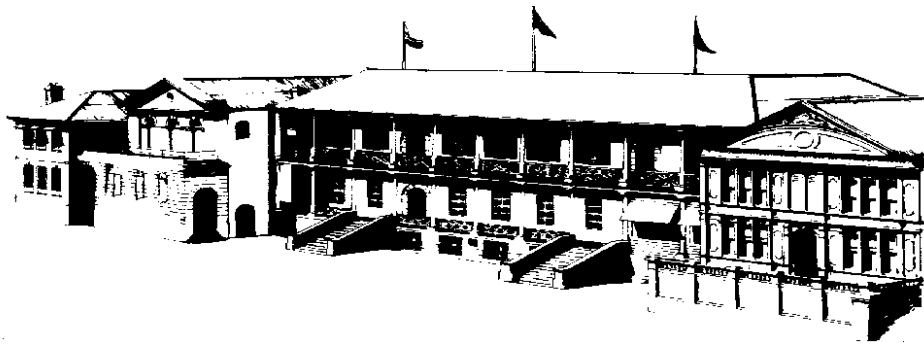




**NEW SOUTH WALES**



*Legislative Council*

**PARLIAMENTARY  
DEBATES**

**(HANSARD)**

**FIFTY-FIRST PARLIAMENT  
THIRD SESSION**

**OFFICIAL HANSARD**

**Wednesday, 29 April 1998**

# LEGISLATIVE COUNCIL

Wednesday, 29 April 1998

**The President (The Hon. Max Frederick Willis)** took the chair at 11.00 a.m.

**The President** offered the Prayers.

## GUARDIANSHIP AMENDMENT BILL

### TRANSPORT ADMINISTRATION AMENDMENT (RAILWAY SERVICES AUTHORITY CORPORATISATION) BILL

**Bills received and read a first time.**

**Suspension of standing orders agreed to.**

## BILL RETURNED

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

Royal Institute for Deaf and Blind Children Bill

### GENERAL PURPOSE STANDING COMMITTEE CONTEMPT ALLEGATION

**Motion by the Hon. Jennifer Gardiner agreed to:**

That the Special Report of General Purpose Standing Committee No. 2 on a possible contempt of the committee be referred to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report by 13 October 1998.

### STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS

**Motion by the Hon. M. R. Egan agreed to:**

That the reporting date for the reference to the Standing Committee on Parliamentary Privilege and Ethics relating to the code of conduct for members be extended until 4 June 1998.

### COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

**Collation of Evidence: General Aspects of  
the Commission's Operations**

**The Hon. I. M. Macdonald**, on behalf of the Chairman, tabled a collation of evidence of the Commissioner of the Independent Commission

Against Corruption, the Hon. B. S. J. O'Keefe, AM, QC, on general aspects of the commission's operations, taken on Friday, 28 November 1997.

**Ordered to be printed.**

### MOTOR TRAFFIC (AMENDMENT) ACT: DISALLOWANCE OF MOTOR TRAFFIC AMENDMENT (FEES AND CHARGES) REGULATION 1997

**Question—That the motion proceed  
forthwith—put.**

**The House divided.**

**Ayes, 23**

Mrs Arena	Ms Kirkby
Mr Bull	Mr Lynn
Mrs Chadwick	Mrs Nile
Mr Cohen	Dr Pezzutti
Mr Corbett	Mr Ryan
Mrs Forsythe	Mr Samios
Mr Gallacher	Mrs Sham-Ho
Miss Gardiner	Mr Rowland Smith
Mr Gay	Mr Tingle
Dr Goldsmith	<i>Tellers,</i>
Mr Hannaford	Mr Jobling
Mr Kersten	Mr Moppett

**Noes, 17**

Dr Burgmann	Mr Obeid
Ms Burnswoods	Mr Primrose
Mr Dyer	Ms Saffin
Mr Egan	Mr Shaw
Mr Johnson	Mrs Symonds
Mr Jones	Mr Vaughan
Mr Kaldis	<i>Tellers,</i>
Mr Kelly	Mrs Isaksen
Mr Macdonald	Mr Manson

**Question so resolved in the affirmative.**

**Motion agreed to.**

**The Hon. D. J. GAY** [11.17 a.m.]: I move:

That under section 41(1)(b) of the Interpretation Act 1987, this House disallows the Motor Traffic Amendment (Fees and

Charges) Regulation 1997, published in *Government Gazette* No. 159, dated 24 December 1997, page 10355, tabled in this House on 31 March 1998.

It is interesting to note that the regulation was tabled on 24 December last year. In the season of goodwill, despite the fact that the Labor Party sneaked into Government through the back door on a promise of no increases in taxes and charges, the Treasurer and the Minister for Transport were sneaking around like two gremlins, dipping into the Christmas stockings of the people of this State and removing their money. It was really a nightmare on Macquarie Street! The coalition remembers the promise well: no increases in taxes and charges; I will write it in blood if you like! That promise is looking pretty anaemic at the moment. They have sucked the blood out of the people of this State. This Treasurer, the bloke responsible for Eganomics, said yesterday in this House—and he will probably say today—"We need that money; it is important to the State." Yesterday in this House the Treasurer, old scissor hands, said in answer to a question about credit ratings asked by the Hon. D. F. Moppett:

Unfortunately, I do not get the opportunity to listen to John Laws. If the honourable member read his Australian Bureau of Statistics publications, the one released today—which, no doubt, is already on his desk—he would know that in the 1996-97 financial year the total New South Wales public sector State Government surplus exceeded \$1 billion.

I am not sure whether that is true, but that is what the Treasurer stated yesterday. He also said:

I invite the honourable member to study that document. The Government came to office just over three years ago and in that time it has managed to reduce the State's total net liabilities by about \$3 billion, reduce its net debt by about \$1 billion and reduce its unfunded superannuation liabilities by \$2 billion.

If the Treasurer is telling us now that the Government needs this money, one of these stories cannot be right, but that is not unusual for Government members. On 24 December last year the Government secretly decided to increase motor vehicle registration charges through the Motor Traffic Amendment Fees and Charges Regulation 1997. Under this regulation, fees for annual vehicle registrations increased by \$5—from \$41 to \$46; and fees for quarterly vehicle registrations increased by \$1—from \$16 dollars to \$17. The Government was also able—and this is more of its happy Christmas good spirit—to oversee an increase in the transfer of ownership fees from \$20 to \$40, a 100 per cent increase, and fees for the issue of new licence plates attract a one-off fee of \$20, or \$19 in the case of motor vehicles. The coalition, in moving this disallowance motion today to the regulation gazetted on 24 December 1997, is honouring a commitment

made by George Souris to repeal the Carr Government's secret increases which, as I said earlier, were an unwelcome Christmas present for the people of New South Wales. These fees were expected to raise an additional \$42 million annually for the Treasurer. As an internal Roads and Traffic Authority memo states:

... major road projects have been modified in response to community demands and the revenue raised from the revised fees will help offset the increased costs imposed by the changes . . .

Publicly, however, the Minister had a different story. He contradicted his department and stated that the fee increases were necessitated by a one-off timing loss as a result of the Hammond and Ha High Court decision—the case to which the Treasurer refers quite often to demonstrate how desperate this Government is when he is not giving us the high beat story that he gave us yesterday. Not surprisingly there was a huge public outcry when the Government's devious tricks were revealed. The taxpayers of New South Wales were not impressed with the Carr Government once again raising taxes when nobody was watching. I quote from the editorial in the *Daily Telegraph* of 19 January:

In what has been a miserable month for Premier Bob Carr's Government—

he has had a few more since—

our State Politicians have been caught once again with furtive hands in taxpayers' pockets.

The editorial stated that the increases "reflect badly on the Carr Government and its ability to manage the State's finances". On the same day the *Daily Telegraph* reported that four angry crossbench members of Parliament confirmed that they would support this motion to disallow the sneaky Christmas Eve charges. I hope that those crossbench members are still as angry today. On 20 January the *Daily Telegraph* reported:

Christian Democrats Fred and Elaine Nile, Shooters Party MLC John Tingle and Australian Democrats MLC Liz Kirkby all will join the Opposition to quash the increases.

I remind those crossbench members of their pledge to quash these tax increases. I refer also to the large amount of correspondence which has been received in relation to this matter. The Motor Traders Association of New South Wales wrote to Minister Carl Scully on 6 January in the following terms:

With respect the MTA asks that, as a matter of urgency, you review the new and increased charges so far as they impact on licensed motor vehicle retailers. The issue is causing a great deal of anger and feeling of injustice as its implications became apparent throughout the industry.

On 19 January Woodleys Motors of Tamworth wrote:

The new regulation has been introduced, surely, without proper consideration of its unfair and inequitable impact.

On 13 January the Armidale Motor Traders Association subbranch stated:

We, in particular, are appalled at the intending doubling of transfer fees and the introduction of a new fee for the issue of general issue number plates . . . In short the announced increases in charges to be levied will severely penalise the motor vehicle industry, which we are sure you know, small businesses are struggling in country areas to survive now.

Grant McCarroll Ford in Armidale wrote:

This in effect is a double dip for the government in a very short space of time.

On Saturday, 1 February, the Government, confronted with this public anger and the commitment by the coalition and the four Independents in the Legislative Council, announced a partial backdown. That partial backdown, which was gazetted on 27 March, included the statement that these increased charges would be reviewed on 1 July 2000. It also included the statement that increases in transfer fees for motor dealers would be limited to \$5, increasing the fee from \$20 to \$25, but that the \$20 increase in private transfers was to remain. It also included an exemption for pensioners from the payment of the fee for the issue of number plates. At the time of this backdown—just another of the Government's backflips—the Government costed that exemption at approximately \$6 million. Nevertheless, the fee increases that were left represent a \$36 million transfer of funds from the motorists of New South Wales to the endless pocket of Michael Egan.

There is no justification for these registration fee increases for a number of reasons. One of the most important reasons is that the Government allocated \$144 million to be spent in the 1997-98 financial year on the M5 East motorway. Since then the Government has deferred the start-up construction date of the M5 East until October, well into the 1998-99 financial year. This move by the Government has freed up the \$144 million, which has offset the High Court decision and completely negated the need for the registration fee increases. The Carr Government promised the people of New South Wales that it would introduce no new taxes or increased charges. This registration fee increase constitutes yet another broken promise by Carr and Egan. We can add that to the ever-increasing tally of

broken promises. There is no reason for the Government to increase registration fees because prior to the fee increases New South Wales had the dubious honour of having the most expensive registration charges in Australia.

As a result of the increased registration fee charges and the massive blow-out in the cost of compulsory third party insurance premiums, many low-income earners are finding it difficult to keep their vehicles roadworthy, and some are not even registering them. The *Daily Telegraph* reported that as many as 200,000 New South Wales-based motor vehicles are registered interstate. That is an indication of how much business this State is losing because of the incompetence of the Government. This illegal practice is causing New South Wales a loss of revenue of at least \$70 million annually. The anomaly exists mainly in the border regions of Albury-Wodonga, Queanbeyan and Tweed Heads. New South Wales car dealers claim that they are losing sales as a direct result of the huge difference in the price of registration and green slips in New South Wales and other States. It is alarming to note how many car rental business vehicles are purchased or registered interstate.

The registration fee increases were introduced without consultation. Motor dealers first became aware of them in a memorandum sent by the Roads and Traffic Authority General Manager, Driver and Vehicle Procedures, on 30 December 1997. The first that the public knew of the dramatic price hike was in a *Daily Telegraph* article. The coalition believes that the lack of consultation and the underhanded way that the Government acted are grounds to disallow the registration fee increases. To achieve the desired outcome of returning motor vehicle registration fees to pre-existing levels, the coalition must move a motion to disallow the Motor Traffic Amendment (Fees) Regulation 1998, which was gazetted on 27 March. Crossbenchers may consider that procedure strange but Parliamentary Counsel has advised that because of the way the amendments were put in place it is necessary to remove both of them.

The Hon. Franca Arena has confirmed in writing to the Deputy Leader of the National Party that she will support the disallowance motion. I hope that my confidence in the success of the motion is not misplaced. On a previous occasion Reverend the Hon. F. J. Nile, the Hon. Elaine Nile, the Hon. J. S. Tingle and the Hon. Elisabeth Kirkby publicly said that they were opposed to the Government's new charges. If the motion is successful, purchasers of second-hand cars will be \$25 better off. [*Time expired.*]

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [11.32 a.m.]: The Motor Traffic Amendment (Fees and Charges) Regulation 1997 came into effect on 1 February 1998. On that date vehicle registration fees increased by \$5 from \$41 to \$46, the cost to transfer a vehicle increased by \$20 from \$20 to \$40, and a \$20 cost-recovery fee for the issue of new licence plates was introduced. The Government has now introduced a sunset provision in the Motor Traffic Amendment (Fees) Regulation 1998 to ensure that the increased fee charges will cease on 30 June 2000. On 1 July 2000 registration and transfer fees will return to the level they were at before 1 February 1998. Also, the transfer fee for licensed motor vehicle dealers has been capped at \$25 in recognition of the high volume of transfers effected by motor dealers. The regulation also exempts pensioners from the payment of fees for the issue of number plates.

The fee increases were necessary to help make up a funding shortfall of approximately \$100 million in the roads budget following last year's High Court decision to outlaw fuel franchise fees. The shortfall resulted mainly from a timing difference between the cessation of the collection of State fuel franchise fees and the imposition of a Federal fee of 8.1¢ a litre which commenced on 6 August 1997. The moderate fee and transfer increases are a responsible measure to allow the continuation of the Government's roads program in the face of the substantial loss of fuel revenue following the High Court's decision. The Motor Traders Association and the NRMA have accepted the fee increases as fair and reasonable and have welcomed the fact that all of the revenue from the increases is to be returned to the roads budget.

The Opposition's disallowance motion is a financially irresponsible piece of political opportunism. If the disallowance motion is successful the RTA will be required to slash the roads budget by up to \$100 million, and that would have a major effect on all parts of the roads budget, roads and jobs in rural and urban New South Wales, road safety, environmental measures and funding for local government. The Government's moderate increase in fees, which will sunset on 30 June 2000 once the lost fuel revenue is regained, is a financially responsible policy that will maintain the roads program. All of the revenue from the fee increases will be returned to the roads budget, as is the case with the 8.1¢ per litre Commonwealth fuel tax, which is fully hypothecated to the roads fund. I urge honourable members to oppose the disallowance motion.

**The Hon. ELISABETH KIRKBY** [11.35 a.m.]: I voted with the Opposition to allow these disallowance motions to be debated because I believed that was the proper thing to do. However, I do not intend to support this motion. The Hon. D. J. Gay has given me the newspaper articles upon which he based his statement about my opposition to the fee increase. On 20 January the *Daily Telegraph's* political reporter Kelvin Bissett wrote:

Australian Democrats MLC Lis Kirkby . . . will join the Opposition to quash the increases.

Another article stated:

Democrats leader Lis Kirkby said she was disturbed by the secrecy.

I will ask Mr Kelvin Bissett when did he speak to me in January and where did he get that information from. To the best of my knowledge and belief—and my office is now checking—I have never spoken to him about this matter. Equally, I have never given any undertaking of support to the Deputy Leader of the National Party in his capacity as the shadow minister for public works and roads. I received a letter from him dated 24 April, but I have not had time to reply. I have certainly not given the Deputy Leader of the National Party or the Hon. D. J. Gay, who is the Leader of the National Party in this House, any reason to believe that I would support this disallowance motion. The Government was forced to introduce the increased fees because of the reasons stated by the Treasurer.

**The PRESIDENT:** Order! People in the gallery will not speak to members in the House.

**The Hon. ELISABETH KIRKBY:** Last year the High Court handed down a decision which left New South Wales with a shortfall in roads funding of \$100 million.

**The Hon. M. R. Egan:** The total shortfall is actually \$400 million.

**The Hon. ELISABETH KIRKBY:** The Treasurer interjects to say that the total revenue denied to the State by the High Court's decision is \$400 million. Why does the Opposition object to the money being raised in another way? The Deputy Leader of the National Party in another place sent me a comparison of registration charges between States. For example, the private vehicle registration rate in Victoria is \$140 compared with \$260 to \$350 in New South Wales. Those comparisons are irrelevant, because Victoria is a small State and does not have the same roads infrastructure requirements as New South Wales. Country people in particular

always complain about the state of rural roads. We cannot have better country roads unless the State has the money to pay for them.

Nobody disputes that a number of vehicles owned by New South Wales residents near the borders of Queensland and Victoria are registered interstate. It is not possible to quantify the numbers. However, the law requires that a vehicle be registered in New South Wales if it is to be operated on New South Wales roads for more than three months. It is open to the police to take action in cases of incorrect registration. Detection of such offences can occur at any time that police pull over a motorist, particularly for random breath testing.

Since the Opposition stated that it would disallow the regulation the matter has been debated and there has been consultation between the Government and the major motoring organisations. The Motor Traders Association has now accepted the compromise offered by the Government on the transfer fee increase. For anyone buying a second-hand car the increase in the transfer fee is a minuscule amount compared with the other costs of changing cars. The annual registration fee has risen by only \$5 per annum. That is a trivial sum which every motorist could afford. Pensioners possibly could not afford it but the Government has made provision for them. I am not sure whether that concession will apply to people on social security benefits but I am sure that it will apply to the average run of pensioners, including veterans on disability pensions.

The problem is that unless the cost of running a car is comparable with other costs of living there will never be a compulsion for people to use public transport. This may not apply to country people, but metropolitan areas have public transport and it is not necessary for all people to drive to work, whether that is at Marrickville or Parramatta or in the central business district. This morning when traffic lights on Bourke Street broke down, traffic was banked up to North Sydney. Many vehicles being driven to the CBD or crossing from one side of the city to the other have only one person in them. According to radio reports the bank-up of traffic was likely to last for about three hours.

It is essential that more people use public transport. If there are glitches because public transport has not been running on time or because the timetables do not meet the needs of the working public, the Government should rectify the problems. The Government has shown that it can do that. It did it with the Easter show. One of the reasons people used public transport to travel to the show

was that parking fees at the Homebush showground were astronomically high, well beyond the means of ordinary individuals. I do not believe that it is necessary to disallow the regulation; nor does the NRMA. It has changed its view on the matter. On 30 January a press release from the President of the NRMA, Nicholas Whitlam, stated:

... the NRMA, which represents more than 1.8 million NSW motorists, had been concerned to identify the use of the funds that will be raised by the ... increase in registration charges ...

The press release continued:

Mr Whitlam said he was now satisfied that the additional funds would be directed to the roads budget and would be used for much-needed road improvements.

Mr Whitlam concluded by saying:

The NRMA is willing to support a relatively high level of road user charges in this State because the funds are needed to ease congestion and improve safety through better roads.

As I said at the beginning of my speech, I fail to understand why the *Daily Telegraph* quoted me in the way it did, and I am making further inquiries about that. To the best of my knowledge I have never at any time had a conversation with Mr Kelvin Bissett, and I cannot understand why he should make such statements. But then, of course, many statements have been made in the *Daily Telegraph* of recent weeks which have been grossly inaccurate in referring to all kinds of things in this Chamber and in another place. Sadly, it appears that the *Daily Telegraph* is not taking the due care that a responsible newspaper should when reporting events in this Chamber or in another place. I repeat that I support the Opposition's right to move the motion of disallowance, but I will not support it.

**The Hon. FRANCA ARENA** [11.45 a.m.]: I support the disallowance motion moved by the Hon. D. J. Gay, for three important reasons. The first was stated by the Hon. D. J. Gay quite clearly: the Carr Government said that it would introduce no new taxes or increased charges. That is definitely another broken promise. New South Wales already has the highest registration charges in Australia. The Minister for Transport, and Minister for Roads has said that 80,000 vehicles are being registered interstate because of the high charges in New South Wales—but the *Daily Telegraph* reported that the correct figure is 200,000. The situation is unacceptable: it is certainly not in the interests of our State. I have received correspondence on this matter from different people, and I shall read one that is typical of the sentiments expressed. A Tamworth car dealer wrote to me on 19 January as follows:

Dear Franca

I am writing to express my very great concern at the increased fees to be imposed from 1 February 1998 by the government for registration of motor vehicles . . . The explanation given for the increased charges was that it was necessary to recover the cost of modification to major road projects demanded by the community.

These transfer and plate issue charges will raise over \$32 million in a full year, but the burden they impose will fall unfairly on licensed motor dealers who must transfer the registration of vehicles they take into stock or trade in, into their names. In other words the new charges are a serious increase in the cost of doing business for dealers who comply with their obligations.

Yet the Government continually says that it supports business and wants to increase small businesses. It has even established a new committee for small business. Nothing is ever done to assist small business. The odds against small business seem to be stacked more and more. The letter continued:

The charges do not fall fairly on all road users as it was probably intended—vehicles taken into dealers' stock are virtually not used on the roads while in their possession and the government then collects another transfer fee when the vehicle is sold to a retail buyer—this is virtually a 'double-dip'.

Remember, this is from a small business in a country town, Tamworth. The letter continued:

For this business, which employs 30 people and pays all of its taxes these new charges will cost \$14,000 per annum and will represent a devastating blow for the business which, as you will appreciate, operates in a highly competitive marketplace in regional NSW already fighting to rebuild after the hard times experienced over the last 10 years.

The new regulation has been introduced, surely, without proper consideration of its unfair and inequitable impact. The government's commitment to fostering small business in this state is an important factor in the electorate.

That is just one of numerous letters I received from motor dealers. These increases break the Government's promise of no new taxes or increased charges. I support the disallowance motion moved by the Hon. D. J. Gay.

**The Hon. J. S. TINGLE** [11.50 a.m.]: Like the Hon. Elisabeth Kirkby I, too, voted to bring on this disallowance motion because it must be discussed by the House and disposed of one way or the other. I hate this impost, the \$5 extra registration fee, and I am sure motorists hate it. I have said before in the House that motorists have had enough, they have been had enough, and they are due for some relief. I have some problems with the disallowance motion, although I endorse and support what the Hon. D. J. Gay has said about the high cost of registration in this State. The Hon. Elisabeth

Kirkby perhaps explained this when she pointed out that New South Wales is a large State with considerable kilometres of road, and that the roads portfolio in New South Wales needs more funding than in the other States.

Far too many cars that regularly travel the roads of this State are registered interstate. On occasions I have discussed with rental car companies the reason so many of their cars are registered in Victoria, Queensland or South Australia but operate on New South Wales roads. The practice is legal and is done to avoid the excessive cost of registering motor vehicles in this State. Successive governments of whatever colour—including this Government and the former Government—always seem to regard the motorist as a milch cow, a captive market, which must pay the increased charges and cough up whatever the government of the day decrees is necessary to register and insure vehicles.

When this Government began its term and the 3 x 3 levy was introduced—as it had to be—I made the point in this Chamber that the Government would not then be entitled to any further additional funding from motorists because at that time it was said that a substantial proportion of that levy would be diverted to cycleways and alternative public transport development in an endeavour to get cars off the road. That was not only futile but also self-defeating, because the taxes are levied on motorists and surely motorists should receive the benefit. The Hon. D. J. Gay said that the Government does not need the extra money because it has a surplus of \$1 billion, as the Treasurer recently informed the House. That may very well be so, but I have to bear in mind that this is a charge within the roads portfolio and I believe that we should look at that from a different focus.

The High Court ruled against the taxes and levies that the State used to charge on petrol. I am informed that the oil companies pocketed \$120 million in the five weeks following the handing down of that court ruling and before the Federal Government took over the levying of that tax to pass the money back to the States. That is plain, ordinary, everyday highway robbery. The oil companies had no right to that money. They should have lowered the price of petrol at the time but they did not. If it is illegal for the State to recover the money, how can oil companies justify pocketing it? When I first heard what they had done I was horrified, but I did not say to any newspaper or other press outlet that I would or would not support this motion. I did not make that pledge. I said I was seriously concerned about what had been done but I had not made up my mind.

Subsequent to that I told the Minister that I was unhappy about the \$5 extra registration hike in particular and I asked what he intended to do when he received the \$100 million, which comprised \$40 million for two years and \$20 million for the following year. I suggested that there was no hope of that regulation surviving without a sunset clause and a guarantee that all of the money raised by this impost would be spent on roads. The Minister has done that in the later regulation that the Hon. D. J. Gay will move to disallow.

I find myself in a difficult position. I know that the NRMA and the Motor Traders Association have now expressed reluctant support for the increased charges. In the past few months I have driven on the Pacific Highway, the Mitchell Highway, the Newell Highway and the new Golden Highway and the condition of those roads is superb. Considerable work is being done on the Pacific Highway, and the Bulahdelah bypass is close to completion. When one flies over one can see the black spots on that road, which stretches east of the mountains at Bulahdelah, being eradicated. I have to make up my mind whether I hate the \$5 impost sufficiently to deny the Government the \$100 million it says it needs to continue the funding program, including the \$160 million a year being spent on the Pacific Highway. After agonising over this for many weeks, today I have reluctantly decided that because of those factors I cannot deny the funding to the Government and cannot support the disallowance motion moved by the Opposition.

**The Hon. R. S. L. JONES** [11.55 a.m.]: I, too, recently travelled the Pacific Highway and observed the work being undertaken on the Bulahdelah bypass. I have travelled down that hilly road many times and I realise how dangerous it is. Many people have died along that horror stretch. I am pleased that the black spots are being ironed out but, as an environmentalist, I have ambivalent feelings towards the wildlife that will inevitably be killed when the road is completed. The Hon. D. J. Gay suggests that the wildlife can go underneath the road but unfortunately many animals, including koalas, cross the road and are run over. Therefore, I have a certain ambivalence towards improvements to some roads.

However, one must have regard to the loss of lives on these roads. I shudder every time I pass the stretch of road at Clybucca Flats, where a couple of years ago a coach overturned and 40 to 50 people died. If the disallowance motion is successful, the Government will be denied substantial funds for road improvements and 1,700 jobs will be put at risk, many in the Byron Bay area, which has the

highest unemployment in the State. I have a certain ambivalence about the existing roadworks, and I am surprised that the Hon. D. J. Gay would seek to put at risk 1,700 jobs in the highest unemployment area in the State. For that reason alone I cannot support the motion. I will not be guilty of putting 1,700 country people out of work through an act of bastardry. Enough problems have been caused with 2,000 wharfies being put out of work because of the high-handed action of Chris Corrigan.

The regulation was put in place only because of the High Court decision. I applaud the Hon. J. S. Tingle for negotiating with the Minister to ensure that a sunset clause is inserted that will have effect on 1 July 2000. Only the money lost will then be reclaimed. The extra vehicle registration fees and other increased fees will be a slight disincentive to motorists, who may be more inclined to use public transport. I agree with the Greens that more money must be spent on public transport. I have received a letter from the Environment Liaison Office, which represents a number of groups including the Nature Conservation Council of New South Wales, the Australian Conservation Foundation, Friends of the Earth, the National Parks Association of New South Wales, the Total Environment Centre and Greenpeace. They are also concerned about the charges and they seek large sums for public transport and the hypothecation of some of these fees to public transport.

As honourable members know, Treasury does not like hypothecation. The question of public transport is perhaps a separate issue from the money spent on our roads. I am sure the Minister will address public transport issues over the coming months. Public transport needs more funding, and there are ways and means of providing it within our taxation system. To sum up, I cannot support the disallowance motion of the Hon. D. J. Gay, for it would not only put 1,700 jobs at risk but would put lives at risk. If some roadworks grind to a standstill as a result of the passing of this disallowance motion and a number of children are killed as a result, I would feel I had blood on my hands if I had voted for the motion and it was passed. I will not allow that to happen, so I will oppose the disallowance motion.

**Reverend the Hon. F. J. NILE** [12.01 p.m.]: In speaking to this disallowance motion moved by the Hon. D. J. Gay I should state that the Christian Democratic Party shares the concerns raised by crossbench members, and in particular by the Hon. J. S. Tingle. We have received a lot of information from the coalition parties and from Mr Souris, the shadow spokesman on this issue, who sent to us



detailed correspondence dated 24 April in which he included information showing that New South Wales has higher vehicle registration charges than other States, particularly Victoria.

I suppose it has been a temptation for motor vehicle owners to avoid paying the high registration fees in this State by registering their vehicles in other States. I understand that there has been considerable public anger expressed that the increases, though not substantial, were implemented on Christmas Eve by the Motor Traffic Amendment (Fees and Charges) Regulation 1997, which was gazetted on 24 December 1997. I do not know whether it was a deliberate intention of the Government to implement the fees on Christmas Eve so that the increases would go unnoticed and would not receive media coverage, so that the measure would not meet with a backlash from the public that would be deleterious to the Government and affect Labor's chances at the State elections in March 1999.

We have received a number of letters on this issue from the Minister for Transport, and Minister for Roads, the Hon. Carl Scully, and we have attended briefings provided by him. As often happens with the Christian Democratic Party, through its sharing the balance of power—which we call the balance of prayer and responsibility—such a disallowance motion puts us in the hot seat, so to speak, and in a difficult position because this matter, even though implemented on Christmas Eve, is similar to a budget measure. If the regulation were disallowed today, obviously the Treasurer would include the measure in the budget, which this House will be dealing with in a few weeks time. This Chamber cannot block the budget and would have to accept such an increase if it were included within the budget. Members of this House could criticise such a budget provision but could not remove it. The Christian Democratic Party received letters from Minister Scully dated 12 February, 25 March and 27 April. In the February correspondence the Minister explained:

The fee increases are necessary to help make up a funding shortfall of approximately \$100 million in the roads budget resulting from last year's High Court decision outlawing business franchise fees. The shortfall resulted mainly from a timing difference between the cessation of the collection of State fuel franchise fees and the imposition of a Federal fee of 8.1c/litre commencing on 6 August 1997.

