



**NEW SOUTH WALES**



*Legislative Council*

**PARLIAMENTARY  
DEBATES**

**(HANSARD)**

**FIFTY-FIRST PARLIAMENT  
THIRD SESSION**

**OFFICIAL HANSARD**

**Wednesday, 17 June 1998**

# LEGISLATIVE COUNCIL

Wednesday, 17 June 1998

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**The Chairman of Committees (The Hon. Duncan John Gay)** took the chair as Deputy-President at 10.00 a.m.

**The Deputy-President** offered the Prayers.

## BUDGET ESTIMATES AND RELATED PAPERS

### Financial Year 1998-99

**Debate resumed from 2 June 1998.**

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [10.05 a.m.]: Last year the Treasurer presented what he described as his Robin Hood budget and he embraced that theme for his budget.

**The Hon. M. R. Egan:** I quite liked it, actually.

**The Hon. J. P. HANNAFORD:** This year's budget should not be regarded as the "eagle has landed" budget but as the Sheriff of Nottingham budget, under which the sheriff—the Treasurer—steals everything from everyone, keeps it unto himself and shares nothing with the people. That is the clear feature of this budget. The Premier could well be classed as King John and the Treasurer as the Sheriff of Nottingham—both detested and distrusted figures.

**The Hon. J. H. Jobling:** Both losers.

**The Hon. J. P. HANNAFORD:** Yes, both losers. The position of the Premier, the Treasurer and the Government with this budget is evident. One thing is certain: nobody really trusts the Premier or the Treasurer. The Government will face the people on 27 March next. A government whose leadership is not trusted is a government that has no chance of success. The Government's problems are compounded. Not only is the Government distrusted, but the community believes nothing that it says. Nobody believes or trusts Bob Carr and nobody believes or trusts the Treasurer.

The Government has no chance of survival because it is neither believed nor trusted. That is not only the Opposition's view, based on what

Opposition members are constantly told by members of the public; it is a message that is being picked up by public commentators. The Government has a real problem because the public's lack of trust and lack of belief are underpinned in relation to this budget. Before I comment directly on the budget, I shall share with honourable members some of the comments made about this budget by various commentators. Ross Gittins made the following comments in the *Sydney Morning Herald* of 3 June:

His planned Budget surplus of \$45 million is the rabbit—

in other words, it is not just unsustainable, it is unrepeatable—

Take a good look at it because today may be the last day you see it.

Mr Gittins asked:

Does it sound a bit too good to be true?

It is.

He further stated:

His problem is tax collections simply can't keep growing at that rate—the property boom has passed its peak and the share market boom can't last . . .

One should not forget Ross Gittins' almost killing comment:

The ever-growing Budget surplus he projects rests heavily on the heroic assumption that from next year departmental spending will suddenly start growing by less than inflation. Fat chance.

That is only the first of a number of devastating comments about this budget. Max Walsh said, in the *Sydney Morning Herald* of 3 June:

Michael Egan can't help himself. He's a smart Alec.

That underlines the lack of confidence in the budget. Max Walsh also said:

It is basically an exercise of Michael Egan filching money out of your left pocket and returning it to your right pocket as a supposed act of generosity.

That is the Sheriff of Nottingham to a T.

**The Hon. M. R. Kersten:** He would not even do that.

**The Hon. J. P. HANNAFORD:** Perhaps the Hon. M. R. Kersten is right. He would take the money and he would not return it at all. Mr Walsh said:

To call this a family concession is an insult to the intelligence of the electorate.

It is, however, reflective of the Budget in total.

Although Mr Egan has produced a set of figures which promise a surplus for the financial year, the components that deliver this are rubbery. Assumptions of tax growth look on the high side, asset sales are included but not specified, and the figure for capital spending looks suspiciously as though it was derived as the balancing item after setting the target surplus . . .

It is impossible to come up with a single measure of the economic competence of the Government . . .

That is a devastating comment from Max Walsh, having regard to his favourable comments about the Treasurer's first budget. The Treasurer has said that this is typically a Labor budget, and Max Walsh clearly underpins that it is a typical Labor budget. He said:

The bottom line is that the Carr Government has been a big-spending, high-taxing government.

The public do not believe and do not trust the Treasurer or Bob Carr. On 3 June, when referring to the budget, John Laws asked, "Will they ever believe Michael Egan? I doubt it." David Humphries said, in the *Sydney Morning Herald*:

His self-congratulation, however, may prove a tad premature.

It certainly will. Alan Wood said in the *Australian*:

Bob Carr and his Treasurer Michael Egan have turned NSW into the highest taxed State in Australia . . .

The editorial in the *Australian* of 3 June stated:

The Budget delivered yesterday by NSW Treasurer Michael Egan was one more reminder of the widening gap between Sydney . . . and the rest of Australia.

In the *Daily Telegraph* of 3 June Piers Akerman said:

But it is really an exercise in tokenism rather than a display of inspirational budget management.

The editorial in the *Daily Telegraph* said it all when it stated:

Treasurer Michael Egan's Budget yesterday shows NSW pays scant attention to the philosophy that smaller governments lead to smaller taxes.

The Budget shows insufficient attention is given to making existing funds work better . . .

The Government would rather depend on increased takings through an absurd payroll tax, that penalises employment, than to get tough on outlays.

The editorial also stated:

They have chosen to drain a bit more from wage and salary earners, employers, builders and entrepreneurs.

Every writer has condemned the budget and the Government, and the public will condemn the Government in the ballot box on 27 March next year. The Carr Government has produced a budget that delivers little but pain—a pain that has continued through the three previous budgets. The Treasurer might well have proclaimed that the eagle has landed, but this budget is no eagle, it is well and truly a turkey, one that is so lean that only the bare bones and a few feathers remain upon it.

Once again New South Wales taxpayers have been hit with more taxes. Tax increases of \$800 million are matched by a massive capital works cut of \$500 million. A mass of unexplained and unachievable asset sales try to underpin the budget. The budget gives no comfort to regional New South Wales now or in the future, and gives no confidence to the outer metropolitan area of Sydney.

The Treasurer has consistently got it wrong in his last three budgets, and he will get it wrong again this year. The underlying result of this budget is a deficit of \$862 million, that is, \$907 million more than the budget papers admit. At the end of the twentieth century it is not sustainable to tell the people of New South Wales that we are facing a deficit of almost \$900 million. In his first budget the Treasurer was \$373 million out.

**The DEPUTY-PRESIDENT (The Hon. D. J. Gay):** Order! I remind the Hon. Jan Burnswoods that the reading of newspapers in the House is disorderly.

**The Hon. J. P. HANNAFORD:** He promised a \$238 million deficit but he delivered a \$611 million deficit. In the next year the Treasurer promised a \$5 million surplus but delivered a \$457 million deficit. Last year he promised a \$27 million surplus but delivered a \$416 million deficit. The people of New South Wales are justified in not believing the Premier and the Treasurer. This year the Treasurer promised a \$45 million surplus. But Ross Gittins said:

Take a good look at it because today may be the last day that you see it.

This budget has no credibility. New South Wales is the highest taxed State in Australia. Since 1955 there has been a 33 per cent increase in taxes. New South Wales taxpayers pay 11 per cent more tax than the next highest taxed State in Australia. New South Wales is the first State in Australia, under this Treasurer and this Premier, to break the 7 per cent barrier for taxes as a proportion of what we produce each year.

New South Wales taxpayers now pay \$2,224 a year in taxes, fees and fines. That is about \$1,063 more than taxpayers in Queensland and \$417 more than taxpayers in Victoria. Taxpayers in New South Wales pay 11 per cent more tax per person than those in Victoria. Whilst Victoria has cut its taxes by \$343 million in the past two years and Queensland by \$103 million, New South Wales, through the Sheriff of Nottingham, keeps ripping more money out of the people of New South Wales.

**The Hon. J. F. Ryan:** A man in tights.

**The Hon. J. H. Jobling:** What a sight he would be! Even the Leader of the Opposition is breaking up at the thought of it.

**The Hon. J. P. HANNAFORD:** It is horrifying. It is bad enough that we have to live with this nightmare but looking at the Treasurer in tights would be more than this House could bear. The Government projected asset sales of \$745 million in 1998-99. That amount is more than double the figure for last year. The Government proposes to get double what it got from asset sales last year although its budget figures identify that it did not achieve last year's projected asset sales revenue; it fell short by approximately \$100 million.

At a time when the Government acknowledges that Australia is part of the Asian economic crisis and that there is a downturn in the residential property market, it projects that it will be able to get more money. If it is going to get any of this money it will do so only by way of fire sales of the people's assets. Why should we stand back and allow this Government to sell off the assets of the people in a fire sale in an effort to sustain some credibility for the Premier, the Prince John of New South Wales, and the Treasurer, the Sheriff of Nottingham of New South Wales, when they are not wanted by their party? I emphasise that the coalition knows of the plot within the Labor Party to oust those two from leadership. The coalition knows that the Premier and the Treasurer are aware that they have little chance of succeeding.

**The Hon. Dr B. P. V. Pezzutti:** The Carr crash-through philosophy.

**The Hon. J. P. HANNAFORD:** As the Hon. Dr B. P. V. Pezzutti said, these two have lived by crashing through, and they are now hatching a scenario. One of their strategies is to crash or crash through. That is how they propose to deal with privatisation. The coalition is aware that one of their proposed strategies is to again take the issue of privatisation to their party room and if the party does not support it they propose to resign. It would be to the coalition's great detriment to lose the Premier and the Treasurer, because they are our greatest political assets. But it is consistent with Carr's crash-through philosophy that he is prepared to take this strategy to the party room.

It is incredible that the Premier and Treasurer are so devoid of ideas or direction that they are prepared to take the Gough Whitlam approach. Gough Whitlam showed greater leadership than the Premier or the Treasurer, although in doing so he gave Australia the greatest economic crash of all time. He had more style and more charisma—and he crashed with panache. But the Carr crash will be destructive for the Labor Party as well as for the economy of New South Wales. Some aspects of this budget manifest the Government's deceit. The Treasurer has outlined a plan to phase out the \$43 levy on car registration over the next four years. The Treasurer, our Sheriff of Nottingham, lauded this as a great benefit to the people. But when one looks at the fine print of this, or any agreement by that deceitful person, one will see that he announced that he will impose a tax of \$125 on the purchase of a \$25,000 car.

Honourable members may recall that the Treasurer introduced this tax a couple of years ago, as part of what he described as his Howard and Costello tax. But he said it would be a time-limited tax. It is only limited in the time it takes this Treasurer to change his mind and do a backflip. And, as they did on this occasion, backflip Bob and the Sheriff of Nottingham, the great supporters of the people, have decided to keep this tax forever. Again, who suffers? The people of New South Wales.

The Treasurer also announced that he would provide some relief in regard to land tax. What is that relief? The budget papers show a proposed 12.6 per cent increase in land tax by this rapacious Treasurer, who is ripping more money out of the pockets of the people. New South Wales land-holders pay more tax per capita than land-holders in any other State: \$58 more per person than those in Victoria and South Australia, and \$89 more per

person than those in Queensland. So much for the so-called land tax concession!

The next coalition government, in its first budget, will repeal the Carr-Egan land tax on residential homes—there will be no land tax. I now address another first by the Treasurer. For the first time during the term of any member of this Parliament the Treasurer intends to introduce a State income tax. It is clear that Treasury has already done the preparatory work. Comments that have been made by Bob and Michael—the archetypal Prince John and Sheriff of Nottingham—make it clear that they cannot be trusted, and you can believe the worst! If they say no, they mean yes. If the Treasurer is returned to government in 1999—and I am certain he will not be—his first budget will contain a State income tax.

At the same time as the Government is ripping money out of the pockets of the people, is it delivering services? No. Having taxed New South Wales into the ground, almost to below sea level, what have the citizens received for their hard-earned dollars? Not much. As the budget indicates, police numbers are shrinking; there will be fewer police in 1999 than there were in November last year. The Government's figures show that 26,000 people a day will be treated in hospitals this year, but that is not enough to deal with the appalling waiting lists, which are blowing out. To demonstrate the extent of the Government's deceit, it now tells the injured and the sick that they will not be put on a waiting list if only one doctor says they are sick. A second doctor will have to certify that they are ill enough to be put on a waiting list. So much for a caring Government!

The budget does not deliver the Carr Government's promised 1,405 extra teachers; it has not budgeted for those extra positions until the 1999 budget. How is the Government achieving the education budget this year? It proposes to borrow against next year's education budget. Have honourable members ever heard of such a stupid and appalling approach to the running of our education system? The Government is saying, "We don't have enough money this year but you can borrow from next year's budget. We don't know what we will do next year but we will work it out then." King John used to fight his wars in almost the same way: "I do not know how I will win but I will try it anyway."

The Carr Government has cut \$122 million from the transport budget and has allocated merely \$6 million for job creation in the bush. That is absolutely no boost whatever to the rural sector. The budget for the Discovery 2000 program for mineral exploration, an area which underpins the New South

Wales economy—the program was initiated by a coalition Government—has been cut again. The Government has ripped a massive \$500 million out of the capital works budget. I shall focus on the capital works budget for a moment. It is acknowledged that at least 1.8 per cent of the budget needs to go into capital works, but this budget projects that only 1.4 per cent of the gross State product will end up in the capital works budget by 2001-02. That means that by 2001-02, when we need to look at a capital works program to boost the economy after completion of the Olympic Games, the Government projects a \$950 million cut in capital works.

The Government should be reversing that trend. This budget shows once again that the Government is not providing any leadership in sustaining economic growth in New South Wales. No provision is made for new passenger trains; rather, the capital budget for State Rail has been cut by 50 per cent, although better trains are needed. What about the safety of the people in western Sydney and in the Penrith region? What about the Warragamba Dam spillway? The spillway is in itself not enough to protect the people in New South Wales. Not only is the Government not prepared to do what is necessary to protect the people of western Sydney; it has delayed the spillway for another two years. This issue alone will cost Labor not only the seat of Penrith but, with the inestimable assistance that the honourable member for Londonderry has given the Government recently, the seat of Londonderry as well. Honourable members are aware of the Government's approach to privatisation of the electricity industry. We can recall Bob Carr saying first that there would be no privatisation ever.

**The Hon. C. J. S. Lynn:** Were his lips moving?

**The Hon. J. P. HANNAFORD:** I do not know whether Bob Carr's lips were moving but his eyes were. His shifty eyes were moving in every direction at once. He cannot look a person in the eye and hold the person's attention for a second. No-one can trust him. Honourable members know about the clear strategy that the Carr-Egan duo will pursue to try to crash electricity privatisation through. The coalition has a clear and consistent position on privatisation of the electricity industry. That position is part of a policy that has engendered great respect in the community for Peter Collins and the coalition. Coalition members are committed to resolving a privatisation plan which addresses all the issues, including creating jobs in regions affected by privatisation, ensuring proper compensation for

power industry workers, protecting consumer rights in relation to prices, providing an appeal mechanism, ensuring quality service standards, guaranteeing access and supply, enforcing strict environmental regulations, and appropriately regulating industry participants.

The community recognises that the coalition has such a plan. It wants leadership and a team that will provide that leadership, and it wants vision and consistency. The community will get all that from the coalition. Indeed, the coalition is the only organisation in the political sphere of New South Wales that is able to deliver that. That is why the polls show so much support for the coalition and it is why they show that only one other great Labor figure—Joan Kirner in Victoria—achieved a worse position than the Premier. She was the only person to have a worse approval rating than the Premier. However, Bob Carr has at least beaten Joan Kirner on one figure. Joan Kirner never achieved a 50 per cent disapproval rating; Bob Carr is the only Premier to achieve a 50 per cent disapproval rating.

The overall picture for this budget is one of total disaster. I shall make only a couple of comments about the areas directly related to my shadow portfolio. In the Attorney General's portfolio it is critical to the Government's law and justice role that the upsurge in crime be dealt with speedily and effectively by the courts. The Government has consistently said that there has been no rise in crime, yet the independent Bureau of Crime Statistics and Research has clearly indicated that there has been a major upsurge in violent crime in New South Wales. That upsurge will be dealt with effectively only if there is a real risk of people being caught and being dealt with harshly but effectively and quickly. Insufficient resources have been allocated in the Attorney General's budget for that to be achieved.

There is a clear need for additional judges to be appointed and for time standards to be imposed on the courts to achieve that objective. The House heard only yesterday from Justice Vince Bruce about the failure of the courts to address these issues. The reason for that is that the Government has not provided the courts with sufficient resources to do so. At a time when Parliament has been asked to address the issue of removing a judge, what has the Government done to the Judicial Commission? The Government has decided to reduce the Judicial Commission budget and cut its staff. At a time when the community is asking for a greater level of accountability from judges one would expect the Government to provide the Judicial Commission with sufficient resources to achieve that, but it has

not done so. The Government has done the opposite—it has cut the Judicial Commission budget by 15 per cent.

The community is concerned about crime prevention. People would prefer to see crime being prevented rather than live with the results of crime. One would have thought that the Government would provide sufficient resources to prevent crime. But what has the Government done? It has cut 6 per cent from the Attorney General's crime prevention budget. So much for the Government's commitment to protect the people of New South Wales! One underlying concern of the people of New South Wales is their personal security. That issue must be addressed but the Government has walked away from it. The Government has also walked away from small business. Small business is the backbone of the New South Wales economy, but it can draw scant confidence from the Carr-Egan budget. Last year's budget showed no real commitment to small business, and this year the message is the same.

The Government's tax increases have impacted significantly on small business. The 13 tax increases imposed over the past three years have in the main impacted directly on small business. Honourable members will remember that when the Labor Government came to office it proclaimed that it would cut payroll tax. But what has it done? Under this Government payroll tax has increased by 34.8 per cent. The Government has ripped off the people of New South Wales by increasing the payroll tax by more than 34 per cent. A 34 per cent increase in payroll tax—in only three years—is appalling. Industry assistance under this Government has declined \$7.5 million with no offsetting allocation increase for any programs. Small business development has received less funds this year than last year.

**The Hon. Dr B. P. V. Pezzutti:** He can't face you.

**The Hon. J. P. HANNAFORD:** He might not be able to face me; he certainly cannot face the people of New South Wales. I guess I might be a small consolation. The one area of deceit or backflip by this Government is information technology. On the Monday before the budget was brought down the *Australian Financial Review* reported a pre-budget announcement by the Treasurer of a \$200 million information technology program. We went through the budget line by line looking for that \$200 million.

**The Hon. Dr B. P. V. Pezzutti:** It was wiped off the disk!

**The Hon. J. P. HANNAFORD:** The Treasurer clearly had a printing or disk problem. We were only able to find \$102 million. I guess that is called the Egan factor: think of a figure and then double it! Perhaps that is the way he deals with the people of New South Wales: promise \$200 million but only give \$100 million. Who knows what will be delivered by the Treasurer? The Government says it will address the millennium bug problem. Time and again the Treasurer and the Minister for Public Works said they had an enhanced program to deal with the millennium bug, yet the budget has allocated only \$24 million to address it. Only yesterday EnergyAustralia said that within its budget its agency will have to spend in excess of \$40 million to address the Y2K problem. The Government is spending only \$24 million on information technology to address the millennium bug.

At the stroke of midnight ushering in the year 2000 the people of New South Wales should celebrate madly, stay outdoors and not go near any Government equipment that depends on information technology because it will collapse the same way the Government will collapse on 27 March next year. With this budget the people of New South Wales are neither winners nor gridders. Absolutely nothing in this budget could give them pleasure or satisfaction. The people of New South Wales will be winners and gridders only when they change the Government on 27 March next year.

**Debate adjourned on motion by the Hon. Dorothy Isaksen.**

#### **FAIR TRADING AMENDMENT BILL**

#### **HOME BUILDING AMENDMENT BILL**

#### **LANDLORD AND TENANT (RENTAL BONDS) AMENDMENT (PENALTY NOTICES) BILL**

#### **MOTOR VEHICLE REPAIRS AMENDMENT BILL**

#### **PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT (PENALTY NOTICES) BILL**

#### **RESIDENTIAL TENANCIES AMENDMENT BILL**

#### **RETIREMENT VILLAGES AMENDMENT BILL**

#### **Second Reading**

**Debate resumed from 16 June.**

**Motor Vehicle Repairs Amendment Bill read a second time.**

**Question—That the amendment of the Hon. J. H. Jobling relating to the Property, Stock and Business Agents Amendment (Penalty Notices) Bill be agreed to—put.**

**The House divided.**

**Ayes, 19**

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

**Noes, 20**

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

**Pair**

Mr Rowland Smith Mr Kaldis

**Question so resolved in the negative.**

**Amendment negatived.**

**Property, Stock and Business Agents Amendment (Penalty Notices) Bill read a second time.**

**Residential Tenancies Amendment Bill read a second time.**

**Retirement Villages Amendment Bill read a second time.**

**In Committee**

**CHAIRMAN:** The Committee will deal first with the Fair Trading Amendment Bill.

#### **Schedule 1**

**The Hon. HELEN SHAM-HO** [10.55 a.m.], by leave: I move Opposition amendments Nos 1 and 2 as circulated in globo:

No. 1 Page 4, schedule 1[2], line 9. Insert after "person":

, and

- (c) the application is made with the approval of the Director-General.

No. 2 Page 4, schedule 1[3], line 11. Insert after "subsections.":

insert instead:

- (4) In proceedings before the Commercial Tribunal under this section, a certificate, purporting to have been signed by the Director-General and certifying as to the granting of approval to the application, is evidence of that approval.

As I said in my contribution to the second reading debate, the Opposition's amendment relates to the director-general's role of filtering the fair trading process. The Opposition believes that the director-general's function of approving access to the Commercial Tribunal is vitally important. This amendment is not intended to deny the consumer's right to apply to the tribunal. However, the Opposition believes that the director-general should have a role in resolving disputes, given the move towards alternative dispute resolution rather than the adversarial process of a tribunal hearing.

Consumer applications to the tribunal would involve considerable cost, time and effort, and would clog up the process. As is well known in legal circles, long delays, of which there have been many, are not fair to those seeking to have their problems resolved. The requirement for the director-general's approval should remain as a provision of the bill, because the director-general could play a conciliatory role before a problem is brought to the tribunal. I understand that the Government accepts the amendment moved in the Legislative Assembly by the shadow minister for fair trading, the honourable member for Myall Lakes, and I will not elaborate on it.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [10.58 a.m.]: The Government does not accept the amendments. It is not appropriate that the director-general should be able to prevent a consumer applying to the Commercial Tribunal if the consumer believes that he or she has a justified cause of action. Consumers are entitled to apply to the tribunal for redress in other areas, for example, under the Home Building Act, without the approval of a third party. In the event that the tribunal dismisses the application, it may order costs against the applicant.

