible for the expenditure of public money, for contractual arrangements and for handling sensitive information. Surely they should be protected if, in the wider public interest as defined in this bill, they go public - after all the other provisions are complied with, if necessary - to a journalist or to a member of Parliament. It is quite clear that the Government does not want to protect people making such disclosures.

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Mr WHELAN (Ashfield) [8.48]: I draw the attention of the Minister for the Environment to the definition of "public official" in the Independent Commission Against Corruption Act. I am sure the Minister is aware that that Act includes a comprehensive definition of public official, as it does for public authority. A public authority is specifically described in the definition section of that Act as a local government authority. A public authority includes everyone from the Governor down to a member of the police force. I remind honourable members of the obligation under the Independent Commission Against Corruption Act. If they become aware of conduct referred to in sections 8 or 9, they have a duty under section 11 to notify the commission of possible corrupt conduct. This amendment seeks to provide a mechanism to include local government officers, who are already covered by the Independent Commission Against Corruption Act in the Protected Disclosures Bill. They already have that duty. They might be prosecuted if they fail in their duty to notify the commission of possible corrupt conduct. This amendment, which is a tidying-up provision, extends to local government. I urge the Minister and the Government to reconsider their position and their opposition to the amendment.

Amendment agreed to.

Clause as amended agreed to.

Clause 8

Mr HATTON (South Coast) [8.50]: I move:

Page 4, clause 8, line 18, insert:

; or

(d) to a member of Parliament or to a journalist.

The Government wants to fight this amendment and the ensuing amendment about disclosure to a member of Parliament or a journalist in the trenches, and will divide on it. I am so pleased that the Government will be calling a division, because that is an announcement to the general public of New South Wales that the Government wants a whistleblower to blow a whistle in a soundproof room. It does not want a whistleblower to be able to have a matter exposed on the floor of the House by a member of Parliament. It does not want a person in the public service - the "public official" as per the new definition in the bill - to be able to speak with a journalist about a matter after going through all the other available avenues.

The Minister for the Environment said that members of Parliament can only act as post officers. Thank you very much, Mr Minister. We now know what you think is the duty of members of Parliament on the floor of this House. We now know what you think are the responsibilities of members of Parliament. Their duty is not only to represent the electorate, but to represent the wider public interest for the good order and government of this State. That includes standing up in this House and revealing corruption, mismanagement, wastage, nepotism, ineffectiveness and inefficiency in the public service.

That is their sworn responsibility, and this legislation will enable them to do that more effectively.

Where do they get their information from? They get it from the public service. Many of them get information only from newspapers, but if one is to do a proper exposé in this House, one does one's homework, one checks one's sources, and those sources are people who work or who have worked in the public service and who are in a position to know. If the Minister for the Environment is silly enough to stand up in this House and make allegations that he cannot back up, he must accept that responsibility and all the opprobrium that goes with it. The Minister then said that a member of Parliament is not able to check out and verify allegations. Many honourable members who have taken a responsible role in this House have been effective simply because they have taken the trouble, as is their responsibility, to verify what they say in the Parliament and to check out their sources.

The final point is the most telling. Does this Government want to deny a public servant, whose sworn responsibility is to serve the public and the public interest, the opportunity to go to an elected representative of our State and tell the truth so that that elected representative can expose the matter in the Parliament? Of course there will be people who will not tell the truth, but by opposing this amendment the Government is seeking to prevent public servants from exercising the most basic of civil liberties, that is, the right to go to a member of Parliament and expose what they have discovered without putting themselves at risk by doing so. It is outrageous.

Mr D. L. PAGE (Ballina) [8.53]: I feel motivated to make a few comments on this matter, having chaired the committee on this important piece of legislation. We have just heard from the honourable member for South Coast a biased view of the world as it applies to protected disclosures. He is saying that the rights of the whistleblower are paramount and the people about whom the whistleblower is making allegations, whether they be public authorities or individuals, somehow do not have any rights. We have not previously had protective legislation such as this, whereby people could go to an appropriate investigating authority, whether it be the ICAC for corruption, the Ombudsman for maladministration, or the Auditor-General for gross waste. The legislation gives whistleblowers the protection to do precisely that.

Having been through that process, this amendment says that even if the ICAC said that a person or an organisation is not corrupt or guilty of any other misdemeanour, a public official would still have the right under parliamentary privilege to make a disclosure to the world through the media. That may have been relevant prior to this legislation. Maybe then the media were the last resort from which to seek public support for some sort of sympathy for a cause; but the legislation provides for protected disclosure and penalties of up to 12 months imprisonment for those who take reprisals against people who make disclosures.

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The whistleblower has an enormous amount of protection under the current arrangement. Agreement with the amendment would signal absolutely no faith in the ICAC, absolutely no faith in the Ombudsman and absolutely no faith in the Auditor-General to assess the matters that come before them. The honourable member for South Coast, despite the judgments of the appropriate authorities, will allow people to go to the media and to vilify, if the allegation is not true. Under this legislation, allegations do not have to be true for a whistleblower to be given protection.

Ms Nori: They do.

Mr D. L. PAGE: They do not have to be true. Read the bill. Honourable members opposite have not read it. If the Opposition passes this amendment it will put the rights of the whistleblower above the rights of the individual about whom the whistle is blown. The Opposition is saying that is in the public interest. Superficially that has some argument, but I remind honourable members that when Professor Finn appeared before the committee he said:

We must remember that this legislation covers the interests of at least four groups. It covers the interests of the whistleblower, it covers the interests of the public authority involved, it covers the interests of the person or persons impugned by the whistleblower's disclosure, and it also covers the public interest.

I believe that the honourable member for South Coast is a reasonable person. If he is aware of my involvement in this legislation he would know that I tried very hard to make it better than it was before, and I believe we have gone a long way down that track. I suggest to the honourable member for South Coast in all seriousness that by moving this amendment, supported by the Labor Party, he will put the rights and the interests of the public authority involved and the interests of the persons impugned by the whistleblower's disclosure at the bottom of the heap. He is moving to the top of the heap the interests of the whistleblower as though that were some end in itself. This legislation is not about providing a mechanism for whistleblowers to vent their complaints about the bureaucracy; it is about improving public management and accountability.

The honourable member for South Coast is saying, in effect, that it is okay for whistleblowers to make a disclosure to bodies that are equipped to investigate allegations, but if they say there is nothing in it, the whistleblowers should be allowed to go to the media. What investigative ability do the media have compared with the ICAC on matters of corruption? What investigative ability do the media have compared with the Ombudsman on allegations of maladministration? The media have to deal with a whole range of issues, not just public interest, which is the case when it comes to the ICAC, the Ombudsman and the other investigative authorities.

The media are concerned about profit; they have to sell newspapers. But the honourable member for South Coast is trying to tell me that the media should be put up as some kind of equivalent body to evaluate whether an allegation made about a person or a public authority is valid. The honourable member for South Coast is saying that even when whistleblowers have been to all the official investigative authorities, they still should have the right to go to the media. I question whether the media have the investigative powers that Opposition members and Independent members have suggested they might have. The final point I make relates to the criteria to apply in the provision of protection for disclosures made. Who is to decide whether those conditions have been met?

Ms Nori: The courts.

Mr D. L. PAGE: Exactly. Acceptance of the amendment would be great for lawyers. The amendment sets out certain criteria that would have to be proved. If we were to accept the amendment we would be opening Pandora's box. I am surprised that the honourable member for South Coast has moved an amendment that would result in a bonanza for the lawyers. Who would decide whether a person should be protected? The matter would go to lawyers and would end up in the courts. I put it that this series of amendments - and they are all related - concerning matters such as a last resort test and disclosure to the media was discussed at great length by the legislation committee. In fairness to members of the committee, the issue was difficult. I thank Opposition members for their constructive approach throughout the committee process.