From 1 February 1998 vehicle registration fees increased by \$5 from \$41 to \$46.

For those buying a car, the cost of transferring a vehicle will increase by \$20 from \$20 to \$40. The transfer fee for licensed motor dealers has been capped at \$25, in recognition of the

fact that motor vehicle dealers conduct high volumes of vehicle transfers, and to protect employment in this industry.

The transfer and registration fees are estimated to raise \$34.3 million per annum.

The Minister went on to state:

I should stress that all of the increased fee revenue will be returned to the roads budget to improve and maintain the State's roads. The alternative would be to massively cut road projects this year.

The Christian Democratic Party would be most concerned if the roads of this State were allowed to deteriorate even further. I do a lot of driving in visiting country centres north and south, and I am amazed at the poor condition of some roads. I acknowledge that a lot of work has been done and there have been big improvements in some roads to the north, particularly to Newcastle, as well as south to Goulburn and Canberra. However, the quality of our roads seems to drop dramatically once we pass those major regional cities. Therefore, I would not be in favour of spending less on our roads than is currently being expended. In fact, I would welcome an increase in expenditure to improve our roads more rapidly, even to make the Pacific Highway a four-lane highway, because it is almost a country road at some points. I know that work is in progress, but it seems to be slow and drawn out. Those road improvements are urgent, not just for the convenience of motor vehicle travellers but for safety reasons. Some of the roads are quite dangerous and contribute to the high rate of accidents. Sometimes the accidents are caused by speeding and drivers falling asleep, but often they are due to the narrowness and generally poor condition of the roadways. I note that statements have been issued by various organisations, particularly the Motor Traders Association, expressing acceptance of a compromise on the transfer fee increase. The Motor Traders Association stated:

The Motor Traders Association has welcomed the announcement from roads minister Carl Scully that licensed motor dealers will now only pay a \$5 increase for the transfer of motor vehicle registrations instead of the \$20 originally suggested.

So the Minister did respond to those concerns. The Motor Traders Association statement dated 30 January ends with these words:

The compromise that we have reached is one that will help pay for better roads yet will not affect the viability of small businesses or threaten employment.

So the Minister has shown a willingness to review the impact of the increases. In the letter sent to us

on 26 March the Minister gave these assurances regarding the increases:

In recognition of the fact that these fee increases were only necessary to deal with a "one-off" revenue shortfall arising from the High Court decision, the Government has now introduced a sunset provision ensuring that the fee increases will cease on 30 June 2000. On the 1st July 2000 the registration and transfer fees will return to the level they were at before the 1st February 1998.

The Minister sent us a copy of the relevant provision that will ensure that that occurs. So we are pleased that some concessions have been made by the Minister in that regard. In his letter of 26 March the Minister reiterated:

The alternative would be to massively cut road projects this year, which would adversely impact on employment in both urban and rural New South Wales and road safety.

In the most recent letter that we have received, dated 27 April, the Minister refers to the disallowance motion and points out further arguments in support of the need for increases in registration fees to go ahead, and raises also arguments against passing of the disallowance motion. The Minister stated:

The arguments used by the Coalition to justify cutting \$100 million from the roads budget are spurious and I will address them in turn.

The Minister referred to underspending on the M5 East. He said:

The M5 East will be funded entirely from within the urban roads budget and without a toll. Because of delays necessary to address issues raised during the EIS process, the project is now due to commence in the second half of 1998. Approximately \$60 million will be spent this year on planning and property acquisitions. The majority of the rest of the funds are RTA investments which will be carried over for expenditure next year.

[Time expired.]

**The Hon. A. B. KELLY** [12.11 p.m.]: The Treasurer has already contributed to this debate. I shall place on record the Government's commitment to maintaining and improving the State's public transport system. The revenue raised by these fees will allow the Government to continue its announced program, including the \$170 million public transport improvement program and other important 3 x 3 initiatives, including the continued sealing of New South Wales roads. This program incorporates the provision of parking facilities at railway stations to encourage the public to use the public transport system. Recently the public was encouraged to use public transport when they went to the Royal Easter Show so that roads would not be congested around

the park. People who went to the Royal Easter Show, particularly rural people, were pleased with the improved public transport system. The Government will continue its commitment to integrated roads and transport planning and it will welcome the support of honourable members to achieve those objectives.

**The Hon. D. J. GAY** [12.12 p.m.], in reply: The Government is spending money on parking lots and not on roads. It is ripping money off motorists and spending it in other areas. I refer to the legislation in which the Government changed the 3 x 3 program. The Hon. Elisabeth Kirkby supported my plea to keep the 3 x 3 program as it was when we were at the top of the stairs but by the time we reached the House her support for my proposal had evaporated. Instead, she supported the Government because she believed that it had a better argument. Honourable members will remember when the 3 x 3 legislation was before the House. The Hon. Elisabeth Kirkby looks bemused, as if she cannot understand what I am saying.

Honourable members will remember that when the legislation was before the House the Hon. Elisabeth Kirkby initially supported the Opposition's plea to keep it as it was, with the 60:40 split to country roads and all the money to be spent on roads. However, she supported the Government's stance that that split be removed and that that money be spent on parking areas and bicycle racks, and not just roads. When the Hon. Elisabeth Kirkby comes into this House and says she supports the Government because she supports country roads, it is a lot of rubbish. At least Reverend the Hon. F. J. Nile was honourable in the reasons he gave for the change. The Hon. Elisabeth Kirkby indicated in the House that she had been verbally by the *Daily Telegraph*—that those dreadful *Daily Telegraph* reporters had verbally her. That was four months ago and she has had plenty of time to tell the *Daily Telegraph* it got it wrong.

**The Hon. Elisabeth Kirkby:** On a point of order. I believe that the Hon. D. J. Gay impugned me when he suggested that I had not acted in an honourable manner and that Reverend the Hon. F. J. Nile had. He made a further statement about my making an excuse that I was verbally. I simply gave an explanation to the House. Mr President, I ask you to direct the Hon. D. J. Gay to withdraw his remarks because I find them offensive.

**The Hon. D. J. GAY:** If the Hon. Elisabeth Kirkby can indicate the exact remarks I would be more than happy to withdraw them. If she cannot, I will not.

**The PRESIDENT:** Order! Is the Hon. Elisabeth Kirkby able to specify the words she finds offensive?

**The Hon. Elisabeth Kirkby:** Mr President, I think the best way for me to deal with this is to make a personal explanation to the House after I read *Hansard*.

**The Hon. D. J. GAY:** The comments in the *Daily Telegraph* were made earlier this year. If the honourable member felt that the *Daily Telegraph* had commented improperly and was not happy to just bask in the glory of the article she has had a lot of time to change it. She should not whinge about the *Daily Telegraph* now. She was happy to bask in the glory of the article. She is in the big boys' House and she ought to play tough with the *Daily Telegraph*. She took the glory when it was happening and she could have said something about it then.

**The Hon. M. R. Egan:** Did you say "the big boys' House"?

**The Hon. D. J. GAY:** I forgot about the Treasurer—he is not one of them.

**The Hon. M. R. Egan:** You outrageous sexist! You are just a redneck sexist!

**The Hon. D. J. GAY:** Talking about rednecks, the Treasurer should see his face at the moment—Egonomics as an art form! Crossbench members believe that this extra money will go straight into roads. The Hon. A. B. Kelly—who, other than the Treasurer, was the only Government member to speak to the disallowance motion today—certainly did not indicate that. My real concern is that the Government is simply collecting extra money to budget a deficit from the Treasurer, and that is a genuine concern. I have not seen any form of words signed off by the Government that indicate this money will go back into roads. The only indication is that the money will go into Treasury. The Hon. R. S. L. Jones believes that there is a way, through the strictures of the system, that the money can find its way into roads. That is not guaranteed. As the Treasurer knows, the roads portfolio is a government trading enterprise—GTE—and is not dependent on consolidated revenue. It is dependent on funding from sources other than the Treasury. That is one of the Opposition's real concerns.

**The Hon. R. S. L. Jones:** You don't care about country jobs.

**The Hon. D. J. GAY:** I do care about country jobs. As I said earlier, I moved amendments to try to stop what the Government did to the 3 x 3 legislation. From memory, I certainly did not have support from the Hon. R. S. L. Jones or the Hon. Elisabeth Kirkby in that regard, but I had support from Reverend the Hon. F. J. Nile, the Hon. Elaine Nile and the Hon. J. S. Tingle—and if the Hon. Franca Arena had had a freer vote she may have supported me. I am simply relating the facts. When honourable members say they do not support this disallowance motion because they want the money to be spent on country roads, I have no choice but to remind them of the history of this situation. I regret that they do not support the motion but I understand the reasons they have given. I hope that when we divide on this disallowance motion honourable members will reconsider it and support it for the benefit of the people of New South Wales, particularly country people.

**Question—That the motion be agreed to—put.**

**The House divided.**

**Ayes, 17**

Mrs Arena	Mr Kersten
Mr Bull	Mr Lynn
Mrs Chadwick	Mr Ryan
Mrs Forsythe	Mr Samios
Mr Gallacher	Mrs Sham-Ho
Miss Gardiner	Mr Rowland Smith
Mr Gay	<i>Tellers,</i>
Dr Goldsmith	Mr Jobling
Mr Hannaford	Mr Moppett

**Noes, 22**

Dr Burgmann	Mrs Nile
Ms Burnswoods	Rev. Nile
Mr Cohen	Mr Obeid
Mr Corbett	Mr Primrose
Mr Dyer	Ms Saffin
Mr Egan	Mr Shaw
Mr Johnson	Mrs Symonds
Mr Jones	Mr Tingle
Mr Kaldis	
Mr Kelly	<i>Tellers,</i>
Ms Kirkby	Mrs Isaksen
Mr Macdonald	Mr Manson

**Pair**

Dr Pezzutti	Mr Vaughan
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**Question so resolved in the negative.**

**Motion negatived.**

## AIR TRANSPORT LEGISLATION REPEAL BILL

### Second Reading

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [12.26 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

### Leave granted.

The Air Transport Legislation Repeal Bill 1998 provides for the repeal of the Air Transport Act 1964 and other consequential legislation on 1 May 1999. The existing air transport licenses expire on 1 May 1999. The Air Transport Council will also be dissolved at that time and its assets, rights and liabilities transferred to the Crown. The New South Wales Government has no role in aviation safety and the repeal of the Act will not affect aviation safety. This is the sole responsibility of the Commonwealth Government. The repeal of the Act on 1 May 1999 allows the existing licences to run their course and sufficient lead time for the industry to prepare for deregulation. Having said this, the Government fully expects the industry to have already begun to prepare for the new environment based on the fact that the Government publicly announced its reform strategy on 20 November 1997.

The Air Transport Act 1964 regulates the intrastate aviation industry by establishing a licensing regime for air services operating within the State's borders. Licences are issued by the Air Transport Council and generally restrict each route to one or two operators between New South Wales regional centres and Sydney. The Government considers that there is no longer a case for this type of regulation of the aviation industry and that the existing regulation works against the interests of consumers, particularly those in rural New South Wales. New South Wales remains virtually the only State that economically regulates the industry. Where licensing regimes have been removed in other jurisdictions, there has been a marked improvement in services and better outcomes for both industry and consumers alike.

Honourable members would already be aware that the Independent Pricing and Regulatory Tribunal, which reviewed the Air Transport Act and recommended its abolition, found that in a regulated environment air fares over comparable distances are around \$30 dearer than in a deregulated environment. Anyone travelling by air in country New South Wales will know that fares are relatively expensive, especially when compared to longer interstate air journeys. The inappropriateness of the licensing regime is demonstrated by the fact that licences are not required for interstate traffic, or for air travel between New South Wales regional centres and other State capitals. This means that interstate flights in regional Australia of a short distance operate in a more competitive environment than some longer intrastate flights which operate within a restricted trading environment.

The regulation in respect of licences which restricts one or two operators per route can only cost the community. The enforcement of restrictive practices diminishes the capacity for industry growth and flexibility. In practical terms, the current

arrangements reduce the level of services able to be provided and, importantly, the development of new services. One of the main outcomes of repealing the Act will be to increase competition within the New South Wales aviation industry. It should also be stressed that the repeal of the Act is fully consistent with national competition policy, which requires the review of all legislation for anticompetitive elements. The Government's decision to repeal the Act is supported by the Independent Pricing and Regulatory Tribunal. IPART reviewed the Act and recommended its repeal. IPART found that the Act lacked clear objectives and that the continued regulation of the intrastate aviation industry could not be justified on economic or social grounds.

It might be thought by proponents of continued regulation that the Act's licensing regime guarantees air services to small country towns. Indeed the shadow minister for transport has suggested this. This is simply untrue. The current regulatory framework does not provide surety of service to rural communities nor does it ensure that unprofitable routes remain open. Rather it supports monopolies on existing routes which can mean higher prices and reduced quality of service for commuters. For example, in 1991 a licensed operator withdrew its services from 14 routes, including Forbes, Gunnedah and Lightning Ridge, on which it held the only licence. The Act did not permit the then Government to compel the operator to provide these services. The reality is that the current regulatory regime provides no guarantee of service levels on any particular route. When the operator withdrew its services the previous coalition Government was forced, if it wanted services to continue, to deregulate the affected routes, although for administrative purposes licences are issued.

The response by the previous Government to this particular example demonstrates the benefits of a deregulated industry. The former Government did eventually deregulate in respect of these licences at no disadvantage to the country communities previously serviced by this operator. In fact, all 14 routes—which were 14 of the least patronised routes in the State—were picked up almost immediately by new operators and those country communities have had regular services ever since. The effective deregulation of these 14 routes with a relatively low patronage can be seen as a successful test case for repeal of the Act. The only way that the previous Government was able to provide services to the 14 rural communities was to deregulate the air routes.

The Act was powerless to provide protection. The Opposition has been quite misleading to the people of rural New South Wales in this respect and shows a misunderstanding of the way current regulation works. The Opposition also has not recognised the way current regulation has stifled growth of the regional airline industry. The more heavily trafficked intrastate routes, those requiring ostensibly the least amount of regulation, remain today restricted to one or two operators. It is interesting to note that since October 1990, over the 1990 to 1997 period, the deregulated interstate market grew by 108 per cent and the regulated intrastate market grew by only 31 per cent. This inadequate performance is clear evidence that intrastate regulatory restrictions should be removed.

The current regulatory regime simply provides operators with licences for routes that they would service anyway. Further, by enforcing restrictive practices the Act has inhibited service development, industry flexibility and growth. The continuation of this situation can only result in poorer quality and more expensive services to local communities, especially those in rural New South Wales. The current Act impedes the operation of an efficient and dynamic airline service in New

South Wales, especially in country areas. This was recognised by the honourable member for Bega who, on 6 June 1997, wrote to the Government regarding the drop in service levels on a regional route proposed by the incumbent operator. I will quote from the honourable member's letter:

Because of this proposed cut in service . . . I believe it is now time that we move to full deregulation, as is the case in most other States.

In the other States and Territories and the Commonwealth where regulation has been eliminated there has been no quantifiable loss of services, nor has the industry been destabilised. In fact, there has been a marked improvement in services and better outcomes for both industry and consumers alike. This is not to say that air service patterns may not change, but the Government fully expects air services to improve. The Government's reform of the intrastate aviation industry is timely given the proposal by the Commonwealth's Federal Airports Corporation to increase landing charges at Sydney (Kingsford-Smith) Airport. It seems that regional airlines are paying a disproportionate amount of the cost of the FAC's capital program for the Olympic Games without benefiting from the improvements.

In February this year the Federal Airports Corporation announced increases in the minimum landing fee of up to 410 per cent over a three-year period. One regional airline has advised the Government that this will mean that their landing charges will increase by approximately \$1 million per annum or 55 per cent above what is currently paid. The charges hit small operators hardest as small aircraft have to pay more per passenger than larger craft. For example, the minimum proposed landing charge is \$140 per landing. Assuming 85 per cent of seats are occupied, this would cost an additional \$18.30 per passenger on a nine-seat aircraft. This compares to only 41¢ for a 400-seat aircraft. I am advised that the Federal Airports Corporation has backed down somewhat by proposing to drop peak period pricing and extending the time for the introduction of the increase in landing fees.

But the essential problem remains. There will be a significant increase in the standard landing charge. The proposed pricing structure clearly discriminates against regional carriers with small craft. The damage to rural communities could be significant. For example, the cost to country people requiring medical treatment will increase considerably and patients may be forced to travel long distances by road, which may, in many cases, be undesirable. While the New South Wales Government is introducing measures that will improve regional air services the Federal Government is introducing a pricing structure that discriminates against regional air service users and may put the industry at risk. I have been advised by the airline industry that this inequitable policy could lead to an increase in airfares and up to 20 country towns could lose their air services.

The New South Wales Government believes that repeal of the Air Transport Act will give the industry the best chance of coping with the threat of increased fees by giving airlines greater flexibility to adjust their route networks, to offer innovative new services and to respond to consumer demand in the most commercially viable manner. The repeal of the Act will see real benefits delivered to consumers, in particular rural consumers, who should see better and more flexible service and quite possibly lower fares. The Government is committed to providing rural communities with a better deal. The repeal of this outdated and inefficient Act will be a significant step towards this goal. I commend the bill to the House.

**The Hon. D. J. GAY** [12.28 p.m.]: The Opposition opposes the bill.

[*Interruption*]

The honourable member indicated that agrarian socialism is the reason the Opposition opposes the bill, but to oppose deregulation of airlines is more than agrarian socialism. Honourable members will recall that on at least two occasions I have raised concerns about airline safety in New South Wales. Honourable members will also recall that three of my cousins were involved in the Monarch plane crash at Young. I am speaking personally against this legislation partly because—

**The Hon. M. R. Egan**: Is the Opposition opposing the bill?

**The Hon. D. J. GAY**: Yes, the Opposition is opposing the bill, but I also oppose it personally. I would be in difficulty if the Opposition were supporting the bill, but the Opposition is not supporting it. The first reason that the Opposition opposes the bill relates to safety issues.

**The Hon. M. R. Egan**: Did they support it in the lower House?

**The Hon. D. J. GAY**: No. The second reason that the Opposition opposes the bill relates to looking after rural communities.

**The Hon. R. S. L. Jones**: Are you saying we should maintain inefficient air services?

**The Hon. D. J. GAY**: I am not saying that we should maintain inefficient air services; I am saying that we should maintain regular and safe airline services.

**The Hon. R. S. L. Jones**: At what cost?

**The Hon. D. J. GAY**: The Hon. R. S. L. Jones made a very silly comment. I ask him: at what cost? This bill will enable any cowboy to establish an airline and obtain an air route. Establishing an airline is quite different from someone mortgaging his house, selling his old GT Falcon, buying a truck, and becoming an interstate truckie, thus fulfilling the great Australian dream.

**The Hon. R. S. L. Jones**: That could not happen; you know that.

**The Hon. D. J. GAY**: It has happened in the past and it will happen in the future. Nothing in this legislation addresses the inherent problems that

resulted in the Monarch airline crash at Young which killed so many people and affected a whole community. When an airline is granted an air route, there is no prerequisite that the airline and the air route have to be financially viable. Deregulation—an option that the Hon. R. S. L. Jones worships—gives an airline the right to go broke and the right to put the safety of its passengers at risk. That is what I am concerned about. That is what happened in the Monarch airline crash—the plane travelling from Cootamundra to Young. Too many airlines were operating out of that area and there was not enough business for them all.

The airline to which I referred was cutting corners in the safety area and not replacing all the instruments in its planes. It will happen again. The 15-year-old kids who were killed in that accident might have died in vain. My cousin Graeme Gay lost his daughter Jane in that air crash. Jane Gay and Alanda Clark, who died in that air crash, were the same age as my daughter Anna. The tears well up in my cousin's eyes and in the eyes of Alanda Clark's parents when they see my daughter. The Government has not thought through this legislation. In addressing the issue of deregulation it has forgotten to address safety issues or proper airline services for country communities. It will be all right for people living in Port Macquarie and Coffs Harbour where there are large airline services but it will not necessarily be all right for people living in Grafton. Will places like Grafton, Griffith and places down south be able to maintain their airline services?

**The Hon. R. T. M. Bull:** We will be down to two Navahos.

**The Hon. D. J. GAY:** We will be down to two Navahos. That will not resolve these problems. We are not dealing with cold, hard, economic rationalism. I would like the Government to address these problems. We still have not addressed the problems identified by the Air Transport Council. There is no guarantee when a company takes out insurance for the first time that it will renew that insurance, which is one of the problems that has been identified. That is a problem we will continue to face. For that reason and a number of other reasons to do with the safety of country communities we need more time to consult the community about this legislation. Honourable members must take into account the true ramifications of this legislation. I move:

That this debate be now adjourned until Tuesday, 5 May 1998.

### **The House divided.**

#### **Ayes, 24**

Mrs Arena	Mr Lynn
Mrs Chadwick	Mrs Nile
Mr Cohen	Rev. Nile
Mr Corbett	Dr Pezzutti
Mrs Forsythe	Mr Ryan
Mr Gallacher	Mr Samios
Miss Gardiner	Mrs Sham-Ho
Mr Gay	Mr Rowland Smith
Dr Goldsmith	Mr Tingle
Mr Hannaford	
Mr Jones	<i>Tellers,</i>
Mr Kersten	Mr Jobling
Ms Kirkby	Mr Moppett

#### **Noes, 15**

Dr Burgmann	Mr Obeid
Ms Burnswoods	Mr Primrose
Mr Dyer	Ms Saffin
Mr Egan	Mr Shaw
Mr Johnson	Mrs Symonds
Mr Kaldis	<i>Tellers,</i>
Mr Kelly	Mrs Isaksen
Mr Macdonald	Mr Manson

#### **Pair**

Mr Bull	Mr Vaughan
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### **Question so resolved in the affirmative.**

### **Motion for adjournment agreed to.**

*[The President left the chair at 12.43 p.m. The House resumed at 2.15 p.m.]*

## **INDUSTRIAL RELATIONS AMENDMENT (UNFAIR CONTRACTS) BILL**

### **Second Reading**

### **Debate resumed from 8 April.**

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [2.15 p.m.]: The coalition does not oppose the Industrial Relations Amendment (Unfair Contracts) Bill. During debate on the Industrial Relations Act the Opposition moved amendments relating to unfair dismissals, which are reflected in part 6 of the Act. The amendments were pursued following consultations with the Federal Minister in an attempt to achieve consistency between the Federal and New South Wales unfair dismissal rules. There is still significant disquiet in the community

about the application of unfair dismissal rules. The intention of the amendments was to ensure that the provisions of the Act applied to public sector employees, because the original arrangements covering those employees were being deleted.

It was also intended to ensure that all employees in the work force would have access to the Industrial Relations Commission for unfair dismissal claims, except employees who were in a relatively high income bracket. The figure of \$62,200 was chosen as the cut-off point for access by employees to the commission. Employees earning above that salary were expected to take their disputes to the courts. The amounts involved in breach of contract claims would usually fall within the increased jurisdictional level of the Local Court, where a claim could be dealt with expeditiously, within two to three months. Employees seeking a declaration in the equitable jurisdiction court to restrain a breach of contract would apply to the District Court, because that court is a limited equity jurisdiction.

However, use is being made of part 9 of the Act to deal with unfair contracts. Part 9 does not relate to any employment covered by an industrial instrument. An industrial instrument is an award, enterprise agreement, public sector industrial agreement, informal industrial agreement, contract determination or contract agreement. Effectively, all agreements with union involvement are outside the purview of part 9, which applies only to employment contracts that are not under award coverage. That is a limited area because a large amount of the work force in New South Wales has award coverage. Part 9 of the Act has been used to circumvent the operations of part 6.

The Opposition supports the amendment to part 9, which makes it clear that employees will still be able to make an application under part 9 in relation to unfair contracts insofar as that application for variation of the agreement does not relate to a matter which could appropriately be dealt with by part 6. So if somebody wants to argue that the terms of his contract are unfair, unconscionable or harsh, he will still be able to achieve a variation of the contract by an application to the commission. The only aspect of this which one might have had a query about is that people arguing an unfair contract case would have to go to the commission and, having had the contract varied because it is harsh, unfair or unconscionable, would then have to go to another jurisdiction, either the Local Court or the District Court, to enforce the claim for damages for unfair dismissal.

**The Hon. J. W. Shaw:** Or the Commercial Division of the Supreme Court.

**The Hon. J. P. HANNAFORD:** Yes, depending on the amount that is being claimed. The Government having now made this change in relation to unfair contracts, it would have been preferable if it were possible as part of the one application for an application to be made in the common law jurisdiction—whether in the Local Court, the District Court or the Commercial Division of the Supreme Court—for a determination that the contract was unfair. There will now be potential for dual litigation, which is undesirable. In government the coalition will seriously entertain an amendment in this regard to minimise the levels of disputation. However, the principle in this change is consistent with the intention of the Industrial Relations Act 1996 and the alterations that were made to part 6. For that reason the Opposition supports the change. As I said, it is unfortunate that it could lead to two lots of litigation. I do not know whether the Government reflected upon that possibility in drafting the legislation, but this change is inconsistent with some of the other changes brought forward by the Attorney General, who has tried to minimise disputation.

**The Hon. ELISABETH KIRKBY** [2.25 p.m.]: On behalf of the Australian Democrats I support the Industrial Relations Amendment (Unfair Contracts) Bill. The purpose of the bill is to amend the Industrial Relations Act 1996 to prevent unfair dismissal claims being dealt with by the Industrial Relations Commission under provisions relating to unfair contracts. The unfair contracts provisions were introduced into the New South Wales Industrial Arbitration Act 1959 by the inclusion of section 88F, particularly to control abuse of the contract system, substantially in the building trades. However, it was generally inserted to prevent the avoidance of awards by the use of independent contracts.

There was a shortcoming in the section in that it provided no effective means of making enforcement orders. This was remedied in 1966 with the provision to allow for monetary compensation. However, in 1985 the section was further amended to allow the commission to make preventive orders following the making of specific orders. In 1991 a completely renovated industrial code was introduced and section 88F became section 275 and section 276. These provisions were subsequently carried over into the present Act as sections 106 to 109. They have become a repository of an interesting array of contracts or arrangements which include

franchise agreements, superannuation agreements, restaurant leases, sharefarming agreements, music royalty agreements with pop stars, footballers compensation benefits and an arrangement excluding footballers from representative selection.

In 1984 it was accepted that employment contracts were covered by the provisions as stated in the case of *Ronan v University of Wollongong*, 1985 AILR 9. In the early stages the unfair contract provisions were used to examine the terms of the contracts but as time went on they were used to litigate contract terminations as well. As has been pointed out by the Attorney General, the Government believes that this is not the intention of this part of the Act, and I believe all honourable members would agree with that. The bill will prevent the commission from exercising its jurisdiction with respect to unfair contracts in which a contract of employment is alleged to be an unfair contract for any reason for which an application has or could have been made under the unfair dismissal provisions or an application could have been made under unfair dismissal provisions but is excluded by the provisions of section 83.

"Contract of employment" for the purpose of this amendment means any contract or arrangement under which work is done by a person as an employee, and includes a related condition or collateral arrangement with respect to such a contract. Distilled to its essence, the new subsection will mean that applicants who earn more than \$66,200 a year or who are not otherwise defined as an employee will be excluded from pleading unfair dismissal cases before the commission. They will still be able to plead an unfair contract case but this will be on the terms of the contract and not on whether the termination of the contract was unfair. This is where there are questions as to how the bill will affect the unfair contracts jurisdiction of the Act. Given that most matters concerning unfair contracts come to court after the contract is terminated, it remains to be seen, firstly, whether the court can hear the matter at all given that the contract is no longer on foot. Secondly, if the circumstances of the dismissal cannot be produced in evidence, will this affect the amount of compensation that an applicant may be able to recover?

I hope that in reply the Attorney General will address these points and others. I have also asked the Attorney General other questions by way of a fax addressed to his senior policy officer. The first question related to the matter I have just mentioned. The second was whether the amount of compensation that an applicant may be able to

recover will be affected if the circumstances of the dismissal cannot be produced in evidence. The third was whether sharefarming agreements will be affected in any way by this bill. The fourth was whether, if an applicant files an application under the unfair dismissal provisions and the commission rules that the action should have been brought under the unfair contracts provisions, the bill will preclude applicants from refileing under the unfair contracts provisions. I ended my fax to the Minister's office by saying:

We would be most appreciate if the Attorney could address these matters in his final remarks.

One reason for the introduction of the bill is that it has been argued that at present unfair dismissals and unfair contracts are taking up too much of the court's time. However, I have been informed by practitioners in the jurisdiction that there is no obvious delay in cases being heard. The most convenient argument is that the commission is or was being used in a way that was never intended. Of course, arguments have been put against the legislation. Prior to receiving further briefings from the Minister's policy adviser I had intended to oppose the legislation, partly because of the argument that the Industrial Relations Commission is the forum to hear all matters dealing with employment, whether they be award employment or contract employment. It should not matter if a contract is worth \$50,000 or \$5 million. If it is an employment contract matter the commission should hear it. That is at variance with the history of the commission, which traditionally has been the bailiwick of award employees and comparable contract employees.