The Government does not see the need to require a consumer or a proprietor to obtain the

director-general's approval to make an application to the tribunal. The amendments demonstrate a lack of appreciation of the nature of the codes of practice administered under the Fair Trading Act, as was indicated by the debate in the lower House. It is not appropriate that the director-general should be able to prevent persons applying to the Commercial Tribunal if they believe they have a justifiable cause of action. Consumers as well as traders are entitled to apply. In the event that the tribunal dismisses an application it may make an appropriate order for costs. The need to obtain the director-general's consent creates a second layer of regulation that may be the cause of a further dispute, bearing in mind that the director-general's decision may be the subject of an appeal on administrative law grounds.

Parties are still able to enter into dispute-resolution procedures administered by the Department of Fair Trading or independently. It is a fallacy to claim, simply because parties have easy access to a tribunal, that all disputes will be resolved in that venue. The amendments will affect people's access to justice. It is equitable that residents of caravan parks and retirement villages can seek redress without the permission of a gatekeeper when disputes arise with providers under a mandatory code of practice administered under the Fair Trading Act.

**The Hon. HELEN SHAM-HO** [11.01 a.m.]: The Minister's comments are to the point. If the director-general can act as a filtering process, the tribunal will not be clogged up. This process will not deny anyone the right of access to the tribunal. Proceedings before the tribunal are usually protracted. Under the Anti-Discrimination Act, the President of the Anti-Discrimination Board usually acts as a filter in cases involving criminal sanction for racial vilification. The president acts as a conciliator before a matter goes to the tribunal.

The Opposition has the support of the Vasey Housing Association of New South Wales, a charitable organisation established after the Second World War to provide accommodation services for ex-servicemen and women and widows. A few days ago the association's chairman, Mr J. Lang, wrote to me in support of the Opposition's amendments. The association supported the amendments when they were moved in the lower House, and it supports them now. So, I ask the Government to accept the amendments. I certainly ask the members on the crossbench to consider them, because it is fair that the director-general have the capacity to intervene with a view to effecting time and cost savings.

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

**The Committee divided.**



**Ayes, 20**

Mrs Arena	Rev. Nile
Mr Bull	Dr Pezzutti
Mrs Chadwick	Mr Ryan
Mrs Forsythe	Mr Samios
Mr Gallacher	Mrs Sham-Ho
Miss Gardiner	Mr Tingle
Dr Goldsmith	Mr Willis
Mr Hannaford	
Mr Kersten	<i>Tellers,</i>
Mr Lynn	Mr Jobling
Mrs Nile	Mr Moppett

**Noes, 19**

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

**Pair**

Mr Rowland Smith    Mr Kaldis

**Question so resolved in the affirmative.**

**Amendments agreed to.**

**Schedule as amended agreed to.**

**The CHAIRMAN:** The Committee will now deal with the Home Building Amendment Bill.

**Clause 4**

**Question—That clause 4 be agreed to—put.**

**The Committee divided.**

**Ayes, 19**

Dr Burgmann	Mr Macdonald
Ms Burnswoods	Mr Obeid
Mr Cohen	Mr Primrose
Mr Corbett	Ms Saffin
Mr Dyer	Mr Shaw
Mr Johnson	Ms Tebbutt
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Mr Hannaford	
Mr Kersten	<i>Tellers,</i>
Mr Lynn	Mr Jobling
Mrs Nile	Mr Moppett

**Pair**

Mr Egan                      Mr Rowland Smith

**Question so resolved in the negative.**

**Clause negatived.**

**Schedule 1**

**The Hon. HELEN SHAM-HO** [11.18 a.m.]: I move Opposition amendment No. 1:

No. 1    Pages 5 and 6, schedule 1[5], line 16 on page 5 to line 27 on page 6. Omit all words on those lines.

This amendment is related to the previous amendment moved by the Opposition. That amendment concerned the Fines Act and this one concerns penalty notices, so they are related. The Opposition has rejected the inclusion of a penalty notices provision in the Home Building Amendment Bill all the way through. The Government is taking a regressive step in reintroducing a penalty notices provision. A similar provision was abolished in 1988 by housing Minister Mr Joe Schipp because it did not work. The Government is wrong to reintroduce it, and that is why the Opposition is opposing it. Industry objects to the penalty notices provision. Neither the Real Estate Institute nor the Residential Tenancies Consultative Committee, which the Government asked to review this legislation, was consulted on it. That is why they objected to it. The Government had no communication with the industry and the industry does not accept this measure.

A penalty notice is an arbitrary measure. Rather than issue penalty notices the Government should provide a conciliation process to solve problems for home builders. Penalty notices will raise revenue for the Government but there should be a co-operative spirit between the department, traders and consumers. The department should show

that it is willing to help to resolve problems rather than simply issue penalty notices and walk away from the problems. Fair trading is supposed to provide a fair system, not to create problems. It is better to remedy problems in the first place than issue penalty notices. That is one of the numerous reasons why the Opposition opposes penalty notices.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.22 a.m.]: The Government appreciates what the Hon. Helen Sham-Ho has said. She has clearly identified the principle of whether penalty notices should be included in various legislation; and most of the amendments deal with that principle. As I understand it, the department uses a wide range of strategies to remedy or prevent illegal or unsatisfactory marketplace conduct.

Such remedies include information and education programs, a contribution to the development and implementation of codes of practice, formal warnings for relatively minor matters, litigation in courts and tribunals, the granting of legal assistance for private action, public warnings and the naming of unsatisfactory traders, and referral to other law enforcement agencies or authorities. The honourable member said that some years ago a former government abolished penalty notices in this statutory context; and she asked why this Government is reinstating this method of dealing with consumer complaints.

Her argument overlooks the fact that in 1993 the coalition Government introduced regulations prescribing penalty notices under the Trade Measurement Administration Act, the Motor Dealers Act and the Fair Trading Act. The amendments proposed by the Government will enable a similar regulation, an analogous system of enforcement, under the Home Building Act, the Property, Stock and Business Agents Act, the Residential Tenancies Act and the Landlord and Tenant (Rental Bonds) Act. Prior to drafting any regulations the Department of Fair Trading will consult with relevant industry and consumer groups on the appropriateness of offences being the subject of a penalty notice.

**The Hon. HELEN SHAM-HO** [11.24 a.m.]: The Minister has just repeated what I put, and said that the Government has numerous measures. The Government has not consulted, and the industry feels that it needs time to consider its view and that the Government should wait until the review, which is under way, is finished. That is why the Hon. J. H. Jobling moved the amendment to delay the second reading of this bill and the other two cognate bills

for six months. In this case a penalty notice is in the same vein and its implementation, particularly as it will be prescribed by regulation, should be delayed. The Government should accept the amendment.

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

**The Committee divided.**

**Ayes, 20**

Mrs Arena	Rev. Nile
Mr Bull	Dr Pezzutti
Mrs Chadwick	Mr Ryan
Mrs Forsythe	Mr Samios
Mr Gallacher	Mrs Sham-Ho
Miss Gardiner	Mr Tingle
Mr Gay	Mr Willis
Mr Hannaford	
Mr Kersten	<i>Tellers,</i>
Mr Lynn	Mr Jobling
Mrs Nile	Mr Moppett

**Noes, 19**

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

**Pair**

Mr Rowland Smith Mr Egan

**Question so resolved in the affirmative.**

**Amendment agreed to.**

**Schedule as amended agreed to.**

**Schedule 2**

**The Hon. HELEN SHAM-HO** [11.32 a.m.]: The Opposition will vote against this schedule.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.33 a.m.]: The Government will not divide on the schedule.

**Schedule negatived.**

## Long Title

### Amendment by the Hon. Helen Sham-Ho agreed to:

- No. 2 Long title. Omit "the issuing of penalty notices for certain offences, and in other respects; and to make a consequential amendment to the *Fines Act 1996*". Insert instead "and in other respects".

### Long title as amended agreed to.

**The CHAIRMAN:** The Committee will now deal with the Residential Tenancies Amendment Bill.

## Clause 4

**The Hon. HELEN SHAM-HO** [11.42 a.m.]: The Opposition will vote against clause 4.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.42 a.m.]: The Opposition's amendments relate to penalty notices. That matter has been exhaustively debated by the Committee. The Government maintains its position. On a number of occasions the Parliament has expressed a view, and there is no point in having further votes on the matter. The Government adheres to its position.

**The Hon. HELEN SHAM-HO** [11.43 a.m.]: The Opposition opposes penalty notices and, therefore, adheres to its position.

### Clause negatived.

## Schedule 1

### Amendment by the Hon. Helen Sham-Ho agreed to:

- No. 1 Pages 4 and 5, schedule 1[4], line 8 on page 4 to line 15 on page 5. Omit all words on those lines.

### Schedule as amended agreed to.

## Schedule 2

**The Hon. HELEN SHAM-HO** [11.44 a.m.]: The Opposition will vote against schedule 2.

### Schedule negatived.

## Long title

### Amendment by the Hon. Helen Sham-Ho agreed to:

- No. 2 Long title. Omit ", the termination of residential tenancy agreements, and penalty notices; and to make a consequential amendment to the *Fines Act 1996*". Insert instead "and the termination of residential tenancy agreements".

### Long title as amended agreed to.

**The CHAIRMAN:** The Committee will deal next with the Retirement Villages Amendment Bill.

## Schedule 1

**The Hon. HELEN SHAM-HO** [11.46 a.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

- No. 1 Page 4, schedule 1[3], proposed section 14A. Insert after line 18:
- (3) For the purpose of determining an application made under this section, the Tribunal must have regard to the expenses incurred in operating the village in current and previous years.
- No. 2 Page 5, schedule 1[3], proposed section 14A(3)(f), lines 1 and 2. Omit all words on those lines.

These amendments relate to budget impasses and the matters that may or may not be considered by the Residential Tenancies Tribunal. This legislation is supported by all the relevant industry bodies, such as the Australian Nursing Homes and Extended Care Association, the Aged Services Association and the Retirement Village Residents Association. The tribunal must not disregard or override the terms and conditions of duly signed contracts and it must consider the costs involved. The Opposition is of the view that the tribunal, when dealing with budget impasses, must consider not only the contractual obligations of the administering authority but also the expenses incurred by the village.

New section 14A must be amended because the tribunal cannot consider budget impasses without considering the expenses incurred in the current year and in previous years. The legislation should not provide the tribunal with an option of whether to consider expenses. The Minister in another place made an amendment relating to contractual obligations and contracts, and the Opposition accepted that. However, these amendments relate specifically to the operating expenses incurred by a village in the current year and in previous years. Amendment 2 is a consequential amendment. The Opposition is of the view that the Government should accept that the tribunal must consider these expenses.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.49 a.m.]: The Government does not accept the amendments. The first amendment, as the honourable member said, would require the tribunal to have regard to expenses incurred not only in the current year but also in previous years. The proposed amendment concerning the consideration of past operating costs could be detrimental to residents if the tribunal in every case were required to examine the expenses of operating the village in previous years. That could mean that a person buying into a village might unexpectedly be required to contribute to losses incurred by the village 10 years earlier. The Government does not consider that this amendment is appropriate.

**Amendments agreed to.**

**Schedule as amended agreed to.**

**Fair Trading Amendment Bill and Retirement Villages Amendment Bill reported from Committee with amendments, Home Building Amendment Bill and Residential Tenancies Amendment Bill reported with amendments, including amended long titles, and cognate bills reported without amendment, and passed through remaining stages.**

## **AGRICULTURAL INDUSTRY SERVICES BILL**

**Message received from the Legislative Assembly agreeing to the Legislative Council's amendments.**

### **POLICE INTEGRITY COMMISSION AMENDMENT BILL**

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

**Suspension of standing orders agreed to.**

### **POLICE INTEGRITY COMMISSION**

#### **Report**

**The President** tabled, pursuant to section 103 of the Police Integrity Commission Act 1996, the report entitled "Report to Parliament Regarding the former Special Branch of the New South Wales Police Service", dated June 1998.

**The President** announced that pursuant to section 103(3) of the Act he had authorised that the report be made public.

## **WORKPLACE VIDEO SURVEILLANCE BILL**

### **Second Reading**

**Debate resumed from 26 May.**

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [11.57 a.m.]: The coalition opposes the Workplace Video Surveillance Bill. The reasons can best be summarised by a statement contained in a letter from the Barrington group, a major organisation that works in the area of video surveillance, to my colleague Michael Richardson. That letter stated:

The Workplace Video Surveillance Bill fails to reflect the reality of commercial life in Australia. The Commission—

I believe the writer meant the Parliament—

has an ideal opportunity to address the real problems, that is the Security Protection Act and the Private Inquiry Act. By addressing these Acts, you will address the real problems, that being persons who should not be working in such a sensitive area.

The coalition believes there is a need to address problems with workplace video surveillance and abuses of workplace video surveillance equipment, but the approach of the Government is aimed directly at employees and does not provide an appropriate balance. The Government asserts that it has put in place a consultative committee, but it acknowledges at least that it is working on a majority report recommending legislative change to require employers to obtain a court order before secretly filming employees. The Opposition believes that a better balance can be achieved, and there is a commitment from all people in the industry to achieving a workable outcome. This legislation does not represent a workable outcome. I once again draw upon the comments of Mr Barry of the Barrington group. Highlighting an area where significant change in workplace practices could be achieved by video surveillance, he stated:

Well, the reality is that we have improved the figures of 1 registered club to the value of \$250,000.00, 6 registered clubs in excess of \$100,000.00 per annum, a significant number of clubs between \$50,000.00 and \$100,000.00 per annum and improved the figures of any number of clubs in the vicinity of \$50,000.00 per annum through the use of covert video surveillance coupled with other investigative techniques.

He further stated:

The detection of one person for a \$10.00 theft or conversion may arrest an ongoing, systematic problem that has cost the organisation many thousands of dollars in losses.

That is really the underlying issue in relation to the application of video surveillance. Clubs have been able to achieve a very dramatic improvement in their operating positions through surveillance. An employer may believe that something is wrong in a business, but may not know what it is that is wrong. If an employer cannot put his or her finger on what is going wrong and why, video surveillance may be able to detect the problem and the employer will be able to address it. I do not understate the position when I say that this legislation will not prevent that from occurring.

This legislation will make it an offence for an employer to carry out or to cause to be carried out covert video surveillance of employees in the workplace, unless it is done solely for the purposes of establishing whether an employee is or whether employees are involved in any unlawful activity, and the surveillance is authorised by a covert surveillance authority. An employer will not be able to undertake covert video surveillance to ascertain what is going wrong in the company or workplace unless he or she obtains an authority, effectively issued by the court, to undertake that covert surveillance. The Attorney General made it very clear in his second reading speech that when applying to a magistrate for a covert surveillance authority, an employer or an employer's representative must provide the following:

- (1) The grounds the employer or the employer's representative has for suspecting that a particular employee or employees is or are involved in unlawful activity. This is needed to justify that the authority should be issued. The employer must have some evidence to substantiate the suspicions; an authority cannot be used simply as a fishing expedition.
- (2) Whether other managerial or investigative procedures have been undertaken to detect the unlawful activity and what has been the outcome of these procedures. This requirement is necessary to determine whether existing means at the workplace are insufficient for the purpose of detecting any unlawful activity.
- (3) Who or what will regularly or ordinarily be in view of the cameras.
- (4) The dates and times during which the covert video surveillance is proposed to be conducted. This is to control the operation of the authority and ensure that the surveillance is not conducted as an open-ended operation.
- (5) In the case of an application made by an employer's representative, verification acceptable to the magistrate of the employer's authority for the person to act as an employer's representative for the purposes of the covert video surveillance operation.

They are the words of the Attorney General. His clear indication was that unless an employer is able to provide evidence that a particular employee is or particular employees are involved in unlawful

activity, that employer will not be able to obtain a surveillance authority. The Attorney General has also made it clear that an employer will not be able to obtain an authority to be used as a fishing expedition. Therefore, an employer who believes something has gone wrong cannot use surveillance to find out what has gone wrong. That is simply bureaucratic stupidity. The Government is saying that an employer who is unable to point the finger at a particular employee or employees and specify that he or they are doing something wrong will be unable to obtain video surveillance to prove it.

The commercial reality is that employees who want to fiddle the till for \$10 at a time or the person who wants to rip off a bottle of scotch will now be able to do so with impunity. That will be the effect of this legislation. It is, in effect, the eleventh commandment. I note that Jeffrey Archer has released a new book entitled *The Eleventh Commandment*. The traditional ten commandments have long sustained us, but the Attorney General has seen fit to bring down an eleventh commandment—"Thou shalt not get caught." The Government is attempting to entrench that idea in the Australian psyche. The Workplace Video Surveillance Bill, which should be seen as giving legislative force to that rule, is the result of stupidity at the highest level! The Attorney General stated in his second reading speech, when referring to what a magistrate must take into account when considering an application for such an authority:

The magistrate must determine whether there are reasonable grounds to justify issuing a covert surveillance authority in the circumstances. In making such a determination the magistrate will take into account matters such as the strength and seriousness of the suspicions the employer has, what other actions the employer has taken to investigate these suspicions and the invasion of privacy that employees will suffer as a result of the surveillance.

Even if an employer is able to show cause for his suspicions, a magistrate will have to determine the strength and seriousness of those suspicions. It would be easier for the Police Service to obtain a search warrant or a warrant for the placing of a detection device than it will be for an individual employer to put in place surveillance measures in order to protect the workplace. Police will investigate only if there is clear evidence of theft or fraud, not merely because an employer thinks something is going wrong.

How will an employer protect his business if he cannot turn to the police or institute his own protective measures? Until he can catch the thief in the workplace he cannot do anything. That will be the result of the Government's approach, and for that

reason the coalition opposes the legislation. If the Opposition is not successful in defeating the bill, the legislation will be revisited by the coalition on its return to government.

**The Hon. R. S. L. Jones:** Not repealed, just revisited?

**The Hon. J. P. HANNAFORD:** There are measures that need to be addressed, but that can be done only by repealing this legislation and amending the Security Protection Act and the Private Inquiry Act, not by employing the bureaucratic measures embodied in the bill. Employers have a right to protect their own property and to ensure that fraud and misappropriation are not occurring in their workplaces. The bill effectively ensures that no employer will be able to provide that element of self-protection. I could go through a dozen other reasons why this legislation is inappropriate but I am not going to do that. I will summarise it with these words of Mr Barry of the Barrington group:

The very nature of internal fraud is that the deceit is on the fellow worker as well as the employer body.

He also said:

... covert video surveillance is an extremely important tool in the fight against internal fraud, major, organised and systematic crime.

That is one reason the bill should be defeated. Another reason, also to be found in the Attorney General's second reading speech, is that overt camera surveillance can be established but material gained from such surveillance may not be used as evidence. Police will be able to use the results of such video surveillance if it assists them in investigation of a crime. However, if video surveillance makes the employer aware of activities which would warrant termination of the employment of a person or persons, under this legislation the employer will not be able to use that material. That is an absolute farce. I will read from the Attorney General's speech:

The fact that employers will not be able to use the security exception to survey employees is reinforced by the fact that the bill creates a presumption that any video recording obtained as a consequence of surveillance that is unrelated to the security of that workplace cannot be admitted in evidence in any legal or disciplinary proceeding against an employee.

This presumption will only be rebutted if the desirability of admitting such evidence outweighs the undesirability of admitting such evidence that has been obtained through surveillance unrelated to the security of the workplace.

Although a court can exercise discretion, the effect of the wording of the bill makes rebuttal of that

presumption almost impossible. Such bureaucratic nonsense does not extend security and protection to the assets and businesses of employers. The provisions of the bill are so restrictive that it is not appropriate for the Opposition even to pursue amendments. The Government's legislation is so fundamentally wrong and misdirected, the Opposition will not try to correct it. The bill, if it is not defeated, will become an albatross for the Government.

If the Government alienates every group in the community, I guarantee to backbenchers opposite that nobody will support them. This legislation will alienate the owners of every small and medium business in the State. The Government is sending a clear message to every one of them that if they want to protect their assets they will have to get a court order to do so. That theme will be sold to small business. Most people will see through the message being generated by the Government, and it will become another tool which I will welcome to belt the Government. Over the past three years the Government has done its darnedest to alienate small business. This bill is the straw that will break the camel's back.

**The Hon. R. S. L. JONES** [12.14 p.m.]: This is an important piece of legislation as currently there is no regulation of covert video surveillance in New South Wales. The Listening Devices Act of 1984 prevents the use of listening devices without a warrant, but no legislation covers images. Video surveillance also falls outside the Federal Privacy Act of 1998, which only covers personal information held by Federal government agencies. A recent report in the *Sydney Morning Herald* highlighted the real need for clear regulation of the use of hidden cameras by employers.

The article centred on a woman employed by Sydney City Council who had written graffiti on a toilet wall about a fellow staffer. The employer had secretly approved of the installation of two cameras to catch the woman, who subsequently left her job. The unions, the Privacy Committee and councillors were extremely angry about the surveillance and questioned the location of the cameras. I am pleased to see that clause 9(3)(b) of the Workplace Video Surveillance Bill will specifically exclude the use of hidden cameras in workplace change rooms and toilets.

The bill seeks to provide a system whereby covert video surveillance, which is currently being used by employers without regulation, is controlled by prior judicial authorisation. It provides that employers can apply to a magistrate who may grant

them authority to videotape their employees for the purpose of establishing whether or not an employee is engaging in unlawful activity in the workplace. The bill defines covert surveillance by establishing that it occurs explicitly without the consent of the employee. If an employee has been informed about the surveillance and the camera is visible, the surveillance is overt. Overt surveillance is guided by a non-binding code of practice. Currently, covert surveillance is not regulated at all. For this reason, Kevin O'Rourke, from the Council for Civil Liberties, supports the principle of the legislation.

It is commendable that the bill provides strict criteria that will govern the authorisation and conduct of video surveillance in the workplace. Filming people without their knowledge, regardless of where it occurs, involves a significant invasion of privacy and should be taken very seriously. In the workplace invasion of privacy holds additional concern: that the employer will use the surveillance for unscrupulous purposes such as monitoring work performance. The bill states that employers must demonstrate, in their application for authority to covertly film their employees, the reasons why they believe an employee may be engaging in unlawful activity and, one would hope, what type of unlawful behaviour they may be engaging in. They must also provide information as to who and what will be videotaped and the dates and times during which the taping is proposed to occur. Importantly, when deciding whether or not to issue an authority, a magistrate must consider whether the covert surveillance might unduly intrude on the privacy of the person or the privacy of any other person.

Once an employer has authority to film its work force covertly, it is essential that the operation of the authority is conducted within strict guidelines. The employer will not carry out the surveillance; it will be carried out by a licensed security operator with a class 1 licence. This safeguard is a strength of the bill, although it relies heavily on the integrity of the security operators and the licences which regulate their industry. It is extremely important that the employer does not carry out or influence the surveillance beyond its issued authority and that there is a clear separation between the operation of the video surveillance equipment, the capture of images and the transfer of images to the employer. If this legislation is to be effective and employees' privacy is not to be unduly compromised, it is essential that the relationship between the employer and the video surveillance operator is completely at arm's-length.