These amendments were the issue upon which the committee divided. Government members did not divide on the issue for some philosophical reason. We said that we wanted legislation that would protect the whistleblower and that arguments that applied previously about whistleblowers needing to go to the media in order to present a case would not apply under this legislation. To provide a last resort of going to the media would be to say implicitly that we do not have faith in the investigating authorities. Occasionally the investigating authorities might fail, but to provide that a whistleblower could go to the media would ultimately be to send a strong message that in terms of capacity to investigate such matters the media were somehow equivalent to the ICAC, the Ombudsman, or the Auditor-General. Frankly, I have real difficulties with these amendments. The legislation is good but I cannot support the

amendments.

Ms NORI (Port Jackson) [9.02]: The chairman of the legislation committee was correct in saying that this series of amendments was the one issue that divided the committee. I reiterate that the committee was well run and that committee members did not draw daggers on this issue. I understand the Government's position, and I understand arguments put forward by Government members, who made cogent arguments for their position. But I do not agree with them; I found that the balance tipped in favour of providing for a whistleblower, as a last resort, to go to the media. The previous speaker was also correct in saying that the issue is difficult and vexed. Honourable members who have read the

report of the legislation committee would realise that on this section there was a dissenting report, signed by my colleague the honourable member for Wyong, the honourable member for Bligh and me.

The honourable member for Wyong, the honourable member for Bligh and I came to the conclusion that if the legislation was to have any meaning the provision for disclosure to the media had to be available and had to be protected. I must confess that I did not reach this position quickly or without deep consideration. The committee received submissions from various groups. The Australian Press Council, predicably I suppose, favoured the provision. The council stated that a disclosure to a journalist or to the media in general should be a protected disclosure under the bill when the whistleblower in good faith believes in the truth of the matter and it is in the public interest, for example, to disclose corrupt conduct, maladministration or substantial waste to a journalist or the media.

Mr Hazzard: What about when a disclosure is false, wrong?

Ms NORI: Why is the honourable member not patient? If he would listen to my reasons he would understand why I feel comfortable in supporting the amendment. The amendment takes us to the issues of good faith and truth. The ICAC submission made a number of points. The commission stated that premature public disclosure could hamper proper investigation. I understand why the ICAC would say that. It is important that any public disclosures not be made in such a way that would impede or compromise operational matters. The ICAC pointed out that public disclosure could unjustifiably damage a reputation when an allegation subsequently proved to be groundless or inaccurate. The commission stated that distorted, unbalanced or sensational media reports could focus on the allegation rather than on any measures that might be taken proactively to deal with the concerns raised by the whistleblower.

I recognise the difficulties in allowing a whistleblower to go to the media. The ICAC also stated that institutions may fail and that a safety valve may be necessary when inaction or victimisation occurred, but that public disclosure should be a last resort and the circumstances in which the public disclosure is protected should reflect this. Honourable members will notice that there is a theme being developed by those who made submissions to the legislation committee. The theme consistently encompasses concepts such as good faith, last resort and truth. The House will be pleased to note that the amendments moved by the Opposition reflect that theme. Dr Simon Longstaff of the St James Ethics Centre brought a similar concept to the attention of the committee. His organisation felt that disclosure to the media could be justified if a whistleblower had reasonable grounds to believe that the report made was true, if the allegation had been found to be substantially accurate, and if, notwithstanding his or her failure to avail of established procedures, that course was excusable in the circumstances. I do not quite agree with the last point.

Anyone who was going to go to the media must have exhausted all of the hoops, and the Opposition's amendments reflect that. A whistleblower does not have the right to go to the media as a first port of call. A whistleblower would have to show good faith, and, from my point of view, one of the tests of good faith is that all possible hoops must have been exhausted. That means that a matter would have to be investigated either within a department or by an investigating authority. The submission made by the St James Ethics Centre reiterates the notion that disclosure to the media by a whistleblower could be justified if it is made in good faith, if the whistleblower believes that what he or she is saying is

true, and if the substance of the claim is found to be accurate. Not by a long shot are we supporting the right of a whistleblower to go public on any whim and make any old allegation.

A number of those making submissions to the committee were asked who would ultimately determine the test of good faith, the test of accuracy, and so on. If a matter ever came to that, of course it would have to be the courts who decided and, yes - surprise, surprise - the lawyers would make a fortune. I am afraid that is a reality of life in a big city. Who but the courts could decide? When the Opposition's amendments are made clear to the House it will be understood that a person would have to go through enormous hoops before reaching the point of making a disclosure. A submission made by Whistleblowers Australia stated:

> The only protection that whistleblowers have had in recent years has been to turn to the media and depending on public outcry to keep themselves from prosecution or retaliatory discharge.

Whistleblowers Australia stated that whistleblowers are reluctant to endorse support for a bill which denies them the right to approach the media with their complaint, for up to the present that has been the only protection they have had. Once a whistleblower makes his or her disclosure the information is no longer under his or her control, leaving no assurance that the matter will be investigated. It would appear to be inappropriate to rule out an approach to the media. Whistleblowers Australia is made up of many people and certainly includes those who consider themselves to be victims of a system that did not afford protection to them as whistleblowers. I take the point made by the honourable member for Ballina that in the past the only option whistleblowers may have had to protect themselves was to go big to the media and give themselves sufficient notoriety - and I do not say that pejoratively - to gain protection.

To some extent the honourable member was correct when he said that if this legislation is used properly, if it works and all the nuts and bolts fit together, whistleblowers will not need to go to the media. There is also provision for an ongoing committee to review the bill, so the Parliament will hopefully have the opportunity to monitor its success and to finetune it. After 12 months the Parliament will be in a position to know whether it is working. If it is working, no whistleblower, or very few

whistleblowers, will have to go public. But I would not like to leave out the option of going to the media. Even though the bill will help many people, the theoretical possibility of complete institutional failure - hopefully not a possibility in reality - cannot be ruled out. That option has to be available for that one case in 1,000 or that one case in one million when everyone gets it wrong; when, no matter what the whistleblowers do, no-one has listened to them or followed up their cases. The Parliament has to provide for the case that will occur once in a blue moon - though hopefully never.

People of integrity and intelligence find themselves in an unenviable position. They feel they have uncovered something and that they have acted in the public interest. They are slapped down, intimidated, isolated, retaliated against, demoted, threatened - either overtly or covertly, by omission or commission - or, worse, they feel they have to suffer a tyranny of silence and be victims for the next five or 10 years, never asking for a promotion in case they are slapped down, too frightened to point out the obvious. The corruption, waste or maladministration simply continues.

The possibility cannot be ruled out that at some stage even venerable institutions like the Independent Commission Against Corruption, or investigating authorities such as the Auditor-General or Ombudsman, might get it wrong. I want these amendments to be available to provide for those instances. To hopefully allay some of the Government's fears, I refer to the minority report of the legislation committee. The committee wanted to ensure that a disclosure to the media must be a last resort. Whistleblowing is no joke; going to the media is no joke. People cannot afford to ruin the reputation of a third party unless they are certain of what they are doing. The allegation has to be true in all material respects. If whistleblowers sincerely and genuinely believe they have got it right but happen to be wrong, that is no excuse. They have to believe that what they are doing is in good faith, and they have to be substantially correct in what they are alleging.

Allegations should not be knocked out on a technicality because the time or date is slightly wrong; they should not suffer because they have slightly mixed them up or the access to information may be imperfect; because not every piece of the jigsaw is available and although they are basically correct there are a few inaccuracies around the edges. The test of being substantially correct or being true in all material respects is to ensure that the core of the evidence is correct. However, if an allegation is erroneous because of a person's incapacity to be in possession of all the facts it should not be knocked out. The committee also submitted that whistleblowers had to have gone through all the hoops.

In return, whistleblowers are given protection from defamation if they meet all the criteria. The media outlet that chooses to print, disclose, amplify, or screen is not protected from defamation under the Opposition's amendments. It has to accept that responsibility. The Opposition is not making the media judge and jury. In case the whistleblowers have it wrong, the so-called innocent third party against whom allegations have been made will have a right of recourse to take a defamation action in the courts. Would the Minister rather sue the media, or an individual who does not have two coins to rub together? I would prefer to sue the media; we all would.

The amendment makes it difficult for whistleblowers to go to the media until they have first passed through all the hoops, and the media can still be sued. The ordinary laws of defamation will hold. It is a compromise between the rights of whistleblowers and the rights of the third party, who may be mistakenly or innocently victimised by the allegation. I cannot imagine the media printing many defamatory statements, so the interests of all parties have been served. Consequently, I am happy to support the amendments.