It is somewhat ironic that one of the criticisms of the present operation of the unfair contracts provisions is that they appear to be cheaper and faster than proceedings in the general courts. It is also a fact that remedies under the unfair contracts provisions are superior to those available under common law. Perhaps thought should have been given to allocating a subjurisdiction to deal with these matters rather than removing them from the commission altogether. Also, the Industrial Relations Commission is the most appropriate forum to adjudicate on employment matters, whether they be contract or award employment. In spite of the large amounts involved in some contracts of employment, surely that is a more appropriate matter for the commission than a franchise agreement dispute, which could still be brought before the commission if this bill is passed. However, having said that, an argument that the intended jurisdiction with regard to unfair contracts is being used in a manner to



facilitate unfair dismissal claims, which was not the original intention of the Legislature, can be sustained.

Only two days ago a letter from a partnership of solicitors and barristers in Sydney brought certain matters to my attention that are appropriate to be placed on the public record. Before I received further advisings from the Minister's office, I had intended to move amendments to the legislation and I even had certain amendments prepared. However, since that further consultation I no longer intend to go down that path. The letter states in part:

Superficially, the Minister's proposal is very attractive because it could be perceived that s106 has become a loophole which highly paid executive-type employees can use to circumvent the restrictions of the unfair dismissal division. This restricts the Commission from awarding a remedy for unfair dismissal to anyone whose salary exceeds an indexed amount, which at present is \$66,200.

Honourable members would remember the recent case of Jana Wendt. I ask the Minister to confirm that the amendments will not prevent someone such as Jana Wendt or highly paid footballers from bringing an action under the unfair contracts provisions of the Act, as long as they allege that the terms of the contract are unfair and do not just seek the termination of that contract. The Minister would be well aware that media reports have been painting this bill in just such a way and that apparently some unions have attempted to remove such contracts from the commission's jurisdiction for that reason. The following objections were given:

There is a distinction in law between an employee, working under a contract of service, and an independent contractor, working under a contract for services. Borderline cases are not common but by their nature are disproportionately likely to find their way to court. In these, the court or tribunal has to weigh up all the incidents of the relationship and apply what is commonly called "the control test", following the High Court in *Zuijs v Wirth Bros Ltd* (1955) 93 CLR 561 and later cases. It is not possible to do this until a great deal of evidence, most or all of which is also germane to the merits, has been heard.

Under the unfair dismissal division, the applicant has to be, in law, an employee or else the Commission can do nothing for him/her. If the Commission finds that the applicant was not an employee but was, as a matter of law, an independent contractor, it cannot do anything for him/her, even if by that stage it has become manifest that the applicant has been treated unfairly. The applicant then has to start over again under s106. This is the current state of play in a matter I am at present dealing with, which the applicant started without legal representation before coming to us.

One of the advantages of s106 as it is now is that it avoids these jurisdictional problems. If the amendment passes, the same jurisdictional problems will arise, in reverse, under s106. My client to whom I refer above was not a highly paid

executive but a cleaner. The potential hardship created is, I think, obvious.

Another advantage of s106 as presently worded is that the whole course of the relationship can be taken into account in determining whether the contract was unfair, i.e. a contract which is fair in its terms can nevertheless be unfair in the way it operated. This makes s106 a superior remedy for someone who has genuinely been unfairly treated when compared with common law remedies. The only effective remedy at common law for the employee who has been unfairly dealt with is a breach of contract action for breach of the implied term of reasonable notice or pay in lieu of notice. This is only available if the contract of employment is silent on the period of notice to be given. If the contract specifies the notice to be given, there is no common law remedy as an executive-type employee is very unlikely to be able to prove unconscionability or undue influence. Nor are they likely to be able to bring themselves within the scope of the *Contracts Review Act* 1980, which is sometimes touted as an alternative to s106 or its predecessors.

While there are clearly cases which are an abuse of the section as is . . . or which some might see as an abuse, eg Jana Wendt, it seems to me that the balance of justice lies with leaving the unfair contracts division alone.

That was the briefing I received that coloured my initial judgment. However, having said that and having placed those objections on the public record, and subject to the Attorney's clarification of the matters previously mentioned, the Australian Democrats are happy to support the bill.

**Reverend the Hon. F. J. NILE** [2.41 p.m.]: The Christian Democratic Party supports the Industrial Relations Amendment (Unfair Contracts) Bill. This bill will exclude matters arising from the dismissal of employees from the jurisdiction of the Industrial Relations Commission relating to unfair contracts. The bill will prevent the commission from exercising its jurisdiction with respect to unfair contracts in cases in which a contract of employment is alleged to be an unfair contract relating to the dismissal of the employee.

The bill makes a number of provisions. The first is that the unfair contracts division does not apply to a contract of employment that is alleged to be unfair for any reason for which an application could have been made by the employee under the unfair dismissals provisions. A further provision is that the unfair contracts division does not apply to a contract of employment that is alleged to be unfair for any reason for which such an application could have been made if the unfair dismissal provisions applied to the dismissal of the employee. "Contract of employment" for the purposes of this amendment means any contract or arrangement under which work is done by a person in the capacity of an employee, and includes a related condition or collateral arrangement with respect to such a

contract. The Christian Democrats Party supports these machinery provisions.

The bill will prevent the commission from exercising its powers under the unfair contracts provisions where an employee did not receive adequate compensation for dismissal or because an employee was not given a reasonable period of notice before dismissal. As the Attorney General, and Minister for Industrial Relations, who is an expert in industrial relations, is very much at home with this legislation, we accept his advice that this measure will assist in the operation of industrial relations in this State and therefore we support the bill.

**The Hon. R. S. L. JONES** [2.43 p.m.]: Initially I had reservations about this bill and discussed it with various entities, including the Law Society. I understand that what has been happening is that some employees who did not qualify under the unfair dismissal provisions of the Industrial Relations Act chose to use the unfair contracts provisions of the Act as a quite neat way of getting around the exclusion provisions of section 83. I understand that the \$62,200 provided for in section 83(1)(b) has now been prescribed at \$66,400, presumably in accordance with increases in award provisions.

Initially I felt that there may be some means of capping the amount to which those earning more than \$66,400 would be entitled, but I now feel it would not be possible to amend the legislation in that way. In any event, I believe that the legislation as it stands will not entirely close the loophole and that some employees who are dismissed will still be able, in my view at least, to use the unfair contracts provisions of the Act to access the Industrial Relations Commission. As I have said, I had discussions about the possibility of an appropriate amendment, but I understand that some employees have been using the provision as something of a loophole.

I understand further that some employees who claim to have been unfairly dismissed have not been advised by their lawyers to bring their cases before magistrates, at significantly less cost, rather than proceed in a higher jurisdiction such as the District Court. If they were to go before a magistrate they would have their matters dealt with in a few days, as opposed to a hearing in the higher jurisdiction lasting some months, incurring great expense. I believe that employees who are earning more than \$66,000 a year and believe they have been unfairly dismissed should be advised by some means that

they need not spend an enormous amount of money on legal costs.

I ask the Attorney to confirm whether employees dismissed under the circumstances I have mentioned could go before a magistrate rather than proceed in a higher court. I would be grateful if the Attorney would confirm my advice on that. I do not intend to move an amendment—as I had initially contemplated—as I understand it would not be supported by the Opposition or the Government. I repeat my belief that some people who have been dismissed are not having their matters dealt with properly and are paying far too much in legal costs. Therefore, I do not oppose the legislation as it stands.

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [2.46 p.m.], in reply: I thank honourable members for their contributions to the debate and for their general support for this limited measure. In the 1950s the unfair contracts provisions were placed in what was then the Industrial Relations Act 1940. Mr Deputy-President, you might have an understanding of the political and policy background to the insertion of those provisions in the Act. Those provisions were described by the late Justice W. S. Sheldon as radical law. Indeed, they were radical to conventional contract lawyers because they allowed contracts to be scrutinised on the basis of fairness, public interest and the like.

In part, the provisions were designed to avoid subversion of the system of industrial awards, but the system came to have wider ramifications. As some honourable members have said, franchise and other arrangements under which workers perform in an industry have been able to be scrutinised and, where appropriate, have been struck down as invalid, with orders for compensation being made. The rationale of the present measure is, as I said in my second reading speech, that this Parliament has carefully laid down tests to be met by an applicant claiming unfair dismissal. There is an income test, or a test as to whether the employee is covered by an award or an industrial instrument.

The unfair contracts provisions have been used, in effect, indirectly to get around those criteria. So it seems, following submissions from both employers and unions, that we ought to revisit this provision and circumscribe it to a limited extent. In my view, cases that do not essentially involve dismissal will still be able to be agitated under the general umbrella of the unfair contracts provisions. So the effect of the measure is not as drastic as

some might think. Only the case which is really disguised as an unfair dismissal case is to be prohibited under these sections. If the bill is passed, the Parliament will be saying: No, you must go, if you can, under the unfair dismissal provisions.

The Hon. R. S. L. Jones asked whether employees who had been dismissed could obtain a more expeditious and less expensive remedy. The answer to that is yes, if the employees meet the test they can go to a member of the Industrial Relations Commission. In practice that person would normally be a commissioner, although it could be a deputy president or a judicial member of the commission. That would be a less formal and more expeditious avenue in which to deal with alleged unfairness rather than the more formalised and litigious unfair contracts jurisdiction of the commission.

I will now respond to the questions asked by the Hon. Elisabeth Kirkby, of which she courteously gave me advance notice. First, to date unfair contracts claims have been brought before the commission after a contract has been terminated. The bill will not change that position. In other words, it will not be an answer to an unfair contract claim to say that the contract had been terminated. Whether the commission would hear an unfair contract claim would not be dependent upon whether the contract had been terminated. If the unfair contract claim is excluded by the terms of this bill, it is because, in substance, it involves an unfair dismissal claim. If the bill is passed, the commission could dismiss a claim on that ground.

Second, in a particular case evidence would be relevant to determining whether a contract is unfair, and such evidence will be a factor to be considered by the commission in assessing compensation. There may be a threshold issue as to the commission determining whether to hear the matter on a preliminary basis before considering the evidence. Third, it is the Government's view that sharefarming agreements are not contracts of employment and therefore will not be affected by the bill. Finally, the bill will not preclude an applicant who has filed a claim under the unfair dismissal provisions of the Act and has had it rejected for some reason from being able to subsequently lodge an unfair contract claim. It is not intended to preclude a person who does not have a valid unfair dismissal claim from seeking to claim that the contract itself is unfair. I hope that those explanations satisfy the inquiries that various members have made. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## **LISTENING DEVICES AMENDMENT (WARRANTS) BILL**

**Bill introduced and read a first time.**

### **Second Reading**

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [2.54 p.m.]: I move:

That this bill be now read a second time.

The main purpose of the Listening Devices Amendment (Warrants) Bill is to clarify the provisions of the Act relating to the installation and removal of listening devices under the Listening Devices Act 1984. It is not proposed that the provisions of the bill apply retrospectively. The bill provides that listening devices may be removed after the expiration of the period of the listening device warrant and that retrieval of the device will be required as soon as reasonably practicable, but no later than 10 days after the expiration of the warrant. The bill also provides that an application may be made to the court for an extension of time for retrieval of the device. However, the maximum period that can be specified in any one order is 21 days. During the extension period police will have the power to enter premises and retrieve the listening device, but not to use it for recording purposes. The bill further provides that a listening device may continue to be used for the purposes of further warrants in relation to the same premises and will be deemed to have been installed pursuant to any such further warrant and that the proposed requirements relating to retrieval apply to all subsequent warrants which may be granted.

The bill also provides that, where an application has been made for an extension of time to retrieve the listening device, the person making the application must provide a written report to an eligible judge, as well as the Attorney General. Currently section 16(3) of the Act provides that, where a warrant granted by an eligible judge authorises the installation of a listening device, the warrant must authorise and require the retrieval of the listening device. Crown law advice has recently been provided to the effect that a listening device must be retrieved before the expiration of a warrant, or the warrant may be rendered invalid. Similarly, where a listening device which was put in place and authorised under the terms of a warrant is not retrieved before the expiration of the warrant and is subsequently used to obtain evidence under a subsequent warrant, evidence obtained by virtue of the subsequent warrant may have been obtained in contravention of the Act. Evidence so obtained may

be held to be inadmissible. Thus, if a further warrant is obtained in relation to the same premises, either a new listening device would have to be installed or the device originally used would have to be removed and reinstalled.

It is noted that the present Listening Devices Act provides the court with a discretion to admit evidence obtained in contravention of the Act. However, the discretion does not apply in every circumstance and it is considered preferable to introduce amendments so as to put the matter beyond doubt. There are significant operational issues for law enforcement agencies if the Act is not amended. Such agencies will be forced to either cease using listening devices or adopt potentially more risky operational procedures so as to comply with the duty to retrieve devices and to ensure that evidence obtained under the warrants will not be held to be inadmissible.

There is potential for covert operations and the police officers conducting such operations to be placed at greater risk if officers are forced to enter premises to remove listening devices within the period of the warrant and/or install another device for the purpose of continuing to eavesdrop under the authority of a further warrant in respect of the same premises. Accordingly, the Government has taken urgent steps to amend the Act to ensure that the efficacy of future police operations authorised by the Act are not jeopardised. The proposed amendments are designed to make the minimum changes necessary to overcome the difficulties identified. Any further amendments to the Act will await the Law Reform Commission's final report on surveillance, which it is understood will be published later this year. I commend the bill to the House.

**Debate adjourned on motion by the Hon. J. P. Hannaford.**

## **BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS AMENDMENT BILL**

**Bill introduced and read a first time.**

### **Second Reading**

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [3.02 p.m.]: I move:

That this bill be now read a second time.

The Building and Construction Industry Long Service Payments Act 1986 provides for a portable

long service payments scheme for building and construction industry workers who, because of the relatively short-term nature of individual work projects in that industry, might otherwise have not had access to long service leave benefits. In the 12 years since the commencement of the Act the building and construction industry, in common with other industries, has experienced changes in work structure and work practices, and there is a resultant need for the scheme to be altered to accommodate those changes. The present bill therefore introduces reforms sought by representatives of both employers and employees in the industry to provide better long service coverage for industry workers in a range of circumstances. This has been effected by substantive reforms to matters such as workers eligibility, the recording of service credits and payment matters.

A further result of the changes the industry has seen over more than a decade is that the membership of the scheme has expanded dramatically. The adoption of more flexible and efficient administrative practices included in this reform bill will allow the Building and Construction Industry Long Service Payments Corporation, the scheme's administering body, to take advantage of modern technology in relation to its business activities and practices so as to offer an enhanced, streamlined service to registered workers and their employers. Moreover, improved compliance measures have been included in the bill by way of protection of the corporation's levy revenue which will assist in the maintenance of a minimal long service levy rate. The membership of the Acts advisory/apellate body, the Building and Construction Industry Long Service Payments Committee, will also be expanded by the bill, increasing the membership of the committee from nine to 11, so as to provide a wider representation of the industry as a whole.

The two additional members will be appointed directly by the responsible Minister and will be individuals who have a knowledge of and experience in the building and construction industry. The bill also introduces reforms in relation to the corporation's ability to refund long service levies in certain circumstances. I would like to address some of the major reforms to the building and construction industry long service payments scheme contained in the bill in more detail for the benefit of honourable members. First, the bill contains a number of reforms to the legislation which will directly benefit workers. In keeping with developments in the industrial relations arena over the past few years, the principal Act is amended to allow long service payments to be calculated by reference to rates of pay set by industrial

instruments other than awards or determinations made by the corporation. This will allow the corporation to take into account rates of pay set by Federal and State industrial or enterprise agreements where these regulate workers' wages.

The bill contains significant reforms in relation to the availability of service credits to workers in the industry in relation to periods of time when those workers are undertaking approved training courses, or building work at their own expense for subsequent sale, during periods of unemployment. Service credits will also be available to persons involved in voluntary building work during declared emergencies or performing light duties following a work injury. Further, in the past ill or injured workers have been able to accrue only half the amount of service credits that would have been available to them had they not suffered the illness or injury. I propose to remedy this obvious inequity by doubling the amount of service credits available to workers in this position, effectively enabling the same amount of service credit to be available for all workers.

The bill also contains important reforms to eliminate discrimination. First, the eligible retirement age for workers will be lowered from 65 to 55 years. This is most significant in this industry in that, because of the arduous physical nature of the work performed, people may find that they wish to retire permanently from the performance of building work. The amendment will allow workers in this situation to be paid any long service due at 55 rather than having to wait an additional 10 years following their actual retirement. Second, the present requirement in the Act that a person must have completed five years service as an adult before becoming entitled to a pro rata long service payment on leaving the industry discriminates against young apprentices and trainees who are not regarded as doing service as an adult, whilst other people of the same age can work in the industry on adult pay, for example as labourers, and thus have their service recognised in terms of eligibility for a pro rata benefit. This inequity is redressed in the bill by removing the adult service requirement altogether.

I propose to effect amendments to the Act to enhance the preservation of workers' long service entitlements in circumstances where they are for a time unable to work in the industry. Accordingly, workers' names will be kept on the corporation's register in certain deserving circumstances following a break in service of at least four financial years. This will allow workers who have accrued more than five years service credits to continue to accrue service or to take an eventual long service payment.

Also, in the case of workers with less than five years service credits, their credits will be retained in permissible circumstances. Workers' names are also preserved on the register where prescribed circumstances prevent them from recording service credits for periods of time. The bill amends the Act to allow workers to record service credits for any day spent doing building and construction work. Presently service credits can be recorded only where a person performs building and construction work for the majority of his time.

This means that should a person perform building and construction work for only two days per week, service credits cannot be recorded in respect of those days. This reform is particularly significant in the light of current employment practices in the building and construction industry where a person's job may involve performing building and construction work for some days per week and other related work which does not constitute building and construction work under the Act for the rest of the week. Under reforms before the House, where workers who choose to take a long service benefit under the Long Service Payments Act 1955 do not receive a full benefit as a result of the liquidation of an employer, the corporation will be able to pay the balance of the amount due to the employee for service in the scheme. Additionally, bearing in mind that the benefit enjoyed by workers under the scheme is a payment rather than paid long service leave, employees will be provided with the option, with the agreement of their employer, of taking a period of unpaid leave to coincide with their long service payment.

Several other minor reforms are aimed at clarifying and enhancing workers' ability to achieve an eventual long service payment under the Act. The second arm of the reforms are amendments made with the express purpose of streamlining and modernising the operations of the corporation to enable it to administer the long service payments scheme more efficiently for the benefit of its clients. These amendments include the creation of an obligation on employers to ensure that their employees are registered with the corporation. This will dramatically decrease the incidence of workers inadvertently failing to register themselves with the corporation and hence risking the non-registration of valuable service credits. Fraud prevention measures are also being put in place by way of the amendments. For instance, a worker will need to demonstrate that he or she is permanently as well as totally incapacitated for work in the industry to become eligible for a pro rata payment on medical grounds.

Similarly, in order to receive a pro rata payment on permanently leaving the industry a worker will need to satisfy the corporation that he or she has left the industry rather than simply indicating an intention to do so, as is the present requirement. Further, offences are created for supplying false or misleading information to the corporation or the industry committee in a range of circumstances. To prevent fraudulent double dipping, employers will be required to inform the corporation prior to making a payment under the Long Service Leave Act 1955. In addition, the period in which the corporation may institute proceedings for offences is increased from one year to six years. A number of minor amendments relating to improving the operational efficiency in relation to the maintenance of the register of workers and the issue and receipt of documents are made. Reforms are also introduced in relation to the corporation's procedures in relation to the refund of long service levies on building works in certain circumstances.

Finally, the Act presently provides for an industry committee consisting of nine members. These are the Director-General of the Department of Industrial Relations, three members appointed by the responsible Minister from a panel of six nominees of the Labor Council of New South Wales, three members appointed again by the responsible Minister from a panel of six joint nominees of the Employers' Federation of New South Wales and the Master Builders Association of New South Wales, and two members being persons with a knowledge of and experience in the building and construction industry appointed directly by the responsible Minister. The two additional positions will be appointments made by the responsible Minister, and will provide an opportunity for wider industry representation, given the increased membership of workers through the new bill.

In conclusion, the bill represents a package of balanced and significant reforms to the building and construction industry long service payments scheme. The measures embodied in the bill include reforms put forward by both employee and employer representatives from the industry, and important amendments aimed at eliminating discrimination and fraud. As such, the proposed legislation is a good example of the principles enshrined in the Industrial Relations Act 1996 of promoting efficiency and productivity in the economy of New South Wales and the prevention and elimination of discrimination in the workplace. I commend the bill to the House.

**Debate adjourned on motion by the Hon. J. P. Hannaford.**

## **CO-OPERATIVE HOUSING AND STARR-BOWKETT SOCIETIES BILL**

### **Second Reading**

**Debate resumed from 22 October 1997.**

**The Hon. J. M. SAMIOS:** [3.10 p.m.]: When the Co-operative Housing and Starr-Bowkett Societies Bill was debated last year the Opposition adjourned the debate because industry required certain amendments to it. Since that time industry representatives have met with all interested parties, with crossbench members and with the Government and they have spoken to members of the Opposition. A number of proposed amendments have been canvassed by the Opposition and, more recently, by the Government. I believe that the Treasurer now has what may be considered by industry to be an acceptable set of amendments. The Treasurer, in his speech to the House, ensured that certain promises would be made by the Government in relation to appointments made under this legislation, as required by the co-operative housing and Starr Bowkett societies. We await those amendments or assurances.

**The Hon. ELISABETH KIRKBY** [3.12 p.m.]: The Hon. J. M. Samios has just pointed out that this legislation has been the subject of lengthy consultation between all parties involved. Those consultations have taken several months. I think all honourable members would be in the position that I am in. I now have so much information that it is almost impossible to wade through it all. Yesterday I received a copy of a letter from the Treasurer dated 27 April, which is addressed to the President of the Co-operative Housing Societies Association of New South Wales. It appears that after further lengthy consultation the Government acceded to some of the requests for change made by industry. The Treasurer refers to correspondence he received from the association on 20 April. He points out in a letter to me:

Those areas in which the Government is unable to change are in the main corporate governance issues which have precedents in other similar legislation and some matters relating to FINCOM's power of intervention which enable it to address problems when they arise in an efficient, effective, timely and equitable manner.

I am well aware, as the Treasurer pointed out to me in his letter, that "the Government has made considerable concessions to the industry". I do not believe any honourable member would disagree with that statement. The Government has agreed in particular to the removal of levies. I looked in some detail through the letter that the Treasurer wrote to

Mr Downing, President of the Co-operative Housing Societies Association, and I noted on page 2 of that letter the following statement:

The industry in its submission is attempting to broaden the powers of the Co-operative Housing Societies Advisory Committee (Review Committee) way beyond that envisaged by the existing legislation or current practice.

I therefore reject the proposed role for a CHS Review Committee and strongly endorse FINCOM's practice of maintaining an informal industry committee to provide feedback to FINCOM on industry issues and concerns.

The proposal to give powers of review to the Administrative Decisions Tribunal effectively gives the industry an appeal process that did not exist under the previous legislation.

I am happy with that statement. However, at the moment no member of this House knows when the Administrative Decisions Tribunal will come into being and when it will be able to hear any appeal made to it. I am informed, but only verbally, that it is the intention of the Government to have this tribunal established and operating by 1 September this year. Unless the Minister states that firmly in his reply so that it is on the record for the benefit of any interpretation of this legislation in the future, I am loath to accept that there will be a review process through a tribunal which, at this moment, does not formally exist.

If I get an assurance from the Treasurer that the Administrative Decisions Tribunal will be in full operation by 1 September this year, I will be happy to support the legislation and to support the Government's quite detailed and lengthy amendments to meet the concessions that it has made to the co-operative housing societies. The Government's amendments, which have been agreed to by all parties, will render the legislation in a form that meets everyone's concerns—matters which were fought for so bitterly and forcibly over the last few months. I trust that the Minister will be able to give me an assurance in relation to the starting date of the Administrative Appeals Tribunal. Once I have that assurance I shall be happy to vote in favour of the legislation and the amendments proposed by the Government.

**The Hon. R. S. L. JONES** [3.18 p.m.]: Before I speak in debate on the Co-operative Housing and Starr-Bowkett Societies Bill, I wish to say how sad I am that the Hon. Ann Symonds is leaving this House. She will be greatly missed by all honourable members. She is one person in this place for whom I have the greatest respect. She always sticks with her beliefs and maintains her integrity. I hope that she visits us frequently and that she will still be involved in the issues for which she and her

colleagues have been fighting. I hope she will be more successful outside the House than she has been inside the House. She has had a frustrating time in relation to some issues. With a bit of luck she will have more success outside this House. I hope she continues to fight for those things in which she believes so passionately. I also thank my researcher Jennifer Emblem, who has undertaken extensive consultation on the Co-operative Housing and Starr-Bowkett Societies Bill.

The enormous size of my file that contains letters between Jenny and the Co-operative Housing Societies Association of New South Wales is proof of the amount of work that she has undertaken. She has also worked with the Treasurer and his staff to bring about improvements to the legislation. I am also grateful to the Treasurer for acknowledging the merit of these amendments. The Government, the Treasurer and the Co-operative Housing Societies Association—CHSA—must all be commended for the spirit in which they have undertaken negotiations on this legislation. The Treasurer and his staff have taken heed of the concerns expressed by the association. Likewise, the association has given detailed consideration to the opinions expressed by the Treasurer. As a result, a series of amendments have been developed which address all outstanding issues.

More specifically, the Treasurer will move amendments that will delete clauses 46, 47 and 48 of part 2, subdivision 6, which refers to levies that provide for industry to fund the cost of its supervision by the Australian Financial Institutions Commission—FINCOM; add the words "and no borrowing members remaining" to clause 178(1)(a); provide for FINCOM to review its decisions and for FINCOM decisions to be reviewed by the Administrative Decisions Tribunal; and allow for there to be more than one employee director on an association of co-operative housing societies, provided that the total number is less than 50 per cent of the board. I also understand that in reply the Treasurer will give assurances that the Administrative Decisions Tribunal will be operational by 1 September.

**The Hon. M. R. Egan:** The legislation will be introduced in the next session of Parliament, probably in September.

**The Hon. R. S. L. JONES:** Will the Treasurer give an assurance that the legislation will be operative some time in September?

**The Hon. M. R. Egan:** It depends on the bill's passage through Parliament. It is the Government's

intention to get it up and running as soon as possible.

**The Hon. R. S. L. JONES:** I will keep an eye on that and help to speed its passage through Parliament. I understand that the Treasurer will also give assurances that FINCOM's access to services corporations will be limited to issues relating solely to co-operative housing societies' affairs; proposed standards will be workable and equitable and achievable transition dates will be set for them; the industry representative on the standards committee will be nominated by the CHSA; and, as a matter of course, FINCOM will always examine whether it is possible to direct transfer the engagements of a society to another society within the industry before looking to any other financial institution. Co-operative housing societies have a proud history of providing housing finance to the lower income sector of the community within New South Wales. The CHSA and its membership have marshalled, originated and managed home mortgage assistance of billions of dollars for hundreds of thousands of New South Wales residents who, without that assistance, may never have been able to achieve their dream of home ownership. I support the legislation, with the Treasurer's assurances.

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.22 p.m.], in reply: Following debate on this bill last year, Government and industry have taken the time to discuss and resolve a number of issues. Both parties, through a willingness to compromise and negotiate, have arrived at a final agreed position and I foreshadow government amendments reflecting these negotiations. In Committee we will seek to amend clause 26 to allow for those affected by a decision of FINCOM to seek a review of that decision. That amendment is linked to the second amendment, which will seek to amend clause 27 and provide that certain decisions made by FINCOM are reviewable by the Administrative Decisions Tribunal. Decisions that are not reviewable relate to FINCOM's power to intervene. The section is consistent with the review provisions of the financial institutions code and the friendly societies code, which are also administered by FINCOM.

The third amendment that I foreshadow will seek to amend clause 96 to allow for there to be more than one employee director appointed to the board of an association. However, the number appointed must be less than 50 per cent of the board and not be more than 50 per cent of the quorum of a meeting of the board. The fourth amendment will seek to clarify clause 178 and ensure that before a

certificate to wind up a society can be issued there are no remaining borrowing members. This amendment was agreed to in the initial consultation phase with industry and was overlooked in the bill initially tabled. The fifth amendment that I foreshadow is dependent upon the Committee agreeing to delete clauses 46 to 48 of the tabled bill relating to levies.

The bill in its present form makes provision for the recovery of costs of supervision by means of levies upon societies in a similar manner to that imposed on financial institutions established under the financial institutions code. This provision is consistent with the approach taken by governments in all States and Territories in relation to the building society, credit union and friendly society industries. Victoria and Queensland already recover some of the costs of supervision from co-operative housing societies registered in those States. After further consultation with the industry it was determined that the industry would find it difficult, because of its declining loan portfolios, to fund the cost of supervision. Therefore, it has been agreed that the cost of supervision would continue to be funded by the State. Therefore, I will move in Committee that part 2, division 2, subdivision 6, clauses 46 to 48 of the tabled bill, no longer stand as part of the bill.

In my discussions with industry I also agreed to comment on the application of a number of issues that relate to the legislation and the proposed standards. First, some concerns have been expressed by industry about FINCOM's discretionary power to direct a transfer of engagements of a co-operative housing society to a credit union or building society. The capacity to undertake such a transfer was included in the bill at the request of some members of the industry. It was determined that there may be times when the capacity for FINCOM to direct such a transfer would be an appropriate supervision tool. FINCOM, or any successor supervisor, will have a responsibility to act in the best interests of the borrowers who are affected by the failure of a co-operative housing society.