Further, while the bill outlines the procedures the security operator must follow in relation to the

transfer of information to the employer, there are no similar guidelines for employers once they have obtained a copy of the incriminating footage. It is essential that once the employer is notified of the suspected criminal activity the matter should be handed over to the police. After all, that should be the outcome of the surveillance. The working party knows that it is important to avoid the recordings being used for illicit or unconscionable purposes such as blackmail, defamation, and entertainment at the expense of persons whose actions are recorded on videotape. The Labor Council of New South Wales, a member of the working party which considered the regulation of video surveillance in the workplace, is happy with the final draft of the legislation. The New South Wales Privacy Committee, which was also part of the working party, is not of the same opinion. The committee points out that there are provisions in the bill which weaken its object to regulate the operation of covert video surveillance in the workplace and which introduce a totally unregulated category of video surveillance in the workplace.

This can be illustrated by the way in which covert surveillance is defined in the bill. The regulation of covert video surveillance rests in large measure on an assumption of what it is not. That is, it is not overt surveillance when cameras are visible, employers are informed and the presence of cameras is signposted. What can be regulated in this legislation is hidden cameras which have been installed in the workplace for the purposes of detecting unlawful activity by employees in the workplace. The legislation is not comprehensive, however, because there is a specific circumstance that is exempt from its requirements. For example, if an employer uses video surveillance for the purpose of ensuring the security of the workplace, there is no need for him or her to get an authority by a magistrate or to comply with any of the other requirements of the bill.

Thus, an employer could install a hidden camera, under the pretext of ensuring the security of employees and the workplace, but be under no obligation to engage an independent operator to operate the video surveillance and under no obligation to comply with any other requirements of the bill, such as disposal of footage within a given period of time. It also means that there is no way of ensuring that the employer uses the surveillance for security purposes only. This provision was not a recommendation of the working party. Representatives from the Retail Traders Association and other industry representatives did not request the inclusion of this exemption. It is unsatisfactory that the test for employers be reduced in a fashion that

effectively produces a loophole for those who wish to use hidden cameras for security purposes.

Further, the Privacy Committee noted that "detecting the 'unlawful activity' of employees would appear in every imaginable case to be a subset of 'security of the workplace or persons.'" Employers should be required to give reason why visible cameras could not be used for security purposes and hidden cameras should be used only as a last resort. Clause 7(4) states that if a hidden camera being used for the purpose of external security happens to record evidence that may be of an unlawful nature that footage may be admissible in court. This amendment was not recommended by the working party. Clause 7(4) exposes a category of surveillance that completely escapes regulation because it is not covered by either the code of practice for the use of overt video surveillance or the relatively strict provisions guiding covert video surveillance outlined in the bill.

*[Debate interrupted.]*

#### DISTINGUISHED VISITORS

**The PRESIDENT:** Order! I announce to the House the distinguished presence in my gallery of Mr Shoji Hashimoto, the Chairman of the Osaka Prefectural Assembly, and delegation.

#### WORKPLACE VIDEO SURVEILLANCE BILL

##### Second Reading

*[Debate resumed.]*

**The Hon. R. S. L. JONES:** I would support an amendment that included in the provisions of the bill the use of hidden cameras for security purposes. The code of practice for the use of overt surveillance in the workplace could be amended to refer explicitly to the legislation currently before the House governing covert video surveillance in the workplace. The code could state that covert surveillance may be used by an employer only to detect unlawful activity and not for monitoring work performance. Even if the purpose of this legislation is to keep employees uninformed about the fact that they may be being videotaped, employees should have a right to know that hidden cameras may be used and in what circumstances this may happen. I am also interested in the appeal provision that appears in clause 25. This provision allows for an employer or an employee to appeal a decision to refuse to issue or to vary or cancel a covert video surveillance.

At first glance this measure appears to be reasonable. However, I am curious to know how it will work in practice. Clause 25(2) gives employees the right to appeal to the Industrial Relations Commission if they are aggrieved with a decision of a magistrate to refuse to vary or cancel a covert surveillance authority. But there is a catch. How is it that employees will access this avenue of appeal if they do not even know that they are being watched by a hidden camera? That, of course, is the purpose of the bill. It seems that this provision will work as an avenue of appeal for employers only and be used only when employers have had their authority cancelled or not extended. Despite the comments I have made, I repeat that this is an important and timely piece of legislation, which has my support.

**The Hon. ELISABETH KIRKBY** [12.24 p.m.]: I oppose the Workplace Video Surveillance Bill. It was my original intention to support the amendment suggested by the Hon. A. G. Corbett. On further consideration, however, and having refreshed my memory with statements I made when the House was debating the security industry legislation last December, I believe that even with an amendment—although I believe the intention of the amendment of the Hon. A. G. Corbett to be extremely sensible—this bill will be unsatisfactory. The purpose of the bill is to provide a legislative scheme for the prior judicial authorisation of covert video surveillance in the workplace. It is accepted that the rapid adoption of information and surveillance technologies has led to serious concerns about personal privacy and civil liberties. This is of great concern in the workplace, where there have been instances of hidden cameras spying on workers without their knowledge.

In December 1994 the New South Wales Privacy Committee announced terms of reference to inquire into and report on overt and covert visual surveillance in the workplace. The report "Invisible Eyes" was produced and released in September 1995. In March 1996 the Attorney General commissioned a working party to consider the issue. The working party included representatives of employer groups, unions, the Privacy Committee, the Attorney General's Department and the Department of Industrial Relations. A report was produced and given to the Attorney General, and Minister for Industrial Relations in December 1996. The majority recommendations of the working party favoured legislation to cover covert surveillance and a voluntary code to cover overt surveillance.

The code of practice for the use of overt video surveillance has been developed by the Department



of Industrial Relations. It was released in July 1997 and distributed to members of the working party. There has not been a general distribution to workplaces around New South Wales. I suggest to the Attorney General that if the bill is to be passed, even if in an amended form, he undertake a campaign to inform employers and employees of their rights and obligations with regard to both the code of practice and the effect of the bill now being debated. Perhaps the Attorney General might address that in his closing remarks. Of course, whether the bill passes through the House remains to be seen.

The bill provides that an employer must not carry out covert video surveillance of an employee in the workplace unless authorised to do so by a covert surveillance authority. A covert video surveillance authority may be granted by a magistrate only if the magistrate is satisfied by the employer that there are reasonable grounds to suspect that an employee is engaged in unlawful activity in the workplace. The magistrate in his or her deliberations must take into account whether the surveillance would unduly intrude on the privacy of the employee. Surveillance is to be overseen by a licensed security operator. This is my greatest concern with the bill. For at least 12 years I have been having arguments with various governments about the training of security operators.

When legislation was introduced by the previous Government the Hon. Ted Pickering, who was then Minister for Police and Leader of the Government in this place, and I debated heatedly the level of appropriate training. Last year the Parliament debated security industry legislation and at that time I again raised the question of training. As far back as 1985—13 years ago—I asked whether security guards were properly trained. Last year when the House was debating security industry legislation, 12 years down the track, I discovered that there are still serious deficiencies in the training of security guards. The Security Industry Bill introduced a new licence system to impose more stringent licensing criteria and criminal record checks. The training system must now be based on core competencies. However, it would appear to me that the current training and the standard of people many security firms employ is still not of a sufficiently high standard to make me feel confident that a licensed security operator is a suitable person to oversight covert video surveillance.

The Workplace Video Surveillance Bill provides that a covert video surveillance authority remains in force for a period not exceeding 30 days. Correction centres, the casino and all law enforcement agencies engaged in investigations can

be included within the ambit of the legislation. I informed the House of another cause of concern when I spoke on the Security Industry Bill. I instanced an individual who was taken away from the casino by people employed as security guards but who in fact on that occasion acted as strong-arm men. That individual now has a case before the courts against those security guards for the rough, severe physical treatment he received at their hands.

The Workplace Video Surveillance Bill will be reviewed after five years. That is far too long a period to allow such practices to be in force without any review or any true oversight. When the Parliament introduces legislation it should be satisfied that the legislation will be administered in a proper manner and in the way that the Parliament believes, at the time it passes the legislation, it should be administered. Regrettably, this bill appears to be a piecemeal approach to that area of the law. I say that because half the regulation will be in an Act and the other half in the voluntary code of practice.

The only sanction for a breach of the code is to complain to the privacy commissioner, and that is totally unsatisfactory. It means that if the code of practice is abused, the person concerned has very little right of redress. The bill could be improved by the proposed amendment of the Hon. A. G. Corbett. Indeed, his amendment is the same as one I originally drafted to make the bill more acceptable. The amendment makes it compulsory for employers to inform employees when covert video surveillance for security purposes under clause 7(3) is to be undertaken. That is different from a covert video surveillance authority issued by a magistrate. It goes directly to the heart of the matter and is complementary to Greens amendment 5, which deals with the same clause.

If the Government does not agree to the amendment that simply means that it is admitting that so-called security surveillance of a workplace is a sham, with a loophole forcibly included by those with vested interests in the security and surveillance industry. That is my great concern about the legislation. I am still concerned about the type of person employed by security firms. I am concerned that their training has not been upgraded sufficiently to ensure that security officers are suitable persons to carry out an armed surveillance.

When we debated the Security Industry Bill last year it was brought to our attention that security guards want to be issued with the dangerous Glock pistol, which is the new pistol that has been given to the Police Service—at very great expense, I might add. Even the Hon. J. S. Tingle, who has

considerable knowledge of firearms and whose views on firearms are not the same as mine, objected very strongly to security industry personnel being given the right to carry the Glock pistol. The Hon. J. S. Tingle regards the Glock as one of the most dangerous weapons that anyone can carry.

Police officers who carry the Glock pistol undergo very stringent training on an ongoing basis—not just one-off training—to maintain their expertise. That level of training is not undertaken by the security industry. I still believe that it is totally unsuitable to give the industry further power to enable the legislation to work. With regret, but for those reasons, I will oppose the bill in its current form.

**The Hon. I. COHEN** [12.36 p.m.]: The Greens generally support the Workplace Video Surveillance Bill. Currently there is no legislation that covers prior judicial authorisation of covert video surveillance in the workplace. In March 1996 a working party was formed to consider video surveillance in the workplace. The party comprised representatives of various organisations, including the Australian Liquor, Hospitality and Miscellaneous Workers Union, the Australian Chamber of Manufactures, New South Wales Branch, the Retail Traders Association of New South Wales, the Registered Clubs Association of New South Wales, the Public Employment Office, the Privacy Committee of New South Wales, the Attorney General's Department and the Department of Industrial Relations.

One of the recommendations of the party was that a legislative regime be created to provide for the prior judicial authorisation of covert video surveillance in the workplace. Clause 7(1) of the bill makes it an offence to carry out covert video surveillance unless that is done solely for the purpose of establishing whether an employee is involved in any unlawful activity in the workplace, and is authorised by a covert video surveillance authority. However, certain exceptions to clause 7(1) are provided in clause 7(2) and clause 7(3). The Greens are concerned about clause 7(3), which states:

Nothing in this section makes it an offence for an employer to carry out, or cause to be carried out, video surveillance of a workplace solely for the purpose of ensuring the security of the workplace or persons in the workplace where video surveillance of any employees is extrinsic to that purpose.

The Greens are concerned that that provision will negate the need to obtain authorisation. In a letter to my office of 1 June the Privacy Committee pointed out:

... detecting the "unlawful activity" of employees would appear that in every imaginable case to be a subset of "security of the workplace or persons".

That means that the requirement to obtain an authority under clause 7(1)(b) is effectively neutralised. It is hard to imagine that an employer would bother to seek a covert surveillance authority when hidden cameras can be installed without a warrant under the security exception. The Greens agree, and in Committee will move an amendment to address that issue. However, the Greens believe that regulation of video surveillance in the workplace is necessary, and support the bill.

**Reverend the Hon. F. J. NILE** [12.40 p.m.]: The Christian Democratic Party shares the concerns of other honourable members about the Workplace Video Surveillance Bill. The object of the bill is to regulate covert video surveillance by employers of employees in the workplace. Reports of employees stealing from shopping centres and warehouses have justified the need for video surveillance. In workplaces such as Tooheys brewery there is always an unaccountable loss of stock. Insurance companies have used covert video surveillance to monitor persons suspected of having made false claims for injuries. Often the surveillance will reveal that those people are able to lift heavy weights and do work they claimed they could not do. Video cameras have become part of modern society. Not infrequently, independent witnesses have taken videos of serious motor accidents and plane crashes and thus provided evidence that previously was available only from eyewitnesses.

Videotapes are less expensive than other filming methods which include the cost of the film and developing; a videotape costs only a few dollars. The Christian Democratic Party is not opposed to employers trying to identify employees who break the law by stealing from their workplace. The Government has reported that there has been a great deal of consultation and agreement on this legislation with employees represented by unions such as the Australian Liquor Hospitality and Miscellaneous Workers Union, the National Union of Workers, and with employers represented by the Employers Federation of New South Wales, the Australian Chamber of Manufactures New South Wales Branch, the Retail Traders Association of New South Wales, the Registered Clubs Association of New South Wales and so on.

There seems to be some concern about the wording of the legislation, not the principle behind it, and what it seeks to achieve. The legislation seems to seek to prescribe the present requirements,

and to regulate covert video surveillance of employees in the workplace by their employers. The legislation refers specifically to covert video surveillance and does not affect permanent video surveillance, which for example is used in Cabramatta to try to identify people selling drugs, and on railway stations to identify bag snatchers or people assaulting passengers. This legislation does not deal with that issue. It clearly provides that signs that are visible to employees and the public must state that video cameras are in place and that the establishment is being screened by video cameras. That is not covert video surveillance as covered by the legislation. A number of conditions have been provided to protect employees from covert surveillance. Video surveillance is deemed to be covert unless:

- (a) the employee has been notified in writing of the intended video surveillance at least 14 days (or, if the employer has obtained the agreement of the employee to a lesser period of notice, that period) before the intended surveillance, and
- (b) cameras used for the video surveillance of any part of the workplace (or camera casings or other equipment that would generally indicate the presence of a camera) are clearly visible in that part of the workplace, and
- (c) signs notify people that they may be under video surveillance in the workplace, and are clearly visible at each entrance to that part of the workplace in which surveillance is taking place.

The legislation lays down further conditions for covert video surveillance that require the employer to apply to a magistrate for an authority authorising covert video surveillance. The legislation makes it clear that when applying to a magistrate for authorisation the employer or the employer's representative must provide a great deal of information to ensure that the application is justified. That information should include the grounds that the employer or the employer's representative has for suspecting that an employee is, or employees are, involved in unlawful activity. The employer must have some evidence to substantiate the suspicions, and the authority cannot be used simply as a fishing expedition.

The application for authority must include information as to whether other managerial or investigative procedures have been undertaken to detect the unlawful activity and what has been the outcome of those procedures. This requirement is necessary to determine whether existing procedures at the workplace are insufficient to detect an unlawful activity. The application must also state who and what will regularly or ordinarily be in view of the cameras. It must also include the dates and times during which the covert video surveillance is

proposed to be conducted; this is to control the operation of the authority and to ensure that the surveillance does not continue open-ended. An application by an employer's representative must include verification, acceptable to the magistrate, of the employer's authority for that person to act as the representative.

The magistrate must not issue an authority unless he or she has regard to whether covert video surveillance might unduly intrude on the privacy of an employee, employees or any other person. Examples of sensitive areas would be a hospital ward or an employees' meal room. An employee would not steal from the employer in a meal room and therefore there would need to be strong argument as to why a meal room should be under surveillance. The Hon. Elisabeth Kirkby referred to the requirement that covert video surveillance be conducted by an approved and authorised security officer. I am sure the Government is aware of reports of security officers who have engaged in criminal activities, and of shady security companies whose principals appear to be persons who have been involved in criminal activities. The Christian Democratic Party is concerned that security officers should be qualified. Amendments have been foreshadowed by the Greens and the Hon. A. G. Corbett; whether they sufficiently improve the bill is open to question.

*[The Deputy-President (The Hon. Janelle Saffin) left the chair at 12.50 p.m. The House resumed at 2.30 p.m.]*

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [2.30 p.m.], in reply: I thank honourable members for their contributions to this debate. I shall deal first with the Opposition's criticisms of the bill, and I shall make three points. First, the Leader of the Opposition stressed that employers have the right to protect their property. That proposition is self-evident, but there are rights of privacy and the like that should be accorded to employees. The Opposition ignored the perspective of employees in the debate. These two sets of rights need to be balanced against each other, and that is what this bill attempts to do.

Secondly, the test that employers must satisfy to convince a magistrate to grant an authority is not unworkable and is not too strict, as suggested by the Leader of the Opposition. The bill will not allow employers to conduct fishing expeditions by surveying employees in case they might be doing something unlawful. Indeed, I do not believe employers should have the right simply to go on a

fishing expedition. Rather, employers must tell the magistrate their grounds for suspecting that an employee or a group of employees is involved in unlawful activity. This is a reasonable test. Contrary to the Opposition's argument that employers need not provide evidence of unlawful activity to the magistrate, employers will have to provide those grounds.

Thirdly, the Opposition misunderstood the admissibility of video evidence collected by way of overt surveillance. Members opposite suggested that videotape collected by way of overt surveillance will be presumed to be inadmissible in proceedings against an employee. That is not the case. The presumption against the admissibility of evidence applies only to videotape collected by an employer in reliance on the security exception provided in clause 7(3). Video evidence of overt surveillance generally will not be affected by the presumption referred to. The general rules of evidence will cover that category of evidence.

I hope that the Hon. Elisabeth Kirkby will reconsider her support for the bill in principle, although I appreciate that she does not think it goes far enough. The honourable member expressed concerns about the security industry and the standards and training of security officers. She is concerned that members of the security industry will conduct workplace surveillance for employers. While this bill will not directly address the concerns expressed by the honourable member, it certainly does not increase the powers or the role of security officers. As the House is aware, the area covered by this bill is completely unregulated at present; employers and security officers can conduct any sort of surveillance in any way they see fit.

If this bill were passed it would regulate how and when such surveillance can be conducted, and it would increase the regulation of security officers. I understand that the honourable member is concerned that the bill covers only covert surveillance rather than both overt and covert surveillance. In response to that concern I shall say two things. First, the Government adopted this course of action in response to the findings of the working party, which recommended that the two types of surveillance be regulated in different ways. Secondly, I draw the honourable member's attention to the definitions of overt and covert surveillance in the bill. The definition of "overt surveillance" contains three requirements without which the surveillance will be considered covert: first, employers must have notified their employees; secondly, there must be signs displayed saying that there is surveillance; and, thirdly, the cameras must be visible. This means that

employees will be well and truly on notice that they are being videoed.

There has been an exhaustive consultation process, as a result of which I believe that this bill strikes the requisite balance. Most small, medium and big employers accept the concept in principle of some form of regulation of video surveillance at work. The question is what rules and regulations should apply and what safeguards should be put in place. This bill contains a reasonable package of safeguards that will enable employers to deal with suspected criminality and other misconduct but will safeguard employees and their privacy in a reasonable way. It might not go as far towards regulation as some members would want but it is a major first step. If in the light of experience it needs to be refined and improved, no doubt future parliaments will do that. I commend the bill to the House.

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

**The House divided.**

**Ayes, 21**

Mrs Arena	Ms Kirkby
Dr Burgmann	Mr Obeid
Ms Burnswoods	Mr Primrose
Mr Cohen	Ms Saffin
Mr Corbett	Mr Shaw
Mr Dyer	Ms Tebbutt
Mr Egan	Mr Tingle
Mr Johnson	Mr Vaughan
Mr Jones	<i>Tellers,</i>
Mr Kaldis	Mrs Isaksen
Mr Kelly	Mr Manson

**Noes, 18**

Mr Bull	Mrs Nile
Mrs Chadwick	Rev. Nile
Mrs Forsythe	Dr Pezzutti
Mr Gallacher	Mr Ryan
Miss Gardiner	Mr Samios
Mr Gay	Mrs Sham-Ho
Dr Goldsmith	
Mr Hannaford	<i>Tellers,</i>
Mr Kersten	Mr Jobling
Mr Lynn	Mr Moppett

**Pair**

Mr Macdonald	Mr Rowland Smith
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**Question so resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Part 1**

**The Hon. I. COHEN** [2.46 p.m.], by leave: I move Greens amendments Nos 1, 3 and 4 in globo:

- No. 1 Page 4, clause 4(2), line 15. Omit "agreed". Insert instead "given the employee's free and informed consent".
- No. 3 Page 4, clause 4(3)(a), lines 21-24. Omit "agreed" wherever occurring. Insert instead "given free and informed consent".
- No. 4 Page 4, clause 4. Insert after line 29:
  - (4) For the purposes of this section, free and informed consent to the use of video surveillance is given by a person or body only if:
    - (a) adequate information about the system to be used to carry out the video surveillance has been given to the person or body, and
    - (b) the person or body has given the consent voluntarily and without coercion.

The Greens consider that clause 4(2) as currently drafted is extremely broad. The phrase "agreed to the use of video surveillance generally" may be abused. The Greens would prefer a more structured definition of "agreed to", using the phrase "given the employee's free and informed consent". Clause 4(2) exempts employers from adhering to the requirements of the bill if they obtain consent of their work force. While this appears reasonable, it assumes that employee consent is freely given and that employees have equality of bargaining power with employers. In many industries in which employees are poorly organised the employer will need to do no more than amend the employment contract to nullify the Act. Potential employees will either consent to hidden cameras or fail to gain employment. Amendments Nos 1, 3 and 4 refer to the term "free and informed consent". It is important to define that term, as proposed in amendment 4. I commend the amendments to the Committee.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [2.49 p.m.]: The Government does not accept the amendments. In relation to amendment No. 1, the concept of free and informed consent does not add anything of substance to the bill and may complicate the simple notion of agreement. The amendments introduce unnecessary technicalities.

Amendment 3 is really consequential, and so is amendment 4. The Government believes "agreement" is a reasonable concept which does not need the embellishment contemplated by the amendment.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [2.50 p.m.]: The Opposition will not support the amendments. The legislation is bureaucratic and difficult enough for employers. The amendments would make it even more difficult, particularly in relation to the issue of enforcement. The coalition opposes the amendments.

**Amendments negated.**

**The Hon. I. COHEN** [2.50 p.m.]: I move Greens amendment 2:

- No. 2 Page 4, clause 4(2), line 15. Omit "generally".

The Greens have concerns about the word "generally" in clause 4(2). The word "generally" appears to attach to the term "agreed to the use of video surveillance generally". This word broadens the use of the words "agreed to". What is a general agreement? Is it an oral agreement when first employed? The Greens have been advised by staff from the Attorney General's office that the term "generally" is meant to qualify the term "premises or place constituting the workplace". The Greens consider that this is not made clear in the clause and seek to have the word deleted. I commend Greens amendment 2 to the Committee.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [2.51 p.m.]: The Government accepts the amendment. There is a legitimate point about the use of the word "generally" in the clause as drafted. The Government does not oppose Greens amendment 2.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [2.51 p.m.]: I note the Government's agreement. I would not have been prepared to agree to the amendment because I take the view, along the lines as advised to the honourable member, that "generally" qualifies the premises. The effect of the deletion of that word gives rise to an argument that the employee had to agree to the use of the video surveillance that may be the subject of any proceedings.