Mr D. L. PAGE (Ballina) [9.16]: I should like to respond to a few of the points made by the honourable member for Port Jackson, who made a valuable contribution to the debate. The legislation in its current form with these amendments will not prohibit people from going to the media if they have been to the ICAC and elsewhere under protected disclosure. The Government has said whistleblowers will not have the right of parliamentary privilege if the complaint has been investigated by the ICAC, the Ombudsman or the Auditor-General and has been found to have no substance. If they go to the media they do so on the basis of law that is normally available. This amendment would give them parliamentary privilege to go to the media. The Government is not denying people the right to go to the media, but they will go with the normal protection that applies, rather than with this super protection of parliamentary privilege.

The honourable member for Port Jackson also said that the media will not be exempted from defamation proceedings. That is true. Anyone who has ever contemplated defamation action against the media will know that it is an expensive exercise. That is a good reason why the defamation laws in New South Wales need to be reviewed. Nothing in the amendments would prohibit whistleblowers from going to the media; they would be totally protected under these amendments, despite the fact that they have been to the ICAC. The media could run the story in the reasonable knowledge that it is unlikely that they would be taken to court on a defamation action because it would cost $80,000 to $90,000 to get it off the ground. The High Court recently decided a case involving defamation and the rights of people to comment on public policy. People have an implied right under the Constitution to make judgments about public policy and public figures. In a sense, the public figure test is similar to the test in the United States of America. It cannot be assumed that the media will be responsible about whether to publish a protected disclosure made by a whistleblower because they are frightened of being sued.

The effect of the High Court decision, I believe, is that they are unlikely to be sued and know they have far more resources than the average individual. Clause 19(4) provides that a public official must have reasonable grounds for believing that a disclosure is substantially true. The allegations do not have to be true, but there need to be reasonable grounds for believing that an allegation is substantially true.

The bill provides woolly definitions, but who will decide whether an allegation is substantially true or that a person had reasonable grounds for believing a disclosure to be substantially true? I ask the honourable member for South Coast to address that question. Clause 19(3)(b) provides that they must have decided to investigate the matter, but not completed the investigation, within six months of the original disclosure being made.

That provision has a real potential difficulty. It would be most inappropriate for a whistleblower to go to the media, say, seven months into an investigation, when the Independent Commission Against Corruption or the Ombudsman was in the final stages of proving corrupt action. If a whistleblower makes a disclosure to the media because the six-month time limit is up, the efforts of the ICAC or other investigating authority would be completely thwarted. As the honourable member for Port Jackson said earlier in her qualitative remarks, ICAC expressed concern that it is not always in the best interests of an investigating authority if disclosures to the media are made before investigations are complete. Some investigations cannot be completed within a six-month period. Disclosures could be made which would be detrimental to the public interest.

Mr CRITTENDEN (Wyong) [9.23]: I want to address the issue raised by the honourable member for Ballina that a whistleblower would still be able to go to the media irrespective of the result of the amendment. The whistleblower could go to the media, but the crucial question is whether the whistleblower would get protection. That is the crux of the matter. Whistleblowers who go to the media in the first instance, after going through all the hoops mentioned by the honourable member for Port Jackson, would not know whether they are protected from defamation. The committee's dissenting view, on page 19 of the report, is that the test operates after disclosure is made, and that a person cannot be certain at the time of media disclosure that protection will be provided. A person making a disclosure will be in the same position as a person seeking to justify a defamatory statement. That is appropriate in view of the capacity of such disclosure to harm an individual.

Irrespective of arguments advanced by the honourable member for Ballina, whistleblowers will not know, at the stage when they go to the media, whether they are protected from defamation. Disclosures made by whistleblowers will have to be substantially true. A whistleblower would have to be pretty tough and have great inner strength to go through all the hoops set out in the proposed legislation and say, "I am still right. I know I am right. I have got the evidence and I am prepared to run with what I have got". In my second reading contribution I pointed out the case of an employee who in the first instance was threatened with defamation. Thankfully, the proposed legislation will overcome that problem. The Opposition's amendment seeks, in the case of institutional failure, to overcome the problem faced by a person who has all the information and who has the right to go forward to the media as a last resort. It is a last resort test and does not arise at first instance. People have to meet the criteria. The honourable member for Ballina mentioned the six-month rule. In the proposals of the honourable member for South Coast and the honourable member for Ashfield there is a six-month requirement, but in the circumstances the reasonable person test would have to be given a fair go. If ICAC or the other investigating authorities, the Ombudsman or the Auditor-General, come forward and say they are proceeding but cannot wrap it up in a six-month period, that problem can be overcome.

I turn to institutional failure, where the whole system has broken down. Systems can break down. An employee of a Government department who finds corruption there can go to ICAC in the first instance and pass all the tests. Suppose ICAC - though this would not happen - investigates a matter in the first instance and finds nothing wrong, that there is no problem, but the whistleblower still perceives a problem, has the goods and decides to again say there is a problem. That person should be given the option of going back to the media and allowing the facts to emerge. Bureaucracies are little clubs. In the "Spectrum" section of last Saturday's *Sydney Morning Herald* an article appeared about how the public service in Canberra used to run and how it runs now. In November 1993 an article appeared in the *Bulletin* about whistleblowers, indirectly. We all know how the public service runs. When there is institutional failure, when people go to the Commonwealth Club or elsewhere and have a discussion and say "Look, we can keep this under wraps and make sure nothing comes out", that is when real problems

occur.

Those who legitimately believe there is major corruption in an organisation should not be jeopardised, because they will not know they are protected until after they have come forward. Many whistleblowers would have to be tough to get to that stage. Most would not be able to mount a case unless they had fair grounds for believing what they said was true. This thing has been around like a smelly cat for over 18 months. The legislation committee reported on 30 June 1993. Opposition members, including myself, the honourable member for Port Jackson and the honourable member for Bligh, issued dissenting recommendation No. 4. The report was in the Parliament on 30 June 1993, and that has been our position consistently since then. It is no secret that we are addressing this critical issue at the death knell. On 9 March 1994 the honourable member for South Coast was reported in the *Sydney Morning Herald* as follows:

> We are saying that if a public servant has used the proper channels to expose waste or corruption and nothing has been done, then they should be able to go to the press without fear of reprisals.

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As the honourable member for South Coast commented, the Government's bill allows whistleblowing so long as it is done in a soundproof room. We must protect the system and the ordinary person who blows the whistle. Without this proposed amendment the bill is substantially deficient.

Mr FRASER (Coffs Harbour) [9.30]: The honourable member for Wyong spoke about institutional failure. The assumption of the Australian Labor Party, and possibly the honourable member for South Coast, is that institutions fail. At times they possibly do but following the advent of the Independent Commission Against Corruption, the Ombudsman and other bodies, the Government, all public servants and anyone acting in the public service are accountable for their actions. The Opposition has indicated publicly and to this House that if it were ever to gain office it would abolish the ICAC. It is nothing more than a smokescreen to claim institutional failure of a body that the Opposition wants to see removed.

The honourable member for Port Jackson asked who would the Opposition rather sue? If a person is defamed in the media, would the Opposition prefer to sue the media or an individual? Obviously the media have more money than an individual - or so one would assume - and we would all love to sue the media. How many times has a local or metropolitan newspaper reported statements that cannot be backed up, defamation action has been taken by the individual against the newspaper and a retraction has been printed some days later? The retraction is never on the front page and is never as big as the original headline; it is always printed on page 5, page 7 or page 12. In the meantime, the individual has suffered personal damage and a loss of reputation that can never be regained.

No matter how strongly one may say that whistleblowers must be protected, fallacious arguments can be put forward by whistleblowers who do not like their bosses because of the way they part their hair or the way they wear their tie. Those people want to run the argument through the Ombudsman, through the ICAC, everywhere, and if no case is found proved, they want to be able to go to the media. Instead of reporting the news, the media make the news and, as the honourable member for Port Jackson said, the media are sued for defamation. The media have access to large amounts of money, to Queen's Counsel and to legal aid; the average person is without that access, is intimidated and accepts the page 12 retraction.