Where the supervisor finds it necessary to direct a transfer of engagements, the supervisor must find another society or organisation that will be able to take on the management of the loans of the failed society. If there is no co-operative housing society that is willing, able and has the capacity to take on the engagements an appropriate alternative solution would need to be found. I can assure the industry that FINCOM will initially attempt to identify an appropriate organisation within the industry to accept the transfer and may also approach the CHSA



for advice before seeking to direct the transfer to either a credit union or building society.

Second, the industry expressed concern about the review of FINCOM's decisions. To address that concern the section of the proposed changes relating to the Administrative Decisions Tribunal has been included in the proposed amendments to the bill. The Government acknowledges industry concerns where those discretionary powers may be unreasonably exercised but maintains that there are adequate constraints and accountability. FINCOM is mindful that it is well established in the law that, except in unusual circumstances, any authority exercising such powers must ensure that every person affected by those powers must be informed of the nature of the charges and be given a timely opportunity to answer them.

Of course, FINCOM's approach to supervision is to consult with directors and management regarding any matters of concern and seek to explain or remedy them before intervention becomes necessary. Clause 26 of the bill provides that FINCOM must review its decisions on request by any persons whose interests are affected by a decision of FINCOM. This section mirrors the requirements of the Administrative Decisions Tribunal Act which requires that decisions be internally reviewed before being referred to the tribunal. The review process does not affect any application a person may make to the court for redress. Although these intervention provisions have been modelled on the Financial Institutions Code there are equivalent provisions in the 1923 Act.

FINCOM, and before 1992 the Registrar of Co-operatives, has long had power to direct transfers of engagements, appoint an administrator, suspend operations or wind up a society. These are all necessary tools to ensure the effectiveness of the legislation and depend upon the ability of the supervisor to act before a point of no return is reached. Some concern has been expressed that the Administrative Decisions Tribunal has not yet been established. I advise the Hon. Elisabeth Kirkby and the Hon. R. S. L. Jones that the essential accompanying legislation to enable the Administrative Decisions Tribunal to commence operations will be introduced in the next session of Parliament. I emphasise that until that time the industry will continue to have the same recourse to review that exists under the 1923 Act and is available to them through the courts.

The third matter related to the setting of prudential standards and their likely impact on some societies that do not initially meet the required level

of compliance. The bill makes provision for the making of standards by a committee, which includes industry input. Those standards are exposed extensively to industry and are commented on before they take effect. The standards are dynamic and reflect the different circumstances that may occur within the industry, the changes that occur in the market or the new initiatives that may be introduced.

Proposed standards are being developed but it is emphasised that they are not part of the bill. The bill regulates the process of making standards. The standards are expected to focus on the management of risk. Some of the risks to be managed by societies are identical with those of deposit-taking institutions—for example credit risk—but other forms of risk are more simple, for example liquidity risk. The standards are expected to recognise these differences and similarities.

A steering committee has been established comprising people with qualifications and experience consistent with the committee to be established under this bill. It includes a co-operative housing society industry representative. The steering committee is now engaged in developing draft standards in consultation with the industry. After the commencement of the Act the standards committee will have to be formally appointed and I will seek and accept nominations from the co-operative housing societies industry to ensure that the industry interests continue to be appropriately represented, not just now or in the near future but also in the long-term future.

Industry has expressed some concern that the proposed standards would impose conditions upon some societies with which they could not comply. In particular, they have referred to the proposed standard for management reserves and provisions for doubtful debts. These two standards have been the subject of considerable debate within the standards committee. The minimum requirements have been drafted to reflect the level of risk that is faced by this industry and also to ensure that there are sufficient funds available to manage societies when they start to decline. The proposed levels are the levels it is considered prudent managers of societies and their boards would have established over the life of a society and which many societies and groups of societies have already established.

Standards are developed to ensure that societies are managed in the most efficient and effective way and that the potential for failure of a society is minimised. It is recognised that not all societies will meet the standards from day one and the society management and FINCOM will have to

monitor those societies carefully to minimise the likelihood of any failure arising. I am sure that all will agree that there is a need for strong, workable and equitable standards. It is recognised that not all societies will comply from the time of implementation and that achievable transition dates will have to be set. FINCOM will monitor societies which do not comply by the end of the transition period to ensure that adequate plans and policies are put in place to assist the non-complying societies to achieve compliance. Standards should not be watered down to the lowest level but designed to ensure that everyone in the industry at least achieves a minimum standard. Standards are designed to be workable, flexible documents and they will be constantly under review by the standards committee to ensure that they are appropriate.

The final matter on which I agreed to give assurance related to FINCOM's access to the records of service corporations. I can assure the House and the industry that any inquiry by FINCOM into a services corporation will be limited to matters directly affecting a society and will not include the other affairs of the services corporation which do not bear a relationship to the society, including its financial viability, unless the services corporation is indebted to the society.

In conclusion I acknowledge the part that the industry has played in fostering home ownership for thousands of New South Wales families for well over half a century. I also acknowledge the co-operation of the crossbenchers and their role in the negotiations on this bill. No-one can argue that there has not been significant change in the home finance market in that time, especially in the last five or six years, or that it will continue. The societies, like any of the other players in that market, will need to continue to manage that change and be innovative if they are to maintain or improve their position in the market.

One of the certainties, however, is that the community will expect the highest standards and accountability of all of the players in that market. A key aspect of this bill is to promote the ability of the societies to innovate and compete by moving away from the prescriptive approach to objects and powers of co-operative housing societies in the 1923 Act in favour of conferring all of the powers of a natural person to pursue any initiatives consistent with the broad object of assisting members and other persons to achieve home ownership.

Nothing in these proposals will take away from societies the constitutional ability to participate in future home ownership schemes promoted by the

Government. The extent to which they actually participate in any future government housing programs is a matter for the Minister for Housing, and this bill ensures that societies will have a sound prudential basis and the constitutional ability to participate if opportunities arise. I commend the bill, and the amendments I have foreshadowed will be moved in Committee.

### **Motion agreed to.**

### **Bill read a second time.**

### **In Committee**

## **Part 2**

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.37 p.m.], by leave: For the reasons stated in my reply to the second reading debate I move Government amendments Nos 1 and 2 in globo:

No. 1 Page 18, clause 26, lines 26-30. Omit all words on those lines. Insert instead:

- (1) A person whose interests are affected by a decision of FINCOM made under this Act may, by written notice given to FINCOM, request FINCOM to review the decision.

No. 2 Page 19, clause 27.

Insert after line 10:

### **27 Review by ADT of FINCOM decisions**

- (1) A person whose interests are affected by a decision of FINCOM made under this Act may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) This section does not apply to any of the following decisions of FINCOM:
  - (a) a decision under any of the following provisions:
    - (i) section 21 (Application of variation under standards),
    - (ii) Subdivision 1 (Enforcement powers) of Division 2 (Specific powers) of Part 2 (Functions and powers of FINCOM),
    - (iii) section 39 (Special meeting and inquiry),
    - (iv) section 41 (Power to suspend operations),
    - (v) section 42 (Appointment of administrator),

- (vi) section 49 (Power to control advertising),
- (vii) section 158 (FINCOM may direct a transfer of engagements between societies of the same type),
- (viii) section 168 (FINCOM may direct a transfer of engagements between society and financial institution),
- (b) a decision under section 40 (Intervention by FINCOM), other than the following decisions:
  - (i) a decision to remove an individual director,
  - (ii) a decision to remove an auditor,
  - (iii) a decision directing a co-operative housing body to change any practice if the practice is not dealt with by a standard,
- (c) a decision prescribed by the regulations for the purposes of this subsection.
- (3) For the purposes of a review to which this section applies, the internal review referred to in section 55 (1) (b) of the *Administrative Decisions Tribunal Act 1997* is a review under section 26 of this Act.
- (4) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to a decision of FINCOM made under this Act.

**The Hon. ELISABETH KIRKBY** [3.38 p.m.]: I accept the view expressed by the Treasurer that it is not possible for him to give me the assurance that I asked for about the establishment of the Administrative Decisions Tribunal, which is the subject of the second Government amendment. I hope that the Minister's intention will not be deflected by any other business and that the legislation will be introduced into the spring session of Parliament and will pass through all stages. However, I place on record that the Australian Democrats will be monitoring the situation if there are problems. The right of appeal to the ADT is not able to be exercised because the ADT does not exist. It is a matter we should be taking up with some vigour. However, I do not anticipate that there will be problems as I am informed that the Co-operative Housing Association has reported only one dispute in the last six years, and it is unlikely that there will be a rash of disputes in the period between the passing of this legislation and the passing of the

legislation which will bring the ADT into operation. So I support the amendments.

**Reverend the Hon. F. J. NILE** [3.39 p.m.]: We support the amendments moved by the Premier following a memorandum we received from Paul Rowe of the Co-operative Housing Societies Association, which stated that it had withdrawn its objection to the legislation because the Treasurer had indicated that he would move these two amendments. The memorandum stated:

... the Bill being proclaimed in its entirety after the establishment of the Administrative Decisions Tribunal and NOT proclaimed in part with the exception of the section relating to the A.D.T.

... the Standards Committee where the Treasurer will seek nominations from the CHS industry to ensure that the CHS industry (not just industry) is appropriately represented.

In view of those assurances being met by the Treasurer, we support the bill and these amendments.

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.40 p.m.]: I shall clarify the matter following the comments made by Reverend the Hon. F. J. Nile. The Government intends to proclaim the legislation other than the measure which deals with the Administrative Decisions Tribunal; that will be proclaimed after the tribunal is in operation. However, there is no reason to hold up all the reforms until that occurs. All other parts of the legislation will be proclaimed.

**The Hon. J. M. SAMIOS** [3.41 p.m.]: The Opposition notes the assurance of the Leader of the House in relation to the proclamation of the Act, excluding the relevant provision, and the standards committee. The Opposition agrees with the amendments.

**Reverend the Hon. F. J. NILE** [3.41 p.m.]: I indicated our support for the amendments in view of the assurances given to the Co-operative Housing Societies Association by the Treasurer. What he has said is different to what is stated in the memorandum. The memorandum states:

... the Bill being proclaimed in its entirety after the establishment of the Administrative Decisions Tribunal ...

The word "after" is underlined. The association may have misunderstood the Treasurer's assurance. I imagine that the Treasurer will discuss proclamation with the association if further clarification is necessary.

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.42 p.m.]: I am not sure how the misunderstanding arose. However, it is the Government's intention to proclaim the bill including the section dealing with the Administrative Decisions Tribunal. The Government will discuss proclamation of the bill with the industry.

#### **Amendments agreed to.**

#### **Amendment by the Hon. M. R. Egan agreed to:**

Pages 39-41, Part 2, Division 2, Subdivision 6, clauses 46 to 48. Omit the subdivision.

#### **Part as amended agreed to.**

#### **Part 4**

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.46 p.m.], by leave: For the reasons I outlined in my reply to the second reading debate, I move Government amendments 3 and 4 in globo:

No. 3 Page 66, clause 96(2). Insert after line 27:

- (2) The members of an association may, under the association's rules, elect one or more employees of the association to be directors of the association, but the number of employees elected as directors must be less than half the total number of directors of the association. Of the directors who constitute a quorum at a meeting of the board of an association, at least half must be directors who are not employees elected as directors.

No. 4 Page 143, clause 178, line 5. Insert "and no borrowing members remain" after "7".

#### **Amendments agreed to.**

#### **Part as amended agreed to.**

#### **Schedule 6**

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.50 p.m.]: I move Government amendment 5:

No. 5 Page 222, Schedule 6.8[2], lines 6-11. Omit all words on those lines.

This amendment is consequential on amendments previously agreed to in Committee.

#### **Amendment agreed to.**

#### **Schedule as amended agreed to.**

**Bill reported from Committee with amendments and passed through remaining stages.**

#### **GUARDIANSHIP AMENDMENT BILL**

#### **Second Reading**

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council), on behalf of the Hon. J. W. Shaw [3.54 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the Minister's second reading speech incorporated in *Hansard*.

#### **Leave granted.**

The Guardianship Amendment Bill reintroduces those provisions in the Guardianship Amendment Bill 1997 which ensure that people who cannot consent to their own treatment are not denied access to new treatments available only through clinical trials. Those provisions were removed from the Guardianship Amendment Bill 1997 by the Legislative Council. Subsequently they were referred to the Standing Committee on Social Issues of the Legislative Council for consideration.

This bill also gives effect to the central recommendations of the Standing Committee on Social Issues in its report "Clinical Trials and Guardianship: Maximising the Safeguards". The all party standing committee unanimously recommended the reintroduction of this legislation.

Let me place this bill in context. Since the Guardianship Act came into force in 1989 it has always been possible to obtain a valid substitute consent to give new treatment, that is, new treatment which has not yet gained the support of a substantial number of medical practitioners—or dentists—specialising in the area of practice concerned, to people unable to give consent to that treatment—in cases in which it was clear that they would receive that treatment.

The Guardianship Tribunal was the consent authority. Occasional use was made of these provisions. A typical case was the use of newly developing anti-epileptic medications on those with serious epilepsy who were not responding to the established anti-epileptic treatments.

The difficulty to be cured by this bill is as follows. The Therapeutic Goods Administration, the Commonwealth authority responsible for overseeing the importation of medications into Australia, has been insisting that many new treatments be available in Australia only through clinical trials in which most of the participants will get the new treatment but some, the control group, will not.

In order for such clinical trials to be scientifically valid, they have to be double-blinded. This means that neither the treating

doctors and nurses, nor the trial administrators know which participants are receiving the treatment and which are in the control group. This means it is impossible to predict which participants in the trial will receive the treatment and those who will not.

In the case of new treatments where there is no existing treatment, some participants will receive a placebo only. In cases where there is an existing treatment, some will get that treatment and not the new treatment.

As I said before, the present substitute consent provisions in relation to new treatment in the Guardianship Act are based on the premise that the person will get the treatment.

Because of the Therapeutic Goods Administration policy—and there is no argument with that policy—people can gain access to many new treatments, only if they join a clinical trial in which it cannot be guaranteed that they will in fact receive the treatment.

If they do not join the clinical trial, they have no chance whatsoever of getting the treatment.

The Government has been of the view, and now the all party Standing Committee on Social Issues of the Legislative Council is unanimously of the view, that people who cannot consent to their own treatment should have access to new treatments provided certain stringent safeguards are met.

Before outlining the structure of the legislation and pointing out the safeguards, I want to put to the House the circumstances in which this matter arises.

Many of the trials for new treatments are for drugs to reduce the secondary and substantial brain damage resulting from stroke, subarachnoid haemorrhage or cerebral aneurism. These treatments are for people who, until they had their stroke, were fully competent members of society. The new treatments are being developed to ensure that they suffer as little brain damage as possible. This means that their chances of returning fully to their former capacity are greatly enhanced. Other treatments are being developed to slow down or even halt the advance of dementia, particularly Alzheimer's disease.

As you can see, these provisions are primarily about giving previously healthy people access to new treatments for conditions taking away their capacity to live a normal life in the community. It is not about providing a group of people who have lost cognitive capacity to be experimented upon.

The provisions of the legislation make this point even clearer. For an adult who cannot consent to their own treatment to be given access to a new treatment available only through a clinical trial, the Guardianship Tribunal will have to be satisfied that the clinical trial is one in which people who cannot consent to their own treatment should be allowed to participate. Before the tribunal gives its consent to participation, it must be satisfied that:

the drugs or techniques being tested in the clinical trial are intended to cure or alleviate a particular condition which those taking part in the trial have;

the trial will not involve any known substantial risk to participants or, if there are existing treatments for the condition concerned, will not involve material risks greater than the risks associated with those treatments;

the development of the drugs or techniques has reached a stage at which safety and ethical conditions make it

appropriate that the drugs or techniques be available to persons with that condition even if those persons are unable to give a consent to taking part in the trial;

the trial has been approved by the relevant ethics committee;

the trial complies with any relevant guidelines issued by the National Health and Medical Research Council; and

having regard to the potential benefits as well as the potential risks of participation in the trial, it is in the best interests of those persons who have the condition to take part in the trial.

As recommended by the Standing Committee on Social Issues, the ethics committees which must approve the clinical trial as a condition to the Guardianship Tribunal giving its consent, will have to be institutional ethics committees registered with the Australian Health Ethics Committee.

If the tribunal does give its consent to those who cannot consent to their own treatment gaining access to new treatment through a particular clinical trial, the tribunal can then decide whether to empower "persons responsible" for particular individuals to give or withhold consent to them taking part in the trial. This provision will ensure that in the overwhelming majority of cases, the decision to take part in the clinical trial in most cases will lie with the person's "person responsible", usually their spouse or an adult child.

The Guardianship Tribunal's role is that of watchdog on behalf of those who cannot consent to their own treatment. It will be bound to apply the safeguards that I have just referred to. Also, these provisions in relation to access to treatments available only through clinical trials will be inserted into part 5 of the Guardianship Act, which is governed by two objects which provide further protection for people who cannot consent to their own treatment. The first object of part 5 is to ensure that people are not deprived of necessary medical or dental treatment merely because they lack capacity to consent to such treatment. The second object is to ensure that any medical or dental treatment is carried out on such people only for the purpose of promoting and maintaining their health and wellbeing.

Without this legislation, those who cannot consent to their own treatment will be denied access to new treatments which will manifestly be of benefit to them only because they have lost the capacity to consent to their own treatment.

Finally, the provisions in the Guardianship Amendment Bill 1998 provide far greater protection for those who cannot consent to their own medical or dental treatment than is available in any other part of Australia.

I commend the bill to the House.

**The Hon. PATRICIA FORSYTHE** [3.55 p.m.]: The Opposition does not oppose the Guardianship Amendment Bill. The Opposition is cognisant of the unanimous support for the granting of authority to approve trials to the Guardianship Tribunal as recommended by the Standing Committee on Social Issues of the Legislative Council following its recent inquiry into this issue. The issue of trials raised certain ethical issues that were appropriately examined by the committee in a

way that a parliamentary debate could not have achieved. I have previously congratulated that committee on its work, and the Parliament has received the committee's report.

It is appropriate to note today, as we commence debate on this bill, that this is the last sitting day of the Chairman of the Standing Committee on Social Issues, the Hon. Ann Symonds, before her retirement. The work of the committee is particularly commendable in that the difficult issue of ethics that it dealt with raised emotions in a number of groups. Yet, through it all, the committee achieved in a brief time frame a response that would have been unobtainable in a parliamentary debate. To anyone who questions the role of parliamentary committees, the work of the committee on this particular issue proves the value of the parliamentary committee system.

As the committee reached a unanimous conclusion, it is appropriate that this House act on its report. It would have been helpful in this debate to have had the Government's response to the committee's report. I appreciate that the Government has, in respect of the report of any standing committee, six months in which to respond, but it would have assisted the debate if honourable members were aware how the Government intended to deal with some recommendations of the committee. Some of those recommendations went to strengthening and improving the bill introduced by the Government last year, a bill from which this House excised the section dealing with clinical trials. All who took part in the debate on the standing committee's report and in the work of the standing committee were unanimously of the view that aspects of the work that the committee did will go to improve the regime of clinical trials and to improving the work of the Guardianship Tribunal. What is not apparent is how the Government intends to incorporate those recommendations into the work of the tribunal.

The decision not to support the introduction of the trials stemmed from apparent concerns in the community about those trials, born as much of ignorance of the goals of the legislation as of fear that the trials somehow meant experimentation, as if the people involved were to be little more than laboratory mice. That, of course, was far from the intention of the bill. Rather, the bill stems from a belief, which I believe the House will endorse, that not to permit people who cannot make decisions for themselves an opportunity to participate in a trial that might alleviate or cure a condition would be to deny a fundamental right available to other people.

The background to the bill is worth recapping, though it was dealt with in the debate last year. It goes back to a discussion paper issued in October 1994 by then Minister Jim Longley. At that time 44 submissions on the discussion paper were received. Yet, on the introduction of the bill last year, I was struck by the number of organisations that seemed surprised by the introduction of that bill and seemed unaware of the clauses relating to clinical trials. I note, however, that the bill had the strong support—as does the bill before the House—of the Alzheimer's Association. The support of that association is important since drug developments to slow down the effects of dementia were particularly noted by the Minister in his second reading speech as one of the trials that may follow the passage of this bill. This is significant. Almost half of all people placed under a guardianship order suffer from some degree of dementia.

It is worth noting that had the House not removed the section from the bill last year and given the Standing Committee on Social Issues an opportunity to examine the issue, many relevant groups—such as the Council on the Ageing and others concerned about people with disabilities—would not have had an opportunity to adequately discuss the provisions of this bill. Of course they were invited to participate, by way of response to discussion in 1994. That is one issue, as important and controversial as it was, that seems to have faded from public attention in the period between October 1994 and May 1997.

Though the Opposition does not oppose the bill, it does raise certain specific issues. I seek a response from the Minister in reply to these matters. The first relates to an issue raised with me by the Christian Science committee on publication in New South Wales. That committee apparently was unaware of the standing committee's inquiry and so only recently has become aware of this legislation. Honourable members would be aware that Christian scientists have strong objections to many medical procedures. In a letter to me they ask for an assurance that an advance directive or appointment of an enduring guardian would not be overturned by the family, carer or Guardianship Tribunal, as participation in a clinical trial would be contrary to a Christian scientist's religious convictions. I assume that the Guardianship Tribunal has previously addressed its mind to the issue of Christian scientists and medical procedures. It is important that this issue be placed on the record, not merely because of the very specific concerns and rights of Christian scientists, but also because as yet the legal status of "advance directive" and "enduring guardian" has not been clarified.

This issue gives rise to another, that of the delegation of consent to the person responsible. Under the legislation the Guardianship Tribunal has a number of responsibilities. It must approve of particular clinical trials as ones in which people under guardianship orders may participate. That, of itself, will not allow just anyone to participate, as each person must be subject to specific consent. The tribunal must then determine whether consent is to be exercised by the tribunal or delegated to persons responsible for the patient. It seems that delegation was the subject of much discussion before the standing committee and has given rise to three specific recommendations by the committee. I ask the Minister whether it is the Government's intention to support the recommendations.

**Pursuant to sessional orders business interrupted.**

### QUESTIONS WITHOUT NOTICE

#### INTERNATIONAL OLYMPIC COMMITTEE CHAIRMANSHIP

**The Hon. J. M. SAMIOS:** I ask the Treasurer, representing the Premier, a question without notice. Is it a fact that the Premier stated after meeting Juan Antonio Samaranch " . . . that the IOC is totally committed to the structure that has the Olympics Minister chairing SOCOG. In the eyes of the IOC it should be the Minister for the Olympics who holds that position"? Is it also a fact that the Director-General of the International Olympic Committee, Mr Francois Carrard, has firmly denied that any such view has been expressed? Why did the Premier lie about his conversation with Samaranch? How can the people of New South Wales have any confidence in a Premier whose statements are so clearly and easily exposed as fabrications? When will the Government stop using the Olympics as a political football?

**The Hon. M. R. EGAN:** The Hon. J. M. Samios is obviously making a premature bid for the Liberal leadership in this House. I am sure the Premier will be delighted to receive the honourable member's question and to furnish a full response.

#### CONSTRUCTION INDUSTRY COMMUNICATIONS

**The Hon P. T. PRIMROSE:** I ask the Minister for Public Works and Services a question without notice. What progress has been made with the publication of a discussion paper to improve

communication through the use of information technology in the New South Wales construction industry?

**The Hon. R. D. DYER:** I am pleased to inform the House that on 23 April, at the appropriate venue of the Powerhouse Museum, the Minister for Information Technology and I released a discussion paper on information technology in the construction industry. At the same time, the paper was made available on the Internet. In addition, an information package was issued to interested parties. The Carr Government's strategy will improve communication in the construction industry through the wider and effective use of information technology. The strategy aims to engender productivity gains in the industry, enabling the Government to deliver more services to the State by providing solutions to overcome problems within the construction industry. These problems include clients' lack of understanding of design, poor co-ordination, ambiguities in documents, and the lack of contractor input. The solutions will enable the industry to improve international competitiveness through quick and efficient access of industry information.

The reasons for the limited use of information technology to date include the diverse and fragmented nature of the construction industry and the very low margins within which the industry operates. This limited working capital severely inhibits the development of new and improved processes. Information is rarely shared; it is jealously safeguarded and used for competitive advantage. Players in the industry focus on single projects, therefore a short-term business planning horizon exists. Making comprehensive information available throughout the industry will help to resolve many of these issues. The aim of the paper is to bring about changes in a manageable way by introducing technology in a number of stages. In the short term, exchange of information in electronic form will enable industry to reduce the cost of doing business and increase the speed of information transfer. The initial information exchange will involve routine electronic mail for communication of non-secure information, such as meeting notices and minutes, and discussion of ideas for project solutions, either at a one-on-one level or involving all parties in the project at that time. Ultimately, tender documents will be exchanged by electronic posting and electronic secure information.

Technology capable of providing solutions to many of the problems of the construction industry does exist but is not yet widely used. A push by the New South Wales Government will help to achieve an improvement in performance through better use

of available technology. In the medium term, shared databases will increase the effectiveness of communication. This will reduce costs in duplicating hard copies and will reduce errors brought about by people working with different versions of the same document. In the long term, shared databases and advanced communication networks will provide all players in the project with immediate access to all project information and allow them to draw on the appropriate expertise no matter where it exists. As a result, people at all levels of a project will be able to interact with the project database, from the end user actively looking at design solutions through a three-dimensional computer model to construction workers on site being able to see exactly how their work fits in with the whole facility. However, while industry remains focused on single projects only, it is unlikely to embrace information technology effectively. The Government is changing this mindset by encouraging industry to take a long-term view by the establishment of strategic alliances with preferred suppliers, encouraging co-operative contracting, and setting up long-term contracts. The Government will be seeking comments from key industry players on the information technology discussion paper. Following a review and assessment of industry comments, a strategy will be finalised and introduced progressively into New South Wales Government projects commencing early in 1999.

#### **WATERFRONT TRADE UNIONISTS**

**The Hon. R. T. M. BULL:** I address my question without notice to the Treasurer, Minister for State Development, and Leader of the Government in this House. Does the Treasurer agree with comments made yesterday by his colleague in another place, the Minister for Agriculture, and Minister for Land and Water Conservation, Richard Amery, that waterfront trade unionists have a lot more to complain about than farmers?

**The Hon. M. R. EGAN:** The honourable member has been in this House for long enough to know that his question is completely out of order.

#### **COMPANION ANIMALS EXPERIMENTATION**

**The Hon. R. S. L. JONES:** I ask the Minister for Community Services, representing the Minister for Agriculture, a question without notice. When does the Minister intend to announce the ban on the supply of companion animals by councils for experimentation? Is it a fact that Wyong Shire Council was fined \$1,000 for illegally supplying for experimentation two dogs that were loved and wanted by their owners?

**The Hon. R. D. DYER:** I am happy to say that I am now the Minister for Public Works and Services, but I represent the Minister for Local Government in another place, and I shall be absolutely delighted to obtain an early response to that question.

#### **SMALLGOODS INDUSTRY**

**The Hon. E. M. OBEID:** My question is directed to the Treasurer, and Minister for State Development. Will the Minister tell the House about the most recent developments in the smallgoods industry in New South Wales?

**The Hon. M. R. EGAN:** I do not know whether the Hon. E. M. Obeid is aware of the fact, but only last week I had the pleasure of opening the new Primo smallgoods plant at Chullora in Sydney's western suburbs. The new plant is a \$60 million investment that has created 400 jobs for families in western Sydney. It is Australia's largest and most modern smallgoods manufacturing facility, covering 18,000 square metres.

**The Hon. J. F. Ryan:** That was the smallgoods factory that was moved for the Olympics.

**The Hon. M. R. EGAN:** What is the honourable member muttering about? He is whingeing on the back bench, where he will wallow for a long time. The manufacturing facility is one and a half times the size of the Olympic stadium at Homebush Bay, the location from which the factory was moved when the site was needed for the new \$388 million Sydney Showground and the 2000 Olympics. I had the pleasure of being given a guided tour around the site by the managing director of the company, Mr Paul Laterriere. I can inform the House that it is a vast operation with meat-steaming rooms in which the temperature soars to 42 degrees. At the other end of the scale, giant freezers store bacon, pancetta, prosciutto, coppa and salamis ready to be shipped across Australia. But, importantly, 10 per cent of Primo's product is now exported around the world.

Vast production lines reduce the beasts of the fields to vacuum-packed components ready to sizzle and pop beside two golden eggs in the frying pans of Australia. As I said last week at the opening of the new Primo smallgoods factory at Chullora, Primo really is one of the great Australian success stories. Primo started business in 1957 as a three-man operation behind a butcher's shop in Annandale. Now the company occupies the most modern, the



most up-to-date, the most efficient smallgoods manufacturing plant in Australia. That is testimony to the initiative, the drive and the expertise of the company and its principals, the Laterriere family. I wish them well, as I am sure every member of this House does, in their new premises at Chullora. Not only will it be a major part of Australian manufacturing, but each year the plant at Chullora will ship exports worth tens of millions and hundreds of millions of dollars around the world.

#### Mr GLENN TAYLOR

**The Hon. D. J. GAY:** My question is to the Treasurer, representing the Minister for Regional Development. Is the Minister aware that the failed Australian Labor Party candidate and concreter, Glenn Taylor, who was recently appointed to head the regional development office in Bathurst in the ALP's rejuvenated jobs-for-the-boys scheme, represented Bob Carr at Wellington Council to answer law and order concerns? Why did Mr Taylor, as a regional development officer, spend the morning speaking with the Deputy Mayor and General Manager of Wellington Council about law and order problems—a very important issue but hardly regional development? Where exactly does law and order fit into the regional development portfolio? Is it a fact that the council rejected Mr Taylor representing Mr Carr, stating that it would prefer the butcher to the block? Is Mr Taylor simply a political minder? Are these sorts of visits designed to raise his profile so that he can have another go at becoming the Labor candidate for Orange in 1999?