I know that if I were trying to knock out the use of any evidence arising from the use of a particular camera, as a consequence of this amendment I would be arguing that there had to be

agreement to the location of the cameras which were the subject of the proceedings. That is certainly the argument that will flow from this amendment. The Government's agreement to delete the word "generally" will give rise to the validity of that argument. I am surprised that the Government has agreed to it, but so be it.

**Amendment agreed to.**

**Part as amended agreed to.**

**Part 2**

**The Hon. I. COHEN** [2.53 p.m.]: I move Greens amendment 5:

No. 5 Page 6, clause 7(3), lines 1-5. Omit all words on those lines. Insert instead:

- (3) It is a defence to a prosecution for an offence against this section for an employer to prove that covert video surveillance of the workplace was carried out, or caused to be carried out:
  - (a) solely for the purpose of ensuring the security of the workplace or persons in it and that video surveillance of any employee was extrinsic to that purpose, and
  - (b) that there was a real and significant likelihood of the security of the workplace or persons in it being jeopardised if covert video surveillance was not carried out.

The Greens are concerned about the breadth of clause 7(3). In a letter to my office dated 1 June the Privacy Committee pointed out the problems inherent in the current drafting of clause 7(3). That organisation stated that, on its face, the bill restricts covert cameras in the workplace to the detection of unlawful activity, as provided by clause 7(1)(a), and requires that an authority be issued, as provided by clause 7(1)(b). However, clause 7(3) states that those requirements do not apply to cases in which the covert surveillance is carried out solely for ensuring the security of the workplace or persons.

Detecting the unlawful activity of employees would appear in every imaginable case to be a subset of security of the workplace or persons. This means that the requirement to obtain an authority, contained in clause 7(1)(b), is effectively neutralised. It is hard to imagine a case in which an employer would bother to seek a covert surveillance authority when hidden cameras can be installed without a warrant under the security exception. The Greens agree with the Privacy Committee. The Greens amendment narrows the circumstances in which an employer can use video surveillance for the purpose

of ensuring security of the workplace or persons in the workplace. I commend Greens amendment 5 to the Committee.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [2.54 p.m.]: The Government does not oppose this amendment. Clause 7(3) provides a defence for employers who conduct covert surveillance without a covert surveillance authority or in breach of a covert surveillance authority. Such an employer would not be guilty of an offence under clause 7(1) if that employer met the requirements of the defence in clause 7(3).

The main point of the defence is that employers may conduct covert video surveillance if they are ensuring the security of the workplace. As I said in my second reading speech, this section contemplates security threats from outside the business rather than actions by an employee or employees. The provision cannot be used by employers to avoid the main purpose of the bill, that is, that employers will need to get a covert surveillance authority if they wish to undertake surveillance of their employees. The Government's view is that the amendment has the effect of clarifying the security exception. It makes it clearer when this security defence may be relied upon. Accordingly, the Government does not oppose the amendment.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [2.56 p.m.]: The Opposition does not support the amendment and is interested to note that the Government does support it. This amendment will completely reverse the onus in relation to surveillance. Clause 7(3) as currently drafted provides that nothing in this section makes it an offence for an employer to carry out surveillance in certain instances. That means that in a prosecution process the requirement is upon the defence to establish that there has not been contravention of clause 7(3). That is, it imposes an additional obligation on the prosecution before it decides to prosecute.

That is of at least some benefit to employers, but this provision will turn that around and impose upon employers the obligation of proving these matters in a prosecution. It will in effect become a defence. As a result there will be more prosecutions than were envisaged in the original drafting of the legislation, because of the onus having been taken from the Director of Public Prosecutions. In addition to that, it makes it harder for employers to establish the defence. As it stands the legislation provides this defence when surveillance is solely for the purpose of ensuring security.

The amendment includes a defence that there was a real and significant likelihood of the security of the workplace being jeopardised if the covert surveillance was not carried out, the onus of proof being upon the defence. That is an absolutely outrageous additional burden. I am staggered that the Government would accept the amendment. The Government will have to wear the consequences of it and I will make certain that the employers of this State understand that the Government has done another backflip in order to make it tougher on employers.

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

**The Hon. A. G. CORBETT** [2.58 p.m.]: I move the amendment circulated in my name:

Page 6, clause 7. Insert after line 5:

- (4) Subsection (3) has effect only if the employer has notified employees at the workplace (or a body representing a substantial number of the employees) in writing of the intended video surveillance for the purpose referred to in that subsection before it is carried out.

This amendment relates to the use of covert video surveillance for security purposes and will serve to prevent a possible loophole in the legislation. At present the section allows the use of covert video surveillance in the workplace only if it is for the purpose of ensuring the security of the workplace and the employees, and not for the surveillance of the work force. However, if a security video surveillance produces evidence of criminal activity in which an employee is involved, there is a possibility that the video will be admitted as evidence against the employee. The possibility exists that an employer will use security video surveillance as justification to watch an employee suspected of an unlawful activity without going through the formal process of obtaining an authorisation from a magistrate.

This amendment imposes an obligation on employers to notify employees, or a body representing a substantial number of employees, of the intention to use covert video surveillance for security purposes. If the sole purpose of the security video surveillance is to reduce the opportunity for unlawful activity, that can also be achieved if employees are aware of the video surveillance, as they will be less likely to engage in unlawful activity. The amendment strengthens the bill because it will emphasise that any video surveillance carried out for the purpose of preventing opportunities for unlawful activity are for that purpose only.

If security at the workplace is the only purpose for which video surveillance is used, there is no reason why such surveillance should not be made

known to employees. However, if employers want to survey employees suspected of unlawful activity in the workplace, they will have to obtain authorisation from a magistrate. Therefore, this amendment will confirm the goal of the legislation, which is to regulate covert video surveillance used by employers. It will also ensure that the privacy of employees is not breached unnecessarily by covert cameras put in place for their own security.

**The Hon. ELISABETH KIRKBY** [3.00 p.m.]: Before the lunch break I put on the record my concerns about this legislation. However, at the time I spoke I was not aware that apparently it is the practice for many employers to use covert surveillance without any regulation whatsoever. I still believe the regulation in this bill is inadequate, however, if it is the practice of some employers in this State to put in hidden cameras without the knowledge of the employees. It is quite obvious that something has to be done to regulate what I believe to be an appalling practice.

I would have thought the very fact that employees were aware that an employer was using covert surveillance cameras would limit their dishonesty, and that they would be unlikely to take possessions out of the premises in which they worked. I would have thought that in itself would be a barrier. The amendment moved by the Hon. A. G. Corbett is an amendment that I was going to move on behalf of the Australian Democrats. Therefore, I support the amendment, and I understand the Government also supports it.

The remarks of the Leader of the Opposition surprised me because they gave me the impression—which I had not gained from his earlier remarks—that the main thrust of the Opposition's stance was the defence of employers. I believe, under these circumstances, if people are being spied on without their knowledge, we should consider the needs and the privacy of employees. Therefore, I decided that I would vote for the second reading of this bill so I could explain my position in Committee; otherwise I would not have had the opportunity to speak for a second time. I am still concerned about the bill. I still believe this bill contains many flaws, but it is iniquitous that employers can spy on their employees without their knowledge and without any control, and I cannot support the practice.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [3.03 p.m.]: The Government does not oppose this amendment. The bill in its current form contains a broad security defence—if I can use that term—and this amendment adjusts that defence in a particular way. The defence is concerned with employers who conduct surveillance without or

outside the terms of the surveillance authority. In other words, employers who are, *prima facie*, in breach of the law by undertaking that form of surveillance without authorisation can rely on the security defence.

The amendment requires employers to notify employees. That is not unreasonable, given that employers could have obtained an *ex parte* order from a magistrate to undertake the covert surveillance or could have complied with the authority in its terms. Those were the ordinary options open to employers. We are concerned here with employers who depart from those options. The amendment of the Hon. A. G. Corbett simply states that there ought to be some form of notification before that defence can be relied upon. The Government does not oppose the amendment.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [3.05 p.m.]: Again it is interesting that the Government is prepared to further reduce the opportunity for a defence under this legislation. The Government now requires an employer to notify in writing all employees at the workplace of the intended video surveillance. Let us take an example of a major company that believes pillaging has taken place at one of its work sites. The employer has notified only those employees who work at the site where the video surveillance is taking place, but the employees who are involved in the pillaging come to the site from other sites and have not been notified. Because they have not been notified, they do not get the benefit of the defence. I raise that issue because the Government has decided to agree not only to the defence but also to a mechanism under which one does not get the benefit of the defence.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [3.06 p.m.]: I do not intend to respond to the political rhetoric but may I say for the record, in case there is an attempt to misconstrue this legislation, that I do not accept the notion that the bill or the amendment requires individual notification to each and every employee. Obviously there could be a reasonable form of generic notification that satisfies the terms of the bill.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [3.07 p.m.]: I note the observations of the Attorney, but that is not what the amendment says.

**Amendment agreed to.**

**Part 2 as amended agreed to.**

### Part 3

**The Hon. I. COHEN** [3.08 p.m.]: I move Greens amendment 6:

No. 6 Page 14, clause 23. Insert after line 5:

- (4) The employer or employer's representative to whom a covert surveillance authority is issued must notify each employee affected by the covert surveillance of the dates, times and parts of the workplace where covert video surveillance has been carried out as soon as practicable after the expiry of the authority unless exempted from doing so under subsection (5).
- (5) The Magistrate that issued a covert surveillance authority may exempt an employer or employer's representative from the requirements of subsection (4) if the Magistrate is satisfied that exceptional circumstances justify the giving of such an exemption.

The Greens consider it is essential that employees be notified that they have been under surveillance. This amendment will ensure that once the covert surveillance has concluded an employee is notified of the times, dates and location of the covert surveillance. I commend Greens amendment 6.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [3.09 p.m.]: The Government does not accept this amendment, which seeks to insert into the bill a requirement that after an employer has conducted surveillance of its employees, pursuant to an authority, it must advise the employees about the surveillance unless the employer has convinced a magistrate that exceptional circumstances warrant an exemption from the requirement.

Following exhaustive consultation, the Government takes the view that the bill constructs a balanced system which will allow an employer to use covert surveillance only if a magistrate has been persuaded that there are reasonable grounds to suspect unlawful activity. So employers will be confined to using covert surveillance only on occasions when it is genuinely needed for the employer's protection. The amendment would impose another obligation on employers, and the Government does not believe that extra obligation is necessary, given the other checks and balances contained in the package. Clause 17, together with the remainder of the bill, provides sufficient protection of the privacy of employees.

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [3.10 p.m.]: I am pleased that the Government is prepared to reject this amendment.



The bill is bad enough as it is. The Government could have made it worse by accepting this amendment. At least the Government is able to say something to the employers of this State. Kim Yeadon gave New South Wales the Native Vegetation Conservation Act, which alienated the rural community.

The Labor Party can take pride in the fact that another left-wing member has introduced this bill, which will alienate the rest of the business community. It would be disappointing for the Left of the Labor Party if the whole of New South Wales were not alienated. I guess the Government is now working very hard to achieve that. I extend my congratulations to the Government. I am, however, bitterly disappointed that the Government does not intend to accept this amendment, because that would have made it very easy for the coalition to convince the rest of the business community that the left-wing of the Labor Party has gone completely mad.

**Amendment negatived.**

**Part agreed to.**

**Bill reported from Committee with amendments and report adopted.**

## **BUDGET ESTIMATES AND RELATED PAPERS**

### **Financial Year 1998-99**

**Debate resumed from an earlier hour.**

**The Hon. ELISABETH KIRKBY** [3.13 p.m.]: I am very grateful to the House for allowing me to present my contribution on the budget at this time, because of the work bans that have been in place in the Parliament. The House has given me the opportunity to make what will be my final budget speech in this Parliament in the presence in the gallery of my daughter-in-law, my grandson and some of my party colleagues. I am very happy that they have found the time to come and listen to me today. I quote:

The future will be either exciting or frightening—and perhaps it will be both. I am deeply concerned that another six years of Fraser pragmatism will make material goals paramount, economic progress the overwhelming criteria and power held in fewer hands.

I fear that people will be further removed from the decision-making processes, propelling them into a feeling of helplessness.

Those are the words of the founder of my party, Don Chipp, who wrote them in 1978, 20 years ago.

It is both depressing and frightening to read those words today and to realise how right Don was, to realise that during the past 20 years no government at either Federal or State level has embraced long-term indicative planning for industry, education or social welfare. There have been token attempts to face up to the problems of environmental pollution and destruction and the social effects of unemployment on the young. We are still facing the widening gap between the haves and the have nots—what the *AQ*, formerly the *Australian Quarterly*, has described as economic growth and social decline.

In the March-April edition of the *AQ* Dr Clive Hamilton, Executive Director of the Australia Institute in Canberra, writes of a genuine progress indicator, a GPI. Dr Hamilton believes that a GPI would be far superior to a gross domestic product, a GDP, because it would incorporate more than 20 aspects of our economic wellbeing that are either ignored or wrongly treated in the official estimates of GDP. In fact, he restates the views of Janine Haines, Democrat leader after Don Chipp, who put forward those views in 1987. Dr Hamilton's words encapsulate them in academic terms. He says:

Much of what contributes to our well-being occurs in the home and the community—caring for children and the elderly, buying for and cooking meals, cleaning the house and coaching the children's soccer team.

Because these activities are outside the market (and have traditionally been performed by women) their contributions do not appear in the national accounts. Only when the market captures them, as in the spread of paid childcare and fast food and the employment of housekeepers—do they appear to add to our well-being, because now they have price tags.

According to Dr Hamilton, the GPI would include an estimate of the value of household and community work. The GPI would also include estimates of the financial cost of unemployment and overwork. The GPI would account for the cost of ozone depletion, land degradation, water pollution, water use and noise pollution. Some spending which is defensive in character, for example, spending on household security and insurance, would be deducted from our consumption spending to obtain the GPI. The costs of crime are estimated to be more than \$20 billion a year. This means not only the costs of preventing crime, but the health and repair bills for the victims of crime. Dr Hamilton prepared a graph that shows that although the GDP has increased since the late 1970s the GPI does not increase at all over the same period. In other words, for the past two decades the costs of economic growth have far outweighed the benefits.

Of course, Australia is in exactly the same position as all other industrialised countries,

including the United States of America, Britain and several other European nations. According to Dr Hamilton, in the past 20 years the decline in measured wellbeing reflects the impact of globalisation, the rapid financial integration of the world economy, huge and unstable capital markets, chronic unemployment and the dominance of economic policies based on small government and unfettered markets. This month Dr Hamilton put in cold economic terms what Don Chipp prophesied in 1978 when he said:

People manipulated by divisive tactics and encouraged to pursue hedonism and materialism. Beer, race horses, football and the sanctuary of wall-to-wall carpets and closely cropped lawns can be an effective opiate on the latent desires to question and challenge our politicians.

Fear of angry students, disenfranchised blacks, or other groups not favourably disposed to Governments will be injected into the mix. Unjust laws will be passed by the sheer weight of numbers in rubber-stamp Parliaments, which will provoke and artificially promote violence.

At this point people will become genuinely scared and turn to strong politicians for protection.

As in Queensland. I stress again that Don Chipp wrote those words in 1978. No-one had ever heard of Pauline Hanson then; yet we know what happened in Queensland last Saturday. Research conducted by Roy Morgan two weeks before the Queensland election showed that Federal coalition supporters were deserting to One Nation in droves. That research also showed that typical One Nation supporters are blue collar workers, retirees, the unemployed or home makers earning less than \$25,000 a year, educated to primary or incomplete secondary level and born in either Australia or Britain. One Nation polled better among men and among those over 50.

That research is mirrored all over country New South Wales by people who have been taken in by Pauline Hanson's simplistic solutions to complex problems, by the rural unemployed, and by the unsophisticated who believe that we are being swamped by Asian migrants and migrants who speak no English and do not want to assimilate. For those supporters it is convenient, indeed it is essential, to ignore the fact that more than 87 per cent of overseas-born residents speak English, 18 per cent of migrants hold tertiary degrees and 84 per cent of eligible migrants become Australian citizens.

It is even more convenient for them to forget that projections based on common migration and growth patterns during the next 30 years show that the Asian-born population of Australia will only be 7.5 per cent—hardly the Asian hordes prophesied by

the extreme racists who support Pauline Hanson. Many people say that the people behind One Nation are the real danger. I realise, of course, that in many countries extreme racists groups exist and have existed for many years. For example, Le Pen and the National Front are to be found in France, the Neo-Fascists in Germany, Enoch Powell formerly in Great Britain, and the Ku Klux Klan in the United States of America, still alive and well and co-existing with supremacist groups and super-racist groups such as the Aryan Nation.

I agree with Malcolm Fraser: we are too small in population to allow such dangerous and divisive doctrines to become entrenched. Regrettably, a strong streak of racism exists in Australia, perhaps arising from a long battle to establish ourselves in a hostile environment so far away from familiar groups, and so close to large populations of other races and other cultures. Our racism, as with all racism, is based on fear. In the 1990s that fear is being fuelled by the helplessness Don Chipp wrote about 20 years ago. It is this helplessness that Pauline Hanson has preyed on.

The same feeling of helplessness has caused the current discontent and anger in country New South Wales. People see services disappearing. They see hospitals and banks closing, traditional jobs disappearing and opportunities for retraining falling beyond their reach. At my local TAFE college very few courses are offered. To enrol in courses in electrical engineering and rural welding techniques, even oxyacetylene welding, one has to travel nearly 100 kilometres to Wagga Wagga. There is no public transport so only those who have a car, and also have the money to buy petrol at country prices, are able to take advantage of the full range of TAFE courses.

Wagga Wagga is a university town, but the wide range of courses offered at Charles Sturt University is available only to those who can afford to pay upfront. Farmers are aware that they are at the mercy of global markets and the climate. The recent El Niño episode—it seems wrong to describe such a devastating drought as an episode—has meant that south-western New South Wales has suffered the longest and most severe drought in decades. Yet when the Government talks about regional development it only offers programs for major regional centres.

There are plans for Wagga Wagga, Tamworth, Albury and Orange but the real problems are in the smaller country towns such as Wellington, Gilgandra, Gunnedah, Harden, Murrumburrah, Junee and Cootamundra. How are business opportunities

and jobs to be created in those smaller centres? The Government has to wrestle with that problem and today the task seems to be beyond it. When the Treasurer extols economic growth in New South Wales, the rise in Government revenue and the strong financial position of the State he is using old-fashioned criteria.

He is spruiking about the GDP and he is only referring to items that are produced and valued in the market sector. In New South Wales, as in Australia, Government is mesmerised by economic growth. Any attempt to change that view seems impossible because the Government believes it is too painful to contemplate. In case honourable members think I am being too critical of the Government in its approach to the problems of rural New South Wales, they might be interested in a comparison of expenditure.

Budget Paper No. 2 shows expenditure at \$5 million for three years, a total of \$15 million for the regional economic transition scheme—RETS. That is described as "Assistance to regional centres that have suffered sharp economic shocks from structural changes in industries which have served as mainstays of the region's economy." I wonder if Cobar will benefit from RETS. What is more interesting though is to contrast the \$15 million for RETS with the contingent liability of \$13 million for the car park at St George Hospital. Admittedly this is a Government contingent liability but the paper further states:

At this time no Government liability is anticipated, under the "proposed termination provisions of the contract to be negotiated. However, based on previous experience with items of this sort, a conservative estimate of the Government liability equal to the debt carried on the project has been included".

There is a similar contingent liability of \$8.4 million for a car park at the Royal Prince Alfred Hospital. The contingent liability has yet to be determined on the Ultimo-Pymont light rail system or on the Bondi Beach rail extension but the fact that the Government believes that such contingent liabilities must be documented is surely proof that the Government is preparing for the worst case outcome. In the case of two hospital car parks in Sydney, \$21 million; and for economic regional assistance, \$15 million. I hope that in future the Government does not have to prepare for a contingent liability for the eastern distributor, which I have learned from the budget papers will cost \$699 million.

An amount of \$1 million per annum is allocated for a country lifestyle program to promote

lifestyle advantages of individual regional centres. An allocation of \$12 million is made to the North Sydney Bears to assist it to move to Graham Park, which is presumably covered by the statement:

Assistance will be provided to Gosford City Council to help develop a 20,000 seat multi-purpose stadium.

The facility will cater for rugby league, rugby union and soccer by early 1999. That \$12 million is to help the North Sydney Bears relocate and to help Gosford City Council develop a stadium, but only \$300,000 per annum is provided for the youth-at-risk program, which is essential to assist in the prevention of juvenile crime and antisocial behaviour. Again it is very interesting to compare where money is allocated for police stations. Budget Paper No. 2 page 4-186 states:

In addition, the Service is actively examining the economic viability of joint developments, in partnership with the private sector and/or local government, aimed at releasing the development potential of a number of Service-owned sites . . . Locations being examined include . . . Armidale—

the only country town—

Bankstown, Chatswood, Lakemba, Menai, Merrylands, Pittwater and Waratah.

Approval has already been given for police stations at Bondi and Kogarah. A new police station at Ashfield will cost \$3.7 million and one at Auburn will cost \$4 million, but there is still no new police station for Wagga Wagga, a major regional centre where the current police accommodation is a disgrace and has been known to be a disgrace for years to my knowledge. I have visited that station on many occasions, as has the Minister and the Commissioner of Police.

I again question the Government's commitment to rural New South Wales. Consider these priorities: \$2.5 million—\$7 million over three years—to address the serious problem of soil acidity; \$2.6 million for the water reform package, which is said to be "central to the long-term health of the State's waterways"; but \$46.8 million for quality assurance programs to "ensure that producers and processors of food and fibre products meet the plant and animal product quality standards of local and overseas markets".

It should be obvious that unless we address soil acidity, salination and rising watertables we shall not be able to produce food products of any quality. That allocation again puts the cart before the horse. Of course, quality assurance is important but the acid soil action program is even more important. The rhetoric—the budget papers state that "soil

acidity in both agricultural and acid sulphate soils is a significant environmental hazard . . . this funding reflects the Government's recognition of this problem"—is not matched by funding of \$7 million over three years. I say it again: \$12 million to the North Sydney Bears—some recognition!

My point is not that the Government should be spending more money, it is that it could spend the same amount of money but rearrange its priorities. The Government is certainly spending more on education—an increase of \$338 million since 1997-98—but as I look through the Minister's news releases it appears again that electorates are very carefully targeted. On the central coast there will be money for public schools at Narara, The Entrance, Ourimbah, Kariong, Tuggerah and Lake Munmorah. In the Illawarra there will be money for public schools at Kiama and Port Kembla.