At the end of the day reputations and careers are ruined, perhaps as a result of fallacious argument. This amendment provides protection to the whistleblower who seeks to make fallacious statements to try to destroy someone for personal reasons. Bureaucrats and public sector employees are doing their jobs but may have a personality clash or may not have a personality that attracts support and loyalty from staff. The problem arises when those people are maligned in the public arena. This amendment will guarantee protection to a person who wants to make such claims on the understanding that that person

will be in no way accountable.

What is the normal procedure for the media? A newspaper runs the claim on the front page, makes a lot of noise, ruins the reputation of the person concerned and at the end of the day will only refer it for investigation to a body such as the ICAC or the Ombudsman. The claim is reinvestigated, disproved once more and the person's reputation is shot. I am surprised that the honourable member for South Coast proposes such an amendment. Over many years prior to my becoming a member of Parliament he made many statements under privilege in this House. Yet now he says it should be possible for those statements to be made publicly, knowing that the person who makes such a statement will be protected from any recourse, apart from the flimsy argument about who to sue put forward by the honourable member for Port Jackson.

I cannot support this amendment; it is a form of justice gone mad. It is an argument put forward by the Independents and the Labor Party for political gain, and nothing else, to try to protect whistleblowers - I do not say all whistleblowers because in some instances they need protection. Unless they are given some protection, there will not be accountability in the public service. We must ensure that a whistleblower cannot make a fallacious statement and ruin someone's reputation for the sake of personal grievance. This amendment will do just that. I urge the Committee not to support the amendment. Any further arguments put forward by the Opposition or the honourable member for South Coast cannot support this amendment, as it leaves the individual too exposed.

Mr HATTON (South Coast) [9.35]: I thank honourable members who have contributed to this debate. I have considerable respect for the honourable member for Ballina, for his sincerity and for his work on the committee. I should like to make a couple of points. All citizens have the right to approach a member of Parliament, but public servants and former public servants really know what happens. If the amendment is opposed those people will be singled out, because they run the risk of losing their jobs, or other forms of discipline, punishment or vilification simply because they are public servants who have approached a member of Parliament. That is not acceptable.

The honourable member for Ballina agreed that the Ombudsman, the ICAC, the Auditor-General and other such institutions - he may not have mentioned them all - occasionally get it wrong. As the honourable member for Port Jackson rightly pointed out, that is an excellent reason for a person consulting a member of Parliament. Those organisations may have undertaken thorough investigations, and I refer to Eddie Azzopardi? Three coronial inquests were conducted before that man was able to show that the first two inquests were wrong, that a policeman had acted corruptly, and that policeman ended up in gaol. Eddie Azzopardi was right. The organisations that were supposed to look after truth and justice were wrong, and wrong on two occasions.

It was interesting to hear the honourable member for Coffs Harbour defend the ICAC when one considers attacks by National Party members on the

ICAC over the north coast and Roden inquiries! A public official can adopt a backdoor approach by speaking to another person, who then approaches the member of Parliament. That member of Parliament will then expose the matter and, of course, the public servant is not put at risk. If the public servant goes direct to the member of Parliament, that member of Parliament can protect his source; but if whistleblowers choose to be open, honest, upfront and courageous, they ought to have the same right as everyone else in this country to approach a member of Parliament. Let me give a classic example. Possibly 2½ years ago I raised a cosy arrangement between the Water Board and the computer company IBM, involving more than 1,000 personal computers still in storage, brand new, never been unwrapped but in respect of which the Water Board was paying maintenance contracts.

Somewhere between $12 million and $15 million worth of public funds were wasted on computer software, computer hardware, and computer programs, and IBM was actually designing the protocol for the purchase of computers by the Water Board. I raised that matter in this House. That material was

given to me by an internal auditor from the Water Board. He had gone to the general manager of the board, but nobody wanted to know him. What did the Minister do? I raised the issue publicly because the internal complaints system had not worked, and the Minister rightly and responsibly undertook an investigation and proved that what the internal auditor was saying was correct. That arrangement would never have hit the light of day if that person had not raised it.

The simple fact is that the action taken was very effective, but it did not protect the whistleblower. The whistleblower is now in private enterprise. That person, who was trying to save millions of dollars of taxpayers money and had exposed a fraud worth a maximum of $15 million, was given the push very smartly. He was vilified. What did he do? He did his job. Why all this passionate opposition to the media? The media are the fourth estate. The media, despite all their faults, do a magnificent job in protecting the public interest and the interests of the individual. Under the proposed amendment the complaint must be substantially true. To answer the question raised by the honourable member for Ballina, the court will be the last arbiter of whether it is substantially true. But will all of these things go to court so readily? Will it be a lawyers' feast? I do not believe so, for the following reasons: the Government and or the department would be most unwise to go to court and rehash the whole issue, particularly if there is some hint of scandal, incompetence or whatever.

The argument put forward by the honourable member for Ballina overlooks the fact that the whistleblower will have to go through the hoops. He will have to go, through the senior officers in the department, to the Independent Commission Against Corruption and or the Ombudsman and or the Auditor-General, so it would be generally known whether or not the matter is substantially true. If the whistleblower, as Eddie Azzopardi did, feels in his own heart that the matter is true and he has the courage, then let him go to the member of Parliament. If there is a court case as to whether or not the matter is substantially true, and he chooses not to go to a member of Parliament but to the court system, then he has to provide his own resources, seek legal aid or have the support of the Public Service Association. Though the bill has imperfections, we should give public servants the same rights as ordinary citizens to use the avenue of a member of Parliament, to be protected persons, and consequently not have to run more risks than citizens who are not public officials, such as losing their jobs, being vilified or foregoing opportunities of promotion, et cetera.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 46

Ms Allan	Mr Martin
Mr Amery	Ms Meagher
Mr Anderson	Mr Mills
Mr A. S. Aquilina	Ms Moore
Mr J. J. Aquilina	Mr Moss
Mr Bowman	Mr J. H. Murray
Mr Clough	Mr Nagle
Mr Crittenden	Mr Neilly
Mr Doyle	Ms Nori
Mr Gaudry	Mr E. T. Page
Mr Gibson	Mr Price
Mrs Grusovin	Dr Refshauge
Mr Harrison	Mr Rogan
Ms Harrison	Mr Rumble
Mr Hatton	Mr Scully
Mr Iemma	Mr Shedden
Mr Irwin	Mr Sullivan

Mr Knight	Mr Thompson
Mr Knowles	Mr Whelan
Mr Langton	Mr Yeadon
Mrs Lo Po'	
Dr Macdonald	*Tellers*,
Mr McManus	Mr Beckroge
Mr Markham	Mr Davoren

Noes, 43

Mr Armstrong	Mr O'Doherty
Mr Baird	Mr D. L. Page
Mr Beck	Mr Peacocke
Mr Blackmore	Mr Petch
Mr Causley	Mr Phillips
Mr Chappell	Mr Photios
Mrs Chikarovski	Mr Richardson
Mr Cochran	Mr Rixon
Mrs Cohen	Mr Rozzoli
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 West
Dr Kernohan	Mr Windsor
Mr Kinross	Mr Zammit
Mr Merton	*Tellers*,
Mr Morris	Mr Jeffery
Mr W. T. J. Murray	Mr Kerr

Pairs

Mr Carr	Mr Collins
Mr Face	Mr Fahey
Mr Hunter	Mr Longley
Mr McBride	Ms Machin

Question so resolved in the affirmative.

Amendment agreed to.

Clause as amended agreed to.

New clause 19

Mr HATTON (South Coast) [9.53]: I move:

Page 8. After line 9, insert:

Disclosure to a member of Parliament or journalist

19.(1) A disclosure by a public official to a member of Parliament, or to a journalist, is protected by this Act if the following subsections apply.

(2) The public official making the disclosure must have already made substantially the same disclosure to an investigating authority, public authority or officer of a public authority in accordance with another provision of this Part.