**The Hon. M. R. EGAN:** The silly speech of the Hon. D. J. Gay would have been more appropriate if delivered during debate on the adjournment motion.

#### FINES RECOVERY

**The Hon. J. KALDIS:** My question is to the Attorney General, and Minister for Industrial Relations. What steps is the Government taking to recover unpaid fines?

**The Hon. J. W. SHAW:** The Hon. J. Kaldis has an assiduous interest in these matters. He is pursuing them with great vigilance, and I commend him for that. I think there is probably bipartisan support for the Government's—

**The Hon. J. F. Ryan:** I doubt it.

**The Hon. J. W. SHAW:** The honourable member doubts it?

**The Hon. J. F. Ryan:** I do. Twenty-five per cent of the residents of western Sydney cannot drive a car and they are looking forward to finding out how you are going to handle the insurance problems this creates.

**The Hon. J. W. SHAW:** The Hon. J. F. Ryan dissents, but I think the frontbench members of the Opposition have given a tick to this Government policy. The honourable member ought to be a little cautious about his interjections because they might adversely affect his future career in the Opposition. The honourable member is being counselled now and that is appropriate. The Government has already recovered in excess of \$5 million from the campaign and the amnesty process, with more than \$500,000 being repaid each week; a total, I am informed, that is increasing all the time. The State Debt Recovery Office is working well. As I have argued in the media, it is only equitable. Most citizens pay their fines, but some do not. If the fine system is to endure, and it is the best system that various governments have been able to devise for relatively minor offences against the criminal law, it has to be fair. But it is not fair if the community perceives that some people simply escape paying their fines.

At the other end of the argument, the Government does not want fine defaulters in gaol. It wants effective and reasonable measures to enforce the payment of fines. That is why I would be surprised if there were not general support in this House for these measures, which are reasonable and appropriate to the circumstances. The Government has gone to a lot of trouble to give people the right signals. It has offered an amnesty, and it is sending out warnings. It is not unreasonable that people who are utterly intransigent should have their licences cancelled. Some might argue that such action is harsh, but it is an effective way of enforcing the fine. Obviously, in extreme cases the Government would consider the waiver of such fines. It does not want to be heavy handed—it is not that kind of government. It is a rational and sensible government, and it will take the same balanced approach to this policy as it takes to every other policy area. I believe this policy has broad community support and, I would hope, general support in this House, with the Hon. J. F. Ryan the sole dissident for this more effective, rational and efficient system of enforcing such penalties.

#### COMMONWEALTH-STATE MEASLES CONTROL CAMPAIGN

**The Hon. A. G. CORBETT:** I refer the Attorney General, representing the Minister for

Education and Training, to the proposed Commonwealth-State government measles control campaign to ensure that all primary school children are provided with a second dose of the measles vaccination, or MMR, through a school-based delivery campaign. Did representatives of the Minister or the Department of Education and Training attend a planning meeting on 21 April this year to discuss the implementation of the campaign? If so, can the Minister advise of the outcome of that meeting? What information about the campaign, if any, is currently available to parents? Will the Minister advise the House about the number of school students and the age cohorts of those students who will be targeted for vaccination in the campaign?

**The Hon. J. W. SHAW:** The honourable member takes an active and positive interest in matters affecting young people. His constructive question seeks information about primary school children receiving a second dose of the measles vaccination through a school-based delivery campaign. This important issue deserves appropriate attention. The honourable member asked whether representatives of the Minister or the Department of Education and Training attended a planning meeting on 21 April to discuss the implementation of the campaign. The answer to that question is yes, representatives attended that meeting. I am informed also that Commonwealth representatives provided an outline of the proposals to be implemented in New South Wales.

The main repository of knowledge on this topic is in the Department of Health. I am informed that there will be full co-operation between the Department of Education and Training and the New South Wales Department of Health, as one would expect in an important matter like that. The honourable member also asked about the number of school students and the age cohorts of those students who will be the subject of the vaccination. I need to refer that part of the honourable member's question to the Department of Health. It is reasonable that the honourable member should be informed about that and I undertake to obtain whatever information I can from the Department of Health to give the honourable member a broader picture of the vaccination program, which seems to be working harmoniously between the Commonwealth and the New South Wales authorities.

#### **FINES RECOVERY**

**The Hon. J. F. RYAN:** My question without notice is directed to the Attorney General. Is it a fact that this Government's scheme for the recovery

of fines will cancel a driver's licence and vehicle registration held in the name of a fine defaulter who refuses to pay? What happens if a family member inadvertently drives such a vehicle and has an accident? Is it a fact that he or she will be liable for any damage and injury that might occur as a result of any such accident? What will the Attorney General do to help protect these innocent victims of the Government's scheme?

**The Hon. D. J. Gay:** A good question.

**The Hon. J. W. SHAW:** It is not a good question; in fact, it is a silly question. The first step will involve the cancellation of a driver's licence. That is individually targeted at the fine defaulter. It is true that an ingredient of the scheme could involve the cancellation of the registration of a vehicle. We will come to that if a fine defaulter does not pay the fine. But I do not see any difficulty with or any problem about the sorts of sanctions contemplated in this scheme.

#### **WOLLONGONG INDOOR STADIUM**

**The Hon. A. B. KELLY:** Will the Minister for Public Works and Services bring the House up to date on the progress of the construction of the indoor stadium at Wollongong showground?

**The Hon. R. D. DYER:** I can speak about this project firsthand. One of the great satisfactions I have with the public works and services portfolio is being able to visit sites at which work undertaken by my department will make a significant contribution to local communities. Recently I visited the construction site for the Wollongong entertainment centre. The Department of Land and Water Conservation appointed the Department of Public Works and Services as project manager responsible for managing the design, documentation, tender phase and construction of the building on behalf of the Wollongong Sportsground Trust. Wollongong has a long history as a nursery for Australian rugby league and, more recently, soccer, through the emergence of the Wollongong Wolves.

With the completion of the entertainment centre the Illawarra Hawks basketball team will have a venue far removed from its current home, the well-known snakepit at Beaton Park. The acknowledged passion and commitment of Illawarra Hawk supporters will bear fruit with the extended capacity of the new venue, bringing with it the potential to increase revenue for the club and its supporters. Each year the Hawks will play 15 to 20 home games at the new centre. However, we should recognise that the entertainment centre caters to a

wide audience, and I am confident that it will enhance employment conditions in the Illawarra region. I am informed that the centre already has taken bookings, the first of which came from St Marys High School, to celebrate its one hundred and thirty-fifth anniversary.

I understand that the centre will be available to cater for major events visiting the city, ranging from rock concerts to live entertainment for all the family. Most importantly, not only will the project create many part-time jobs once the centre starts operations; the construction work force, which will peak at 130, has made a major contribution to reducing unemployment in the Illawarra region. Local input to this project is high, with the project manager and the construction supervisors based in the south coast regional office of the Department of Public Works and Services. A local firm, Camarda and Cantrill Pty Ltd, won the construction contract. To date the contractor has employed numerous local subcontractors. I am pleased to inform the House that the project is due for completion in August this year at a cost of some \$15.5 million, and that the project is on time and on budget.

#### **TOMAGO KOALA HABITAT**

**The Hon. I. COHEN:** My question is directed to the Attorney General, and Minister for Industrial Relations, representing the Minister for the Environment. A recent fire affecting 300 hectares of Tomago koala habitat exposed 24 koalas, most with symptoms of chlamydia. No back babies or juveniles were found. A similar fire in only half this area in 1994 exposed 31 koalas, including babies and juveniles, none affected with chlamydia. Does the Minister believe that this important koala colony is crashing? Does the National Parks and Wildlife Service accept any responsibility for the apparent decline in koala numbers in this area? What plans or strategies does the National Parks and Wildlife Service have in place to ensure that this colony does not disappear but in fact recovers?

**The Hon. J. W. SHAW:** I will refer the honourable member's question to the relevant Minister and obtain a response.

#### **NEWCASTLE CITY COUNCIL UNFAIR DISMISSALS**

**The Hon. HELEN SHAM-HO:** My question without notice is directed to the Attorney General, and Minister for Industrial Relations. Is it a fact that as a result of the case *Moore v Newcastle City Council* involving the civic centre at Newcastle, people employed by unincorporated organisations who are covered by Federal awards do not have

access to an unfair dismissal remedy? Is it a fact that the Labor Ministers Council in March 1996 agreed to amendments to give the Australian Industrial Relations Commission jurisdiction in respect of such cases? Why has New South Wales not pursued legislative reform in this area similar to legislation being considered in other States?

**The Hon. J. W. SHAW:** The statements in the honourable member's question are more or less accurate in the sense that the decision by the Full Bench of the New South Wales Industrial Relations Commission in *Moore v Newcastle City Council* indicates a lack of jurisdiction in the State tribunals for employees of non-constitutional corporations. I do not believe that the honourable member is accurate in saying that there has been a decision of the Labor Ministers Council to deal with this problem, but I would need to check that. Certainly it has been discussed by the council.

It is a difficult policy area of reform to which, I assure the honourable member, I am giving active consideration. The difficulty about the Moore case is that the commission did not determine the question of inconsistency that arises under section 109 of the Constitution. It simply determined that on a proper construction of the New South Wales law such an employee could not apply and make a claim for unfair dismissal. It has been the subject of discussion between New South Wales and Commonwealth governments. The more appropriate solution might be to refer the State powers to the Commonwealth so that the Commonwealth tribunals could deal with the matter. That is one option we are actively considering and employers and union groups have been consulted about that possibility.

The other possibility is that we could seek to legislate that employees of non-constitutional corporations are given rights of unfair dismissal within the New South Wales jurisdiction. However, there is an unanswered constitutional question as to whether we are able to do that. That question was argued in the Moore case but the Full Bench of the commission did not consider it was necessary to answer it to dispose of the case. The honourable member has asked a pertinent question that relates to an apposite matter to which I am giving active consideration. Mr Reith and I have had constructive dialogue about it, and that dialogue will continue. I hope the matter will be resolved in the near future.

#### **LOCKHEED MARTIN TELECOMMUNICATIONS FACILITY**

**The Hon. Dr MEREDITH BURGMANN:** My question is to the Treasurer, Minister for State Development, and Vice-President of the Executive

Council. What success has the Government had in attracting hi-tech industry to regional New South Wales?

**The Hon. M. R. EGAN:** I am pleased to inform the Hon. Dr Meredith Burgmann and the House that in February Lockheed Martin Telecommunications announced its decision to establish a \$25 million satellite tracking station near Uralla in north-western New South Wales—its first satellite facility in Australia. It will create 37 full-time and part-time permanent jobs, in addition to 40 jobs during the construction stage. That is a significant number of jobs for that part of New South Wales. Lockheed Martin will build facilities to control commercial customers' satellites from the time they separate from the launch vehicle until they are in a position for use by their commercial owners.

As honourable members would be aware, Lockheed Martin is a global company that is principally involved in advanced technologies. It employs almost 200,000 people in more than 100 countries and in 1997 recorded sales in excess of \$28 billion. Uralla was selected ahead of 30 Australian and overseas sites. Lockheed Martin was particularly impressed with the region's highly skilled work force and technological capabilities. I am pleased to report that the State Government's ability to fast track Lockheed Martin's development requirements across a number of State and local planning authorities helped to push this regional New South Wales site over the line.

The new investment will benefit the whole community. Lockheed Martin will employ highly skilled staff, and inject significant funds into the local economy. The satellite facility will be a catalyst for the upgrade of telecommunications in the region. It will provide a vehicle for attracting other information technology companies to the area. The University of New England will benefit from the outsourcing of staff to the company who will have access to state-of-the-art technology. To date, Lockheed Martin has spent more than \$150,000 using local contractors, so the benefits are already flowing into the region.

This satellite tracking station is yet another example of our success in securing multimillion dollar information, technology and telecommunication investments for New South Wales. Australia's IT&T market, as the Hon. Jennifer Gardiner knows, is worth more than \$33 billion, and more than half of Australia's 7,500 IT&T companies are based in New South Wales. International firms are increasingly recognising that

New South Wales has a multilingual and multicultural work force with special IT&T skills, educational facilities comparable to the world's best, and falling business costs. Lockheed Martin is one of many global companies that has recognised the advantage of doing business from New South Wales. I congratulate the company on its decision and wish it well.

### M5 EAST FUNDING

**The Hon. C. J. S. LYNN:** I ask the Treasurer, Minister for State Development, and Vice-President of the Executive Council a question without notice. Is it a fact that the Treasurer's colleague in the other place, the Minister for Roads, recently announced that the M5 East will be funded from the roads budget? Is it also a fact that the proposed \$700 million contract to design and construct the M5 East is currently out to tender and that bidders have been advised that \$280 million will be payable by the New South Wales Government in monthly payments up to June 2000, with the balance being paid at 3.75 per cent per month until June 2002? What is the cost to the New South Wales taxpayer of this deferred payment financing? Has the Treasurer authorised this form of borrowing for the M5 East project?

**The Hon. M. R. EGAN:** I gather from the question that the Hon. C. J. S. Lynn does not have much of an idea what he is talking about. I will refer his question to the Minister for Roads, who in due course will correct the nonsense that we have heard from the honourable member.

**The Hon. C. J. S. LYNN:** I ask a supplementary question. Treasurer, has the financing for the M5 East project been approved by the Auditor-General?

**The Hon. M. R. EGAN:** The Hon. C. J. S. Lynn has been in this place long enough to know the role of the Auditor-General. The Auditor-General is not part of the Executive Government.

### GAMBLING

**Reverend the Hon. F. J. NILE:** I ask the Treasurer, representing the Premier, a question without notice. Is it a fact that in the 1996-97 financial year Australians gambled almost \$80 billion and lost more than \$10 billion? Is it a fact that the figures for the last financial year equate to each New South Wales citizen gambling more than \$7,000 and losing \$853, which is the highest loss in any Australian State? Is it a fact that these high levels of gambling are having a damaging

impact on families, marriages, children, the economy, and retail, food and clothing industries? Will the Government provide courageous leadership on behalf of the families of New South Wales and urgently establish a judicial inquiry or royal commission into the social, moral and economic impact of gambling on New South Wales? Will the Government be pro-active in protecting the citizens of New South Wales, especially the working class who vote for the Australian Labor Party, from the harmful impact of gambling and place a moratorium on any further expansion of gambling in New South Wales?

**The Hon. M. R. EGAN:** I am not sure about the accuracy of the global figures Reverend the Hon. F. J. Nile has given to the House but from my personal experience I would not be surprised if they were correct. On Easter Saturday I went to Randwick for the Doncaster Handicap and I think I came home \$150 the poorer. The following Saturday I went to Randwick for the first three or four races and I lost about \$120. Last Friday night I went to Harold Park trots and lost more than \$100. I did not back a winner in three visits to the races, not a single winner. But of course most of my losses went straight into the State Government's coffers because most of the bets I had were on the totalisator rather than with the bookies, although I do enjoy betting with the bookies on occasion. Often the totalisator offers much better odds, although the bookies would probably disagree with that.

I do not know of the gambling experience of other members; I hope they are more successful than I am. Some people in the community clearly have a problem with gambling; there is no question about that. But I would not expect that any extension of gambling opportunities will add to the problem. I would have thought that, given the number and range of gambling opportunities already available in the State, people prone to a gambling problem have enough temptation already. There is a problem with people who are addicted to gambling, but the only way to eradicate problem gambling would be to abolish all forms of gambling. However, the eradication of legal gambling would result in the emergence of illegal gambling, and the social consequences of that would not be good.

**Reverend the Hon. F. J. Nile:** Can we have the inquiry to find out the answers?

**The Hon. M. R. EGAN:** I am not quite sure what that inquiry would achieve. We do know that some people are addicted to gambling. What we should be doing is developing problem gambling

policies for implementation by all of the gambling outlets in the State, the clubs, hotels, racecourses, TABs, lotteries, casinos and so on. That is the way we should be going.

**The Hon. J. P. Hannaford:** The Catholic church has bingo.

**The Hon. M. R. EGAN:** Yes, I have repeatedly told members of this House that I would not have had an education but for gambling. There would have been no way that my school would have survived financially. It was not bingo. It was not housie. We had out-and-out illegal gambling nights and all the big gamblers from all over Sydney were invited. I recall the Burraneer Bay Country Club being donated to the Sisters of Mercy, who ran the Lady of Mercy College at Burraneer Bay, to use as a school, and an illegal gambling night was held to enable the sisters to raise funds.

**The Hon. Dr B. P. V. Pezzutti:** It was housie.

**The Hon. M. R. EGAN:** It was not housie; I can assure you that they had all the games that are available at a casino. It was in about 1956 and the star attraction of the night was Sabrina, who was in town. She was invited along as the drawcard.

**The Hon. R. T. M. Bull:** Wasn't she an attraction!

**The Hon. M. R. EGAN:** I think she was in those days. She was certainly an attraction, if not attractive. I am going back 40 years. I was seven or eight at the time. Not only was Sabrina there; so was Hollywood George, one of Sydney's big gamblers. Indeed, as Hollywood George was leaving the function he offered to those who were standing guard at the door, who were from De La Salle Brothers at Cronulla, a donation of a pony. The brothers were not quite sure what the nuns—

**The Hon. B. H. Vaughan:** How much?

**The Hon. M. R. EGAN:** It was £25. The De La Salle Brothers were perplexed as to what the Sisters of Mercy would do with a horse. Of course, if the same offer had been made to the Christian Brothers, they would have known exactly what a pony meant.

#### LIVING WAGE CASE

**The Hon. B. H. VAUGHAN:** I direct my question to the Attorney General, and Minister for

Industrial Relations. Can the Minister inform the House about today's decision by the Australian Industrial Relations Commission in the living wage case?

**The Hon. J. W. SHAW:** I think the notion of an arbitrated safety net for poorly paid workers has been vindicated by the decision today. It is certainly not all that the trade union wanted but it does give effect to a notion of equity—increases of between \$10 and \$14 structured to provide the greatest assistance to those who receive the lowest award rates of pay. There is a new Federal minimum wage of \$373.40. The New South Wales Government made submissions in this important case, essentially endorsing the proposition of the Australian Council of Trade Unions that there ought to be a better safety net for low-paid workers. We estimate that 817,000 New South Wales employees are covered by Federal awards, and approximately 70 per cent of all Federal award employees are covered by enterprise level agreements. So there will be substantial benefit to New South Wales workers from the decision and the State Government's participation in the case.

The commission has balanced the competing interests of the parties to the claim and awarded an increase which appropriately counterposes the needs of low-paid workers with the effects of any increase on productivity, employment and inflation. The decision represents a vindication of the idea of collective representation of employees because without the trade union movement such a decision would never have occurred. It vindicates the idea of an independent umpire or arbitrator because without the independent umpire such a decision would never have been made. The Federal commission has handed down a decision which provides a fair compromise—I am not sure what the trade union movement is saying about it—well in excess of what was proposed in the Federal Government's submission. To that extent it provides a more beneficial result than the Howard Government would have desired.

#### COMMUNITY SERVICES FUNDING

**The Hon. ANN SYMONDS:** I ask a question of my esteemed colleague the Treasurer. Will he undertake to review the effect of competition principles on the delivery of services in the health, education and welfare sectors? Does he support the use of the tendering process in funding community services? Will he consider amending legislation to quarantine health, education and welfare from the worst excesses of the Hilmer approach to government delivery of programs?

**The Hon. M. R. EGAN:** In a word, no. The Hon. Ann Symonds has a genuine interest in and commitment to the provision of public health, education and welfare services. But I am not sure that in her time in this House I have been able to convince her, or even inform her, of what the competition principles entail. I apologise for not having done it previously but I will make sure, now that she will have more time on her hands, that I invite her and Professor Hilmer to lunch one day.

It is time that the Hon. Ann Symonds had a more accurate understanding of what competition policy is about: it will ensure that the Australian community is not taken to the cleaners by big, fat, lazy monopolies. In April 1995 I was pleased to attend the Premiers Conference as the Treasurer of New South Wales when the national competition policy was agreed to by all the States and the Commonwealth. Competition policy is about making Australia not only a more prosperous but a fairer community. I have not had any success in convincing the Hon. Ann Symonds of that. I hope to have more success now that she will have more time on her hands and will be able to come to grips with the arguments that I will put to her.

#### DEPARTMENT OF COMMUNITY SERVICES DIRECTOR-GENERAL Ms HELEN BAUER

**The Hon. VIRGINIA CHADWICK:** I direct my question without notice to the Attorney General, representing the Minister for Community Services. Upon becoming Minister for Community Services did Minister Lo Po' meet with her director-general, Helen Bauer, to develop a new performance agreement? If such a new agreement was not entered into, was Minister Lo Po' satisfied with the existing performance agreement reached between the former Minister, the Hon. R. D. Dyer, and the now former director-general? Will the Minister table the performance agreement between herself and the director-general at the time of the director-general's dismissal?

**The Hon. J. W. SHAW:** I am not privy to the agreements between the relevant Minister and the head of that department. However, I shall undertake to refer the matter to the Minister and provide an answer to the honourable member.

#### PENRITH LOCAL COURT

**The Hon. A. B. MANSON:** My question without notice is to the Attorney General, and Minister for Industrial Relations. Will the Attorney update the House on the new courtrooms at Penrith Local Court?

**The Hon. J. W. SHAW:** The Government has taken positive action in relation to restoration of courts and additions to court facilities. An analysis of court trends undertaken recently by the department identified a real need for additional court facilities in the Sydney western region. That is not a surprising result to the inquiry because obviously that area of Sydney is experiencing a population explosion. The requirement has been incorporated into my department's strategic plan for service delivery. However, as an immediate response to the clearly identified need, action has been taken, in concert with Penrith City Council, to lease its former library premises and complete fit-out work to provide additional courts for the region.

A contract was awarded to Meridian Constructions, of Bay Street, Brighton-le-Sands, to complete the work. The annexe to Penrith court has been completed and it includes three additional courts, interview rooms and a general office to service the courts. The courtrooms and facilities have been available from 6 April. The new courtrooms have had an impact on the present court load at Penrith and will be able to absorb some of the backlog from neighbouring courts. As a result of the work done on the annexe to the Penrith court, the Attorney General's Department has had an opportunity to reassess the whole operation at Penrith Local Court. In this assessment the department is considering ways to improve services to the local community and, in particular, to meet the needs of people attending court for domestic violence matters. I will inform the House of further developments at Penrith Local Court as they occur.

#### NATIONAL HEMP OLYMPICS

**The Hon. ELAINE NILE:** I direct my question without notice to the Attorney General, and Minister for Industrial Relations, representing the Minister for Police. Is it a fact that this Friday the National Hemp Olympics will be contested at Nimbin on the far north coast, with an expected attendance of more than 10,000 people? Will the Minister please explain what action the police will take to prevent the planned mass illegal use of cannabis at this event?

**The Hon. J. W. SHAW:** I must confess that I am totally unaware of the planned event at Nimbin, but I will refer the matter to the Minister for Police and obtain an answer.

#### BUSINESS REGIONAL HEADQUARTERS ESTABLISHMENT

**The Hon. JANELLE SAFFIN:** My question without notice is to the Treasurer, Minister for State

Development, and Vice-President of the Executive Council. What is the Government doing to attract organisations to establish their regional headquarters in New South Wales?

**The Hon. Dr B. P. V. Pezzutti:** I thought that question was asked yesterday.

**The Hon. M. R. EGAN:** As each day goes on there are new, interesting opportunities. As honourable members are aware, New South Wales is the leading State in Australia for attracting regional headquarters. More than 60 per cent of regional headquarters in Australia are situated in this State.

**Reverend the Hon. F. J. Nile:** It is the leading State for gambling, with \$35 billion spent on poker machines.

**The Hon. M. R. EGAN:** We might have the biggest gambling revenues because New South Wales has the largest population and economy, but proportionally we do not have the largest gambling-derived revenue.

**The Hon. Dr B. P. V. Pezzutti:** Who is creaming it off?

**The Hon. M. R. EGAN:** Victoria, because its poker machine tax rates are a lot higher than those in New South Wales. Since coming to office in 1995 the Government has attracted more than 100 new multinational companies to base their regional headquarters in New South Wales. The Government's regional headquarters program is on target to overtake Singapore as the key location for multinational headquarters in the Asia-Pacific region. As honourable members would be aware, almost 12 months ago I set the target of 2005 as the date for Sydney to overtake Singapore as the preferred Asia-Pacific regional headquarters location. The Government has been active in making New South Wales an attractive place to establish headquarters. The New South Wales economy is now not only larger than all of the other Australian economies but, interestingly, larger than the national economies of Malaysia, Singapore and the Philippines, and is on par with the Hong Kong economy.

Real estate is cheaper in New South Wales than in any of the emerging global cities in Asia, including Hong Kong, Tokyo and Taipei. The Government has been successful in reducing utility costs in New South Wales, particularly for electricity and water. For example, a small business in New South Wales pays up to 40 per cent less for electricity than its competitors in Victoria. Also, New South Wales has much lower utility charges than Japan, Hong Kong and Taiwan. That is why

Sydney has secured yet another big international win.

In March the second largest computer software company in the world, Oracle, announced a major expansion to its operations in Sydney. Oracle will invest more than \$48 million and create more than 370 new jobs in New South Wales. In the world of computer software Oracle is second only to Microsoft. It plans a new corporate headquarters for Oracle Corporation Australasia in North Ryde and a national centre for network computing in North Sydney where Australian and regional computer companies can develop new products.

New South Wales will now become a regional centre for software development expertise in the fastest growing area of information technology. Oracle's decision reinforces Sydney's reputation as the centre of information technology in Australia. Already Sydney is the home to almost half of Australia's 7,500 IT&T companies. Three-quarters of Australia's top 100 IT&T companies have their headquarters in New South Wales. New South Wales offers a highly competitive environment for information technology and telecommunications companies seeking to establish a base in the Asia-Pacific region.

#### **DEPARTMENT OF COMMUNITY SERVICES DIRECTOR-GENERAL Ms HELEN BAUER**

**The Hon. M. J. GALLACHER:** My question is to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. Is it a fact that with the removal of Ms Helen Bauer from the Department of Community Services to the unattached list, this list now has as many as 20 members, all of whom were removed by the Government and most of whom were appointed by the Treasurer to start with? Is it also a fact that the cost to taxpayers of this dumping ground is as high as \$1.5 million per annum? What steps will the Government take to end this high level of wastage?

**The Hon. M. R. EGAN:** Permanent heads or other senior public servants in New South Wales who are on what is called the unattached list are of course engaged in very productive activities on behalf of the New South Wales Government, as indeed were the 410 senior public servants on SES contracts who were appointed by the coalition Government but removed by that Government. I said it was 410; it might have been 510.

#### **TIBOOBURRA STATE EMERGENCY SERVICE PERSONNEL VEHICLE**

**The Hon. M. R. KERSTEN:** I address a question without notice to the Treasurer, Minister for

State Development, and Vice-President of the Executive Council, representing the Minister for Emergency Services. Is the Minister aware of recent statistics, released as a result of meetings between the State Emergency Service and the National Parks and Wildlife Service, which reveal that this year the Tibooburra area will be visited by more than 30,000 tourists? Is the Minister further aware of correspondence from the State Emergency Service that explains the need for another vehicle personnel carrier for the unincorporated area of New South Wales, including Tibooburra, which has a staggering area of 58,000 square kilometres? Will the Government give a commitment to assist in the funding of such a vehicle for emergency purposes?

**The Hon. J. W. SHAW:** I must say, without any real embarrassment, that I am unaware of the details sought by the honourable member. I will refer the matter to the Minister and obtain a response for the honourable member.

#### **MENTAL HEALTH SERVICES AND HOUSING FOR THE HOMELESS**

**The Hon. FRANCA ARENA:** My question without notice is to the Treasurer. Has the Treasurer seen the document "Down and Out in Sydney" that we sent to all members of Parliament by the St Vincent de Paul Society, the Sydney City Mission, the Salvation Army, the Wesley Mission and the Haymarket Foundation? Has the document identified and documented that homeless people are clearly the most deprived group in our community and that three out of four homeless persons have a mental disorder? Whilst I understand that the Treasurer is unable to reveal budget secrets, will he ensure that the forthcoming budget has an adequate or, better still, a generous allocation for both mental health and housing for homeless people?

**The Hon. M. R. EGAN:** The magazine referred to by the honourable member, "Down and Out in Sydney", has not been drawn to my attention. Although I accept that it may have been sent to me, I have not seen it. I can assure the honourable member that, as in the past, the Government will do as much as it can to ensure that health and community services spending, which are the two areas of relevance to the problem she raises, will receive very high priority from the Government. In our three years in office we have increased spending in community services by around \$300 million, which is a huge increase. In health, for example, we have increased spending by about \$1,000 million a year.

If honourable members have further questions, I suggest they place them on notice.



**FINES RECOVERY**

**The Hon. J. W. SHAW:** Earlier in question time today the Hon. J. F. Ryan asked me a question. As I understand it, he was dissenting from the general bipartisan position in favour of a more effective fine enforcement system. In effect, he asked whether, under the system that has been enacted under which the registration of a fine defaulter's vehicle could be cancelled, a member of the family who drove the car unaware of the cancellation and had an accident would be liable for all costs of the accident. I would like to answer that question more fully than I did earlier in question time.