In the southern highlands there will be money for public schools at Colo Vale and Hilltop. On the north coast there will be money for public schools at Evans Head, Macksville, Camden Haven and Coffs Harbour. The only public school in the Riverina that is mentioned is Coolamon, which will receive four demountable classrooms. The only public schools on the south coast mentioned are Ulladulla and Bungendore. In western New South Wales only Parkes, Yeoval, Lightning Ridge and Dubbo south are mentioned.

Is it any wonder that country New South Wales is disillusioned. Is it any wonder that we live with the wry comment "NSW means Sydney, Newcastle and Wollongong"? The health estimates are very little different. Money is provided for health centres at Erina and Tuggerah and for a day surgery at Wyong. There is to be an upgrade at Belmont, and a new 15-bed inpatient facility at Wallsend. I have been in this Parliament long enough to remember when Wallsend hospital was closed; it was no longer required and was made redundant.

Equivalent services in rural New South Wales are few and far between—only Dorrigo, Lake Cargelligo and Grenfell are mentioned—and there are far fewer doctors in rural New South Wales than there are on the central coast, in Newcastle, Wollongong and western Sydney. This year western Sydney rates a budget statement all to itself. There are 45 pages devoted solely to western Sydney, but there is no separate budget paper for regional or rural New South Wales. Is it any wonder that the people in the bush are angry and disillusioned. The statement on page 4-155 of Budget Paper No. 2, regarding health, paints a rosy picture. It states:

Budgeted 1998-99 total expenses will cater for—

- an estimated 1.33 million hospital admissions;
- over 20 million occasions of service across the whole NSW health system. On an average day, this equates to 80,000 people being treated and cared for including 20,000 people who will undergo inpatient treatment, 5,000 who will be cared for in emergency departments, 22,000 who will receive outpatient treatment and 31,000 who will receive non-inpatient services such as dental and community health services. In addition, ambulances will be sent out 2,000 times on any one day. These services will be provided by around 81,000 staff working in over 1,000 health facilities including hospitals, multi-purpose facilities, community health centres, early childhood centres and nursing homes;

But it is not so rosy when one is aware of the health needs in rural New South Wales and the funding imbalance. I remind honourable members of the question I asked on 28 May about life-threatening only ambulance services. Ambulance services were being redirected from Westmead, Fairfield and Liverpool hospitals. Since I asked that question, the policy has been changed. I realise that New South Wales faces a severe problem in relation to Commonwealth payments. Overall Commonwealth payments to all States have grown in real terms since 1982-83 by only \$2.4 billion, but Commonwealth own-purpose outlays have increased by \$22.7 billion and Commonwealth taxes have grown by \$40.6 billion over the same period.

On average, between 1983 and 1997 Commonwealth own-purpose outlays and Commonwealth taxes have increased in real terms by 2.4 per cent and 3.3 per cent respectively, while payments to States have increased by only 0.8 per cent per annum. There has been a 3.7 per cent contraction in capital specific purpose payments—SPPs—for Government schools, housing and roads. The Commonwealth has also applied the so-called efficiency dividend or reductions in funding to many SPPs. They have not responded to the State initiatives to renegotiate the Commonwealth-State housing agreement block funding.

At present there are 94,000 applicants on the waiting list for public housing. However, the States are funded at only six-monthly intervals, and even this interim arrangement will cease in June 1999. People wanting Housing Commission accommodation in New South Wales must wait an average of five to six years. In the eastern suburbs the average wait is nine years, and it even takes more than a year to satisfy a crisis application.

It is difficult to get an accurate figure for the number of homeless in greater Sydney. The Council of Social Service of New South Wales says that the

number is 40,000; SHELTA says that the figure is 80,000. Whatever the figure, the waiting lists are unacceptably long and they are one cause of social unrest. The shortage of affordable housing is not only in Sydney; and rents are unacceptably high in country towns. In the windows of the estate agents in the country town in which I live it is not unusual to see a small two-bedroom cottage offered for rent of \$190 or \$200 a week.

That is an impossible amount to find for people living on a social security benefit and for whom no Housing Commission accommodation is available. That was pointed out by the social justice statement issued in April by the St Vincent de Paul Society. I ask honourable members to look carefully at that document because the St Vincent de Paul Society deals with many underprivileged people. The society does not seek to make political points; it is simply putting on the record what it has seen and what it knows from all its service centres. The statement includes many examples of people paying up to 48 per cent of their income in rent—again, an impossible demand. The problem between the States and the Federal Government is ongoing and will not be solved by the simplistic solutions of One Nation. Indeed, I wonder what Pauline Hanson's policy advisers would make of this statement in Budget Paper No. 2 on the establishment of benchmarks:

- the aim should be to identify as tax expenditures those special provisions which can, in most cases, be considered as alternatives to direct expenditure programs . . . rather than attempt to define some ideal taxation system and show deviations from it. Thus the benchmark should not depart excessively from the actual tax structure. For example, in the case of personal income tax, the benchmark used by the Commonwealth in its annual TES is the personal income tax rate scale, including the tax free threshold; thus the existence of the threshold is not classified as a tax expenditure; and
- if there is doubt about the status of a particular provision, the statement should err toward being more comprehensive rather than less.

I am not making this up; it is in Budget Paper No. 2. The section on valuation of tax expenditures contains other interesting examples of newspeak. The paper states:

The revenue gain approach attempts to estimate the increase in revenue that could be expected if a particular relief were to be abolished. Unlike the revenue forgone approach, this approach attempts to take into account any behavioural or second order effects associated with a tax change. Given that such effects are difficult if not impossible to forecast, this approach has limited application.

After reading this I began to wonder who in Treasury had taken on the mantle of Sir Humphrey Appleby. Whoever it is, I salute the person. Luckily,

the Auditor-General's report to Parliament was not written by Sir Humphrey Appleby. It does, however, make very disturbing reading. The report states:

- *Rail Industry Restructure*—as a result of the restructure of the rail industry, assets were written down by \$6,430m, comprising asset revaluation reserve decrements of \$4,549m and an abnormal expense of \$1,881m. The decrease in value of these predominantly infrastructure assets did not result from a deterioration in the physical quality of the asset but from the restructure of the rail industry. Under this restructure the value of the rail infrastructure has been substantially written down to reflect that—apart from a few profitable coal freight lines—it has no commercial value. Although this approach is consistent with accounting standards, other approaches to the restructure would have been more revealing to users of these statements.

If the results of the Queensland election teach us nothing else, it is crystal clear that there is deep-seated anger and resentment in the community. Earlier I emphasised that that has been fuelled by economic rationalism that gives value only to financial gain. Often it is the unintended implication of words that shows resentment. They show a blind obstinacy to blame someone else—the outsider, the foreigner. Some bureaucrats have seen fit to ensure that busking for a living in Martin Place station has been outlawed. What sort of mean-spirited Appleby has done that? In a colourless world people are denied even small opportunities to entertain and to earn a small living.

At the National Party conference in Orange last weekend it was suggested that when a person became nationalised—I presume the speaker meant naturalised—that should be marked on the person's citizenship papers and if the person commits a serious offence after becoming a citizen he or she should be deported. I wonder to which country we should deport a person who has come to Australia from a South-east Asian country or to escape a repressive regime in central Europe, Turkey, Lebanon or Palestine.

Another strange phenomenon is the current antipathy to multiculturalism. From the National Party conference came the amazing assertion that when people come to Australia they should regard themselves as Australians, as part of a monoculture. The argument was that people in America do not regard themselves as Hispanic or European but as American. That is a naive statement—and it has been dealt with at some length recently by President Clinton—because it totally ignores the difference between race and nationality, between an individual's cultural inheritance and a citizenship that is acquired.

It is ridiculous to suggest that the people who have immigrated to America over the past 400 years, including the founding fathers, the pilgrim fathers, and the Huguenots who escaped persecution in France, abandoned their language, their heritage and the centuries of art, literature and music that made them and their race unique. The ethnic festivals held all over America bear witness to the fact that while citizenship is valued and sought after, old customs, old songs and longstanding festivals are also valued. I instance the southern States with their creole music and cajun food.

The position in Australia is the same. If we begin to criticise or condemn that diversity, we diminish ourselves. When I left Malaysia more than 30 years ago to come to Sydney, Chinese and Indian friends, many of whom were wealthy professionals—doctors, lawyers and business executives—would visit to investigate the possibility of immigration. Many of them looked at Australia in the 1960s but went to the United States of America, Canada and England. They told me that there was no point in staying in Australia because they would always be regarded as second-class citizens and they did not want that for their children. I was so convinced that they were wrong I used to argue with them. I am amazed now that I could have been so naive.

Arthur Calwell was the Leader of the Australian Labor Party and made the all-time racist statement, "Two Wongs don't make a white." There were similar ill-mannered and uninformed remarks from Bruce Ruxton, Alf Garland and others. Sydney is the tourist Mecca it is today because of multiculturalism. Is our cultural cringe so overwhelming that we still do not have the generosity to acknowledge the enormous contribution made by Italians, Greeks, Poles, Dutch, Germans, Chinese, Cambodians, Latin Americans, Vietnamese and people from many other cultures? The Snowy Mountains scheme was just one of many projects, including the Tasmanian hydro project and national icons such as the Opera House, to which migrants contributed greatly.

We cannot turn back the clock. Even if we could, we would still find that Australia was being developed by Chinese, Germans, Poles, Scots and Irish. They all contributed to the development of this country more than 150 years ago. I live in an area where practically every other name in the telephone book is of German origin: Heinrichs and Eisenhauers and so on. The area has many German settlers and until just after World War I some primary schools taught in German so that the children's early schooling was in their mother tongue

before they learned to speak English. World trade changed over 50 years ago with the establishment of the General Agreement on Tariffs and Trade—GATT. ASEAN—the Association of South East Asian Nations—was established in August 1967. Indeed, in 1965 I attended a pre-ASEAN inaugural meeting in Kuala Lumpur as a radio commentator.

Today there are more than 90 regional trade agreements. The MAI has stalled, not because Pauline Hanson has stopped it, as she claimed last week on television, but because of squabbles over its impact within the OECD. Today the World Trade Organisation has 132 members, and more than 30 countries, including China, are waiting to join. Whether or not we like it, our economic problems must be solved through world trade. Perhaps the National Party farmers will remind One Nation—if and when they form a closer alliance, as some of them seem tempted to do—that all the urea we need must be bought from Cargills and that the wheat we export, even that sold through the grain board or the wheat board, is sold on the world market under the control of Cargills, through the Chicago market, which is what the world wheat price is based on.

I can now download grain prices from the Internet in a matter of minutes. I can access weather maps and short- and long-range weather forecasts in the same way. Just as farming was mechanised in the 1950s, marketing is globalised in the 1990s. We cannot stop technological change; we can only tailor our policies and equip our children with the skills to cope with change. We cannot be coaxed into the false security of fortress Australia. It did not work 100 years ago and it will not work now. It is pointless for me to expect the State Government to spend more money on what I believe are priorities; and I am not asking for that to be done. All I ask is that the Government base its priorities on need and not simply on electoral advantage. For example, it is pork-barrelling to install a linear accelerator at Penrith to treat cancer patients when Penrith residents are only 30 minutes from Westmead Hospital, which already has linear accelerators.

A major regional centre like Wagga Wagga, Dubbo or Tamworth needs the next linear accelerator so that country people do not have to travel to Sydney and stay for up to six weeks while receiving treatment at a time when they need not only that treatment but the support of their family and friends. It is ridiculous to close nursing home beds in Griffith and force elderly people who need nursing home care to go to Narrandera. Again that removes them from family and friends, who might also be elderly and may not be able to visit daily. Has the Treasurer or the Minister calculated the cost

of consultants examining the delivery of aged care, women's health, support for young children at risk of suicide, or drug dependency? These needs are already known. Consultant advice is not needed; we require staff with the skills to deliver the services needed.

Every complaint I have received about hospitals has been not about lack of expensive equipment but about staff shortage that is so acute that patients often have to wait for bed pans, clean linen, a catheter or pain-killing drugs. They are simply waiting for old-fashioned nursing that does not require a high-tech solution. People are the essential component in nursing and they cannot be replaced by computers and high-tech equipment. How much money is the Treasurer paying to allow chief executive officers to threaten legal action against responsible citizens, many of whom are mayors in country towns, who criticise their actions?

The Auditor-General has identified that the whistleblower at St George Hospital who appealed against her unfair dismissal and rightly made her concerns public cost the Government more than \$800,000 in legal fees. She was right, the Government was wrong, and that \$800,000 would have been far better spent in the delivery of health care. It could have funded the employment of more drug and alcohol counsellors. Perhaps it would have made it possible for people with acute dementia to remain in familiar surroundings and not be moved at weekends away from familiar staff to acute hospital wards because of staff shortages in their aged care unit. The list goes on.

What will it cost the State Rail Authority to compensate the families of the two freight train drivers who died at Robertson because the bridge abutments had not been removed? Was it economic to employ underqualified maintenance workers on that section of track instead of experienced and qualified engineers? How much will the recent derailment at Concord cost? Whatever it costs, that money could have been used productively in many departments that are being forced to cut back expenditure. Is it really sensible to spend \$55 million on the back-to-school allowance by paying it to the parents? Has the Treasurer worked out how much it costs the Department of Education and Training to prepare, process and post the thousands of individual cheques?

Would it not have been better to allocate the money on a per capita basis to the schools? It would still have been used for the benefit of the pupils and if some parents found the cost of school uniforms and shoes beyond them, the schools could forgo the money the parents pay for art materials, school outings, books and other extra charges. The money saved on those items could be given to parents to

buy the uniforms and shoes. I am not against a back-to-school allowance, but I am against the way it is administered. The money saved on the administration of that allowance could be used by the schools to better assist families in an administratively friendly way. I shall conclude as I began, quoting Don Chipp:

Australia could not only be the best country in the world but could give a lead to other nations for a more ennobling lifestyle. Greed and selfishness are infectious. Can we not see that compassion also can be contagious?

... I want us to embrace the politics of hope, of participation, of personal involvement—to regain our right to own ourselves, that is my commitment.

That was my commitment when I came into this House in September 1981 and I have tried to live up to it in the years that I have been privileged to serve the people of New South Wales. I hope to continue that service in other capacities when I leave here next week. The events of last Saturday in Queensland have made me more determined than ever to continue the fight for the politics of hope, compassion and personal involvement, and I hope I have the opportunity to do so. Even if I do not, I shall always cherish my years in this Chamber and the friendship that I have received from everybody in the Parliament—not only you my colleagues, whatever political party you represent, but also Hansard, the library staff, the attendants, the dining room staff and the staff of the printing office, all those people that make this institution work. I am very grateful to every one of them and I shall remember my years here with affection.

**The DEPUTY-PRESIDENT (The Hon. J. R. Johnson):** Well done thou good and faithful servant. You will always be welcomed back.

**Pursuant to sessional orders business interrupted.**

#### **DISTINGUISHED VISITOR**

**The PRESIDENT:** I have the honour to announce the distinguished presence in my gallery of Ms Priscilla Williams, the newly appointed Consul General of New Zealand.

#### **QUESTIONS WITHOUT NOTICE**

#### **SCOTT BEYNON BAIL CONDITIONS**

**The Hon. J. P. HANNAFORD:** My question without notice is directed to the Attorney General. Is it a fact that Yass court recently allowed former Federal policeman Scott Beynon, who is facing armed robbery charges, to successfully challenge his

bail conditions and to obtain bail? Is this the former policeman who disappeared from a beach in Victoria and was presumed drowned, and has been involved in a number of armed robberies? Does the Attorney General agree that bail in such circumstances should be tightened? What steps will he take to ensure the tightening of bail provisions and to ensure that bail for this person is reviewed?

**The Hon. J. W. SHAW:** I do not know the case to which the honourable member refers, but it seems curious to question whether a court should have allowed a challenge to bail conditions. If a person is entitled to raise questions about bail conditions and have them reviewed in accordance with law, that is his or her entitlement. The courts decide these matters independently, free from interference from the Executive Government or indeed the Parliament. I am happy to examine the case, but I do not accept the notion that courts should not be free to impose appropriate bail conditions and then, if a person is entitled to have them, to seek to have them reviewed.

#### HERITAGE STONework PROGRAM

**The Hon. J. KALDIS:** I address my question without notice to the Minister for Public Works and Services. The Minister recently told the House about some of the grand public buildings and other buildings being restored under the heritage stone program. Will he tell us what else is being done under that program?

**The Hon. R. D. DYER:** I assure the honourable member and the House that, as Minister for Public Works and Services, I will not stonewall in answering this question. I would very much like to tell the House about other aspects of the stone program, and I can think of some particularly delightful examples of work being done close at hand. When I utter the name "The Choric monument to Lysicrates" I am confident that it immediately conjures up in everyone's mind that little circular sandstone monument in the Royal Botanic Gardens down near Farm Cove. We recall its Corinthian columns around the base and a carved frieze around the top. I am sure that on occasion most honourable members have succumbed to its charms. Residents and tourists alike will recall it with great affection as one of the attractions that makes living in or visiting this city such a pleasure.

This little monument was executed for Sir James Martin, after whom Martin Place was named, for his house at Potts Point, but it was moved to the Royal Botanic Gardens in 1943. It is a scaled replica of the original built in Athens in 334 BC specifically to receive the victor's tripod won by Lysicrates at a

drama contest at the festival of Bacchus. The original is of special interest to Greek scholars and students of architecture as it was the first example of external use of the Corinthian order. Our example was carved by Walter McGill, who also worked on other monuments in the gardens and at the Australian Museum, the General Post Office and Sydney Town Hall. The column details are still sharp and deep, although, sadly, the frieze is badly weathered in places.

**The Hon. J. P. Hannaford:** Your speech writer is really scraping the bottom of the barrel today.

**The Hon. R. D. DYER:** I know from his interjection that the Leader of the Opposition has no appreciation of classic Greek culture at all, unlike the Hon. J. Kaldis and the Hon. J. M. Samios. In order to retain as much of the carving as possible and to protect it from further weathering, six of the curved cornice stones were replaced by the Department of Public Works and Services stone yard at Alexandria. The new work was kept to a minimum so as to retain the cultural significance of the monument. I understand that the stone that was removed is being kept for research purposes and as an example of the skills of the original colonial stonemasons.

This restoration project was funded out of the \$100,000 set aside within the stone program each year for repairs to public monuments. I therefore encourage all members of the House to take the time to go down to the Royal Botanic Gardens, not only to smell the flowers but also to admire the monument of Lysicrates. If any members are so ignorant as to not appreciate what I have said, I have an illustration that will bring readily to mind the beautiful monument to which I am referring.

#### LICENSED PREMISES GAMBLING LOANS

**The Hon. R. T. M. BULL:** I ask the Minister for Public Works and Services, representing the Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development, a question. Is the Minister aware that two cases regarding the provision of irresponsible loans to gambling addicts by licensed premises were referred to the Department of Gaming and Racing in late 1996 and in 1997? Given that no action has been taken by the department, what are the reasons for the delay and what does the Minister intend to do about it?

**The Hon. R. D. DYER:** I will obtain a response from my colleague the Minister for Gaming and Racing.



**APPREHENDED VIOLENCE ORDERS**

**The Hon. CARMEL TEBBUTT:** My question without notice is directed to the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading. Will the Attorney inform the House about the misapprehensions about the system of apprehended violence orders contained in statements by the Opposition on the weekend?

**The Hon. J. W. SHAW:** There were a number of National Party policy announcements made on the weekend. I would like to focus on only one of them, namely, the proposal that the word "violence" be removed from apprehended violence orders and that the orders be renamed personal safety orders. The Leader of the National Party said, as I appreciate his statement, that the word "violence" should appear on such orders only when violence is subsequently proved. The basis for making these changes was the supposed number of vexatious complaints clogging up the Local Court. With respect to the question of whether the word "violence" should be included in apprehended violence orders when violence has not yet been proved, I would draw the attention of the Opposition to the word which precedes it, "apprehended."

**The Hon. D. J. Gay:** On a point of order. As someone who attended the conference at which it is alleged by the Attorney this suggestion was made, I can attest that the Leader of the National Party did not move such a motion, nor did he speak to such a motion. The matter was raised by someone from the floor of the conference. If the Attorney persists with this allegation, in the knowledge that what he has put is not correct, he will be in breach of the standing orders.

**The PRESIDENT:** Order! There is no point of order.

**The Hon. J. W. SHAW:** I do not pretend to know the details of the decision-making process of the National Party but I know that the media reported that the view that emanated from the National Party was that the title of apprehended violence orders ought to be changed. If members of the National Party want to repudiate that, I welcome them making that clear.

**The Hon. R. T. M. Bull:** It was passed.

**The Hon. J. W. SHAW:** It was passed?

**The Hon. R. T. M. Bull:** Yes.

**The Hon. J. P. Hannaford:** That does not mean it is policy.

**The Hon. J. W. SHAW:** The Leader of the Opposition said that because this was passed by the National Party conference that does not make it policy.

**The Hon. J. P. Hannaford:** That is absolutely right.

**The PRESIDENT:** Order! I am required to hear the Minister's answer, as is Hansard. Honourable members should remain silent.

**The Hon. J. W. SHAW:** The matters raised by way of interjection are nonsense and concentrate on form rather than substance. A member of this House has asked me about a proposal to change the title of apprehended violence orders. It is now conceded that the National Party conference has carried a resolution calling for such a change, and I am responding to a question about the change. When considering whether the word "violence" should be included in the term "apprehended violence order" when the violence has not yet been proved, I draw the attention of the Opposition to the word that precedes "violence", namely "apprehended." An AVO is granted to a person who is able to prove to a magistrate that he or she has reasonable grounds to fear violence, and the objective of the AVO is to protect him or her from that violence. Indeed, the system is successful if there is no violence.

*[Interruption]*

I am trying to make a serious point here, but because of the cacophony of interjections and silly remarks from the Opposition I am finding it somewhat difficult. It may be that the Opposition does not take the issue of apprehended violence orders seriously and regards the whole issue as frivolous. I, however, take the matter seriously and would like to convey my answer to the question, if I can. I will persist, notwithstanding the silly interjections. The point of an AVO is that a person has proved to a magistrate that he or she has reasonable grounds to fear violence, and the AVO is given to that person to protect him or her from that violence. The system is successful if there is no violence. It is a vindication of the system if no violence actually occurs.

With regard to the success of the system of apprehended violence orders, I draw to the attention of members of this House a report of the Bureau of Crime Statistics and Research, dated October 1997, on the effectiveness of apprehended violence orders in New South Wales. The main objective of the bureau's research was to determine whether AVOs achieve their legislative purpose, that is, whether people who obtain apprehended violence orders are

provided with protection against future violence, abuse and harassment from defendants. I was pleased that the report stated that the lives of the majority of applicants improved after an AVO was served. That is, the report showed that the system of AVOs in New South Wales was working.

The research did not cover whether courts are clogged by vexatious claims, which seemed to be asserted at the National Party conference on the weekend. I would offer three observations in response to any such suggestion. First, other evidence has not shown that such a problem exists. For example, I draw the attention of honourable members to a study on this issue in December 1994 which was reported in the Law Society Journal. I draw attention also to the following comment of Dr Don Weatherburn, of the Bureau of Crime Statistics and Research:

Although an increasing number of women are seeking AVOs, there is no strong reason for believing that AVO abuse is widespread. Crime surveys indicate that many victims of domestic violence still do not attempt to obtain an AVO.