(3) The investigating authority, public authority or officer to whom the disclosure was made or, if the matter was referred, the investigating authority, public authority or officer to whom the matter was referred:

(a) must have decided not to investigate the matter; or

(b) must have decided to investigate the matter but not completed the investigation within 6 months of the original disclosure being made; or

(c) must have investigated the matter but not recommended the taking of any action in respect of the matter; or

(d) must have failed to notify the person making the disclosure, within 6 months of the disclosure being made, of whether or not the matter is to be investigated.

(4) The public official must have reasonable grounds for believing that the disclosure is substantially true.

(5) The disclosure must be substantially true.

I do not want to delay the Committee, but I simply want to say that I share the concerns of members of the Australian Labor Party about clause 19(2)(d). That matter may be reconsidered in another place. Surely any problems that the Government might have had have been clarified by this amendment. The Government should be able to agree to this amendment, which states that a disclosure must be substantially true and that a public official must have reasonable grounds for believing that a disclosure is substantially true. An authority must take reasonable action if a public official has made a disclosure to an investigating authority, public authority or officer of a public authority in accordance with other provisions in the Act. Surely, after doing all that, the person concerned should be protected under the Act. That person should be able to go to a member of Parliament or to a journalist and retain that protection.

Mr D. L. PAGE (Ballina) [9.56]: I am disappointed that the honourable member for South Coast has not addressed many of the concerns that I have raised tonight. I ask him in particular to address the relevance of disclosures to the media with the protection that is afforded under the Act as opposed to the previous situation that applied. It is true that the only avenue available to Azzopardi was for him to go to the media. People making disclosures are now protected, which was not the case before. There is no need now for them to go to the media as a last resort. The equality of rights of an accused and an accuser was referred to by Professor Finn, who said that the interests of a number of people were involved in relation to whistleblowers. Not only should whistleblowers have a right to protection; the person against whom the whistle is blown, whether it be an institution or an individual, should have equal protection. The question of the media not having investigative powers has not been addressed. The media often make a one-day wonder of an issue that is then referred back to the investigative authority. The media are not really equipped to carry out the sort of investigation that I think the honourable member for South Coast would like to see available. Another matter that is causing me considerable concern is the definition of "maladministration" in clause 11(2), which states:

For the purposes of this Act, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory;

That is an extremely wide definition. I put it to honourable members that there would not be one public servant in New South Wales who would not believe at some stage - no matter what the political persuasion of the government of the day - that a policy decision made concerning health or education was unreasonable. This amendment will enable public servants to go to the media, after having gone to the ICAC or other investigating authority, if the investigating authority said, "You are talking a load of nonsense. The Government has every right to implement policy A or B as it is the elected government". The public servant might say, for example, "I do not care about that; it is maladministration and it is unreasonable. I think it will lead to privatisation of the health system and I think it is unreasonable". We could well find ourselves faced with such a situation.

This amendment will enable such a person to make a disclosure in the media with protection similar to that of parliamentary privilege and there is not a damned thing that anybody will be able to do about it. The amendment has a number of problems associated with it. The definition of "maladministration" is too wide. I would appreciate it if the honourable member for South Coast could address those issues. As I indicated previously, I take the legislation very seriously. I support good legislation, but these amendments leave many questions unanswered, and for that reason I cannot support them.

Mr WHELAN (Ashfield) [10.01]: The honourable member for Ballina confirmed the concerns I raised in my speech at the second reading stage. However, as impaired as the bill may be, it is the Government's bill and he, as a member of the Government, is bound to accept it.

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Mr D. L. Page: But you are tacking on something very specific at the end.

Mr WHELAN: That is so, but the honourable member omitted to mention that it refers to conduct or inaction of a serious nature, so the amendment seeks to impose a higher standard. The Independent Commission Against Corruption Act refers to inaction, but it does not refer to inaction of a serious nature. The point raised by the honourable member is valid. However, it is the Government's bill, and far be it from me to suggest that the Government should not be promoting higher standards. Clause 31 of the bill provides for a joint review committee of the Parliament. The Opposition had foreshadowed moving amendments similar to those moved by the honourable member for South Coast, but I am pleased that the position has changed in relation to clause 19(4), which provides that the public official must have reasonable grounds for believing that the disclosure is substantially true and that the disclosure must be substantially true. The amendments proposed by the honourable member for South Coast are important.

However, two matters in relation to paragraphs (b) and (d) in proposed new clause 19(3) concern me. It may be that those fears will be allayed when the bill goes to the upper House for reconsideration. There will be a time when a major investigation will be carried out by one of the public authorities or investigating authorities - perhaps the Independent Commission Against Corruption. It may be that the complainant is not advised by the Independent Commission Against Corruption within a reasonable period - whether that period is defined as six months or otherwise - and the public body might not be examining the complainant's views because they might be part of a larger investigation.

A rider may have to be added to proposed subclauses (3)(b) and (d) to cover such a situation - to indicate that it is part of a wider inquiry and that such examination at that stage would jeopardise the

disclosure of information. However, I largely support the amendments and indicate to the honourable member for South Coast that we will look at proposed subclauses (3)(b) and (d) to ascertain whether it is appropriate for a suitable amendment to be drafted and moved in the upper House.

Mr HATTON (South Coast) [10.04]: The honourable member for Ballina and I are going to have to agree to disagree, each for our own good reasons. The Azzopardi example showed that the investigating authority, in this case the police and the courts, got it wrong on two occasions. Azzopardi was not a public servant. I am sure that the honourable member for Ballina would agree that the ICAC, the Auditor-General and the Ombudsman are not perfect. They will not get it right all the time. Because of work pressures they may decide not to investigate. With regard to the investigative procedures of the media, first, the media are vehicles for reporting what is said in the Parliament and, second, some sections of the media choose to investigate and are vehicles for exposure in their own right.

The point is well taken that it adds to the force of that exposure if they can report what a member of Parliament said and be covered by a qualified privilege if the report is accurate. That is the way the Parliament works. If the member of Parliament decides to expose what has been said to him or her by a public servant, that is a fair decision. All the remarks I made earlier in debate on earlier amendments apply in this debate. But if the department has not investigated thoroughly, if the ICAC, the Ombudsman or the Auditor-General have got it wrong in the opinion of the complainant, how is the matter raised? How does one ensure that somebody has another look at it? It is raised in the Parliament. That is what happens all the time.

I would like a dollar for every time I have questioned an investigation by the police, raised the matter in the Parliament, had it reinvestigated either by the police or another authority, been vindicated and shown that the police have either been wrong or not diligent. For example, the motion relating to paedophilia would not be before the House if some members of Parliament felt that the ICAC would investigate or is investigating paedophilia in a way that will ensure a thorough and unbiased investigation. I refer also to the complaints made by Sergeant Kim Cook about his treatment by the ICAC, and the complaints by members of the National Party about their treatment by Commissioner Roden of the ICAC.

Such authorities can get it wrong because individuals working for them are incompetent, lazy or have been got at. What if the public servant is an employee of the Ombudsman? What if the public servant is an employee of the Independent Commission Against Corruption? They are running grave risks because of the secrecy provisions, but they may have to run those risks. To reveal something of vital importance to the public interest of the citizens of New South Wales they may have no alternative but to go to the Parliament. But the conduct must be of a serious nature. It has to be contrary to law. It has to be unreasonable, unjust, oppressive or improperly discriminatory. I support that wide definition. Something that is unreasonable or unjust or oppressive or improperly discriminatory can be extraordinarily important to the public servant involved and to the business person who is being discriminated against or treated unjustly or unreasonably, especially if the information is, as clause 11(2)(c) provides, based wholly or partly on improper motives. I am very comfortable in moving the amendment and commending it to the Committee.