First, car registration is cancelled only if persons who have not paid their fines do not have a licence or their licences have already been cancelled consequent upon default in payment of another fine. Second, I inform the House that before the licence suspension or cancellation, or registration cancellation, a person will have received four or five notices about the fine and what will occur if the person does not pay it or enter a time to pay agreement. Whether the number of notices is four or five depends on whether it was a court fine or a penalty notice. Third, and perhaps most important, section 70 of the Fines Act provides that a vehicle insurance policy is not terminated by the cancellation of vehicle registration or the cancellation or suspension of the licence. A claim cannot be refused if either the registration or licence has been cancelled pursuant to the Fines Act. This has effect despite anything in any insurance policy. A vehicle insurance policy is defined to include property insurance.

Furthermore, third party personal insurance will also continue to apply. Section 13 of the Fines Act amended the Motor Accidents Act 1988 and made it clear that in relation to third party personal insurance the same continuity would apply as I have already explained applies in relation to a vehicle insurance policy preserved by the force and effect of section 70 of the Fines Act. The Hon. J. F. Ryan thought he had a good point when he attacked the effective and efficient fines enforcement policy of this Government; in fact his attack fell to the ground. The point he raised was an absolute furphy. Perhaps one should not have too great an expectation of an Opposition and should expect point-scoring of this kind, but it is disappointing that the honourable member did not read the legislation.

**The Hon. Patricia Forsythe:** You had to take advice on this.

**The Hon. J. W. SHAW:** I agree that we needed to look at the Act. But one would have expected a responsible member of the Opposition to have looked at the Act before trying to score cheap points. I shall ignore the trivia apparent in interjections being made and content myself with saying that this scheme is a thought-out and effective scheme. It is a pity that some members, no doubt for opportunistic reasons, feel the need to score points about it, whereas I understand that the leadership of the Opposition has backed the scheme.

**Questions without notice concluded.**

**STANDING COMMITTEE ON STATE DEVELOPMENT****Report: The Fisheries Management Amendment (Advisory Bodies) Act 1996**

**Debate resumed from 8 April.**

**The Hon. Dr B. P. V. PEZZUTTI** [5.09 p.m.]: On the last occasion this matter was before the House I spoke at length on the report and said how disgusted I was with the Government's response. Many other members will speak to the report. I simply draw the attention of honourable members to the serious concerns expressed by all fishers, recreational and commercial, to the way in which the Minister is managing the issue of advisory bodies and the report of the standing committee. The concerns of the members of the standing committee are but some of the concerns that are being expressed. Most of the concerns simply reflect what the committee was told, what information the committee could obtain, and what members of the committee put to Dr Glaister, Mr Dunn and others in expectation of a response.

My colleagues the Hon. Jennifer Gardiner and the Hon. D. F. Moppett will have something to say. To allow time for my colleagues to make their contributions, and to enable this Chamber to move on to discuss other reports, I will curtail my contribution and content myself with making some comments in reply. It is a shame that the Government did not adopt the decisions and recommendations of the Standing Committee on State Development. If the Government had listened to and responded to the wise counsel of the witnesses who appeared before the committee, it would have had a much better idea of how these advisory bodies should act and the Minister would have had a mechanism to get good advice on the management of fisheries in New South Wales.

My colleagues will continue the debate on this matter. I believe that, to some extent, they will repeat everything I have said to date and, more importantly, they will repeat the evidence of every witness who came before the committee, except for Mr Dunn, Dr Glaister and the other staff of the department who supported the Minister. Perhaps they ran the agenda and the Minister was simply dragged along? No-one knows why the Minister destroyed the communication between the Government and the industry. The actions of the Minister united the recreational and commercial fishermen—who were hitherto enemies—to fight the Government. Those people are allies of the environment movement and the wider community. As I said earlier, this Minister should go. I shall refer to that matter in my reply.

**The Hon. JENNIFER GARDINER** [5.12 p.m.]: I am pleased to address the report of the Standing Committee on State Development entitled "The Fisheries Management Amendment (Advisory Bodies) Act 1996". The committee received the reference on 5 December 1996, which meant that a total of five references were before the committee at that time. The standing committee formed a subcommittee to deal with the advisory bodies reference so that it received proper consideration. The subcommittee reported to the full committee before it tabled its findings. The work of the committee proved to be stunningly revealing, particularly to the then chairman, the Hon. Patricia Staunton, who, I think it is fair to say, was fairly unhappy and angry as the evidence in relation to the fisheries advisory bodies that were established by the Minister for Fisheries, the Hon. Bob Martin, was revealed before her.

In December 1996 the committee advertised for public submissions. It received 29 submissions from recreational and commercial fishers, environmental groups and the New South Wales Fisheries. In February 1997 the committee heard evidence from 16 witnesses during two public hearings held at Parliament House. It heard evidence from the President of the Oyster Farmers Association, Mr Richard Roberts; the President of the Master Fish Merchants Association, Mr John Roach; officers of various government departments, including the Department of Land and Water Conservation and the Nature Conservation Council; and the Chairman of the Advisory Council on Commercial Fisheries, Mr Baker.

Mr Baker was unable to provide the committee with much information about the board meetings of which he was the chair. When the committee asked him to name the other board members he could not

do so. When the committee asked him whether the board members' names appeared on the list of names provided to the committee he was not quite sure. At the first hearing the committee started to get the impression that the Minister's advisory bodies were in a state of limbo and had not got off to a good start.

**The Hon. Dr B. P. V. Pezzutti**: In fact, the Minister had no legislation on which to support them, did he?

**The Hon. JENNIFER GARDINER**: No, he did not. As the chairman flipped through the legislation it was obvious that she realised she was dealing with a government department that was operating with advisory bodies that did not have any statutory or legal basis.

**The Hon. Dr B. P. V. Pezzutti**: And they were paying them.

**The Hon. JENNIFER GARDINER**: The money was flowing out of the Government's coffers. On what basis was this being done? There was no satisfactory answer to that question.

**The Hon. Dr B. P. V. Pezzutti**: The term "ultra vires" kept popping up.

**The Hon. JENNIFER GARDINER**: Yes, the term cropped up frequently. The Director-General of the department, Dr John Glaister, gave evidence before the committee, as did a number of his senior executive service. In addition, representatives of the fishing industries and the recreational fishing sector gave evidence. Committee members soon realised that the inquiry promised to be interesting, if not depressing. The report examines the background of the establishment of the advisory bodies. The Fisheries Management Amendment (Advisory Bodies) Bill passed through the Parliament on 5 December 1996 and was proclaimed on 20 December 1996.

The Fisheries Management Amendment (Advisory Bodies) Act, in concert with the associated regulations, significantly altered the fisheries advisory bodies structure throughout New South Wales. The Act abolished the Commercial Fishing Advisory Council and the Recreational Fishing Advisory Council, and created a system of four new ministerial advisory councils and seven fisheries-based management advisory committees. Concern was expressed in relation to the effect of the Act on industry consultation—which, of course, was what the Act was all about; it was meant to be about advisory bodies and consultative links from

the fishing community through to the Minister of the day—and on 5 December 1996 the Legislative Council resolved that the Standing Committee on State Development inquire into and report on the advisory bodies Act.

**The Hon. Dr B. P. V. Pezzutti:** I think the Minister promised this House that he would sort it out.

**The Hon. D. F. Moppett:** Yes, that was how he got his bill through.

**The Hon. JENNIFER GARDINER:** Yes. The bill was presented to the House on the basis that certain consultative controversies would be solved before the bill was proclaimed. As history shows, that is not the way it worked out at all, and the Government rushed to proclaim the bill before Christmas 1996. The committee examined the way in which advisory bodies are formed and administered; the role and composition of the advisory bodies in managing commercial, recreational, research and aquacultural sectors of the fishing industry through share management and restricted fisheries; the role of conservation representatives on advisory bodies; and suggested amendments to the Fisheries Management (Advisory Bodies) Act to better facilitate the role and participation of the stakeholders in the consultation process in the management of the fishing industry in New South Wales.

The committee started work in January 1997 and received 29 submissions. It conducted public hearings in Sydney and heard evidence from 16 witnesses. Not one of those witnesses praised the Government for its legislation. Between January and May 1997 the committee held public hearings in relation to fisheries management and resource allocation, which the House will debate in the future. The deliberations of the committee on the advisory bodies legislation continued because the lack of consultation between the Minister and the industry continued to crop up throughout the major inquiry.

The committee had to put that to one side while it produced the advisory bodies report. To properly consider the reference the committee required knowledge of at least the draft regulations associated with the advisory bodies Act. However, the problem was that neither the advisory council regulations nor the management advisory committee regulations had been gazetted or released for public comment by the time the committee was supposed to report to the House. On numerous occasions the chairman of the committee had to correspond with

the Minister to request basic information in relation to the likely content of the regulations.

**The Hon. Dr B. P. V. Pezzutti:** In quite acerbic tones, from memory.

**The Hon. JENNIFER GARDINER:** The correspondence was increasingly acerbic, as the Hon. Dr B. P. V. Pezzutti said. How could the committee get on with its job if the regulations it was meant to consider had not even been gazetted?

**The Hon. Dr B. P. V. Pezzutti:** Even the Hon. I. M. Macdonald was terribly concerned about that.

**The Hon. JENNIFER GARDINER:** The Hon. I. M. Macdonald was concerned right throughout both of the fishing reports.

**The Hon. D. F. Moppett:** It is called ministerial incompetence.

**The Hon. JENNIFER GARDINER:** The ministerial incompetence referred to by the Hon. D. F. Moppett was profound. It is fair to say that it was embarrassing to the Government members to have to conduct this inquiry, let alone produce a report in the terms that is now before this House. The committee finally received the draft regulations in March, but preliminary draft advisory council regulations were not received until April 1997. The committee could not complete its inquiry by the original reporting date of 11 April 1997, although it had every intention of so reporting. It was not any delay on our part. We got straight into it in January and we put other committee reports to one side so that we could urgently address this inquiry. But, because of this prolonged delay in obtaining the fundamental information from the Minister and possible obfuscation—I think it was basically incompetence—the committee had to table an interim report on the Fisheries Management Amendment (Advisory Bodies) Act 1996 on 10 April 1997, and the House granted our request to report in June 1997.

It was not until 12 June 1997 that the committee received an expanded version of the draft advisory council regulations, and that necessitated another request for a short extension of the reporting date right through until July 1997. In December 1996 the Minister for Public Works and Services, who was the Minister at the table at the time the bill was discussed, said that it would all be sorted out. But, as honourable members can see, the whole affair dragged on until July 1997. The basic information was not available to the committee, let

alone the Parliament. We wrote the interim report at a deliberative meeting in Grafton when we were inquiring into fisheries management and resource allocation. The report stated that the inquiry had generated considerable interest among the fishing community and the crux of the concern of people in the fishing industry was the membership and the method of selection of the ministerial advisory bodies.

The Director of New South Wales Fisheries told the committee "The regulations for the management advisory committees have been drafted or are being drafted. The regulations for the advisory bodies have not yet been drafted." We were told that the bodies we referred to were established informally; in other words, Dr Glaister was admitting it. He said, "They did not have statutory power and there has not yet been the requirement for them to undertake any actions that would require that power." But the chairman of the committee asked him, "How long will this state of limbo continue, given the legal and practical difficulties that it is clearly creating?" The director said, "I understand that the management advisory committee regulations will be available Friday week." The chairman asked him, "With consultation or to be gazetted?" and he replied that they would be available for gazettal. The chairman said, "So there is not to be any consultation about the regulations before they are gazetted, given your longstanding commitment to consultation?" The director continually told the committee that consultation was very important to New South Wales Fisheries.

Dr Glaister said, "No, it is necessary to get the management advisory committee regulations in place so that the elections for the management advisory committees can occur as soon as possible. The intent of the regulations is to allow for the preparation of management plans for each of those fisheries as soon as possible." The committee then had to write to the Minister three more times. Eventually the department forwarded the committee a draft copy of the regulations for the management advisory committees, accompanied by some suggested changes that the department had taken on board after further consultation with commercial fishermen. But the department still failed to nominate a date to furnish the committee with regulations in relation to the proposed ministerial advisory councils. The preliminary draft ministerial advisory council regulations were not received by the committee until 8 April 1997.

The committee reported that it had a number of concerns regarding the delays in drafting and gazetting the regulations associated with the

Fisheries Management Amendment (Advisory Bodies) Act 1996. The committee was concerned about the obvious lack of consultation with stakeholders in drafting the regulations. Written submissions were received by the committee, and evidence given during public hearings generally indicated concern about the lack of consultation between the department and the respective user groups. The committee considered that such consultation was essential in assuring the acceptance by stakeholders of regulations that have a significant impact on all of those involved in the fishing industry. We believe that public participation of some kind in the drafting of the regulations before their gazettal would improve the chances of their acceptance. It is extraordinary, given that the Parliament set up an inquiry into the advisory bodies legislation, that the Government did not move quickly to involve the stakeholders in consultations at that stage.

Unfortunately, lack of consultation is a theme that continues not only in this report but into the larger report on fisheries management and resource allocation. It is quite obvious from correspondence to members in the last day or so on the same subject that that lack of consultation is unchanged. The Government has not mended its ways, particularly with respect to fisheries. The committee expressed concern about the existing advisory structures at the time it presented its preliminary report. Committee members were operating without the foundation of regulations to guide them. The committee believed that the composition of the proposed fisheries advisory bodies, particularly the role of conservationists, was central to the inquiry. The committee was unable to interpret the full impact of the Act and it could not complete that inquiry as requested by the due date until it had access to all the regulations governing the composition and the function of the advisory bodies under inquiry. So the committee reported to the House that unsatisfactory state of affairs.

The Minister for Regional Development, and Minister for Rural Affairs, Mr Woods, recently circulated the report of the New South Wales Rural Communities Consultative Council. All through that document is a reference to the need for consultation by the Carr Government with people involved in rural and regional communities. It is obvious from the wording of the report—a report delivered to the Government last year but which is only now available to the public—that people throughout rural and regional New South Wales involved in industries such as the commercial fishing industry are fed up with the Carr Government's lack of consultation across the board. It is sad, with respect

to fisheries in particular, given that there are only about 1,800 stakeholders in the commercial fishing industry. It could not be said that that is a large number of people with whom to consult. One could do that quite easily if one were dedicated to that cause. The Minister for Fisheries could consult quite regularly.

**The Hon. D. F. Moppett:** If you determine to ignore them then you take the road that he has taken.

**The Hon. JENNIFER GARDINER:** That is right. It was mentioned to us a number of times that, whilst at times commercial fishermen clashed with the previous Minister, the Hon. Ian Causley—they did not agree on some issues—they respected the fact that the previous Minister always turned up to consult with them and he always listened to what they were saying.

**The Hon. D. J. Gay:** They wanted him back.

**The Hon. JENNIFER GARDINER:** They did want him back. To this day members of this House are still receiving correspondence from commercial fishermen asking for improved consultation. Over the years a variety of groups have represented the interests of commercial fishers. These include angling clubs and trout acclimatisation societies—one of the favourite topics of the Hon. Dr B. P. V. Pezzutti. It was not until 1989 that the Commercial Fishing Advisory Council and the Recreational Fishing Advisory Council were created as a formal structure to provide advice and act as a consultation mechanism between commercial fisheries and the Government. The CFAC and RFAC system was established under the Greiner-Murray Government. That Government was actually interested in consultation with this important industry. These two advisory bodies were part of the Fisheries and Oyster Farms Amendment Act 1989.

The Commercial Fishing Advisory Council was supported by regional advisory committees, known as RACs, and the function of these RACs was to provide a forum for the discussion of regional fisheries issues and to appoint representatives to CFAC. But after the election in January 1996 and the change of government, a review of fisheries consultation in New South Wales was undertaken by the Director of Fisheries, Dr John Glaister. This was after the previous director, the highly respected Mr Paul Crew, had been sacked by Mr Martin—although Mr Martin never told Mr Paul Crew that he had been removed from office as the Director of Fisheries. Committee members will refer to that matter when they speak on the

expanded inquiry into fisheries resource allocation and management.

After Mr Crew was summarily dismissed from office, Dr Glaister appeared as director and he reported that the primary problem with the existing advisory structure was that there was a blurring of advisory and representative roles. This blurring of roles was a recurring theme throughout the government agency's submissions to the committee. Nevertheless, the Minister accepted Dr Glaister's report. The Fisheries Management Amendment (Advisory Bodies) Bill, which went through this Parliament at the end of 1996, abolished CFAC and RFAC and provided for the establishment of management advisory committees. Various regulations eventually followed. There was a sense of outrage in the industry, particularly in the commercial sector, arising from the abolition of the Commercial Fishing Advisory Council and that led to the reference for this inquiry. The Fisheries Management Act, as amended, is the overriding legislation. Section 58 of that Act sets out the responsibilities of the Minister for Fisheries regarding public and industry consultation.

The Minister, under the Act, is actually required to give the public an opportunity to make submissions on any proposed management plan for a fishery, or proposed new plan, and to take into account any submission that is duly made. The Minister is required to consult the management advisory committee for a fishery and any other relevant commercial or recreational fishing industry bodies about any proposed management plan for a fishery or a proposed new plan.

We believe, as a standing committee, that it is the responsibility of the Minister to ensure that all user groups have an opportunity to provide input into the management of the resource, while it is the role of the advisory bodies generally to provide objective advice based on expert opinion so that the Government can develop and enact policies. We believe that the quality of that advice to the Minister will depend on what a clear understanding of the role of the bodies is and the ability of the bodies to effectively consult. Obviously there was a great deal of angst amongst stakeholders about the capacity of those bodies, as set up by the Minister, to do their job. We received a great deal of evidence in relation to the abolition of CFAC, notwithstanding evidence from New South Wales Fisheries that the council structure was outdated and that council had lost the confidence of the industry.

One witness, Mr Harasymiw from the south coast, admitted that there were problems with the

structure of CFAC, but he stressed that the major problem was that a lack of funding prevented the councils' regional advisory committees from performing effectively. He claimed that members of the Commercial Fishing Advisory Council had recognised that and they were preparing to address the problem when they were suddenly chucked off the pier at Black Wattle Bay by the Minister for Fisheries. A number of other witnesses criticised the abolition of CFAC, claiming that the move to the advisory council on commercial fishing would seriously undermine the commercial fishing industry's representation and feeling of ownership of the management process. Mr Ron Snape, a well-known representative of the commercial fishing industry, said:

For industry to have confidence in management we must have confidence in our elected representatives and in the structures that they will be representing.

That is, commercial fishermen's interests. One of the other criticisms concerning the abolition of CFAC was the way in which the collection of industry levies to support the council was stopped and the council's assets allegedly seized by the department. The Director of Fisheries was asked about the withdrawal of funding to the council before it was legally abolished. He stated that the Minister for Fisheries had withdrawn the direction to collect funds to support the council in early 1996 and after that the department had assumed the financial commitments of CFAC until the legislation abolishing the council was passed through the House. Dr Glaister undertook to provide the committee with written information about these events because the commercial fishing industry and the committee wanted to know the details.

The letter from the Director of Fisheries shed no further light on this important matter. It was a wholly unsatisfactory response to a parliamentary inquiry. There was controversy for other reasons about the abolition of the Recreational Fishing Advisory Council, but to this day the abolition of CFAC rankles the New South Wales commercial fishermen. Another area of great controversy surrounds the New South Wales Government's stance on the fisheries research advisory bodies, which were part and parcel of the committee's terms of reference. The bulk of fisheries research in Australia is funded through the Commonwealth's Fisheries Research and Development Corporation.

The structure of that corporation is that each State has a designated fisheries research advisory body, known in the industry as FRABs. Since 1993 the New South Wales Fishing Industry Research

Advisory Committee, FIRAC, was designated as the New South Wales FRAB under the Commonwealth-New South Wales research funding arrangements. The committee was set up on a non-statutory basis as a subcommittee of the New South Wales Seafood Industry Council. After the change of Government that whole process went out the window and after the 1996 review on fisheries consultation in New South Wales the Director of Fisheries stated that FIRAC's role as the New South Wales fisheries research advisory body was untenable because "FIRAC is effectively setting the research agenda for New South Wales, almost in isolation from the New South Wales Minister for Fisheries."

That brought another theme to the inquiry—the integrity of the research process. There seemed to be great cynicism among the fishing community about whether the research being produced out of the Department of Fisheries had been tampered with at the department's head office. People lacked confidence in the integrity of the research under Dr Glaister's direction. The Advisory Body Act, in conjunction with the draft advisory council regulations, provides for the creation of the Advisory Council on Fisheries Research, ACFR. The Minister withdrew New South Wales Government recognition of FIRAC and determined that ACFR would act as the New South Wales fisheries research advisory body under the Commonwealth operations. That led to confusion and a sense of absurdity about the Government's approach to fisheries research funding.

The standing committee heard divergent views on which body would best serve New South Wales as its fisheries research advisory body. For example, the Seafood Industry Council submission claimed that the Minister had been critical of FIRAC. The Minister had told the council that FIRAC did not adequately represent the views of government or industry and its membership lacked the expertise to provide a balanced assessment of research priorities. However, Mr Richard Roberts, Chairman of the Seafood Industry Council and a witness at both inquiries, rejected that criticism. He said there was another reason for the Minister's and department's attitudes towards FIRAC. In answer to a question from the Hon. I. Cohen as to why there was a disagreement, Mr Roberts said:

I can only think that it is to enable Dr Glaister or the department to ensure that most of the money is used to fund projects within New South Wales Fisheries.

That is, within the department. He continued:

I have commented before that I believe Fisheries look on some of these external funding sources as maintaining full employment, not increasing the commercial viability of the

habitat or whatever the issue is, which the industry believes are the key issues.

The chairman of the Seafood Industry Council provided the committee with a specific example of where the department had missed out on some oyster research funding. As a result, it resolved to bypass the FIRAC system. Mr Roberts claimed also that the department was attempting to undermine FIRAC by negotiating a memorandum of understanding between itself and FRDC—the Commonwealth body—using levy funds collected by the department as bargaining chips. Concerns were raised by witnesses regarding ministerial appointments to the Advisory Council for Fisheries Research and Dr Glaister's chairmanship of that advisory council. Mr Snape suggested that ministerial appointments to a body that has some power over research funding may allow the department to influence research application outcomes. Referring to corruption in the system Mr Snape said:

The corruption that we were concerned about is that we have universities and other groups seeking research funds. So long as this research advisory committee had ministerial appointees on it, we were concerned that they would not look at other research organisations, universities and the like, in the same light as they would look at projects coming from Fisheries. There is only a certain amount of research dollars available and we were worried that Fisheries would get the lion's share, when there could be an equally good project coming from a university. We thought that this had the potential of being corrupt.

The Director of Fisheries did not agree, but when asked by the chairman of the committee whether external observers or participants might perceive that the Advisory Council on Fisheries Research would not be objective and impartial if the Director of Fisheries was also the chairman of the council, he said, "You may be right." So he conceded that there could be some perceived, if not real, conflict in research matters. We heard many other criticisms about the new advisory system which centred around the perception that there would be a lack of opportunity for stakeholder input into fisheries management following the introduction of the new system. Mr Snape, former chairman of CFAC, was critical of the multitude of advisory bodies that were being set up. He said:

There is nothing incumbent upon these new advisory committees to have port meetings or to disseminate information to the fishermen, or, most importantly, to have the fishermen's will taken up with management. There is absolutely no way of fishermen getting their ideas through to management. At present it is a top-heavy bureaucracy, instead of fishermen's ideas coming through.

That view was supported by the Nature Conservation Council, which suggested that a single

advisory body encompassing all interests would allow better advice to flow through to fisheries management. Members of the industry also criticised the new advisory body system for not having better provision for regional input. They suggested that fishing activities are diverse, and without effective regional consultation management decisions may not reflect local conditions or methods used. Mr Baker, Chairman of the Interim Advisory Council on Commercial Fishing, agreed that the lack of regional input was a shortcoming of the new advisory system. He said:

I am aware of the criticism. I cannot see how it will represent regional interests because there is no structure that allows it to represent regional interests.

Mr Baker was appointed by the current Minister, Mr Martin, yet he felt that he should make that criticism to the committee. He said:

I believe the committee needs to come from a regionalised basis. It does not worry me if it is three regions or ten regions. It needs to come from some regionalised body which would then, to my way of thinking, appoint one of its personnel to move up to some State body to advise the Minister. I feel it is the only way to get some grass roots participation going through from an advisory council through to an advisory body to the Minister. . . . I think it is of paramount importance that we get information from the grass roots up. To that extent I think there should be some form of regional council.

President of the Oyster Farmers Association of New South Wales and Chairman of the Seafood Industry Council, Mr Roberts, stressed the need for industry "to have some form of ownership in the decision-making process as to what is to occur in whatever committee or council has been formed". The President of the Master Fish Merchants Association, Mr Roach, put to the committee that morale and industry confidence in the new advisory system were very low. He stated:

The only way to regain that confidence is to set down ground rules, whether it be by setting up non-biased advisory committees to be part of the decision-making process or to give the participants in the industry, which is part of their everyday life, a say about their future so that they have confidence to go on with further investment and further participation.

The department defended the new system and rejected suggestions that its consultation with stakeholders was deficient. In fact the director said:

The Executive and the staff of New South Wales Fisheries are totally committed to consultation.

But if that is true we have to ask why so many witnesses came forward to express concern about the lack of consultation. The department also saw distinct disadvantages with a regionalised approach

to forming advisory bodies. During the inquiry it became evident to the standing committee that for the Act to be properly implemented it required the gazettal of the necessary regulations. Dr Glaister, as I said, was not able to provide us with much information that we could home in on, at least not until well down the track.

The committee also examined issues surrounding the composition of advisory bodies such as the advisability of having representatives of the non-extractive users on advisory bodies—conservation representatives, Aboriginal representation, recreational interest groups—and how such representatives might be appointed. Not for the first time the response of New South Wales Fisheries on questions about, for example, the Government's supposed indigenous fishing strategy went unanswered. It was obvious to the committee that various people from different government agencies—Aboriginal affairs for example—did not know what was going on in the other departments even though there was meant to be an indigenous fishing strategy. At least one of our witnesses who was meant to be involved in an indigenous fishing strategy did not know that there was such a document.

There was conflicting evidence about appointments versus direct election to advisory bodies. The committee experienced great difficulty in completing the inquiry because of the lack of information. It could not give a big tick to Mr Martin's advisory body structure and it recommended a number of improvements. It is essential for the Minister to have access to unbiased expert advice upon which the Government's fisheries management decisions can be based. It is important for stakeholders in the fishery to be involved in the management process. We considered that it would be in the best interests of fisheries management in New South Wales if the Minister for Fisheries had a clear statutory responsibility to establish specific advisory councils; that is, not to have ministerial discretion in the matter. The committee recommended that the discretionary "may" be replaced by the obligatory "shall" in the Act.

The committee made a series of recommendations as to specific ways in which consultation via advisory bodies could be improved. It also recommended that the appointment of representatives to advisory bodies be at arm's length. I endorse the expression of disappointment by my colleague the Hon. Dr B. P. V. Pezzutti at the Government's response to the committee's recommendations in the report. The Government is obviously still running into trouble with its response,

because we are still receiving correspondence from some of the witnesses expressing their deep concern about the failure of the Government to respond accurately to the recommendations of the committee. Therefore the Government is obviously still not taking any notice of the fishing industry. It might be said that it is treating the industry with a degree of contempt. That applies across the board to all the stakeholders in the industry.

In conclusion I thank the secretariat of the Standing Committee on State Development for the work done on the report. The committee had to proceed immediately after making this report to deal with other inquiries including that on the wider fisheries management and resource allocation. The committee secretariat was under pressure because it had before it five references at the time. I thank all members of the secretariat for the work that they did.

**The Hon. I. COHEN** [5.56 p.m.]: I speak on the report of the Standing Committee on State Development on the Fisheries Management Amendment (Advisory Bodies) Act 1996. As a Green member of Parliament I was interested to look into this resource issue and my time on the committee was illuminating. The inquiry into the Act has exposed exactly why the commercial fishing industry, fisheries resources and the recreational fishing industry are in crisis. New South Wales fishers, be they recreational or commercial, the environment groups which protect the riparian habitats, and obviously the fish, the natural resource they are charged to protect and manage, are suffering from the current administration's complete incompetence to consult effectively.

It has been interesting to see consultation New South Wales Fisheries style. The current New South Wales Fisheries administration has a definite consultation problem. Lack of consultation was tagged as a key issue by both recreational and commercial fishers, by indigenous fishers and by the environment groups—all key client groups of the department. An important point to make is that the new consultative process outlined in the recommendations of the committee needs to be watched very carefully. The consultative process under this administration has been woeful. Unless the recommendations of the inquiry are adopted and implemented by the current administration, there will be no improvements in relations between the key client groups and the Minister for Fisheries.

Let us look at the history of consultation New South Wales Fisheries style. One of the first tasks Dr John Glaister completed in New South Wales



Fisheries was a report into the fisheries consultation mechanisms in New South Wales. He then implemented the recommendations after the passing of the Fisheries Management (Advisory Bodies) Bill. That caused an uproar from the commercial sector resulting in the referral of the matter to the standing committee. When one looks at how the changes were implemented from a fisher's perspective one can see why. Representatives on old consultative committees were unaware that they were no longer needed by the department. For example, Peter Parker, a consultant who was on the Recreational Fishing Advisory Council, was questioned by the then chairman of the committee, the Honourable Patricia Staunton MLC, as part of the wider inquiry into fisheries management and resource allocation. I quote from the transcript:

**CHAIRMAN:** That body, of course, no longer existed. You are aware of that?

**Mr PARKER:** I became aware of that five minutes ago.

I remember that. It was in Ballina. He was completely unaware of the situation. He was a scientist, a person involved in marine biology, living on the coast and constantly working in the area, and he was not aware of his status at the time. The Minister and his department did not inform Mr Parker that the advisory council to which he had committed time and energy was abolished by an Act proclaimed two months before Mr Parker gave evidence to our inquiry.