Those comments were reported on the letters page of the *Sydney Morning Herald* of 6 October 1997. Second, I would draw the member's attention to the legal provision in the legislation that deals specifically with vexatious applications for an AVO. If a magistrate finds that an application is vexatious, there is provision for a finding of costs to be made against the applicant. Third, no system in this world is perfect. If the price we pay to protect many women is the dismissal of a few applications or the occurrence of a few applications that may be characterised as vexatious, so be it. The system as a whole is worth defending, and I would be one to defend it.

The Government is committed to finetuning the concept of AVOs when such amendment is warranted. It has introduced a number of bills to improve the system of protection and it will continue to work on improving it. Should the Opposition have any useful suggestions, the Government will gladly consider them. However, the recent ill-informed commentary contributes nothing to the issue and reveals the problematic stance the Opposition has with the protection of women and others in need of protection from violence and crime.

#### CASINO SURVEILLANCE

**Reverend the Hon. F. J. NILE:** I ask the Minister for Public Works and Services, representing the Minister for Gaming and Racing, a question without notice. Is it a fact that the New South Wales

Auditor-General has released a report condemning the surveillance operations responsible for keeping criminal elements out of Sydney Star Casino? Why are the two independent surveillance operators, the Casino Control Authority and the Director of Casino Surveillance, not co-operating with one another and co-ordinating their activities? Will the Government support the recommendation of the Auditor-General that a parliamentary committee oversee the Casino Control Authority? Will the Government amend the legislation to allow the Director of Casino Surveillance inspectors to share with police information on criminal elements?

**The Hon. R. D. DYER:** I shall obtain a full and considered response from my colleague the Minister for Gaming and Racing.

#### MAITLAND MOTOR VEHICLE FATALITY

**The Hon. PATRICIA FORSYTHE:** My question without notice is directed to the Attorney General. Has the Attorney called for a review of the files on the decisions handed down by magistrates in relation to the 14-year-old involved in a car crash that killed two people and injured four at Maitland last week? Will the Attorney investigate the role of the legal aid in supporting the 14-year-old being continuously bailed despite numerous breaches of bail?

**The Hon. J. W. SHAW:** I have called for a review of decisions in the case to which the honourable member has referred. I am not inclined to review the question of legal aid. People are entitled to legal aid. I would not want in any way to rebuke or criticise the legal aid authorities for giving legal aid to a person, whatever crime that person might have committed. To answer the broad question, yes, I am considering the decision about bail in the particular case to which the honourable member refers.

**The Hon. J. F. Ryan:** You give legal aid for drunken offences, so obviously—

**The Hon. J. W. SHAW:** Legal aid is given for all kinds of offences, however morally culpable a person might be. I do not really propose to review the question of legal aid. The legal aid authorities are governed by certain privacy provisions. It is not my province to examine who is granted legal aid or why legal aid is granted. I am happy to review various decisions of magistrates in relation to bail. I would counsel caution in this particular case, which is sub judice. It is my belief that charges have been made, and I think honourable members ought to be circumspect about discussing the tragic events

associated with the incident to which the honourable member refers. The matter is before a criminal court and any general discussion about those matters, which are sub judice, would be quite inappropriate.

### INTERSTATE CONTESTABLE ELECTRICITY MARKET

**The Hon. A. B. KELLY:** Could the Treasurer convey to the House the results of the Australian Chamber of Manufactures' survey on electricity competition in New South Wales and Victoria?

**The Hon. M. R. EGAN:** Yes, I can. I am sure that honourable members will be interested to know that on Monday I launched the Australian Chamber of Manufactures' survey entitled "Outcomes of the Contestable Electricity Market in New South Wales and Victoria". At that launch I took the opportunity to thank the chamber's member companies for taking the time to respond to the survey. Indeed, their time was well spent. The results of the chamber's survey again proved the benefits of electricity reform.

The survey shows that manufacturers in New South Wales have on average saved 30 per cent on their power bills, compared to 23.2 per cent in Victoria—a fact that will be of interest to the Hon. Virginia Chadwick. The survey shows that larger and smaller businesses are both making significant savings. The chamber's report proves that competition is delivering big gains to firms that can shop around for power. Honourable members should bear in mind that people who cannot yet shop around have also enjoyed major benefits.

**The Hon. D. J. Gay:** Why don't you join the National Party? Then you would get the support you want.

**The Hon. M. R. EGAN:** Join the National Party? I hear you're about to dice it for One Nation. I know a couple of members over there are. In fact, among them are not only National Party members like the Hon. M. R. Kersten; there is the Hon. C. J. S. Lynn, too.

**The Hon. M. R. Kersten:** On a point of order. The Treasurer is a liar. He said that I am joining the One Nation Party. That is untrue. It is a lie. I ask that the Treasurer be directed to withdraw that statement.

**The PRESIDENT:** Order! That is not a point of order.

**The Hon. M. R. Kersten:** I find the statement highly offensive, and I request that the Treasurer withdraw it.

**The PRESIDENT:** Order! The Hon. M. R. Kersten has objected to a claim by the Leader of the Government that he has joined or is about to join the One Nation Party. The Hon. M. R. Kersten finds the comment offensive and has requested the Leader of the Government to withdraw it.

**The Hon. M. R. EGAN:** I am delighted to withdraw that statement if the Hon. M. R. Kersten finds it offensive, but let me assure him that we will not let him back into the Labor Party.

**The Hon. C. J. S. Lynn:** On a point of order. The Treasurer also referred to me in his comments. I also find the remark offensive and request him to withdraw.

**The Hon. M. R. EGAN:** If the honourable gentleman finds that statement offensive, I will withdraw it in relation to him, too. May I continue?

**The PRESIDENT:** Order! The Minister may proceed with his answer.

**The Hon. M. R. EGAN:** I await events with interest, and I predict that quite a few members opposite will end up in One Nation—I have no doubt about that.

**The Hon. R. T. M. Bull:** Not me.

**The Hon. M. R. EGAN:** No, you will not. I give the Deputy Leader of the Opposition credit for being a true blue Nat. Nor would the Hon. Jennifer Gardiner, who is a very civilised person. I often wonder why she is in the National Party, as I wonder about the Hon. D. F. Moppett. But there are not too many others about whom I would make that comment.

**The Hon. D. J. Gay:** What about me?

**The Hon. M. R. EGAN:** Well, perhaps the Hon. D. J. Gay, who occasionally gets to use the President's car, being the Deputy-President. I do not think that as a One Nation member he would become President of the Legislative Council.

**The Hon. D. J. Gay:** On a point of order. I ask the Treasurer to withdraw that remark on the ground that I find what he said to be offensive.

**The Hon. M. R. EGAN:** I am not quite sure what the Hon. D. J. Gay found offensive.

**The PRESIDENT:** Order! The Leader of the Government did not say that the Hon. D. J. Gay was or intended to become a member of the One Nation Party; he said that if he did, he would not become President of the Legislative Council. That comment is not offensive; it is true.

**The Hon. M. R. EGAN:** I actually said that the Hon. D. J. Gay enjoys driving around in the President's car. And he makes a mess of it when he does. Have honourable members ever seen it? He must put sheep in the back.

**The Hon. R. T. M. Bull:** The Government should spend some money on the roads at Crookwell.

**The Hon. D. J. Gay:** I am the only member who lives on a dirt road—you would not know, you have never been there.

**The Hon. M. R. EGAN:** I have been to Crookwell but the Hon. D. J. Gay was not there at the time. In fact, the locals had never heard of him. Last year, the Independent Pricing and Regulatory Tribunal reported that New South Wales businesses and households enjoyed the cheapest power in Australia. Since the Government took office households and small businesses have enjoyed substantial real price reductions—more than \$370 million in aggregate, or a full 9 per cent real reduction. To put it simply, everyone is a winner. A small business in New South Wales now pays between 25 per cent and 40 per cent less for power than its competitors in Victoria—an average saving of about \$3,400 a year. A typical New South Wales household spends \$165 a year less on electricity than a comparable Victorian household. The chamber's survey, the IPART report and all the evidence indicates the Government's hard work in remaking our power industry.

#### EMPLOYMENT AGENTS ACT ADMINISTRATION

**The Hon P. T. PRIMROSE:** My question is directed to the Minister for Fair Trading. Will the Department of Fair Trading soon become responsible for the administration of the Employment Agents Act 1996? If so, what will that mean for employment agents and their clients?

**The Hon. J. W. SHAW:** From 1 July this year responsibility for administration of the Employment Agents Act will be transferred to the Department of Fair Trading from the Department of Industrial Relations. From that date the licensing of all private employment agents will be the responsibility of the Department of Fair Trading. The new arrangements will improve the administration and scrutiny of the industry.

**The Hon. Dr B. P. V. Pezzutti:** On a point of order. The Attorney General is about to offer an opinion on what he thinks might happen, rather than

comment on what is going to happen. He is offering an opinion, which he has said in the past he would not give.

**The PRESIDENT:** Order! That is not a point of order.

**The Hon. J. W. SHAW:** The new arrangements will improve the administration and scrutiny of the industry, as the Department of Fair Trading operates licensing systems in a number of other industries and it has an efficient complaint-gathering system through its statewide network of fair trading centres. As honourable members would know, the Federal Government dismantled the Commonwealth Employment Service and privatised all employment agencies effective from 1 May.

In the past eight months, an extra 337 employment agency licence holders have appeared in New South Wales, an increase from 1,644 licence holders in November 1997 to 1,981 now. Since 1 May this year, 46,000 job seekers have been referred to New South Wales employment agents. Given the rapid expansion of the private employment agency industry, I am concerned that some less than scrupulous operators may be out to exploit job seekers, a group already in a vulnerable position.

**The Hon. Dr B. P. V. Pezzutti:** Who had it before?

**The Hon. J. W. SHAW:** In response to the interjection, I reiterate: I have already explained that it was transferred from the Department of Industrial Relations. The Department of Fair Trading will ensure not only that all employment agents are properly licensed but it will also monitor agents to ensure they are dealing fairly with their clients. Details of private employment agent licence holders have been provided and are being entered into the Department of Fair Trading business licence system. The Department of Fair Trading has recently written to all licence holders informing them of the change in administration of the Private Employment Agents Act 1996.

By law, employment agents are not allowed to charge a fee for looking for work for any person. The task of the Department of Fair Trading is to ensure that that law is enforced. Under the Federal Government's changes, employment agents only make money if they place people in jobs. If unemployment rises, as it now seems to be doing, some agents may struggle. The Department of Fair Trading has learned that some agents are vastly overservicing clients, offering them a range of services at extra cost. For example, job seekers may

be told by an agent that they need a professional curriculum vitae or interview training. These services are usually offered at a high price, and are often irrelevant or unnecessary.

I urge New South Wales job seekers to contact their nearest fair trading centre—and they are available throughout New South Wales—if they believe they are being unfairly treated by private employment agents. The Department of Fair Trading has the power to restrict or revoke the licences of employment agents who break the law. Honourable members may be assured that the Government will remain vigilant about the expanding privatised employment market. Despite the jocularity on the Opposition benches, this is a very serious topic and attention is focused on it by reason of the changed employment arrangements at a Federal level.

Private employment agents have a more active role to play in the labour market. Their behaviour must be scrutinised and regulated, and it will be. There have been examples of exploitation and the Department of Fair Trading I believe will act vigilantly to protect people seeking jobs from employment agents—one hopes very much a minority of employment agents—who do the wrong thing. An increasing level of attention will be given to employment agents who are playing a larger role than supplying jobs to unemployed people.

#### BYRON SHIRE COUNCIL FINANCES

**The Hon. D. J. GAY:** My question is to the Attorney General, representing the Minister for Local Government. Is the Minister aware that during a recent council meeting of Byron Shire Council it was decided to lobby the State Government and the Local Government Association for legislation to allow a bed tax to be introduced in a bid for cash to help out the cash-strapped council? Will the State Government take steps to ensure a special bed tax for Byron—a tax which will be discriminatory and inequitable—is never introduced?

**The Hon. J. W. SHAW:** The answer to the first part of the question is no. The answer to the second part of the question is that I do not believe it would be within the province of the State Government to overrule the appropriately determined decisions of a local government authority.

#### WOLLONGONG HOSPITAL

**The Hon. ELISABETH KIRKBY:** My question without notice is directed to the Minister representing the Minister for Health. Can the Minister confirm that the new operating theatres at Wollongong Hospital are unusable due to problems with the airconditioning system? Do the accounts

about the new surgical wing at Wollongong Hospital suffering a variety of construction problems have any basis in fact? Could the Minister explain what is going on at Wollongong Hospital?

**The Hon. R. D. DYER:** The Department of Public Works and Services—DPWS—is managing the Illawarra Regional Hospital project on behalf of the Illawarra Area Health Service and the Health Department. Boulderstone Hornibrook Pty Ltd is the contractor for the project. Boulderstone Hornibrook designed the airconditioning system and placed the chillers for the airconditioning units in the roof above the 25-bed western ward, on level four of the hospital. The western ward is used for the treatment of general surgical patients.

When tested, noise from the airconditioning unit was found to be too loud for patients accommodated in that ward. DPWS staff brought the matter to the attention of Boulderstone Hornibrook, which attempted to remedy the problem. Following the remediation work, the noise still exceeded the Australian standard for single and multibed hospital wards. Acoustic tests were carried out by the contractor's acoustic consultant, in the presence of DPWS staff on 29 January 1998, to determine the problem and identify a solution.

The test results were forwarded for analysis to the DPWS acoustics section based in Sydney. Remedial work was carried out with acoustic blankets being fitted to the ceilings of the worst affected rooms. Although the noise levels were then close to specification, there were tonal components of the noise that did not comply and which caused discomfort. DPWS engaged another acoustic consultant who carried out tests commencing on 25 February this year. Under instructions from DPWS, the contractor took corrective action in accordance with the DPWS consultant's recommendations.

The contractor has completed each of the recommended actions identified in the acoustic consultant's report. I understand that the chief executive officer of the Illawarra Area Health Service delayed opening the ward pending resolution of the noise problem. In the interim, alternative beds were provided for patients. I understand that the sound levels are now such that the hospital administration has accepted that the ward space is suitable for occupation. I am advised that the ward is now in use.

#### OLYMPIC GAMES FACILITIES

**The Hon. J. R. JOHNSON:** My question is to the Treasurer and Leader of the Government. How will the people of the Bankstown area benefit from the staging of the 2000 Olympics?

**The Hon. Dr B. P. V. Pezzutti:** They are getting a velodrome.

**The Hon. M. R. EGAN:** That is right. The Hon. Dr B. P. V. Pezzutti—tutti-frutti as he is known on the north coast—

**The Hon. Dr B. P. V. Pezzutti:** On a point of order. Mr President, in the past you have ruled to be disorderly the expression used by the Treasurer. I ask that he desist from using it and withdraw it.

**The PRESIDENT:** Order! The Hon. Dr B. P. V. Pezzutti has objected to being called "tutti-frutti". In the past I have ruled that that expression is offensive because of its mental implication. I ask the Leader of the Government to withdraw the comment.

**The Hon. M. R. EGAN:** I certainly did not call him tutti-frutti. I said, "the Hon. Dr B. P. V. Pezzutti, who is known on the north coast as tutti-frutti Pezzutti". That is all I said, that is exactly what I said.

**The Hon. Dr B. P. V. Pezzutti:** You are telling lies again.

**The Hon. M. R. EGAN:** Check *Hansard*. I would never call the honourable member "tutti-frutti". I think it is most unfair that people on the north coast refer to him as "tutti-frutti Pezzutti", and I sympathise with him.

**The PRESIDENT:** Order! The Leader of the Government may care to suggest that although the Hon. Dr B. P. V. Pezzutti may have thought that was his opinion in the past, it is certainly not the opinion of the Leader of the Government at the present time.

**The Hon. M. R. EGAN:** It was once, but I am not allowed to say it.

**The PRESIDENT:** Order! Is it now the opinion of the Leader of the Government?

**The Hon. M. R. EGAN:** No, definitely not, unless I am permitted to say that it is. I am pleased to inform the House that earthworks are now under way for the construction of the Olympic velodrome in Bankstown. The new velodrome will sit on 11,000 square metres of land, about half the size of the Sydney Cricket Ground, at Crest Park in Georges Hall. It will have a 250-metre track and, when completed in September 1999, will seat 6,000 spectators. The building of the velodrome is expected to inject about \$40 million into the

Bankstown and greater western Sydney region, and its construction will create more than 500 new jobs.

The new venue will be an important addition to the State's capacity to attract international and national sporting events to the Bankstown area, bringing with them investment and even more quality new jobs. The money that is being spent on the cycling track is part of more than \$2 billion to be spent by the Olympic Co-ordination Authority on construction for the Games. As I have said on a number of occasions, all those costs are being met up-front; when the Olympics are held in September 2000 there will not be a single cent for taxpayers or, more importantly, their children to pay.

The Bankstown velodrome will be named after Australia's first Olympic cycling gold medallist, Edgar "Dunc" Gray. "Dunc" Gray competed in three Olympic Games. He won a bronze medal in Amsterdam in 1928 and a gold medal in Los Angeles in 1932, and carried the Australian flag in Berlin in 1936. Mr Gray died in 1996, at the ripe old age of 90. Cyclists of all types, from schoolchildren to elite competitors, will ride at this venue, which will be named after a man who was committed to the sport of cycling and who so completely embraced the Olympic ideal of sportsmanship.

#### TOTALIZATOR AGENCY BOARD SHARE ALLOCATION

**The Hon. J. M. SAMIOS:** I ask the Treasurer, Minister for State Development, and Vice-President of the Executive Council a question without notice. I refer to the Treasurer's answer to the House on the TAB float and the non-payment of interest from subscribers' funds to those subscribers. When will the Government repay the unused funds to subscribers? Will the Treasurer confirm that this will occur before the end of the financial year, or will the Government retain these funds for longer in order to gain further interest payments?

**The Hon. M. R. EGAN:** The Hon. J. M. Samios presumes, correctly, that most people who applied for shares applied for more shares than it will be possible to allocate to them. In recognition of that and of the fact that people were required to send a cheque with their application, some time ago the Government reduced the minimum number of shares that could be applied for from 700 to 400. Nevertheless, most people have applied for many more shares than that. The Government will endeavour to return to them as quickly as possible the money that is not required for the purchase of shares. I anticipate that return will take about the

same time as it took for oversubscriptions to the Telstra float to be returned, and my recollection is that that was a couple of weeks. I assure the House that as soon as possible that money will be returned. The honourable member's question indicates that there has been a tremendous demand for shares—and next Monday the TAB will be listed.

#### **TIMBER INDUSTRY ASSISTANCE**

**The Hon. E. M. OBEID:** My question is addressed to the Treasurer, and Minister for State Development. What is the Government doing to assist the timber business in this State?

**The Hon. M. R. EGAN:** No doubt the Hon. E. M. Obeid would be aware that last week the Premier opened a new timber mill near Lismore. Hurfords has been a major supplier to the building industry on the far north coast for more than 50 years, as the Hon. Dr B. P. V. Pezzutti would be aware. It employs more than 110 staff and supports six harvesting contractors.

**The Hon. Dr B. P. V. Pezzutti:** Of course, I know all this stuff.

**The Hon. M. R. EGAN:** The honourable member might know everything but not all of his colleagues do, so I am imparting some of his knowledge to them. This new mill represents a total investment of \$6 million, including about \$1 million from the forest industry structural adjustment package. The mill will create 19 new jobs.

**The Hon. Dr B. P. V. Pezzutti:** Boring.

**The Hon. M. R. EGAN:** Boring? The honourable member said that the creation of 19 new jobs is boring; it is not boring for the people of Lismore. The mill will provide training for 18 existing employees. It is also part of a major transformation that is taking place in the timber industry as a result of the Government's forestry reforms. The Government has managed to resolve the long-standing battles between conservationists and timber workers. The Government also set up the \$120 million forest industry assistance package to protect jobs and create a modern timber industry. Under this package the Government has allocated more than \$27 million and assisted more than 500 timber industry workers. The package includes approvals of \$6.2 million for industry development, which has already generated \$24 million in total investment and more than 130 new jobs.

The package has also replaced yearly quota allocations with five-year agreements, and scope for

an additional five years if millers can demonstrate a commitment to value adding. The Government has made a \$74 million investment in hardwood plantations and has established 13,000 hectares of hardwood plantations. This year the Government has targeted another 10,000 hectares to be planted in conjunction with the private sector. I point out that the coalition planted a mere 2,900 hectares during its eight years in government. The Government's achievements in hardwood plantations obviously outstrip that figure. Hurfords investment is a vote of confidence in the Government's forestry reforms. It shows that we can create secure long-term jobs through the sustainable development of our natural resources. The timber industry, in partnership with the Government, has the ability to lead the world in ecologically sustainable forest and plantation management.

#### **TYRE DEFLATING DEVICES**

**The Hon. J. H. JOBLING:** I ask the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading, representing the Minister for Police, whether it is a fact that in 1994 the Staysafe committee recommended, and in May 1996 the Parliament unanimously supported, the purchase of tyre deflating devices, or road spikes, for use by police. Is it also a fact that Western Australia has already introduced these devices and purchased 53 such devices at a cost of \$1,000 each for use by patrol cars in critical areas? What action will the Attorney General take to resolve the remaining legal issues and implement that recommendation?

**The Hon. J. W. SHAW:** I shall be happy to refer the honourable member's question to the Minister for Police and obtain a response.

#### **MACLEAN FLYING FOX COLONY**

**The Hon. R. S. L. JONES:** I ask the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading, representing the Minister for the Environment, when the Minister will act to protect the flying fox colony at Maclean. Is the Minister aware of the uproar amongst conservationists and wildlife carers about the preposterous suggestion that this colony, which includes endangered flying foxes, be moved. Will the Minister find out why the Department of Education and Training stupidly constructed a new building two metres from this maternity colony?

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

# **CLOTHING, TEXTILE AND FOOTWEAR INDUSTRY OUTWORKER EXPLOITATION**

**The Hon. DOROTHY ISAKSEN:** I direct my question without notice to the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading. Will the Minister outline to the House the impact of the Federal Government's plans to strip back awards on outworkers in the textile and clothing industries?

**The Hon. J. W. SHAW:** The Hon. Dorothy Isaksen has highlighted an issue which I believe will receive much more attention in the coming weeks. Honourable members will know that there is a process of stripping back Federal awards to 20 basic or core matters under the Federal Government's Workplace Relations Act. Honourable members will know also that that represents a phenomenon whereby certain conditions of employment would be removed from the award system. That is self-evident. However, the Federal Government has focused on outworkers in the clothing industry because the suggestion before the Federal Industrial Relations Commission is that the outworker clauses in the relevant award, the Federal Clothing Trades Award 1982, should be removed.