Mr D. L. PAGE (Ballina) [10.10]: I wish to make it clear to the honourable member for South Coast, as we are obviously going to agree to disagree on so many things, that I could not possibly support any restriction on the rights of members of Parliament to bring before the House matters raised by their constituents or anyone else. This bill will preserve that right. My problem is not with members of Parliament raising matters in the House, that has

never been my problem and it never will be. My difficulty is with the whistleblower who has been to the normal investigative authorities and then goes to the media without going through a member of Parliament. I want to make it perfectly clear that I have no problem with someone going to a member of Parliament.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 46

Ms Allan	Mr Martin
Mr Amery	Ms Meagher
Mr Anderson	Mr Mills
Mr A. S. Aquilina	Ms Moore
Mr J. J. Aquilina	Mr Moss
Mr Bowman	Mr J. H. Murray
Mr Clough	Mr Nagle
Mr Crittenden	Mr Neilly
Mr Doyle	Ms Nori
Mr Gaudry	Mr E. T. Page
Mr Gibson	Mr Price
Mrs Grusovin	Dr Refshauge
Mr Harrison	Mr Rogan
Ms Harrison	Mr Rumble
Mr Hatton	Mr Scully
Mr Iemma	Mr Shedden
Mr Irwin	Mr Sullivan
Mr Knight	Mr Thompson
Mr Knowles	Mr Whelan
Mr Langton	Mr Yeadon
Mrs Lo Po'	
Dr Macdonald	*Tellers*,
Mr McManus	Mr Beckroge
Mr Markham	Mr Davoren

Noes, 43

Mr Armstrong	Mr O'Doherty
Mr Baird	Mr D. L. Page
Mr Beck	Mr Peacocke
Mr Blackmore	Mr Petch
Mr Causley	Mr Phillips
Mr Chappell	Mr Photios
Mrs Chikarovski	Mr Richardson
Mr Cochran	Mr Rixon
Mrs Cohen	Mr Rozzoli
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 West
Dr Kernohan	Mr Windsor
Mr Kinross	Mr Zammit
Mr Merton	*Tellers*,
Mr Morris	Mr Jeffery

Mr W. T. J. Murray Mr Kerr

Pairs

Mr Carr	Mr Collins
Mr Face	Mr Fahey
Mr Hunter	Mr Longley
Mr McBride	Ms Machin

Question so resolved in the affirmative.

Amendment agreed to.

New clause agreed to.

Clause 20

Mr HATTON (South Coast) [10.18]: This amendment is a consequential amendment. Therefore, the matters raised in debate on the previous amendment relate also to this amendment. I move:

Page 9, clause 20, lines 2 and 3. Omit "or public official", insert instead ", public official, member of Parliament or journalist".

Mr HARTCHER (Gosford - Minister for the Environment) [10.19]: The Government does not agree to the amendment. The memorandum of understanding does not provide that the protection of whistleblower legislation will extend to media disclosure. The Government has acted in good faith in bringing the legislation before the House.

[*Interruption*]

The honourable member for South Coast may say "Rubbish" sotto voce, but the memorandum of understanding does not provide for the protection to be extended to media disclosure, and he must acknowledge that the Government has acted in good faith by introducing this legislation. The Government supports the legislation; that is why it has introduced this bill. There is no justification in the argument that the Government is not serious because it has not agreed to these amendments. The legislation committee was not united on this point. A majority of the committee found against the concept that the honourable member for South Coast and the honourable member for Ashfield have argued for tonight. The committee found against it for the clear reason - which has not been addressed by those arguing these amendments tonight - that the whistleblower legislation is designed in the public interest. It is designed to bring to the attention of the public matters that might otherwise not be properly ventilated or given attention. The focus should be on the veracity or the nature of the allegations and not on the interests of the person bringing the complaint. That fundamental was argued in the legislation committee and is being argued tonight. That significant point has never been addressed.

Mr Whelan: Where have you been for the last two hours?

Mr HARTCHER: I have been listening to the honourable member for Ashfield and the honourable member for South Coast, and I have still not heard those points addressed. I am now giving the honourable member the opportunity to address them,

and I will be interested to hear if he does so. We have been arguing the requirements implicit in the memorandum of understanding and the focus of this legislation. We have not been arguing that the Government is trying to emasculate the legislation; we have been arguing whether the legislation would maintain a correct and proper focus or whether it would be a device whereby people could run to the

media. Why would two such excellent representatives be in the House at 10.25 p.m. unless they can see great opportunities in the weeks, months and possibly years ahead. The Government will continue to resist this proposal. I give notice that if the amendment is successful and the report is adopted, the Government will seek to reverse it in another place.

Mr HATTON (South Coast) [10.22]: When the memorandum of understanding was signed with the Government that whistleblowers would be protected, no-one in their wildest imagination would have believed that it would not extend to a public official going to the media or to a member of Parliament. The Government is saying people can blow the whistle but they cannot tell anyone other than established organisations such as the ICAC, the Ombudsman and the Auditor-General. If those organisations decide not to investigate or they get the investigation wrong and the department does not handle the matter to the whistleblowers' satisfaction, they do not have the democratic right to go to a member of Parliament or to the press without putting their jobs at risk.

The Minister for the Environment spoke about the Government acting in good faith. Good faith is signing a memorandum of understanding knowing that whistleblowers, after going through the internal mechanisms, can go through the external mechanisms and then to a member of Parliament or the media and still be protected. The Government introduced a staggering proposal 12 months ago that whistleblowers can be protected, but not if they go to the media or to a member of Parliament. Because some aspects of the charter of reform were not written into black-letter law and did not spell out every clause, the Government is interpreting it the way it wants to interpret it.

The Minister said the whole purpose of the bill is to bring the matter to public attention, but a person cannot do that by way of a member of Parliament or the media and be protected. Everybody else in New South Wales can go to a member of Parliament, but public servants in a position to know have to put their job at risk, and have to risk vilification, lack of promotional opportunities or discipline because they exercise that right. The Act provides also that a disclosure must not be vexatious. In their minds whistleblowers are doing their public duty to the citizens of New South Wales as true public servants should.

Amendment agreed to.

Clause as amended agreed to.

Bill reported from Committee with amendments, and report adopted.

POLICE SERVICE (RECRUITMENT) AMENDMENT BILL

Second Reading

Debate resumed from 15 September.

Mr WHELAN (Ashfield) [10.28]: I have distributed a series of four amendments from the Parliamentary Counsel, titled C-058, which I intend to address in my second reading speech on the basis that the Parliament will rise at 11.00 p.m. and it is important that the matter is resolved. This bill has been adequately described by a variety of people, including members of the Police Association, as a knee-jerk reaction to the tragic murder of our late colleague John Newman. In an editorial in the *Police News* in October the editor and president, Lloyd Taylor, said:

> The issue of lateral entry into the Police Force has been raised following the death of Mr John Newman, MP at Cabramatta. The Government, through the Police Minister, Mr West, have moved to introduce legislation allowing this to occur . . .
>
> It is a knee jerk reaction to the tragic death of John Newman. It is an ill-conceived and

inappropriate response to a perceived problem with crime involving a specific ethnic group.

Mr Taylor went on to say:

> When one considers there is a report due from the Ombudsman into Police and Race Relations which will doubtless make recommendations regarding police recruitment practices it is hard to understand the urgency of the Government's legislation.

Mr Taylor said:

> Also the Wood Royal Commission has the issue of Police Promotions as one of its terms of reference.

I can provide the necessary information to Mr Taylor. The Government has introduced this legislation for two reasons: one, the knee-jerk reaction that the President of the Police Association and I have referred to; and second, the Government knows reports are available - one in the process of preparation, and the Ombudsman's report - which are damning criticism of recruitment in the police force. Today the Minister for Multicultural and Ethnic Affairs spoke glowingly in this House about alleged Government attributes in ethnic policing and other like matters. The Ombudsman's reports for 1991, 1992, 1993 and 1994 show what major problems exist. I feel sorry for the present Minister for Police, because the Minister for Multicultural and Ethnic Affairs knows what is in the report and is doing a fair bit of damage control. He is going to dump it on the Minister for Police, just as his parliamentary colleague the Minister for Transport, and Minister for Roads said today that 800 beat police will be taken off the beat and put on the trains.

Mr West: That is a nonsense.

Mr WHELAN: I know it is a nonsense.

Mr West: Stick to the bill.

Mr WHELAN: This is part of the bill. This is about an important part of recruitment.

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Mr West: It is natural recruitment to transit.

Mr WHELAN: That is probably what you are doing, and that is why I will move an amendment.