Despite Dr Glaister's firm assurance to the committee that he and his department are totally committed to consultation, both the recreational and commercial sectors found that this verbal commitment does not translate into action. Peter Parker, who was on the Recreational Fishing Advisory Council zone one, explained that pearl perch was the subject of a draft policy on adopting a bag limit of just one fish per fisher. This reflects how limited and rare this fish was becoming. He said that over a period of more than a year the advisory council, because of its concern, "continued to lobby Fisheries". Any group of people who volunteer their time and expertise to New South Wales Fisheries and offer advice on key issues should not merely be ignored. In response to a question on the nature of consultation with the department Mr Parker stated:

I think it has been fairly poor. At times we have had to resort to freedom of information requests to try to get information from the department.

That is unsatisfactory. Also, there has been little confidence in what brief consultation has occurred.

Mr Oleh Harasymiw, a commercial fisher and Chair of the Four Ports Management Committee, highlighted the fact that consultation was extremely limited and that the consultative bodies created by Dr Glaister's reforms did not have the confidence of industry. He said:

There is no doubt that, in the appointment of some of the advisers and some of these committees . . . there was a degree of handpicking. Even people who had been nominated, or who nominated themselves, who were considered to be unwanted were in fact rejected and NSW Fisheries officers actually touted by phone other people they wanted to have on the committees. There is no question about that, and that can be established.

John Connor, Executive Officer of the Nature Conservation Council of New South Wales, shares similar concerns. He stated:

I am concerned about a simple clause that gives the Minister total discretion as to the appointment of other people or interest groups, but it is not transparent and I do not think that it provides the best people. In fact, unfettered discretionary appointments would more likely result in the selection of individuals who are least able to give the solid, robust and independent advice that these structures need so much.

I am concerned about that, and that is why the Nature Conservation Council has made these recommendations.

Mr George Baker, a commercial fisher from the Clarence, who was appointed Chair of the new Advisory Council on Commercial Fishing in October 1996, four months before the legislation which formed the council was proclaimed, also agreed. He stated:

I can well imagine, given that they are political appointments, that people would be upset about the fact that people were appointed rather than elected. I can understand their views.

I fully support the recommendations of this inquiry, particularly the recommendations that set up democratically elected zonal advisory committees to progress regional issues directly with the department. The zonal advisory committee—ZAC—process has been a huge success in Queensland, and regional liaison has been extremely poor in New South Wales. The future of fisheries management lies with co-management. The recent Second World Congress on Sustainable Fisheries highlighted a number of countries where local communities are successfully managing local fisheries issues within a wider framework of State or national management. This style of management relies on an accountable and transparent process occurring at a local level, such as the recommended ZAC process.

The New South Wales Greens strongly support the committee's recommendation that the membership of the advisory councils be widened to

include members of the Nature Conservation Council, the New South Wales Aboriginal Land Council and the Master Fish Merchants Association of New South Wales. New South Wales Fisheries will benefit from a broader consultative base, bringing a conservation, indigenous and post-harvest sector perspective to the central issue of ensuring a sustainable commercial fishing industry in New South Wales.

Recommendations regarding the New South Wales Fisheries research advisory body are necessary. For New South Wales to have two research advisory bodies recognised at a Federal level not only reflects a certain degree of respect and confidence in the original New South Wales Fishing Industry Research Advisory Council but also acknowledges that there may be a legitimate concern about the New South Wales Fisheries Advisory Council on Fisheries Research. Richard Roberts, Chair of the New South Wales Seafood Industry Council, explained to the committee how New South Wales Fisheries tried to force the Federal Government to make a choice. He stated:

Dr Glaister has approached the Fisheries Research and Development Corporation in Canberra and asked for a memorandum of understanding to be drawn up between NSW Fisheries and the FRDC. I suppose I look at it as blackmail.

Dr Glaister is saying that if you recognise him as the only Fisheries Research Advisory Body in NSW, he will pass on to them (FRDC) the research levies from oyster farmers and fishermen. I cannot predict what the FRDC will resolve, but I suspect that would be like a red flag to a bull. I suspect Dr Glaister has now put himself into an invidious position in that the FRDC will reject what he is saying.

However, the current situation where both committees call for submissions and make separate recommendations to the Commonwealth Fisheries Research and Development Corporation, and where there is no communication between the department and the New South Wales Fishing Industry Research Advisory Council—FIRAC—is not serving the interests of fisheries research in New South Wales. There is a real risk that the Federal Government may no longer continue to complement industry funds with the three-to-one subsidy. This would dramatically affect the amount of research that would be carried out in New South Wales, not only through the Fisheries Research Institute in Cronulla but also through the State's universities.

The committee has recommended a reconstituted advisory council on fisheries research, with a representative from each sector and two representatives from the New South Wales Seafood Industry Council. Hopefully, once this reformed advisory council is working effectively, and has

earned the trust of the seafood industry, there will no longer be a need for the New South Wales Fishing Industry Research Advisory Council.

The committee thought it important for the advisory council to have a certain degree of independence from New South Wales Fisheries, and recommended that the Chair of the Advisory Council on Fisheries Research be an independent person with no direct or indirect pecuniary or other interest in fisheries. I am concerned about the time, energy and resources that were given to this inquiry by representative bodies, individuals, the department and my colleagues on the committee. This was compounded by the fact that the Government's response to the committee was woefully inadequate.

The department's attitude and delays left me and many within the fishing community doubting its commitment to the inquiry process. I no longer share that doubt following a reading of the Government's two- or three-line response to each committee recommendation. It could have been a much briefer response: no. That sums up the Government's response. It has not given a well-reasoned and logical response to the recommendations derived from the 29 submissions and the evidence of 16 witnesses. Its response suggests that committees may as well not bother making recommendations. That is the disturbing conclusion I was forced to make after reading the Government's response.

I am particularly concerned that the substantial recommendations that the Government is ignoring include statutory recognition of the five advisory councils; representation on these advisory councils from recognised peak bodies such as the Nature Conservation Council, the New South Wales Aboriginal Lands Council and the Master Fish Merchants Association; tighter provisions relating to ministerial discretion; regular planned meetings of advisory bodies; and rationalisation of the three different regional and sectoral consultation bodies into zonal advisory committees. The committee as a whole recommended these as vital changes for the industry to ensure that the Minister receives expert, unbiased advice. I can only conclude that the brevity and lack of developed argument in the Government's response is because such an argument does not exist. I am pleased that the Minister has ignored one recommendation relating to the Fishing Industry Research Advisory Council.

*[Time for debate expired.]*

**GUARDIANSHIP AMENDMENT BILL****Second Reading****Debate resumed from an earlier hour.**

**The Hon. PATRICIA FORSYTHE** [6.09 p.m.]: I was referring earlier to the delegation of consent to the person responsible and I asserted that the Guardianship Tribunal has a number of responsibilities under the legislation. The first obligation is to approve a particular clinical trial as one in which people under guardianship orders may participate. Nothing can proceed beyond that. That of itself does not permit anyone the right then to participate, as each person must be subject to particular consent.

The point needs to be clearly understood so that we can put to rest many of the issues raised, perhaps needlessly, in the media when the standing committee was undertaking this inquiry. Each person must be the subject of particular consent. I go a little further. Consent can be given to enable a person to participate in the trial of a drug only if that drug is for an illness or condition that the person is known to have. For example, a person suffering from Alzheimer's disease may be permitted to participate in the trial of a drug that will alleviate some of the symptoms of Alzheimer's disease but not in the trial of a drug that might alleviate the symptoms of arthritis. This legislation is intended to cover approval for therapeutic trials. That seems to have been lost in media coverage of issues of the day.

An issue of some controversy at the time was what happens once the tribunal has determined that people under guardianship orders may participate in a trial. Who will give consent for the individual to take part in the trial? It is for the tribunal to determine whether consent is to be given by it or delegated to the person responsible for the patient. Delegation was the subject of much discussion before the standing committee and gave rise to some specific recommendations, and it is still a matter of some concern. To an extent, this debate is taking place in a vacuum because we do not know the Government's intention with each of the standing committee's recommendations.

While this issue was one of the more controversial of the many issues raised in submissions made to the standing committee, I note that the purpose of the bill is to give the system the widest possible flexibility in the best interests of the patient. I note particularly the comment published in the standing committee's report by Professor

Brodaty, who said that as a clinician and researcher he would be most unlikely to enrol a subject in a trial if the family did not agree. That comment is worth putting on record because they are the sorts of safeguards and assurances that many in the community seek.

The Carers of Protected Persons Action Group, COPPA—an organisation that probably most strongly represented community opposition to this bill—was formed by people concerned about certain aspects of guardianship in New South Wales. COPPA has raised strong objections to anyone other than a family member being able to give consent. The group has raised its concern because, as it noted to me, some 61 per cent of applications before the Guardianship Tribunal result in the appointment of the Public Guardian as guardian, thus cutting out family members. As the House well knows, this is a very emotional issue for many families, and explains why there are strong community feelings about the bill.

I do not believe I misrepresent COPPA when I say that its objections do not stem from opposition to clinical trials per se; far from it. That group would want decisions to be made in the best interests of family members. It is just that the appointment of the Public Guardian can remove family members from the decision-making, and, despite Professor Brodaty's comment about consideration of family views, it is not clear that a family necessarily will be aware of a decision to admit a person to a trial if the decision is made by the Public Guardian. The Government must consider that. It goes to the heart of many ethical issues, and the community is not entirely satisfied with the Government's assurances or indeed with the strong views that the standing committee expressed in its unanimous support for clinical trials.

I put this matter on the public record because I think it would be unfair to groups such as COPPA if their position were not known and well understood by the House; although on balance the Opposition would not oppose this legislation, because it believes it is in the interests of many people under guardianship that clinical trials proceed and they have the opportunity to participate in them. The standing committee recommended that the annual report of the Guardianship Board include details of all clinical trials approved during the year, and that any amendments relating to clinical trials be reviewed one year after the proclamation of the Act.

I seek assurances from the Government that it will adopt that recommendation. The Opposition does not oppose the bill, but it seeks from the

Government an assurance that the recommendations of the standing committee will be adopted. In particular, I believe that in any reporting, the Public Guardian should note not merely what clinical trials were approved but how many people under guardianship orders were admitted to the trials, and who gave the approval—not by name, of course, but by class.

Finally, I note that recommendation 18 of the report of the Standing Committee on Social Issues calls for the creation of an appeals division of the Administrative Decisions Tribunal to hear appeals against the Guardianship Board. That would certainly go some way to appeasing some of those who object. However, despite the House agreeing last year to establish the Administrative Decisions Tribunal, one is well entitled to ask what is happening about its establishment. I know that Carers of Protected Persons Action Group and others who oppose this bill would be far happier if an appeals mechanism were in place.

Indeed, if the Administrative Decisions Tribunal were already in place I would have had less difficulty in saying on behalf of the Opposition that, on balance, there is compelling argument to allow the legislation to go forward. I note that the Minister in the lower House suggested that this matter was before Cabinet. What is happening about the Administrative Decisions Tribunal? The House approved its establishment in June last year. An appeals mechanism has been talked about in general, and I recall that during the debate on the guardianship legislation last year the concept of a less legalistic appeal mechanism, other than to the Supreme Court, appealed to many people who were considering the problems facing guardianship.

The weight of evidence strongly suggests that many people under guardianship orders would benefit from new drugs. But because under existing legislation most new drugs being admitted to Australia must first be subject to clinical trial, the failure to establish the Administrative Decisions Tribunal could deny people a chance to be treated effectively. For this reason the Opposition does not oppose this legislation.

**The Hon. ELISABETH KIRKBY** [6.18 p.m.]: As a member of the Standing Committee on Social Issues I support the bill. It is very sad that, after the standing committee unanimously agreed to the provisions that the Government has included in this legislation, in this debate we must revisit the concerns of some minority groups in this State. I know that when the committee was dealing with this matter the Hon. Ann Symonds received some

extremely offensive letters from the Medical Consumers Association of New South Wales. The committee and the Hon. Ann Symonds were subject to attack in the *Telegraph Mirror*—which, as I said in another debate today, is said to be a suitable authority but which recently incorrectly reported what I had said. Today I too received a letter from the Medical Consumers Association. It seems that some sections of the community are determined not to let this matter lie, and are determined to ignore the provisions of the bill that will safeguard those who are under the care of the Guardianship Board. I would like to refer first to the most recent letter I received, to which I referred earlier, from the Medical Consumers Association. It reads in part:

It is suggested that the community will see your statements, about the situation had the victims been under the control of The Guardianship Board, as bizarre in the extreme.

The association is referring to an aside made to me during debate on the report by the Hon. R. D. Dyer, who was then Minister for Community Services. I believe that this is a very subjective suggestion by the Medical Consumers Association, because in my opinion there was nothing either in the Minister's aside or in my reply to it that could be regarded as bizarre. The association goes on to say:

[The Guardianship Board] now a tribunal is not a medical expert body at all, and can only realistically be seen as quite Statute impotent to provide any of the protection you ascribe to it.

It is the legislation, not the tribunal, that will provide protection to people. Schedule 1[9] adds to the Act a new section 45AA, relating to clinical trials, which provides:

- (1) The Tribunal may approve, in accordance with this section, a clinical trial as a trial in which patients to whom this Part applies may participate.
- (2) The Tribunal may give an approval under this section only if it is satisfied that:
  - (a) the drugs or techniques being tested in the clinical trial are intended to cure or alleviate a particular condition from which the patients suffer, and
  - (b) the trial will not involve any known substantial risk to the patients (or, if there are existing treatments for the condition concerned, will not involve material risks greater than the risks associated with those treatments), and
  - (c) the development of the drugs or techniques has reached a stage at which safety and ethical considerations make it appropriate that the drugs or techniques be available to patients who suffer from that condition even if those patients are not able to consent to taking part in the trial, and

- (d) having regard to the potential benefits (as well as the potential risks) of participation in the trial, it is in the best interests of patients who suffer from that condition that they take part in the trial, and
- (e) the trial has been approved by a relevant ethics committee and complies with any relevant guidelines issued by the National Health and Medical Research Council.

They are very strong inhibitions on the Guardianship Board allowing a trial to be conducted on people who are under the board's care and guardianship without all those conditions being met. I am tired of hearing what can only be described as doctor bashing. There seems to be a conspiracy suggesting that doctors in New South Wales are incompetent, prescribing drugs improperly, and using patients as guineapigs; and suggesting that all the good work that is done by the medical profession is being swamped by sensational media reporting to the effect that there is something wrong with the state of scientific western medicine and that we have to go back to the days of so-called natural therapies. This totally ignores the advances in scientific medicine that have taken place over the past 100 years. It is to the detriment of society as a whole that we attempt to ignore what has taken place and what has been achieved in the control and treatment of many diseases that 100 years ago, or even 50 years ago, would have been fatal.

The Hon. Patricia Forsythe said she received a letter from the Christian Science Church. I also received a similar letter. The church wrote that it did not know that the social issues committee was conducting this inquiry, or it would have made a presentation to it. I simply cannot accept that, because the social issues committee advertises the details of its hearings, as do all committees of this House. In regard to this inquiry, the committee advertised this reference not once but twice. The committee also received a lot of adverse media publicity. It certainly received a lot of publicity following what I believe are the totally unfounded remarks of the Medical Consumers Association of New South Wales.

I do not understand how a body such as the Christian Science Church, in its letter that I received only yesterday, can possibly say that it "only became aware of the above standing committee report during the last week". That is inconceivable, particularly given, as honourable members would be aware, that those in the community who follow the philosophy of Christian science have a totally different attitude towards the treatment of certain medical conditions. They have every right to adopt that position; it is part of their philosophy. However, they do not have the right to suggest that legislation

is based only on their philosophy and that legislation does not take into account the scientific medical evidence that is now available to this Parliament and every citizen in this State. Perhaps they thought it was possible when they read the report, but they should read the legislation and see the very careful way in which it has been drafted to provide protection to all people under the care of the Guardianship Board who, for whatever reason, are not able to give informed consent.

The Government has included the recommendations of the committee in this legislation in the most appropriate and careful way. It is not usual for recommendations of any committee of this House to be taken up so quickly by the Government and given such careful attention. One of the tragedies of our committee system is that members of committees spend many weeks taking evidence, hearing a whole variety of opinions and having lengthy discussions in which all considerations are weighed up. Practically every sentence in a report such as this is gone over, every "i" is dotted, every "t" is crossed, and all the views of the committee are taken into account. It is tragic that the Government does not more often accept the recommendations of a committee and adopt them in legislation. That it has done so in this case is to its credit. I applaud the Government and the Minister for Public Works and Services particularly for the work he did when he was the Minister for Community Services and responsible for the Guardianship Board and for being willing to take on board, as was Cabinet, the recommendations of our committee.

I cannot emphasise too strongly that the committee's recommendations were unanimous—that does not often happen. On many occasions a committee will make recommendations that are not fully supported by every member. However, in this case all members of the committee were happy to accept the recommendations; there was no dissent. That fact seems to have escaped the media. As I said earlier, the chair of the committee was quite wrongly criticised by the *Daily Telegraph*, which suggested that it was her idea, as chair, that the recommendations should be made. We have never seen any public comment that it was not simply the views of the chair, but that it was a unanimous report.

The Hon. Patricia Forsythe was right to put the views of the Christian Science Committee on Publication on the public record. If she had not, I would have done it. It is also right that the views of Carers of Protected Persons Action Group—COPPA—should also be put on the public record. But when one is weighing up such matters, one has

to consider not just the evidence of two particular groups but of everyone. The Medical Consumers Association has suggested that we as a committee, or even as individual members of political parties, do things without considering what we are doing. The letter the association wrote to the chair of the committee on 9 November 1997 stated:

Your committee has failed to produce any real evidence that the amendment is actually needed at all.

That is a very subjective judgment, and I can only suggest to the MCA that it read the report and the evidence in the report, which certainly refutes that suggestion. The letter continued:

As your Committee is a joint committee, and in view of the findings of your Report No. 13 the public must presume that a debate and vote along party lines under the pressures of party whips will cause the measure to be passed most resoundingly. In view of the workload pressure on MPs it is very possible that most MPs will vote following the party whip and pass the measure without ever really understanding what it was really about. We note also that in taking the oral evidence not all (by any means) committee members were present. Thus the truth appears to the public that very few MPs will have had a real role in the passage of this amendment. Thus the moral responsibility for this amendment being passed must fall very heavily indeed on the leadership of your Committee.

That is a most insulting statement. It is perfectly true that not all members were present at every hearing, but all members have copies of the evidence, all members took part in the final consultation and all members voted on the recommendations. When the matter comes before this House it is possible for committee members who opposed the recommendations to put their views on the public record without any pressure whatsoever from either the Opposition Whip or the Government Whip. These matters are not decided on political lines. That is why all political parties are represented on the committee. In fact, the chair of some of the newer committees is not even a member of the Government but a member of the crossbenches or a member of the Opposition. These wild assertions, which have no basis in fact, must be addressed.

When the original bill was debated I said that I have a deep interest in the treatment of people who are unable to make decisions for themselves because I have an autistic grandson. At the moment his parents make decisions for him, but somebody will have to make decisions for him for the rest of his life. I would be very concerned if, when the time came for decisions to be made by carers or a body such as the Guardianship Board, he did not have the opportunity to have some form of treatment or medication available to others in the community who can make up their minds for themselves. It is discrimination to deny a person treatment or

medication that might alleviate or possibly cure the condition from which that person is suffering simply because he or she cannot make the decision, and no friends or relatives are able to make that decision and use their best judgment.

To suggest that a tribunal is not capable of making honest, ethical decisions—particularly when it is bound by legislation couched in careful terms—is not only an insult to the people on the tribunal, but to the members of this Parliament who have debated this matter at length and in depth. We should not be subjected to any further comments such as the ones I have just put on the public record. They are ill-founded. I suggest to those who are writing these letters that they read not only the report in full but the legislation and that they study its fine print. I applaud the Government for introducing this legislation in such careful terms. I trust that it will go through the House with minimum debate and certainly with no further public criticism. Such criticism is totally unnecessary and it has caused great concern and distress to the chair of the committee, the Hon. Ann Symonds.

This is the Hon. Ann Symonds' last day in this Chamber and it is proper that I, as a member of the committee, and all members of this House thank her for her outstanding work as chair of the committee and for the way in which she has dealt with most contentious subjects. I congratulate her on the way she dealt with people who came before her in an attempt to destroy the committee and then publicly make her totally responsible for matters for which she was not at all responsible. In conclusion, I sincerely thank the Hon. Ann Symonds not only for her work as chair of this committee but for the valuable work she has done over many years on all issues connected with health, education, community services, prison reform and women in general. I am sorry that she is leaving the Parliament, but I know that that does not mean she will give up her work for all these causes. I am quite confident that she will continue to fight for all the things in which she believes so strongly. I wish her the very best of luck.

**Debate adjourned on motion by the Hon. Elisabeth Kirkby.**

## **LISTENING DEVICES AMENDMENT (WARRANTS) BILL**

### **Rescission**

**Suspension of standing and sessional orders,  
by leave, agreed to.**

**Motion by the Hon. J. W. Shaw agreed to:**

1. That the resolution adopted by the House today ordering the resumption of the second reading debate on the

Listening Devices Amendment (Warrants) Bill for five calendar days ahead, be rescinded.

2. That standing and sessional orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.
3. That the order of the day for resumption of the second reading debate on the bill be called on forthwith.

### Second Reading

#### Debate resumed from an earlier hour.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [6.43 p.m.]: Because of the unusual circumstances that have prevailed since the Listening Devices Amendment (Warrants) Bill was introduced by the Attorney General today the Opposition will not oppose the passage of the bill. I should outline the reasons, as I understand them, for this matter being dealt with in this unusual way. Today the Attorney General, following notice given yesterday, introduced the Listening Devices Amendment (Warrants) Bill and made his second reading speech. At the completion of that speech the debate on the bill was adjourned for five clear days, which is in accordance with the practice of this House.

In the past hour the Commissioner of Police, together with Minister for Police, had discussions with the shadow minister for police. The Commissioner of Police indicated to the shadow minister that investigations that are ensuing—the details of which I do not believe should be revealed in this House—would be compromised if this legislation were not passed as a matter of urgency. The Commissioner of Police briefed the shadow minister not on the detail of the investigations but on the nature of them, which involves serious criminal activities in this State. It would be inappropriate and not in the public interest to compromise those most serious investigations by not passing this legislation.

Because of the assurances given by the Minister and the Commissioner of Police to the shadow minister, the Opposition adopted the unusual course of agreeing to the motion moved by the Attorney General, which enables this bill to be dealt with now. We do so with some reluctance as a result of public outcry about legislation being rammed through this House without proper public consideration. However, I note on this occasion that the legislation is not being debated in the early hours of the morning. Members of the public have expressed a strong view that legislation should not be rammed through the Parliament. Correspondence that I have received makes quite clear the views of some people in that regard, although I believe that

the views of some commentators have been more vociferous than the views expressed in the letters which I and other members of Parliament have received.

The point that should be made is that there are circumstances in the public interest which warrant urgent legislation. As a result of the assurances given by the commissioner—if I might use the words of the shadow minister, Andrew Tink—I was eyeballed and convinced. That is why we are debating this legislation. However, the Opposition has a serious lament about this legislation. Yesterday the Government briefed crossbenchers on the contents of this legislation. Nobody indicated to the crossbenchers that this legislation was urgent. If the Attorney General, when introducing this legislation, had been aware of its urgency he should have consulted me and we would not now be in this dilemma. I am satisfied that at no stage did the Minister for Police confer with his colleague to convey to him the fact that this bill was urgent. For some reason or other this bill suddenly became urgent after 4 o'clock today. That demonstrates to me an appalling level of consultation with the office of the Minister for Police in relation to these matters.

**The Hon. Franca Arena:** And the Attorney General.

**The Hon. J. P. HANNAFORD:** I do not blame the Attorney General. I think that the Minister for Police should have conferred with his colleague. He should not have put his colleague the Attorney General in the unenviable position in which he now finds himself. The Attorney General gave notice yesterday of his intention to introduce the bill. He introduced the bill today and adjourned debate on it before he was made aware of its extreme urgency. When this matter of urgency was first raised, before the Commissioner of Police briefed the shadow minister for police on this matter, my initial attitude was that if serious criminals were going to take advantage of a loophole in the existing listening devices law—and provided that those cases were not yet before the courts—I would be prepared to contemplate an amendment to the legislation to ensure that such loopholes could not be exploited to enable serious criminals to walk free. If the Attorney General had been consulted on this matter and he had had an opportunity to consult with me, we could have looked at a different form of this law to ensure that serious criminals could not exploit a loophole in the law.

This is the bill that the Police Commissioner wants to secure evidence in police investigations.

Therefore, the coalition lends its support to the bill. The Attorney General, in his explanation of the bill, said that a listening device may continue to be used for the purposes of further warrants in relation to the same premises and be deemed to have been installed pursuant to any such further warrant. As I understand it, under the current legislation a listening device must be placed in and removed from premises within the time frame of a warrant that has been authorised by a judge. Proposed section 16A(2) will allow police a further 10 days after the expiry of the authorised warrant to enter premises and remove a listening device. The proposed section states:

The warrant is in that case taken to continue in force for the period of 10 days after expiry—

and I emphasise these words—

for the purpose of:

- (a) authorising and requiring the retrieval of the listening device, and
- (b) authorising entry onto the premises for the purpose of that retrieval.

I have not had time to consult on this amendment but it suggests to me a problem that arose in the Wood royal commission. Under present law, if a listening device—audio tape or video camera—is removed after the authorised period of a warrant, the entry of premises and retrieval of the listening device are illegal actions. Therefore, the material contained on the listening device cannot be used. The proposed new section provides that if the warrant period has expired officers will have 10 days to lawfully retrieve a listening device and the validity of the evidence will not be compromised.

I have had only an hour to examine this bill and I might be at error but I believe that there is a potential gap in the legislation. Although the section will provide for the legal removal of a listening device any further evidence gathered on it during that 10-day period cannot be used. Officers are authorised only to gather evidence during the period authorised by the warrant. That gap will continue to apply in this bill. A further authorisation can be obtained from a judge to extend the warrant for up to 21 days. If a hiatus exists between the expiry of a warrant and the obtaining of a new authorisation, albeit within the 10 days, any evidence gathered during that period would also be illegal. The Attorney General ought to look at that matter.

If such a gap continues to exist, the Opposition would be prepared to co-operate with the Government to correct that error. This highlights the

potential problems of rushing through legislation. We do not want a gap in this legislation that would allow criminals to get away with committing serious crimes. We need new technology, including listening devices, to win the war against criminals. Honourable members should visit the police intelligence area to see the incredible technology that is available to help combat today's crime. The police have to be given the power to use that technology. The coalition supports the legislation. We would have been prepared to support retrospective legislation to ensure the validity of past warrants. Again I ask what is happening with the Government's law and justice administration? We are forced to act in this manner and rush legislation through this House because there is a breakdown in communication between the police administration, the police ministry and the Government.

**The Hon. FRANCA ARENA** [6.56 p.m.]: I will not oppose this legislation because I do not want to be accused of helping criminals or impeding investigations. However, I sincerely and vehemently resent the way that the legislation has been introduced. Staff members of the Attorney General's office told me that a great deal of correspondence on this matter had been received in March and April. The last letter of request was dated 17 April. Why is it that today there is incredible urgency? I wish I could say that I accept this legislation because the Government has introduced it and the Opposition has supported it. But what happened with the superannuation legislation? All members were in agreement and we ended up with egg on our faces. What happened with the judicial amendment bill? As a result of that bill I was sent before the Nader inquiry. In time the Opposition and the Government will have egg on their faces for what they have done there.

It is a disgrace that we have been told that if we do not pass this bill we will be impeding a major investigation. What can we do? Of course we have to accept it and agree to its passage through the House. But it is a shame for this Parliament and for the Government that this legislation should be introduced at this late time after we have had nothing to do all week. Last night the House adjourned at 6.30 p.m. and tonight it was to adjourn at 6.30 p.m. The House did not sit for 3½ months and it still has nothing to do. We go home at 6.30 p.m. because there is no legislation and now, without analysis and discussion, we have to pass this legislation, otherwise we will be accused of impeding investigations. I object vehemently. I will not vote in support of the legislation but I will not impede major investigations. I will leave the Chamber during the vote. I hope that the members



who vote in support of the bill will not end up with egg on their faces. If they do it will be the fault of the Attorney General and the Treasurer, who have told us that to do otherwise will cause serious trouble.

**Reverend the Hon. F. J. NILE** [6.58 p.m.]: Like other members, I have had only a short time to consider the Listening Devices Amendment (Warrants) Bill. I understand from the briefing notes and other information that it is serious legislation which justifies the House dealing with it as a matter of urgency. The object of the bill is to amend the Listening Devices Act 1984 in connection with the installation and retrieval of listening devices under warrants authorising their use. Under the Listening Devices Act, which includes the words "authorise and require the retrieval of the listening device", a listening device has to be retrieved within a 21-day period. Sometimes it may not be possible for police officers—or officers of a number of agencies, such as a royal commission, ICAC and the National Crime Authority—to retrieve a listening device without disclosing its location and hindering the investigation of a suspect.