The interaction of the outworker clauses with the other clauses, coupled with the unique features of the clothing industry, justifies a divergence from the award simplification principles established by a full bench of the Australian Industrial Relations Commission in its decision of 23 December 1997. The Textile Clothing and Footwear Union recently applied to have the review of the clothing trades award referred from an individual commissioner to a full bench of the Australian Industrial Relations Commission. In a decision announced yesterday, 16 June 1998, the President of the Federal Labor Relations Commission, Justice Giudice, granted the application as he was of the opinion that in the public interest a full bench should be constituted to deal with the matter.

The New South Wales Government will seek leave to intervene in those proceedings before the full bench in an effort to preserve and protect outworker clauses from the so-called award simplification process. We do not think the outworker clauses should be removed from the Federal clothing trades award. That award is unique because a large number of workers in the clothing industry are outworkers or contractors. The outworkers are predominantly isolated workers, most of them are women, and many of them are from non-English speaking backgrounds. Traditionally, they are low paid and they are likely targets for

exploitation. Operation of the payment by results system expressed in this award is different from the way similar clauses operate in other industries.

The history of this award shows that since the earliest days of conciliation and arbitration industrial tribunals have been prepared to provide appropriate conditions in an attempt to avoid exploitation of outworkers. The basis for the insertion of outworker clauses in the award in 1987 included achieving social justice, eliminating the exploitation of workers, realising the objects of the industrial relations legislation, and protecting the viability of enterprises engaging workers in accordance with award provisions. Those entitlements are now under imminent threat.

The Federal Government is attempting to claw back the rights of workers who have historically been identified as some of the most disadvantaged members of the work force. That part of the Federal Workplace Relations Act which expressly provides for pay and conditions for outworkers but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable—in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises—vividly illustrates the insipid and vacuous nature of the Federal Government's approach to industrial relations.

The Federal Government, in its effort to curtail the rights and entitlements of that part of the work force most in need of award protection, is showing its true colours. Since the passage of the Workplace Relations Act the New South Wales Government has generally been concerned that there is no guarantee that provisions stripped from awards on the basis of so-called simplification will be replicated in workplace agreements. A parallel concern arises from the Federal Government's apparent attempt to encourage workers in the textile and clothing industry to transfer to independent contracts. That information is included in a document which I understand the Federal Minister is about to release. The Federal Government's attitude stands in stark contrast to the New South Wales Industrial Relations Act, which proceeds on the assumption that a system of appropriate and relevant minimum award conditions is essential to the protection of wages and conditions of working men and women.

The State Government recently launched an outworker code of practice which aims to prevent exploitation in the outworker industry. The Government has taken a position against the



exploitation of outworkers by pledging to do business only with companies that can show that their employees receive a fair day's wage for a fair day's work. As reported in the *Sydney Morning Herald* on Monday, only suppliers who agree to sign the code of practice will receive contracts to supply government departments with items ranging from shirts for police officers to boots for firefighters and uniforms for nurses. The New South Wales Government has spent resources on educating outworkers through the outworkers diary and launching targeted blitzes on sweatshops in the Sydney metropolitan area. Our approach stands in marked distinction to that of the New South Wales Opposition, whose only suggestion appears to be to resurrect within the Department of Industrial Relations a task force that managed only three prosecutions in 18 months.

In short, the New South Wales Government proposes to intervene in the Federal proceedings to seek to safeguard the outworker provisions in the Federal award. We suspect that the Federal Government will support the removal of those provisions. I call on Mr Reith to make clear the Federal Government's position. If the Federal Government supports the removal of those outworker provisions in the Federal award, that would be detrimental to fairness in the industry. I do not want to be unfair to the Federal Government, but one would have to say that, consistent with its general philosophy about industrial relations and award stripping, it is very likely to support the removal of these outworker provisions. If that is not the case let Mr Reith make it clear. Let him intervene in the Federal commission in support of the New South Wales Government to say that these provisions should remain in the award.

#### **RICHMOND RAILWAY STATION CRIME**

**The Hon. C. J. S. LYNN:** My question is directed to the Treasurer, representing the Minister for Transport, and Minister for Roads. I refer the Treasurer to claims by the Australian Services Union that crime at Richmond railway station is out of control because of reduced staffing and a lack of police presence. Will the Treasurer assure the House that he has not ordered budget cuts in the transport portfolio which would lead to a reduction in staff numbers and even more crime on Richmond railway station?

**The Hon. M. R. EGAN:** I shall refer the question to my colleague the Minister for Transport, and Minister for Roads.

#### **WESTERN SYDNEY AIR POLLUTION**

**The Hon. I. COHEN:** I ask the Attorney General, Minister for Industrial Relations, and

Minister for Fair Trading, representing the Minister for the Environment, what strategies are in place to insure the people of western Sydney against further summers of smog in light of the development of major housing estates and further freeways, and the Federal Government's proposal to build a second airport at Badgerys Creek. What educational programs or incentive schemes are in place to encourage Sydney commuters to leave their cars at home and catch public transport?

**The Hon. J. W. SHAW:** I undertake to refer that question to the Minister for the Environment and obtain a reply.

#### **ANTISMOKING EDUCATION PROGRAM**

**The Hon. Dr MARLENE GOLDSMITH:** My question without notice is addressed to the Minister for Public Works and Services, representing the Minister for Health. Is the Minister aware that at least 15 separate studies have shown that the poisons in tobacco smoke affect a man's sperm and that, among other consequences, a baby is 25 per cent more likely to develop cancer if its father smoked before its conception? In view of such information what does the Government propose to do about the fact that the Australian Medical Association has ranked the New South Wales antismoking education program as one of the worst in Australia?

**The Hon. R. D. DYER:** I draw the attention of the Hon. Dr Marlene Goldsmith to the question I answered a few weeks ago and the detailed account I gave of various measures that the Government had taken in the general area of improving public health through antismoking measures. I commend that answer to the honourable member because it is a multipronged approach by the Government towards dealing with this serious public health issue. I shall raise the particular matter referred to in the question with my colleague the Minister for Health and obtain a response.

**The Hon. M. R. EGAN:** I suggest that if honourable members have further questions they place them on notice.

**Questions without notice concluded.**

#### **STANDING COMMITTEE ON STATE DEVELOPMENT**

**Report: Fisheries Management and  
Resource Allocation in New South Wales**

**Debate resumed from 3 June.**

**The Hon. JENNIFER GARDINER** [5.02 p.m.]: On the last occasion I was giving the House an account of the removal of the New South Wales

Director of Fisheries, Mr Paul Crew, who was summarily dismissed by the Minister for Fisheries, Mr Martin. Mr Crew gave evidence to the Standing Committee on State Development and outlined his expertise in accounting and management and his experience with the Tasmanian fisheries department. He had been encouraged to apply for the position of Director of New South Wales Fisheries. He knew morale in the department was low and that two main tasks had to be undertaken: to structure the department adequately so it could better perform its role, and to inject proper management into the industry.

Former Minister Ian Causley asked him to chair a working group known as the property rights working group to develop a new concept for fisheries management in New South Wales. Mr Crew commenced in that position in August 1993 and was required to report towards the end of 1993. He was given a short time frame in which to develop a new concept. Mr Crew said in his evidence that the work that had preceded the development of the new Fisheries Management Act had been undertaken in total consultation with the commercial and recreational sectors of the New South Wales fishing industry. Many witnesses from up and down the coast confirmed that consultation was real and meaningful in that era.

Mr Crew and members of his staff visited many fishing ports and had public meetings with fishermen and people from the industry. At that time he believed he had a dedicated and professional staff and that the industry showed a strong preparedness to work with the department. In fact, the department developed working teams to progress aspects of the management plans for the development of the new Act.

Mr Crew was endeavouring to bring the Government and industry together in a partnership arrangement as quickly as possible because he said he always passionately believed that the industry needed to be deeply involved in any issues that affected its wellbeing and future. He said that he made it perfectly clear that this was not going to be a push by the Government or the department to deliver what they felt they should deliver; rather, that it was going to be a partnership and that the industry must have some stewardship in its future. Whilst it took a while for that consultation process to get under way, because confrontation had been of the old order, eventually he won the respect, confidence and trust of the industry.

**The Hon. Dr B. P. V. Pezzutti:** And that of his Minister.

**The Hon. JENNIFER GARDINER:** He certainly had the confidence of his Minister.

However, he said that in August 1995 he was removed very quickly from office without notice, warning or explanation. Since that time he has been approached on numerous occasions by people in industry who have asked his advice as an unofficial consultant and expressed concern about the apparent alienation of the industry from the management approaches that needed to be taken, which were written into the Fisheries Management Act that he and the Hon. Ian Causley saw pass through this Parliament. It was interesting that the Hon. I. M. Macdonald, representing the Australian Labor Party, asked Mr Crew to give the parliamentary inquiry an account of the events that led to his removal. Mr Crew said that he would try to reconstruct what may have precipitated his removal. He said that when the new Fisheries Management Act was being debated in Parliament Mr Martin, who was then Opposition spokesperson on fisheries matters, strongly opposed it. Mr Crew said:

I do not recall precisely what was in [the parliamentary record], but that it was apparent, certainly in my mind, that Mr Martin did not understand the full implications of the Act.

**The Hon. Dr B. P. V. Pezzutti:** Of course, that is quite possible.

**The Hon. JENNIFER GARDINER:** As the Hon. Dr B. P. V. Pezzutti said, it is quite possible that Mr Martin did not understand the full implications of the Act and it is quite possible also that he still does not understand. Mr Crew said:

I am not quite sure why he opposed the concept of share management fisheries, which was the plank of the Act.

I understand . . . that he was embarrassed by the debate that ensued about the Fisheries Management Act. It was reported to me through rumours from the industry—the industry seems to be a minefield of rumourmongering; that seems to be an inherent aspect of fisheries—to the effect that Bob Martin was fairly unhappy about the Act going through and that if ever he became the Minister he would seek to have it removed and remove those who were responsible for its development.

Mr Crew said he took no notice of that and that prior to the change of government he addressed public meetings. At a meeting in Hexham, which is in Mr Martin's electorate, he recalled:

. . . the industry questioned me at length about its concerns that the Act would be overturned if Mr Martin became the Minister for Fisheries. I tried to allay the industry's concerns by making comments to the effect that people in Opposition do not have accountability or responsibility for legislation and that they say what they feel they believe—and say it quite openly.

He said that he advised those people that once a person becomes a Minister of the Crown, the accountability and responsibility is squarely on his or her shoulders. He said that he told them he

believed that if Mr Martin became the Minister, as he subsequently did, he would have access to expert advice from the department about the full implications of the Act and what it meant. He said he believed that as Director of Fisheries he would be able to persuade the new Minister that what had been passed and supported by the industry was the best thing for the industry and should continue. Mr Crew said:

Unfortunately I was unsuccessful in convincing Mr Martin. In fact, at our first meeting after he became Minister he instructed me to immediately cease all work on implementing the share management component of the Act.

Mr Martin would not take advice from me on this aspect; he was adamant that he would not entertain any discussion, and we were asked to stop work immediately on implementing the share management fisheries part of the Act. [The Minister] said that he would conduct a full review of the Fisheries Management Act before any other action would take place.

There was then an account of some toing and froing with respect to some media releases, which certainly caused concern throughout the industry at the time. Mr Crew was concerned to get some positive information to the industry about where it was going and where the department was going, and if he was going to conduct a review he had to do it quickly and get people moving so that they understood precisely what was going to be involved. He said that he had difficulty in getting it under way. He suggested some terms of reference and the way that the department might proceed, and asked the Minister for advice as to whom he might want to serve on the review committee.

Mr Crew said that he was pushing the Minister all the time in an effort to understand what he wanted to do and which way he wanted to go, so that the department could keep the industry informed. Volatility, he said, was starting to build up. Fishermen were complaining bitterly to him and to the department about what was happening and where management was going. It was quite a difficult situation, he said. Coupled with that were the rumours which had persisted for some time, in fact prior to the election. He said, "Once the election was won, the fishermen told me, I was going to be sacked, and they told me who my replacement would be."

Those rumours, he said, gained strength and in late July he met with his executive board of management. He told the meeting that he could no longer tolerate the depth of the rumours about him being removed, who his replacement would be and what was going to happen to the department and some other staff members of the department. The director said that he intended to raise the issue with

the Minister to see if it could be put to bed. The industry was in an uproar about what was happening. It was having a destabilising effect on the industry and the department and on the director's ability to properly manage the affairs of the department.

Mr Crew approached Mr Martin on about 1 August and Mr Martin said to him, "Oh, so you have also heard these rumours. You cannot place any trust in rumours. You should ignore them. They have no basis. Let us get on with things." Mr Crew said, "Fine, I am happy with that." Mr Crew asked the Minister if he was unhappy with his performance and the Minister said, "No, things are going along quite well. We just want to get this review up and running. We want to get that finalised and get on with the business." Mr Crew said, "Well, thank you. That is fine. I am happy with that."

Mr Crew continued with his work, but on about 20 August, Mr Crew said, the deputy director came to him at about 4.45 p.m. and he said, "I have just had a call from Mr Martin. I am the acting director with effect immediately, and you have been removed from the job of Director of New South Wales Fisheries." Mr Crew said he was summoned to see Mr Cripps—a man we do not hear much of these days, Mr Cripps in the Premier's Department—and the next morning Mr Cripps gave Mr Crew a letter stating that he had been removed as the Director of New South Wales Fisheries and advising him that he would be placed on some unattached list, or whatever it was. Mr Crew said, "That was it. I was gone that day. I have never received an explanation. I have never been told that I was acting irregularly or unsatisfactorily in the job, so it had quite a devastating impact upon me personally. That was it. I was gone."

**The Hon. Dr B. P. V. Pezzutti:** Martin never actually spoke to him?

**The Hon. JENNIFER GARDINER:** No, he did not.

**The Hon. Dr B. P. V. Pezzutti:** What a gutless wonder. What did he say?

**The Hon. JENNIFER GARDINER:** Well, he is a gutless wonder.

**The Hon. Dr B. P. V. Pezzutti:** You would think the Minister would have taken offence at that.

**The Hon. JENNIFER GARDINER:** There was then a question with respect to the review.

**The DEPUTY-PRESIDENT (The Hon. D. J. Gay):** Order! The Minister might not take offence but there are certainly standards of parliamentary language that I remind honourable members should be adhered to.

**The Hon. B. H. Vaughan:** Could we hear what he said?

**The Hon. JENNIFER GARDINER:** I will repeat it in a moment because it is a direct quote from *Hansard*. The Hon. I. M. Macdonald asked some further questions about the review of New South Wales Fisheries, how it was structured, and what consultation was meant to go into the review, and Mr Crew, the director, gave some answers. Mr Crew said that one member of his team had asked, "Do you know Dr John Glaister?" He said, "Yes, I do." He was asked, "Do you have any problems with those?"—meaning the people who were to be appointed to the review team—and he said, "No, I think John Glaister has a lot of experience in fisheries research, particularly in Queensland."

Dr Glaister had worked in the department and Mr Crew had no problem with that, despite the fact that he had been told that Dr Glaister was going to be his replacement. The rumours had been circulating for some time. Mr Crew said, "I do not have a problem with that because I still felt, perhaps naively, I was performing sufficiently well to maintain my position, and I felt this might be an opportunity to demonstrate that to the Minister." The review proceeded and Mr Crew said it was a difficult review.

Mr Crew continued, "Prior to the first meeting of the review committee, it came to my attention that Dr Glaister had approached some people and it appeared to me that he may have been trying to unduly influence the workings of the committee." Mr Crew said he was deeply concerned about that and he went to the Minister and asked if the Minister was aware of what was going on. The Minister said no. Mr Crew told Mr Martin, "I am concerned that this has a potential to compromise the committee and I seriously suggest to you that we should consider removing him from the committee." The Minister told Mr Crew that he was not going to remove Dr Glaister, that Mr Crew should sort it out and get on with it.

Mr Crew raised the issue with Dr Glaister privately and it was interesting that he found out that Dr Glaister had been sending out some letters on ministerial letterhead, under his signature, which the director felt was quite inappropriate. They related to some of the issues he had raised with Mr

Crew as well. The review went on and the new Fisheries Act came about. It was a very good Act and it provided options for government. It did not have to be a share managed fishery option. It could have been a restricted or unrestricted fishery option. "The Act," Mr Crew said, "provided plenty of options for government to change its mind and do whatever it felt appropriate to manage fisheries."

Mr Crew's major concern was that the industry had spent some time and quite some effort, professionally and responsibly, working with the department to bring together an Act. It was looking for a share managed fisheries Act. The Minister made it quite clear that he was not going to go down that path and that they had to look at another way. The other way was the restricted fisheries path, but that still left an avenue open to progress to a share managed fishery once the restricted fishery was up and running. As Mr Crew pointed out, that basically lengthened the period in which the management regime must be in place. He knew that that would be frustrating to the industry but he thought that once they had got it together they could try to sell it to the industry.

Mr Crew said, "We had to put something there to give industry confidence about the future." It is a tragedy that there was confidence about the future at that time but that it has subsequently been smashed to pieces by the current Minister for Fisheries, Mr Martin. I come to the gutless aspect of the Minister for Fisheries. The Hon. Dr B. P. V. Pezzutti asked Mr Crew, "What is your view of the manner of management of a Minister who spoke to you, face to face, and said that he was perfectly happy with your performance and then, without warning or further consultation, sacked you?" Mr Crew said—and I draw the Deputy-President's attention to this aspect—"I thought it was horrendous and gutless." Later in his testimony I asked Mr Crew, "After you had been told of your sacking, did Minister Martin ever eyeball you again?" Mr Crew replied, "No."

I asked him, "Have you had anything to do with him since then?" and he said, "No." He said he wrote to Mr Martin seeking an extension of some weeks prior to his total termination from the New South Wales public sector, to give him an opportunity to get his affairs and family situation in order, and Mr Martin agreed to that. I certainly have not heard anyone suggest that Mr Martin's behaviour was other than that described by Mr Crew, namely, gutless and horrendous. I think it is important to place those issues on record. It is pathetic that he is still in the ministry, despite the best efforts of some of his parliamentary colleagues on the other side. He is still there and he is still butchering the fishing

industry in New South Wales. The man is a total failure and commands no respect from anyone in the industry. I will quickly go through some of the recommendations of the very extensive parliamentary inquiry.

I note that no Labor member of the Standing Committee on State Development is in the Chamber to defend Mr Martin. The Hon. A. B. Kelly came into the inquiry on fisheries right at the end of the inquiry, and I suppose we can look forward to hearing his defence of Mr Martin shortly. The first recommendation was that New South Wales and the Commonwealth finalise the offshore constitutional settlement. The Minister has responded to that and said he will work constructively with the Commonwealth. It is a pity that the Minister for Fisheries does not say anything about working constructively with the fishing industry as a whole. He has not done that so far and there is no sign that he will in the future. The Minister says he will determine eventually the recommendation that he implement share management immediately after 30 April, in fisheries whose management advisory committees request it. That is the recommendation of the MACs, but we still await a response to that matter. Obviously, the kingfish trap issue was one of the issues that triggered the whole inquiry into fisheries management in New South Wales.

**The Hon. I. M. Macdonald:** Protect yourself. Go back to sleep.

**The Hon. JENNIFER GARDINER:** A Labor member of the Standing Committee on State Development is now present in the House and honourable members await the Hon. I. M. Macdonald's defence of this pathetic Minister for Fisheries. I am glad the honourable member has turned up, because he is listed to speak. I hope he does speak. I hope he does not try to hide on the crossbench, to escape the kingfish trap. Where are the Maritime Union of Australia people? They should be in the gallery to support the Hon. I. M. Macdonald's speech.

**The PRESIDENT:** Order! The Hon. Jennifer Gardiner will address the Chair.

**The Hon. JENNIFER GARDINER:** I am sorry, Mr President.

**The Hon. I. M. Macdonald:** Be thankful for what I said.

**The Hon. JENNIFER GARDINER:** The honourable member has not said it yet. He has not contributed.

**The PRESIDENT:** Order! The Hon. I. M. Macdonald will cease interjecting.

**The Hon. JENNIFER GARDINER:** The committee still does not have a satisfactory response to the kingfish trap recommendation, and that is a continuing point of contention within the industry. There has been a completely negative response from the Minister. The beach haul fishery recommendation has been referred to the beach haul management advisory committee by the Minister for further consideration. Our committee awaits the Minister's response and trusts it will be advised of the views of the beach haul MAC. The Minister says he will have extensive consultation with operators affected by the charter boat recommendation. Again, that will be an innovation for the Minister for Fisheries, as he has not consulted with anyone else. We will wait to see whether he will consult with the charter boat operators.

With regard to the post-harvest sector, the committee recommended that fish marketing organisations should be provided with a more formal role in liaising with fishers. The department has responded through the Minister and I hope the response of the Minister which was tabled in this House is not a crack at the Fish Merchants Association, because members of the committee found the Fish Merchants Association was a forward-looking organisation and helpful to the industry, and should not be the subject of snide remarks by the Minister for Fisheries.

The committee recommended that a compulsory levy be collected from the first receiver, levied on each kilo of product caught or imported into New South Wales. The committee recommended that funds raised from the levy should be used to improve quality assurance, product development, seafood promotion, and environmental sustainability. Again, we received a negative response from the Minister for Fisheries. The recommendation with respect to benchmarking identified the duties of the enforcement branch of the department—

**The Hon. I. M. Macdonald:** Was the committee happy with the Minister?

**The Hon. JENNIFER GARDINER:** Generally speaking, no. On this occasion he said that a benchmarking project against other State fisheries agencies is already in train. The members of the committee unanimously gained a negative impression of the Minister.

**The Hon. I. M. Macdonald:** That is wrong.

**The Hon. JENNIFER GARDINER:** It was a unanimous impression.

**The Hon. I. M. Macdonald:** Did we do that in the committee?

**The Hon. JENNIFER GARDINER:** The answer is yes. There is silence from the Hon. I. M. Macdonald. The Minister says the benchmarking project against other State fisheries agencies is already in train. We are now getting somewhere. Honourable members look forward to monitoring progress. The committee made a recommendation with respect to the volunteer fishing liaison program. The committee inspected the operation of the pilot program in Western Australia and honourable members were very impressed with it. The Minister has said a pilot scheme will now commence in New South Wales, and we are happy that the Minister has taken the lead from the committee on that.

The committee has alerted Parliament to the Minister's and the Government's double standards in imposing a general recreational fishing licence on inland but not coastal recreational fishing. It has been noted previously that the Minister represents a coastal electorate and one wonders at his conflict of interest in this matter. It is good to see the Hon. I. M. Macdonald cracking his whip. He demands his place at the podium so that he can defend his Minister for Fisheries. The recommendation calling for an amendment to the restricted fishery regulations to provide for recreational allocation of TAC for restricted fisheries based on the recreational component of the catch for each fishery—with any consequential financial contributions to be drawn from the recreational fishing licence trust which the committee recommended be established—is a good recommendation. Again, we had a negative response from the Minister.