Mr SPEAKER: Order! The member for Ashfield and the Minister for Police will cease conversing across the table. The member for Ashfield will direct his statements through the Chair.

Mr WHELAN: My amendment provides that the maximum number of police officers to be employed in the Police Service, as determined by the Treasurer under section 9, is to be increased by the number of special designated positions under this section. For once the Minister will not be able to cheat on the figures. The Minister knows, as well as I do, that since 1988 the number of transit police has dropped from 300 to 60; that 240 transit police have been downgraded. I got the figures out of the budget papers; they are as clear as crystal. The Minister cannot claim there is an authorised strength and raise all the old arguments. He has had a fair bit of success trying to colour the true position in the absence of policing.

During private members' statements today I noted that two Government members pleaded for additional police strength in their electorates. Not one member I have spoken to who has talked to local police will tell them they are over strength in their police divisions. We know from Orange newspapers that that city is in the grip of a crime wave, because in the Minister's own electorate police authorised strength numbers have decreased. That has been the subject of criticism in that electorate and in local

newspapers. The Minister for Police knows that what I am saying about police numbers is true. For that reason the Opposition will be moving an amendment to ensure that designated officers who are provided with lateral entry into the police force will be additional to the authorised strength.

The Government has not stated with certainty the number that will be subject to lateral entry. Much disquiet has been echoed by the association, which wrote letters to the Minister, but its views apparently were not considered. Mr Tunchon, president of the association, asked in a long letter after the announcement of this legislation on 21 September 1994 that the bill be deferred. He said it was a knee-jerk reaction, that the timing of the legislation represents little more than political opportunism, and that it is particularly evident that the Government is not even prepared to await the forthcoming report of the Ombudsman into police and race relations, which doubtless will make recommendations regarding police recruitment practices. In addition, the royal commission is to consider promotion as one of its terms of reference. I was very interested to read the story that the Minister for Multicultural and Ethnic Affairs leaked to the *Sunday Telegraph*, which had the headline "Sydney Police Racists" - a classic example of damage control.

The Minister knows the report is bad, but the Minister for Multicultural and Ethnic Affairs is a lot smarter than many others in this Parliament and is able to get out from under. He has said that nothing has been done for four years. The Minister for Police has ignored the Ombudsman's recommendations about racism in the police force. The Ombudsman has claimed that the Minister has starved him of funds to enable him to make bona fide criticisms of the problem of racism in the police force. The Government hopes that this poppycock bill, all froth and bubble, a knee-jerk reaction to a tragic death of one of our colleagues, will solve the problem of recruitment.

Mr Photios: The Ombudsman's report will recommend something like that, too, I believe.

Mr WHELAN: The Minister may be privy to the report; obviously, he is. He gave the report to Michael Wilkins. It is a damage control report. There must be some horrific evidence in that report of racism in the police force, yet this innocuous bill is to provide lateral recruitment. Mr Tunchon said further in his letter:

> The police association was requesting deferral of debate on the bill until further consultation and public scrutiny of its ramifications can occur. In the event that the Government is determined to prematurely force the proposal we request consideration of the following amendments in order to ameliorate the effects of the bill on current serving officers of the police force.

The letter lists four short matters, including: first, that the Police Association be consulted regarding individual positions proposed for lateral recruitment; second, that it be mandatory for such positions to be advertised internally so as to ensure that special skills and qualifications and experience do not in fact exist within the Police Service; third, that any special designated position be additional to the authorised strength of the service and be additional to the authorised strength of the particular rank concerned. I strongly support that provision. The proposal will not alter traditional means of entry into the service. A response has been sought from the Government but has not been forthcoming.

My amendment number 4 provides that the maximum number of police officers to be employed by the Police Service is determined by the Treasurer under section 96 and is increased by the number of special designated positions under that section. I intend - not tonight but when the bill reaches the upper House - to change that amendment to provide that particular rank will also be considered because there is an opportunity to fix numbers between existing systems. In order to have authorised strength there must be authorised rank. I will be moving the amendment as published but I notify the Government that I intend to move to cover the position sought by the Police Association in the upper House, namely that the bill provide for the authorised strength of a particular rank.

The first amendment provides for special designated non-executive police positions above the rank

of constable to be open to outside appointment. The current bill provides that the commissioner is to have power, for the purpose of the selection process,

to designate a non-executive position as one available to an eligible person, whether or not that person is already a police officer. That is described as a special designated position. The other amendments I intend to move relate to the deletion of the commissioner and the insertion instead of the Police Board as the responsible body. Those simple amendments warrant the support of the Government. The third proposed amendment is to insert after line 27 a new subsection (4) that provides as follows:

(4) In the case of a special designated position that is not that of a non-executive commissioned police officer, the following provisions have effect despite anything to the contrary in this Part:

(a) the Commissioner is required to advertise a vacancy in the position in such manner as the Police Board directs;

(b) the Commissioner is not to appoint to the position a person who is not already a police officer unless the Commissioner has sought, and obtained, the recommendation of the Police Board to make the appointment;

(c) the Police Board may only recommend the appointment if the person has, in the opinion of the Police Board, the greatest merit of the applicants eligible for appointment to the position.

These amendments insert a new provision in section 65A of the Police Service Act. At present section 65 provides for the filling of non-executive positions by either police or administrative officers. This proposed section is headed, "Specially designated non-executive police positions above rank of constable open to outside appointment". It gives an enormous amount of power; it is open-ended, with the number of police officers to be appointed to those positions known. I trust the Independents will support my proposal that these positions be in addition to the authorised strength, and also take up the question of rank. It is important to ensure there is no hoodwinking about police numbers, as we have experienced in the past.

The board is the proper authority for the purposes of the selection process. We are dealing with specially designated non-executive police positions; we are talking about people from overseas who, I am sure, will have professional expertise to assist the New South Wales police where possible. Some people would say that ability, that information and that resource may be already within the New South Wales Police Service. I agree that the Government's proposition should be supported, but I do not agree that the selection process should be left to the commissioner. The board is the proper and responsible organisation to look at what might be a continuing arrangement to ensure that those appointed to those positions are monitored. The board will recommend the appointment of the person who, in its opinion, in each case has the greatest merit of the applicants eligible for appointment to the position.

I support the broad brush approach of the bill, but I will move the amendments in Committee. Lateral recruitment of police is opposed by the Police Association. However, with the amendments proposed, it is supported by the Australian Labor Party. I should hope the Government will see the sense of the amendments. As honourable members know, only New South Wales police officers are eligible for appointment or promotion to positions of police officers of any rank other than that of constable or in the police senior executive service. This bill will enable the commissioner to designate a position that requires special skills, qualifications or experience not generally available in the Police Service. Any person so appointed will not be eligible for promotion or transfer to a non-designated position for a period of five years.

The Government argues that this measure will assist in dealing with crime involving persons of particular ethnic origin. The Police Association has a view about that. The Minister for Multicultural and Ethnic Affairs is in the Chamber and I hope he will participate in the debate. The bill does not limit

appointments but provides for lateral entry to the Police Service and that the power to designate such positions and to appoint people should be with the Police Board, irrespective of the ranks involved. This will permit the board to pursue the integrity of overseas applicants as well as monitor lateral entry. The Government should be pressed to provide additional authorised and funded positions to the overall police strength and relevant ranks. The bill does nothing to address the problem of the composition of the Police Service not reflecting the community it serves. Of an authorised strength of 12,906 in the New South Wales Police Service, only 1,541 are females. The people covered by this proposal will provide benefits for both an intelligence and tactical perspective, but they will have little impact on the streets. For those reasons, the Opposition supports the bill.

Mr HATTON (South Coast) [10.46]: I support the Police Service (Recruitment) Amendment Bill. The Government has taken appropriate and proper action, and the bill is an historic step in the development of the Police Service. The Minister for Multicultural and Ethnic Affairs is nodding his agreement. No doubt the points he has put forward to the House are worthy of support: we must have police from a variety of ethnic backgrounds who have a wider understanding, because crime is more and more internationalised, and more and more organised. In some areas it is institutionalised; it certainly is sophisticated and technical in many areas; and it is cultural. Whether we are talking about the Australian culture of not dobbing in your mates or the attitude that we owe something to our convict origins or the culture of another country, it must be taken into account.