The Supreme Court has made a decision that if a listening device has not been retrieved within the 21-day period for which the warrant is valid the evidence gathered from that device may be invalid, which would seriously jeopardise the investigation. Obviously, we would not want that to happen. When the legislation was passed by this House that was not thought to be the interpretation of the wording but the literal meaning is being applied. I understand that for a technical reason there are similar problems in relation to all the search warrants issued by the royal commission. Justice Temby has challenged whether the search warrants are valid. I suppose that puts more pressure on the Parliament and the Attorney General to make every effort to prevent loopholes in the drafting of legislation. Defence lawyers are going through legislation with utmost scrutiny.

Justice Temby accepted the argument put by Mr Marsden in relation to royal commission warrants. It is a serious matter that ongoing investigations by the Police Service or other agencies could be hindered because of the court's interpretation of the Listening Devices Act 1984. There is a potential for covert operations and police officers conducting such operations to be placed at greater risk if officers are forced to enter premises to remove listening devices within the period of the warrant and/or to install another device for the purpose of continuing to eavesdrop or gain information under the authority of a further warrant

in respect of the same premises. It was not anticipated that the court would hold that the first listening device has to be retrieved and another one be installed. It would have been dangerous to place the first one. Removing one listening device and replacing it with another would increase the danger to the officers concerned. The situation must be rectified.

The Listening Devices Amendment (Warrants) Bill, which we support, deals with a number of practical matters. Listening devices may be removed after the expiration of the period of the listening device warrant. Retrieval of the device is required as soon as reasonably practicable but no later than 10 days after the expiration of the warrant. An application may be made to the court for an extension of the time for the retrieval of the device. However, providing there are reasonable grounds for doing so, the maximum period of extension of any one order is 21 days. A listening device may continue to be used for the purposes of further warrants in relation to the same premises. The proposed requirements relating to retrieval apply in respect of any subsequent warrants which may be granted.

In concluding I note that the bill has a strange provision which no-one has referred to. Proposed new section 19(4)(b) provides that the persons who applied for the original warrant and who placed the listening device, if the listening device was not retrieved, must furnish a report in writing giving reasons why it was not retrieved. I would assume that the reason is obvious: it was not safe to retrieve it. Is it expected that the officers will say that they were neglectful or stupid? I wonder about the purpose of requiring a report to be made on this matter. Sufficient documentation is required by the form of order that must be used. The judge would obviously ask questions if he thought there was some neglect by the officers, police or others, in carrying out their duties. The Attorney General may be able to explain why this is necessary.

**The Hon. ELISABETH KIRKBY** [7.05 p.m.]: In spite of the way in which the Listening Devices Amendment (Warrants) Bill has been introduced, I support it. The bill will amend the Listening Devices Act 1984 in connection with the installation and retrieval of listening devices under warrants authorising their use. The Act and the matters within it were agreed to by the House previously. It is not as if it is new legislation that has been totally untested. It became known to the Commissioner of Police, in what I can only describe as unique circumstances, that the legislation would not go through this Chamber for another five days.

This would have meant that it would not be debated in another place for another three weeks because there is a week's recess at the end of next week's sitting. He put his problem to the shadow minister for police.

I do not believe that it is proper on this occasion to lay blame, if there is blame, at the feet of the Attorney General, because it is not his legislation. He introduced it in this Chamber but it is legislation which is the responsibility of the Minister for Police. It is merely a formality that is adopted that legislation of the Minister for Police is introduced in this Chamber by the Attorney General. I can see that it would not be in the public interest for further details to be given in the Parliament about the matter.

To the best of my knowledge I have never heard of the Commissioner of Police directly approaching the shadow minister with a problem. The commissioner's explanation totally convinced the shadow minister. I can only believe that if the commissioner had believed it was proper also to let the crossbenchers into his confidence he would have convinced us equally. It seems to me that the flaw is inherent in part of the Minister's second reading speech. Again, I am not suggesting that this is the fault of the Attorney General: the second reading speech would have been read in another place by the Minister for Police. It states:

... where a listening device, which was put in place and authorised under the terms of a warrant, is not retrieved before the expiration of the warrant and is subsequently used to obtain evidence under a subsequent warrant, evidence obtained by virtue of the subsequent warrant may have been obtained in contravention of the Act. Evidence so obtained may be held to be inadmissible.

In the next paragraph but one it states:

It is noted that the present Listening Devices Act does provide the court with a discretion to admit evidence obtained in contravention of the Act. However, the discretion does not apply in every circumstance and it is considered preferable to introduce amendments so as to put the matter beyond doubt.

That is the crux of the matter we are discussing. Reverend the Hon. F. J. Nile was perfectly correct when he said that warrants and surveillance are not confined to police; requests are made by the Independent Commission Against Corruption, the National Crime Authority and the Office of the Ombudsman. The legislation must be tight enough to cover all possible contingencies. I do not believe it is possible for any honourable member, under any circumstances, to oppose this bill. I am certain that no member of this Chamber would want an operation dealing with a serious crime to be

jeopardised because, on a matter of principle, the legislation and debate on it was delayed.

Reverend the Hon. F. J. Nile referred to proposed section 19(4), which provides that a report must be furnished in writing to an eligible judge and to the Attorney General stating whether or not the listening device was retrieved and, if not, giving reasons why it was not retrieved. That excellent safeguard means that the law authority which requests the listening device—police, the Independent Commission Against Corruption, the National Crime Authority or the Ombudsman—must provide good and cogent reasons for seeking the advice in the first place and must state why the provisions of the law were not fulfilled. That measure strengthens the Act.

Schedule 3, which relates to the form of order, places solely on the eligible judge within the meaning of the Act the authority to issue the licence. It also means that before the listening device can be approved the judge must be satisfied that there are reasonable grounds for allowing a longer period under section 16A of the Act. Those who are concerned about civil liberties and the actions of police, ICAC or other authorities should be reminded that it is not possible for the police in this State to put listening devices or surveillance cameras anywhere without a form signed by a judge. That should protect the civil liberties of the citizens of this State. The legislation is necessary, although it is regrettable that it is being dealt with at such short notice. Nevertheless, the Act itself has been well debated. It was generally agreed to by the House and, frankly, I cannot see any problem in tightening up the Act by means of these amendments.

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [7.13 p.m.], in reply: I thank honourable members for their contributions to the debate and for their tolerance of the procedure that has been adopted. I apologise to the House for the urgency with which the matter has been processed. It is certainly not the ordinary course of events and not the ideal. However, as various members have pointed out, information has been provided by the Commissioner of Police which indicates a practical need for the urgent processing of this legislation. The bill deals with a technical point and does not infringe on any basic rights. It simply meets what is an arguable point about the legislation.

I would like to put one caveat on what was said by the Leader of the Opposition. He referred to the fact that evidence could not be used where there was an infringement of the Listening Devices Act

1984. Under section 13 of that Act, notwithstanding breaches of that Act, evidence can be admissible in court proceedings in various circumstances and a judicial discretion exists to allow the admissibility of that evidence. I would not like it to be thought that there is some categorical or absolute bar to evidence being admitted in a criminal trial arising from some contravention of the legislative scheme. I commend the legislation to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

### ADJOURNMENT

**The Hon. J. W. SHAW** (Attorney General, and Minister for Industrial Relations) [7.15 p.m.]: I move:

That this House do now adjourn.

### RETIREMENT OF THE HONOURABLE ANN SYMONDS

**The Hon. ANN SYMONDS** [7.15 p.m.]: I made an entry into this place on my own in September 1982 as a casual vacancy and, although I did not intend to, I am leaving on my own at this time. I remember the unfortunate way in which I made my first speech. The Hon. Virginia Chadwick pointed out to me afterwards—although nobody else bothered to point it out to me—that an honourable member on that side of the House, John Holt, shouted out and left the room, and Derek Freeman said it was the most tasteless speech he had heard in the 10 years he had been in the Chamber. I would like to apologise for making a tasteless speech at that time and to withdraw my intemperate remarks about Malcolm Fraser because I have come to admire him tremendously, particularly his role in South Africa and his assessment of New Zealand's deregulated society. I agree with him on a daily basis more and more.

I have had enormous pleasure in this place. I have witnessed the Aboriginal land rights legislation, homosexual law reform, domestic violence reform, and wonderful programs for women and children introduced during the Wran years, which I enjoyed tremendously. I would never have met the people I have met if I had not been elected to this Parliament: hundreds of courageous people such as Jean Marie Tjibaou of the Kanak Liberation Movement, who unfortunately is now dead; as is Timoci Bavadra, who was overthrown in terrible circumstances; and Lord Mancroft, whom you and I,

Mr President, met together and who was interested in explaining the difference in acceptance by society of his father's addiction to alcohol and his addiction to heroin. I have had a wonderful time in this place.

I thank the attendants, the catering staff, the Library staff and my secretary, Sue Tracey, who has been so loyal to me. I thank members of other parties, of whom one does not expect to become fond, but one does. I would also like to express my gratitude to the Clerks at the table. I would like to say many things in leaving but I will only note two of the problems faced by those who are interested in the way society is organised—that is, members of Parliament. We are facing a terrible new tyranny of ideas. People in the Enlightenment fought against the tyranny of the divine right of despots. Our tyranny is about market values dominating society. If we do not return to human values, we will be in big trouble. I am upset that there is a bipartisan approach to the deregulation and privatisation of essential services.

Also, I urge honourable members to consider as a serious issue the decline of the parliamentary role and the decline of government. People seem to have accepted an idea that government is business and that they are applying business principles to the operation of government. This idea is not to the advantage of members or to the advantage of society. Members of Parliament should become more than consumer advocates for their constituents, the direction in which we are going. If we could pay less attention to the dictates of the media and more to our own convictions about our proper role in society and our role as people with a social conscience, we would be serving our constituents really well.

I have been disappointed in the development of a bipartisan approach to privatisation. I do not really believe that it is in the interests of our society to go down that path. I am afraid that we will never return to common ownership of things that we once held together.

Finally I would like to say that I found it to be an absolute privilege to have been a member in this place. I hope that is quite clear to everybody. I have enjoyed being a representative of the Australian Labor Party, and I look forward to its return to its traditional values.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [7.20 p.m.]: I indicate personally and on behalf of my colleagues that we regret that the Hon. Ann Symonds is leaving this Chamber. All political parties need people who can be identified as

embodying the philosophy of their party or a section of their party and who are prepared unflinchingly to articulate that philosophy. Ann Symonds certainly falls into that category, which some people might describe as the social conscience of their organisation. I think it would be fair to say that people such as Ann have always been prepared to challenge the direction of their organisations because they believe that direction is not consistent with their views on what their organisations should be about.

One good aspect of the Legislative Council, as distinct from the other Chamber, is that it provides a place for such people in their party and in the Parliament. If we do not have such people within our organisations, then we are the poorer for it. If the Labor Party had not had Ann Symonds among its membership and undertaking that role, then the Labor Party would have been the poorer for that. This Parliament will be the poorer for losing her.

I know that many on both sides of the Parliament think that Ann should have held higher office in the Parliament. However, she can leave this place in the knowledge that in all areas of human endeavour—because she is a person who has really stood for individuals and the rights of individuals—her contributions to the Labor Party, philosophically and administratively, and to the committees of this place and the Parliament have driven substantial change. Ann's name may not necessarily be assigned to those items of change but, Ann, you can be satisfied that you have made your mark, and we appreciate it.

**The Hon. FRANCA ARENA** [7.22 p.m.]: I met the Hon. Elizabeth Ann Symonds many years ago, maybe more than 25 years ago, whilst attending a meeting at which she was speaking about children's welfare and I was representing the ethnic communities. She impressed me straight away for her sincerity, her commitment to children in particular and to social justice, and to equality of opportunity for all. Her commitment to peace and disarmament is well known. It is therefore with great regret that I rise tonight to farewell my colleague and friend, who is leaving Parliament for health reasons.

I want to put on the parliamentary record my deep appreciation for Ann's outstanding work during her 16 years in Parliament. Ann Symonds was born in Murwillumbah on the north coast of New South Wales. She came to Sydney and became involved in community affairs. She was a teacher until she met her husband Maurice, better known as Maurie, who had three children, Katharine, Michael and Meredith.

It says a lot about the person Ann is that she always considered his children as her own. Maurie and Ann had two other children, Rachel and David.

Ann Symonds and I were on the same Labor Party ticket for the Legislative Council in 1981. She was further down on the ticket—the top places being taken by some "mates", some Labor Party trade union hacks who never made any contribution to this place—so Ann Symonds was not elected in 1981. She has served the community of New South Wales and Australia in a most honourable way and in different capacities. Apart from Ann's excellent speeches and her commitment to community organisations, her best work has been on the Standing Committee on Social Issues.

When the committee was formed in 1988 she was the deputy chair. I was a member of that committee until 1995, and I had every opportunity to see what a tremendous contribution she was making. It was therefore logical that she would become the chairperson of that committee when the Labor Party was elected in 1995. I believe that Ann's work on the Standing Committee on Social Issues will be undoubtedly her crowning glory. She has contributed so much on so many issues. I will not name them all because time is short. However, it is important to remember, whether it was children of imprisoned parents, children's advocacy, sexual violence, or suicide in rural New South Wales, what wonderful work Ann Symonds has done.

Some of us might not always have agreed with everything that Ann said, or with the position that she took on different issues. I often had to disagree with her, but all of us have admired her for her sincerity and her commitment. Today I want to salute my former colleague in the Labor Party and my parliamentary colleague and friend Ann Symonds. I wish her all the very best in her retirement from active politics—and I say "from active politics" because I am sure that Ann will not stop fighting her battles for social justice or for equity in our society.

People in this place often get quite full of their own importance. Some people believe that being a Minister is the most important achievement of their lives. Ann Symonds will never be a Minister, but I am sure that her contribution to society and to Parliament will be more important and better remembered than many obscure Ministers who owe their position to the patronage of their party bosses and/or because they were able to count numbers much better than my good friend Ann. It might take some time before it is all sorted out, but eventually history will be the best judge of the contribution

made by outstanding people like the Hon. Ann Symonds. Ann, we salute you, we wish you well. You will always be one of the brightest stars that ever shone on the parliamentary horizon.

**The Hon. R. T. M. BULL** (Deputy Leader of the Opposition) [7.26 p.m.]: I join with other honourable members in congratulating Ann Symonds on the work she has done in the Legislative Council. I have been here some 14 years, so I guess I know a little about the work that Ann has done in this Chamber. From my perspective, Ann is one of the most compassionate people one could meet or work with. She has always had a clear understanding of her philosophy and pursued it with great commitment. At the end of the day we respect those members who stick by their philosophy, and Ann certainly has done that.

The contribution of Ann Symonds to the Standing Committee on Social Issues has been outstanding. Ann, we commend you for that. We, the members of the National Party, are sorry that you are leaving the Chamber so soon. Of course, we understand the reasons for that. You have done much from the back bench—probably more than many have done from the front benches of this Parliament. We congratulate you on your work and wish you the best for the future.

**Reverend the Hon. F. J. NILE** [7.28 p.m.]: On behalf of the Christian Democratic Party, the Hon. Elaine Nile and I extend to the Hon. Ann Symonds a very sincere farewell as she retires from this Parliament. Ann has always been a very worthy, intelligent and thoughtful opponent in the debates in this House, particularly those related to drugs. I still remember one tense moment on the Social Issues Committee concerning a glass of water. But there have also been some areas of agreement on certain issues, such as the Tobacco Advertising Prohibition Bill. Elaine and I pray that God will bless Ann and her family, renew her health and strength, and also renew her earlier convent faith in her future days of meditation and reflection away from the pressure of politics.

**The Hon. I. COHEN** [7.30 p.m.]: The eloquence of Ann Symonds' presence in this House goes far beyond anything that has been said by any member on this occasion. During my short time in this House it has been an inspiration for me to work with Ann on a number of significant projects. It has become clear to me that Ann is the heart of the Australian Labor Party—and honourable members know what happens to any party or organisation that loses its heart. During the Standing Committee on Social Issues inquiry into safe injecting rooms Ann

was very patient and determined, and against all odds carried on with the task. I remember a comment to the effect that the committee's report will always remind us of Ann. I agree with honourable members who have said that many of the things Ann has done both within and without this Parliament will be remembered for a long time into the future. She is a person of significance to me and also, I am sure, to many people in the Green movement, people who are working in grassroots organisations, and people who are working on human rights and social justice issues.

Very few members of Parliament are spoken of in glowing terms by the public, but there is a consistent response when people talk about Ann. She is held in high regard in the community because of the work she has done. I will miss her in the Parliament, and I will miss her advice and her openness. More than anything, her patience, both with me and with many other members of this House, has been overwhelming. I thank Ann Symonds for her service to this Parliament.

**The Hon. Dr MEREDITH BURGMANN** [7.32 p.m.]: The Hon. D. J. Gay has said that I can speak for him and all the other lefties in this House. I am very sad that Ann is leaving because she is my best friend. When I came to this Parliament seven years ago I had a fair idea that Ann was pretty special. However, I soon discovered that even that compliment did not do her justice. This Parliament is a pretty lonely place for a new member to come to. When I arrived here Ann took me under her wing and gave me her tour of Parliament House, which had certain interesting characteristics. First she showed me where the toilets are. Then she showed me how to get to the bottle shop, on the fifth floor, because everyone loses their way there. Then she introduced me to Pat in the printing section. I have since realised that they are the three most important locations in this building that a new member needs to know. I am determined to give Carmel Tebbutt, her replacement, exactly the same tour.

Since coming to this Parliament I have discovered that Ann is a witch. She claims to be a witch, and she is always right, so obviously she is. She says she can put hexes on people. Ann is the best person to sit next to on the back bench. Her interjections, particularly against Robert Webster, were legendary—such that she and I were considered to be the two old geezers from the Muppets, or Marge's man-hating sisters Patty and Selma from the Simpsons. As I have said, she is the wittiest interjector. She is the person who got the Hon. D. J. Gay to rule that size counts. Ann is

always right and her judgment of people is just amazing. Years after the event I have realised that Ann was right when she said that one particular person was a jerk. Ann is the most principled, the most intelligent and the most compassionate person in this Parliament, and we will all be the poorer for her leaving.

**The Hon. VIRGINIA CHADWICK** [7.34 p.m.]: Like all members of this House I am very sorry that Ann is going. I have strong memories, as Ann herself has, of her maiden speech. I thought I had made a fairly bland and appropriate maiden speech, but I was told later that I had flown pretty close to the wind. When I reread my speech the next day I could not work out which part of it was controversial. So, I sat in absolute awe during Ann's maiden speech. She looked as fiery as all get out, so when she commenced by saying something like, "I rise with a feeling of trepidation", I thought, "She is telling a fib, she is not scared." She then spoke about John Holt, another person for whom I had and still have a high regard as a very decent human being. I was watching some of my colleagues, thinking they would have apoplexy, until John Holt, of all people, fell apart saying, "This is intolerable." The Chair said that such a comment was inappropriate in a maiden speech but, completely undeterred, Ann continued with her speech.

One of the great things about being a member of Parliament, as Ann alluded to, is that many of us come to this place with preconceived ideas about people who belong to other political parties. One of the great joys is being able to find out that the world is not black and white, but is fairly woolly and grey. People like Ann make sure we remember that we are individuals first and foremost; they actually make it a pleasure for us to get to know others who have views that we presumed would be diametrically opposed to ours. More often than not, it turns out that there is more common ground than differing ground.

It is fashionable these days to talk about community services and what may or may not have happened 10 years ago, but I can remember saying to Ann when I was a shadow minister for something like four years, "What do you really think is happening in such and such an area?" and being told that, in the same way that I was banned by the Minister of the day from going to those institutions, so was she. So over a long period some things have not changed. Finally, I would like to tell members what caused the Hon. John Holt to interject during Ann's maiden speech. She said—and I think this is probably true of all new members, who still perhaps see things in black and white—that we in the

Liberal Party had misnamed ourselves. Ann and I have worked together on a number of matters over the years, both publicly and privately, and I would like to think that she believes that there are Liberals on both sides of the House. With all respect to Reverend the Hon. F. J. Nile, I would not like to see Ann back at the convent. My final wish is to see her in the golden climes of somewhere like Tuscany, with a glass of wine, a bread roll and a book of poetry, having a damned good time.

**The Hon. J. R. JOHNSON** [7.38 p.m.]: There is probably no member of this Parliament who has known Ann longer than I have known her. Like you, Mr President, Ann and I come from the same home town. I can remember Ann as a curly-haired little girl waiting outside her father's butcher's shop for her brothers to come home from school. I lost track of her for many years and renewed our acquaintance during an inspection of Eraring power station, just before she took her seat in the House.

The rules of the Labor Party provide that members must get permission to resign. A few weeks ago Ann received that permission from the Administrative Committee, on which I serve as a member, representing the Premier. When it was announced that Ann had sought the permission of the Administrative Committee to relieve herself of this place I told that gathering that Ann, as has been said, is immeasurably principled. She does wear her heart on her sleeve. I doubt that she has ever voted for me, and on only one occasion was I disappointed that she did not. Nobody will go from this House with better goodwill than you do, Ann. We loved you while you were here and we will love you when you are gone.

**The Hon. PATRICIA FORSYTHE** [7.40 p.m.]: Being a member of Parliament brings many privileges, and one of them is that one comes to know fine people. I count Ann Symonds as one of those people. Ann Symonds, in her commitment to women and social issues, has been an outstanding advocate for many causes. Her sincerity and dedication will be long remembered in this House, as will her legacy in the form of her work on the Standing Committee on Social Issues. Ann Symonds now joins Judith Walker and Beryl Evans as women members of this House when I joined in 1991 who have now retired. To see the example set by each of these women was to be inspired by their work. I wish Ann Symonds well for a wonderful retirement. This House will be the poorer for the loss of her interjections. No doubt the humour will be less fine. Ann Symonds has been a great leader and a great advocate and, more importantly, a fine human being.

**The Hon. A. G. CORBETT** [7.42 p.m.]: Like many other members I wish to convey my appreciation to the Hon. Ann Symonds for her time in this House, for what her presence has meant to me, and for what she has achieved for young people and children in this State. Although I have not known her for as long as other members, it is obvious to me that the Labor Party has lost one of the people who gives it a human face. I would concur with the comments of the Hon. I. Cohen about the heart of a party. Ann, your living spirit will remain in this House and you will be remembered as one who has achieved a great deal and made a real positive difference to the lives of many children and young people. Thank you, and all the best as you experience a very new and different life.

**The Hon. Dr MARLENE GOLDSMITH** [7.43 p.m.]: I would like to concur with all the sentiments expressed by my leader in respect of the Hon. Ann Symonds and her contribution to politics. I will not go over that material because I believe that other members wish to speak, and we are running short of time. On a number of occasions the Hon. Ann Symonds and I have had differences of opinion. However, as deputy chair of the social issues committee it would be extremely remiss of me if I did not comment on her work with that committee specifically, because I am one of the people who has seen how much effort she has put into that task in the past three years. It has been extremely challenging because we have had a number of very interesting inquiries, and I use the word "interesting" in the Chinese sense.

Honourable members might recall the debate on guardianship earlier this evening and some of the pressures the honourable member was under during that debate. But her dedication to the task, her commitment to always finding the best answers, and her thoroughness has never been in doubt; indeed, it has been an inspiration to all of us. The achievements of the social issues committee under her chairmanship have been considerable. I would like to commend her for and congratulate her on those achievements in particular. I also wish her well not just in her retirement but in all her future endeavours.

**The Hon. HELEN SHAM-HO** [7.44 p.m.]: I am very grateful to have the opportunity, Ann, to farewell you tonight. I congratulate you most sincerely on the inspirational and outstanding work you have done for social issues. It is an area I know very well, having been a social worker for most of my life before I spent a short time as a lawyer and then came into this Parliament. I respect you very much even though we are in opposition. We certainly worked well together on the social issues

committee because social issues is a non-partisan matter.

I remember one issue particularly well. As a Government member of the committee I joined Ann in writing a minority report on medically acquired HIV. Tonight the gay community is demonstrating about that and other issues. You have strength of character, Ann, and I pride myself on having that also. We stand up for what we believe in and that is one thing for which I respect you enormously. You have taught all of us many lessons. As other members have said, you are a fine person. I join with my colleagues in voicing the sentiment that we will all miss you. You will be a sad loss to the Parliament. I wish you and your family all the very best for the future.

*[Extension of time for debate, by leave, agreed to.]*

**The Hon. D. F. MOPPETT** [7.45 p.m.]: Well done, Ann, thou good and faithful servant. The respite from your labours that you seek is well deserved and has been thoroughly earned. You go from this place gowned in our friendship, adorned by our unqualified admiration and crowned by our ineffable love.

**The Hon. J. S. TINGLE** [7.46 p.m.]: I want to say not goodbye, but farewell, to Ann Symonds. It was inevitable that we should be friends. When I came into this place she was a much-loved friend of my late mother. Our friendship was inevitable because I discovered we shared a mutual passion for firearms, albeit from the opposite ends of the barrel. That friendship was cemented when we also discovered a mutual passion for very good, dry martinis. From all aspects of the social spectrum I believe we have become friends. Most of all I think she taught me a very important lesson, which is something one has to learn in this place: the animosity reflected in the Chamber should never be carried outside it. We have been good friends. It is terribly important that we understand that we are losing a very important member of this House whose wit is reflected not only in interjection but in a wonderful ability to be irreverent about the things we sometimes take far too seriously. Ann, I wish you fair days and bright sunshine. I cannot call it your retirement, I cannot believe it can be retirement, but I hope you will get some very small return of the love, care and compassion you have shown other people.

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [7.48 p.m.]: I join with all members of the House in paying tribute to Ann Symonds tonight. A number of glowing and very well deserved tributes have been delivered. Very

often in these sorts of debates one hears the public tributes and thinks they may be exaggerated to some extent, they may be for the occasion only, but it is fair to say that the comments and opinions expressed about Ann tonight truly reflect the feelings that people express privately and have expressed for a long time about her. I did not know Ann before she became a member of this Parliament in 1982. I soon realised that there were a few areas of disagreement between us, but I was heartened to realise, when I heard her final remarks to the House tonight, that there were still two issues on which we strongly disagree: privatisation and Malcolm Fraser.

Today I read Ann's first speech and the things she said about Malcolm Fraser, which reflected my opinion of Malcolm Fraser then and still do now. But at least it occurred to me that if Ann has the capacity to change her mind on a subject like Malcolm Fraser she might also change her mind about privatisation. I hope so at any rate. Ann can be a vehement, articulate and fierce opponent on occasions, but she certainly has won the respect of everyone in the House as a woman of great integrity, sincerity and commitment. She is also a woman of tremendous spirit and passion. It is that spirit and passion which she brought to all the work she has done in this House over the past 16 years that earned her the tremendous respect of all honourable members.

A few caucus meetings ago, when I thought it was Ann's last Labor Party meeting, I described her as a great colleague, friend and sparring partner. She is all those things. I saw somewhere today when looking through some papers that my staff gathered for me that Ann once said that she wanted to be an advocate for the untidy. I think she meant that both literally and metaphorically because in all her 16 years in this Parliament she was always a champion of the people who needed a champion and who often never had one. As I said, she took that role upon herself with great sincerity and passion. In the course of her 16 years in this Parliament, while she has had many disagreements with colleagues on the other side of the House—she has had disagreements with colleagues on this side of the House—

**The Hon. J. P. Hannaford:** Perhaps more on your side.

**The Hon. M. R. EGAN:** Perhaps she had more disagreements with colleagues on this side of the House, but she is a member who is universally respected and loved by all members. We will be very sorry to see her leave, although I have a feeling

we will still be lobbied by her and have our arms twisted by her, because she will continue to fight for the causes she believes in for the rest of her life.

**The PRESIDENT:** I take the liberty of associating myself with the sincere and flattering but true comments made about our colleague Ann Symonds. It is significant on my part to say that of all the members of Parliament with whom I have associated over the past 28 years, the one of whom I can truly say that I have felt a better person for having walked the path with her is Ann Symonds. Ann, of course, as the Hon. J. R. Johnson said, hails from the same town as he and I. For the last 32 years the position of President of the Legislative Council has been occupied by a son of that town. It is a pity that when I go the mantle cannot be passed to a daughter of that town. I contemplate that perhaps the mantle would not rest easy on Ann, because the great disadvantage of this position is that one cannot talk on something about which one feels passionately.

Speaking of the place of our origin, probably the greatest experience I had was when I was the inaugural chairman of the Standing Committee on Social Issues and Ann Symonds was my deputy. Many cynics said words to the effect, "You are going to get hell," but they did not realise how much in common Ann Symonds and I have. It is probably because we are from similar origins in the valley of the Tweed. In that context I must say that she and I had a most harmonious relationship and that I received her tremendous support.

I came to admire Ann Symonds' intellectual integrity, her wit and her capacity to be passionate and, when necessary, to subordinate her passion in order to achieve a practical objective. I think we did rather well. In fact, at one stage Ann Symonds paid me an enormous compliment. She said, in a fit of enthusiasm one day, "You have more social conscience than most of the members of the Labor Party." I did not know how to take it at the time, but I decided to accept it as a compliment. I recall another happy occasion when Ann Symonds and I sang a duet in the dining room. I think it was *Desert Song*; I cannot quite remember, but I think we sang a more important and rewarding duet on the social issues committee. I wish Ann Symonds a healthy and happy retirement and I assure her that all of us, and I in particular, will miss her presence in this place.

**Motion agreed to.**

**House adjourned at 7.55 p.m.**

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