When I was in Hong Kong talking to the investigators of the Independent Commission Against Corruption they used the delightful phrase that they regarded crime as a competition of the minds. They say that the law enforcement and investigatory authorities have to keep up with the play. Consequently the Police Service must be professional, highly trained and sophisticated and have as much expertise as possible from as wide a variety of recruits and backgrounds as possible. This bill is the first step

in lateral recruitment. Lateral recruitment is resisted fiercely within the service and by the union for a number of good reasons, that is, it is a threat to the promotional opportunities of those within the service if people can be recruited from outside.

I was disappointed to learn that the protective mechanism against lateral recruitment within the Police Service is so sophisticated that after this Government applied the senior executive service to the Police Service, the answer to a question upon notice was that no officers had been recruited from outside the force into the SES. Yet the purpose of the SES process was to ensure that people with skills and special understanding and experience were recruited from outside the Police Service, from other departments - administration, personnel, organisation, management - with the specific purpose of bringing a different background of experience to the service. That is not happening, but it is vital that it should happen. In this case it is lateral recruitment for a specific purpose, which is to get the special understanding of how crime works in other countries and in other cultures.

It is wrong to blame crime on people of ethnic origin only. I am guilty of using the word mafia. I make no apology for that, but at the same time I have always recognised that, whether it is the mafia of Italian, Japanese, Chinese, Vietnamese or true British origins, it really does not matter. Crime is all about business, about making money; it is opportunistic. If it can be organised it becomes highly organised. Whether people are third generation or fourth generation Australians, true British stock or whatever, they will take advantage of the opportunities to make money on the wrong side of the law. So crime is not specific to people of ethnic origin.

However, we need to understand that people from different ethnic and cultural backgrounds have different ways of looking at things and, of course, we need to understand, through tapping the experience of people coming in from overseas, how to handle the challenges and problems that may be presented in terms of law enforcement and containment of crime. I pose the question: how can we get significant reform in the police force unless we get lateral recruitment? The Police Association argues that lateral recruitment should not occur until all States agree - and there is some sense in that - but if we do not bite

the bullet there can be no agreement. Incidentally, the sooner we have a national police structure with full national co-operation, lateral recruitment and exchange interstate and nationally of police with the retention of their benefits, superannuation, leave entitlements and so on, the better and the more effective we will be able to answer the challenge of organised crime and internationalised crime.

I hope that the Government will address the significant weaknesses in this bill, one of which is related to when people are brought in on probation. Section 73 of the Police Service Act specifies that a constable can be on probation for a period of a minimum of six or 12 months - I am not certain - but there is no maximum. In this case a person can be on probation for, say, five years and not be eligible for promotion. If I were wanting to transfer here from Hong Kong, Malaysia, Great Britain or anywhere else, I would not do so if I knew that I had no right to promotion for a period of five years and I could be on probation for a considerable period of time. We will not get the best officers to come to our country if we have that restriction. A senior commissioned officer with great skill, understanding and expertise can be kept on probation for a number of years and be sacked by the police commissioner, whereas a commissioned officer within the force cannot be sacked by the police commissioner.

The commissioned officer within the force must have a recommendation from the board and he can be sacked only by the Governor. That protection for commissioned officers is there for very good reason. The commissioner is not given that power. I think it is an unintended consequence that the Minister has undertaken to look at when we debate the amendments to the bill. I hope that he sees his way clear to agree to the amendments that I will move in Committee, that appointment on probation cannot exceed 12 months and a commissioned officer cannot be dismissed except by the Governor. I hope also that both the Government and the Opposition will omit the period of five years and insert two years, and that the employment of these people will be on the recommendation of the Police Board rather than merely on the recommendation of the commissioner.

It is of extreme importance that the board has a role. A specific challenge brought about by tragic events, consideration of the real position we are finding ourselves in, the challenges of containment of crime and in the investigation of crime in areas with which we are not culturally familiar necessitated this legislation. But it was required for a wider public purpose and therefore the public input should come through the board and not simply be in the hands of the commissioner. In that respect I will support the Opposition's foreshadowed amendments and I congratulate the Government on bringing this bill before the House.

Debate adjourned on motion by Mr Photios.

BUSINESS OF THE HOUSE

Hours of Sitting: Suspension of Standing and Sessional Orders

Motion, by leave, by Mr West agreed to:

That this sitting be extended to allow the consideration of Government Business Order of the Day No. 7 and the tabling of correspondence by Mr Speaker.

NATIONAL CRIME AUTHORITY (STATE PROVISIONS) AMENDMENT BILL

Second Reading

Debate resumed from 26 October.

Mr WHELAN (Ashfield) [10.58]: I have been dragged unwillingly to the rostrum to make this speech

on this important bill, notwithstanding that the Parliament has made a decision to finish at 11 p.m. sharp. This is a method by which the Government is adopting the implied gag. I am lucky that the bill is

not one with which the Opposition would but otherwise agree. It is an important bill dealing with the administration of the National Crime Authority. It deals with a series of amendments that will open up the functions of the administration as well as provide some necessary safeguards and give greater additional power to those who have received summonses or notices from members of the NCA. It is a bill with which all honourable members of the House should agree. It provides a great deal more co-operation between the National Crime Authority and State Attorneys General on referring matters.

Section 5 of the State Act allows the Minister to refer matters to the NCA for investigation if the relevant offence is an offence against the law of this State. As a result of amendments to schedule 1 the Minister will be able to notify the NCA as to whether the matter referred is related to another reference or if that reference already made is related to another reference. Honourable members should understand that this bill provides a great deal of power to the NCA. It enables the NCA to prohibit a person who is in receipt of a summons or a notice from prohibiting or disclosing not only information about the document but also any information that would indicate the existence of the NCA reference or investigation of any proceedings connected with the investigation or the reference. That is enormous power to be granted by the State. Offences of disclosure are covered in proposed section 18B. The bill states:

> In particular, the proposed section prohibits disclosure of any information about such a document or any official matter connected with it, except in certain specified circumstances which provides safeguards for a person receiving the document, and is designed to ensure that no information that might suggest the existence of the NCA investigation can be communicated to others. However, a person receiving the document will be able to disclose its existence if the disclosure is:
>
> * in accordance with the circumstances (if any) specified in the notation of the document; or
>
> * to a legal practitioner in order to obtain legal advice or representation; or
>
> * to a legal aid officer in order to obtain legal or financial assistance under section 27 of the Commonwealth Act; or
>
> * to an officer or agent of a body corporate to enable compliance with the document; or
>
> * if the person is a legal practitioner, to allow compliance with a legal duty of disclosure arising from the practitioner's professional relationship with the client or to enable the legal practitioner to obtain instructions in relation to waiving legal professional privilege.
>
> Persons to whom disclosure of such a document can be made are, in turn, generally prohibited from disclosing the existence of the document.

The powers are enhanced by enabling those who breach them to be arrested under section 20 of the Act. If a person has committed an offence under section 19(1) the powers of arrest are extended under the current National Crime Authority Bill. The bill originated in the New South Wales Legislative Council. My colleague the Hon. R. D. Dyer indicated the Opposition's willingness to support this important piece of legislation. I am pleased to have been able to contribute to debate on this bill.

Mr WEST (Orange - Minister for Police, and Minister for Emergency Services) [11.01], in reply: I thank the honourable member for Ashfield for reading the explanatory note to the bill, which I commend.

Motion agreed to.

Bill read a second time and passed through remaining stages.

INDEPENDENT COMMISSION AGAINST CORRUPTION

Investigation of Allegation of Corruption Concerning Police and Paedophile Activity

Mr Speaker laid upon the table of the House correspondence, documents and a report received by him on 7 November 1994 from the Acting Commissioner, Independent Commission Against Corruption, concerning the Acting Commissioner's letter of 20 October 1994, which was reported to the House on 27 October 1994, and the Presiding Officer's reply dated 27 October 1994 relating to the investigations into police and paedophile activity by the Independent Commission Against Corruption and the Royal Commission into the New South Wales Police Service.

House adjourned at 11.03 p.m.