Another negative response was received to the recommendation that the regulations be amended regarding the purchase of part of any recreational shareholding by commercial fishers. The committee called upon the Government to release its coastal policy without further delay. The Minister says that that has been released—no doubt prompted by our report—but the policy has not been welcomed throughout New South Wales coastal regions. In fact, I challenge any member of the Government to tell the House what is in the coastal policy of the New South Wales Government. The committee recommended some performance measures for the

Office of Natural Resources and Policy review. Again, a half-baked response was received from the Minister.

The committee conducted a number of inspections of and took particular interest in areas affected by acid sulphate soils. This is an extremely serious issue up and down the coast and elsewhere, but the committee was particularly concerned with the problem on the coast. Again, we are waiting to see if we receive any gritty response from the Carr Government. The committee requested that the fishways program be adequately funded to enable the removal of unnecessary barriers to fish migration and the installation of necessary fishways. Again the question must be asked how much progress has been made in making funds available to expedite the work of New South Wales Fisheries and the Department of Water Conservation on methods of ameliorating the thermal effects of large impoundments. The committee visited Lake Burrendong and Burrendong Dam to look at the problems arising there that are relevant to this issue. The Government has said that some funds have been made available recently to New South Wales Fisheries from the water irrigators fund to conduct research on how the thermal impacts of weirs can be ameliorated. That research is being undertaken at Burrendong, so we can say there is a bit of action there.

The recommendation on the river bank willow eradication program has been referred to the Department of Land and Water Conservation. I would have expected it to be referred to the department before the committee made its report. Committee members await the department's response to that. The committee was appalled at evidence received in relation to aquaculture, a matter I have referred to in a previous speech in the House. We await the change of government so that we can pick up the pieces following this Government's lessening in priority of aquaculture development throughout New South Wales. The Government has made a very unimpressive performance in aquaculture and this State has fallen behind others.

The integrity of research undertaken by the Director of Fisheries was a matter of serious concern to all committee members, particularly the former chairman of the committee, the Hon. Patricia Staunton. The response missed the point. The committee was extremely concerned about the issue and the director's right of veto on research papers. Committee members believe that integrity in research has not been satisfactorily addressed in the

Minister's response. There is still great cynicism in the fishing community on that issue. The committee recommended that Aboriginal community licences be introduced and that general purpose licences be developed to accommodate the indigenous fishing methods of the Aboriginal commercial fishers in the assessment of catch history. The Minister responded that the needs of Aboriginal people are currently being assessed through the development of the indigenous fishing strategy.

The Minister's response is extraordinary, given that the fishing strategy was being developed at the time of the inquiry. There was some confusion between witnesses from various departments about progress on the strategy, so it is obvious that not much progress has been made in that regard, either. The Minister has said that the New South Wales Aboriginal Land Council and the Department of Fisheries are working closely with each other, but their relationship would need to be much closer than was evident during the inquiry. The committee recommended that the Fisheries Management Act be amended to provide for the provision of adjustment assistance and/or the payment of compensation to commercial fishers who either are excluded from their fishery as a result of a resource allocation decision—for example the establishment of a marine park—or wish to surrender their endorsement. The committee requested specific compensation and structural adjustment packages to be determined by the Resource and Conservation Assessment Council, RACAC.

Committee members took particular note of this issue as regards Western Australia. Western Australia has in place a very satisfactory adjustment program, instituted by the National Party. The New South Wales Government has said that it will not amend the Fisheries Management Act in that way and gave a very equivocal response to that recommendation as well. It seems that the Government's policy is for ad hoc decision making on a case-by-case basis. Will there be any benchmarking? Will there be transparency in the making of decisions on adjustment pay-outs? The committee needs to monitor that issue very closely.

The committee's final recommendation was that a fishing industry structural adjustment unit of the Department of Fisheries be established to determine, in consultation with RACAC and affected stakeholders, individual structural adjustment packages. The Government must ensure that this unit is adequately funded. The Government responded that it had formed an interdepartmental committee to consider options for structural adjustment in commercial fisheries, including likely sources of

funding. It said that the committee had met once—no doubt so that committee members could say hello to each other and direct that that particular line be incorporated in response to the Parliament. The committee needs to monitor progress on the implementation of that recommendation also.

We all know that the present Minister for Fisheries is the least successful of all Ministers in the Carr Government in gaining the Parliament's support for his administrative moves. As Mr Jeff Angel told the committee, Mr Martin is at the bottom of the pile of Ministers, he is in a class of his own. In terms of the Minister's failures, he has had more of his regulations rejected by this House than the Hon. Dr B. P. V. Pezzutti has caught fish. The series of rejections seems to have deeply unsettled the Minister, as was evident a couple of weeks ago, but this Minister has a lot to be unsettled about. The fact of the matter is that Mr Martin is an horrendous Minister, as his former Director of Fisheries described him. I believe that the sooner he goes, the better.

**The Hon. D. F. MOPPETT** [5.35 p.m.]: I congratulate the committee members on this seminal report, the content of which is far ranging. I believe that the implications of the committee's research and recommendations will be very significant. This report was obviously difficult for Government members of the committee. In many areas the investigations were directed at seriously evaluating policy moves of the present Minister for Fisheries. It must have been very difficult for the former chairman of the committee, the Hon. Patricia Staunton, and other members to listen to the evidence, which criticised the operations of the department and, more particularly, challenged policy directions followed by the Minister.

This evening I do not intend to criticise the Minister. My views on his policies are well known. Recently I had occasion to call into question some of the Minister's personal relationships, and I do not want to indulge in that this evening. I point out to honourable members the work that has been done by the committee, first in describing the history of fisheries in New South Wales particularly and in Australia generally. That was important to set the background to understand the crisis that had developed in New South Wales Fisheries up to the enactment of the Fisheries Management Act 1994. The fisheries are a finite resource. Certainly they are a renewable resource, but because of the pressure of increasing fishing activity with our growing population, particularly subsequent to World War II, it was obvious that fish stocks were being depleted at a rate that could not continue.

The Fisheries Management Act was a bipartisan move. It heralded a new regime that was supported by fishermen, and I have referred to that on many occasions. There has been great controversy and the committee was given this reference of inquiry because it seemed that the Minister and the Government were departing from the essential thrust and drive of the Fisheries Management Act. The report contains some wonderful reviews of what is happening in fisheries in other States. All honourable members should read the section on aquaculture. It is clear, and is backed up in the report, that if we are to have a growing fishing industry and meet the demands for fish as part of our diet then we will need to embark on a widespread program to encourage aquaculture. Other States have beaten New South Wales to that. It would not be an exaggeration to say that this State has been left on the starting blocks. States such as Tasmania and South Australia have moved ahead and have substantial aquaculture industries.

Most of us would realise that salmon has become a common commodity in commercial dining rooms everywhere around Sydney, including the parliamentary dining room. It is remarkable to think that salmon, once regarded as a delicacy imported from Canada, is now supplied by and large from Tasmania. New South Wales has to solve its planning and environment problems, and determine where the sites will be. In addition to a longstanding oyster culture, New South Wales will also have aquaculture on a much wider scale to supply our own needs. In all environmental matters we have a responsibility to be self-sustaining in our foodstuffs as far as possible. There is the opportunity for a tremendous export industry if only we could overcome the hurdles and, more particularly, the inertia of the present Minister.

There are excellent sections in the report on inland fishing, which I think is slightly less controversial than the current management of ocean fishing and particularly the commercial fishing industry in New South Wales. I thank the committee for their diligence and hard work in putting the excellent report together. The Hon. B. H. Vaughan questioned me about the state of the pondage in the Burrendong Dam, which we all regret is extremely low, scarcely able to meet stock and domestic supplies for the coming year.

**The Hon. B. H. Vaughan:** A big problem for the Macquarie marshes.

**The Hon. D. F. MOPPETT:** Yes, a problem for the marshes. It was interesting to note the committee's report on what was to most people the

unexpected effect dams have on our inland rivers of supplying water after it has been in storage at a markedly lower temperature—not just one or two degrees. That section of the report alone is worth reading, quite apart from the significant political issues addressed by the committee and contained in the report. The Hon. Jennifer Gardiner mentioned, for instance, the controversy about the kingfish traps and our efforts to disallow the regulation banning kingfish traps.

Honourable members must remember that although the committee basically has a government majority, its findings could in no way support the decisions of the Minister. As honourable members will remember, it was largely at my instigation that the reference was given to the committee. For those who want to read the critique of the present administration and the way in which the essential direction of the Fisheries Management Act has been subverted—that is not too harsh a word—a story runs throughout the report of vulpine manoeuvring by the Minister to avoid his mandate and indeed his constraint to work within the Fisheries Management Act.

The Minister has taken every dodge and every turn to avoid the obligation that I believe this Government has to operate the fishing industry according to the Fisheries Management Act. That stands as a serious criticism of the policies that the Minister is pursuing, and at the end of it all he is left abject and condemned by this report.

**The Hon. A. B. KELLY** [5.43 p.m.]: I thank all honourable members who spoke in the debate, who I know have a keen and genuine interest in fishing matters, and were involved in the long investigation leading to the report. The Hon. D. F. Moppett referred to Lake Burrendong, which is very close to my home and my farm—probably five kilometres as the crow flies. I am pleased to report to the honourable member that Burrendong Dam has had a 100 per cent increase in its water storage and has now topped 3 per cent.

As a child I swam in Macquarie River in what was called the shallows when the water temperature was quite pleasant for much of the year. Few people can now swim in the river just below the dam because of its cold temperature, and that is of serious concern. One can understand why the fish have a problem breeding and living in that environment.

I was appointed to this committee at the end of its investigations but prior to the report being written. I was pleased to see the work done in the



area from which I come and in Lake Burrendong in relation to the effect of cold water in dams. The Hon. Dr B. P. V. Pezzutti carped on for nearly two hours and made a number of accusations. However, at one stage he said that the chairman acted without fear or favour, and for that I thank him. I presume he was referring to me.

In the committee deliberations the Hon. Dr B. P. V. Pezzutti fought strongly to delay the tabling of the report to investigate the new Fisheries Management Amendment Bill introduced by the Government. The committee did not agree with him. As it turns out most of the amending bill was not passed. Only the environmental measures, which both he and the Hon. I. Cohen supported, were passed in the Legislative Council. Therefore it would have been fruitless had the Hon. Dr B. P. V. Pezzutti got his way to delay the bill. The Hon. Dr B. P. V. Pezzutti also spoke about the cost of this inquiry. His share of those costs amounted to something in the order of \$50,000 because he responsibly attended most of the country trips—

**The Hon. Dr B. P. V. Pezzutti:** I attended every meeting.

**The Hon. A. B. KELLY:** —and all the meetings. For the past five or six years the general rule of thumb has been that in the commercial world a consultant's report costs \$1,000 per page. All the speakers have called this a very good report. If one does the calculations, the report actually cost 20 per cent less than the industry commercial standard. Therefore I take this opportunity to thank the committee staff for their excellent work in producing the report at 20 per cent below commercial rates.

The Government's response has been alluded to, and obviously honourable members have read the response to the report in a different light to how I have. From a quick examination of the 33 recommendations I found that the Government has basically accepted 18 responses, had two bob each way on nine, and rejected six. I also thank all the members of the committee who were involved in producing this report, and the members who spoke in the debate.

**Motion agreed to.**

*[Personal Explanation]*

**The Hon. Dr B. P. V. PEZZUTTI,** by leave: I wish to make a personal explanation. The Chairman of the Standing Committee on State Development, the Hon. A. B. Kelly, said that I said in this debate that the chairman of the committee

acted without fear or favour, and took that to mean himself. No reading of my speech could indicate that that was the case. I was referring to the previous chairman, the Hon. Patricia Staunton, resigned. I would like the record to reflect that.

## STANDING COMMITTEE ON LAW AND JUSTICE

### **Report: Motor Accidents Scheme (Compulsory Third Party Insurance) Second Interim Report**

**Debate resumed from 31 March.**

**The Hon. B. H. VAUGHAN** [5.51 p.m.]: One of the most important features of the Report on the Inquiry into the Motor Accidents Scheme (Compulsory Third Party Insurance) Second Interim Report is the reference to structured settlements. On 25 September last year I addressed this House in detail on the benefits of structured settlements to all parties involved in compensation for victims of motor accidents, particularly people who had suffered serious and long-term disabilities. I remind the House that structured settlements represent a method of compensating personal injury victims through a guarantee of regular instalments of a compensation award for life or a fixed term, in full or partial replacement of a lump sum award. Regular payments are secured by means of an annuity purchased from a life insurance company.

Currently in New South Wales, as honourable members would realise, all motor accident compensation payments are made by way of a single lump sum payment. I am convinced more than ever, as are other members of the committee, that the lives of those who are most seriously injured in motor accidents—particularly infants and those who through an acquired brain injury as a consequence of the accident lose the capacity to manage their own affairs—would be significantly assisted by a structured settlement. In the second interim report the committee made its final recommendations in support of the use of structured settlements in appropriate personal injury cases. In particular, the committee recommended that the Government adopt the submission prepared by the Motor Accidents Authority relating to Federal tax reform, which would be necessary to facilitate structured settlements in Australia.

I am therefore pleased to report to the House that substantial progress has been made in this regard. The New South Wales Government has formally submitted the reform proposal to the Federal Government and I understand that it has

been favourably received. I specifically thank Mr Dallas Booth, General Manager of the Motor Accidents Authority, and Miss Jane Ferguson, the structured settlements consultant to the Motor Accidents Authority, for their energy and vision in explaining and promoting the concept of structured settlements to key people at a Federal level. It is now incumbent on the Federal Government to introduce the necessary tax reforms. I strongly encourage all honourable members to take up this issue with their Federal colleagues.

This matter must not be allowed to slip off the policy agenda because it amounts to giving a tax exemption to periodic payments under the structured settlements scheme. The committee will do all it can to promote structured settlements until they become a viable option for motor accident victims. The committee was also concerned about section 45 of the Motor Accidents Act. That section lies at the heart of what one might describe as just treatment for motor accident victims. Section 45 provides that it is the duty of the insurer to endeavour to resolve a claim by settlement or otherwise as expeditiously as possible. Under section 45 an insurer must, after liability has wholly or in part been admitted by the insurer, make all reasonable and properly verified payments to the claimant in respect of hospital, medical, pharmaceutical, rehabilitation and respite care expenses incurred in relation to the injury sustained.

A condition of third-party insurers' licences is that they comply with section 45. However, the committee encountered a most grievous case which concerned an accident in 1993 to a child aged three months. Jackson Paul Stubbs was profoundly injured in a motor vehicle accident when he was a passenger in a car owned by his father and driven by his mother. Jackson's parents were killed and the injuries sustained by Jackson included severe closed head injuries which left him a severely affected spastic quadriplegic. Jackson's next of kin, his grandmother, became his primary carer and sued for damages in late 1996. Disputes arose between the NRMA and Jackson's grandmother to the extent and cost of Jackson's need for care and the extent of his entitlements under section 45. Jackson requires continuous care that is beyond the capacity of his grandmother, who suffers from an orthopaedic condition. This condition makes it increasingly difficult for her to lift, carry or reposition the child as he steadily grows in size and weight.

Interim payments of compensation are critical to that child. His grandmother is Mrs Judy Stephens of Oatley, Sydney. If ever there was a saint, Mrs Stephens is one; she is a person of compassion,

courage and intense love for the child. The matter went before the Supreme Court and was heard by Justice John Dowd. Justice Dowd found that section 45 does not set up positive statutory duties under which a victim may take action against an insurer for payment or provision of services. Any layman reading the report of this case would be disturbed by the apparent unfairness of Justice Dowd's interpretation of section 45. But without doubt the judge was interpreting the law as it stands. Indeed he voiced his compassion in this case but could do nothing about it. As the law stands, section 118A of the Motor Accidents Act provides that proceedings for breach of an insurers' duty to comply with the condition of the licence may only be brought by the Motor Accidents Authority.

An appeal was heard by the Court of Appeal, which agreed with Justice Dowd's interpretation of the law. That was the law and that was that: only the Motor Accidents Authority may initiate proceedings against an insurer for dereliction of the insurers' duty. However, the President of the Court of Appeal, Justice Mason, stated that if the Motor Accidents Authority failed to properly supervise an insurer's behaviour, a person with sufficient interest, for example Jackson's grandmother, could ask the court to hold the Motor Accidents Authority accountable for that dereliction of its duty to supervise the licensed insurer under the Act. The situation appears to be particularly clumsy. It is time-consuming and an expensive way to secure an individual's right to proper and fair interim payments under section 45.

If an individual feels aggrieved, under this section he would have to apply consequently to the Supreme Court for an order compelling the Motor Accidents Authority to comply with its supervisory duty. The Supreme Court may then require the authority to initiate proceedings against an insurer for a breach of the insurer's duty under section 45. The law and justice committee considers that the more appropriate course of action is to amend sections 45 and 118 to give victims of motor accidents the immediate personal right to take proceedings against an insurer for a breach of its duty. In general I commend to the House the concluding remarks of Justice Powell of the Court of Appeal in the Stubbs case. Justice Powell said:

Given what appears to have been the intention of the Legislature that the scheme established under the Act should, in a case such as this, make effective provision for the speedy supply to the injured of benefits in the nature of services the subject of section 45(2) of the Act, the means which the Act has provided is unsatisfactory and that in the circumstances the matter should be referred to the Government to consider whether some better means to achieve that intention might be devised.

The Motor Accidents Authority has since released a discussion paper outlining draft procedures for the investigation of alleged breaches of section 45.

**Pursuant to resolution business interrupted.**

## **PUBLIC SECTOR MANAGEMENT AMENDMENT BILL**

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

**Suspension of standing orders agreed to.**

### **BILLS RETURNED**

The following bills were returned from the Legislative Assembly without amendment:

Legal Profession Amendment (Solicitors' Mortgage Practices) Bill  
Administrative Decisions Tribunal Legislation Amendment Bill  
Young Offenders Amendment Bill  
Courts Legislation Amendment Bill

## **CRIMES LEGISLATION AMENDMENT BILL**

### **Second Reading**

**Debate resumed from 3 June.**

**The Hon. J. P. HANNAFORD** (Leader of the Opposition) [6.03 p.m.]: The coalition does not oppose the Crimes Legislation Amendment Bill, which makes a number of procedural amendments to the Bail Act, the Children (Criminal Proceedings) Act, the Crimes Act, the Criminal Appeal Act, the Criminal Procedure Act and the Justices Act. I am informed that the Law Society and the Bar Association have expressed concerns about this bill, but as I have not received details of those concerns I am unable to refer to them.

The question arises, however, as to whether the Bar Association and the Law Society were adequately consulted, because whenever there is consultation with those organisations they are normally quick to respond or seek to elucidate matters. The Council for Civil Liberties responded to my inquiries and said it has no objection to most of the issues raised. It did express one reservation about the amendment to the Crimes Act. I do not embrace that reservation and I am happy to support the Government on that amendment, but I will put it on the record. In a letter of 15 June 1998 the secretary of the Council for Civil Liberties said:

#### *Amendment of Crimes Act 1900*

This seeks to abolish a wife's common law immunity from prosecution as a criminal accessory to her husband. We

strongly oppose this as (i) a public intrusion into the trust and personal commitment of a marriage and (ii) an untimely invitation to further corrupt police conduct. With the police focus on securing guilty pleas from mainly male defendants, a significant corrupt police practice in the pre-trial process has been offering to drop charges against a female partner in return for a guilty plea from the male. We do not accept the Attorney General's claim that this section is motivated by anti-sexism. If there were a genuine desire to remove gender bias it could be done by affording husbands the same immunity as wives. We say that introducing a new level of potential criminal complicity into a married relationship will do nothing socially constructive, but will expand the opportunities for improper police inducements. We urge you to strongly oppose this section.

I do not understand the logic of the argument. At present a male partner is liable for an offence, and until recently people assumed that a female partner was similarly liable for an offence. It is only recently that the common law, which has always existed and has been immutable, has been re-nounced. Consequently, a wife may be able to escape liability for being an accessory after the fact to a criminal matter, whereas the husband could never be regarded as an accessory after the fact or be able to escape liability as being an accessory after the fact.

The Opposition is of the view that in these days of equality it is appropriate that the wife be treated equally as to liability for criminal offences. The concept of a wife being a chattel is no longer appropriate. I understand what the Council for Civil Liberties is suggesting in terms of police being able to pursue corrupt conduct in these areas, that is, if a wife is charged with being an accessory the police could seek to induce a guilty plea on the basis that they would allow her husband to go free. There is potential for corruption in that situation, and equally so if a son or daughter is an accessory. The police could say that the son or daughter would not be charged with being an accessory if the parent pleads guilty.

In these days of cynicism some might say that a parent would be more likely to plead guilty in order to protect a son or daughter than to protect a spouse. However, I am not that cynical! I do not regard that as a justified argument for not supporting this change. The Attorney has outlined his other amendments in detail. I do not see any benefit in further analysing those amendments other than to acknowledge that the changes will overcome unforeseen irregularities that have developed within the law. Such changes sometimes arise as a necessity to further clarify or improve the law. It is only through changing the Crimes Act that there is a major change to pre-existing law which draws necessary comment. I have made those comments and indicate that the coalition supports the bill.

**The Hon. ELISABETH KIRKBY** [6.11 p.m.]: As the Attorney General outlined in his second reading speech, the Crimes Legislation Amendment Bill will amend a number of Acts dealing with criminal law and procedure. The proposals enshrined in this bill come from a number of sources, including the Director of Public Prosecutions, the judiciary, the Sheriff's Office, the Legal Aid Commission and the Environment Protection Authority. Suggestions for reform were put to the criminal law review division of the Attorney General's Department and form part of an ongoing consultation. As the Leader of the Opposition explained, the intent of the bill is to abolish the common law rule granting immunity to a wife against conviction for being an accessory after the fact to a felony committed by her husband. I am informed that this rule dates back in English common law to the year 1557. I am pleased that the Attorney General's Department is now acting on these matters speedily!

The bill will also amend an anomaly in the Criminal Procedure Act 1986 which provides that an accessory charge cannot be heard summarily whereas the main offence can. The bill further amends that Act to provide that a trial court, at the completion of hearing an indictable offence, may deal with less serious but related offences, known as back-up charges, rather than having to remit them to the Local Court to be finalised. This is an important amendment and should speed up court procedures fairly considerably.

The bill will amend the discretionary direction given by a justice under section 48E of the Justices Act 1902 relating to the attendance of a witness in proceedings relating to an offence involving violence. The present test is substantial reason for the witness to attend and the amendment will change that to the stronger test of special reasons. Finally, the bill amends the Criminal Appeal Act so that the procedure for referring questions of law to the Court of Criminal Appeal is the same for all courts. These amendments are much needed and will obviously clean up various anomalies in Acts pertaining to the administration of criminal justice in New South Wales. On behalf of the Australian Democrats I am happy to support the bill.

**The Hon. Dr MEREDITH BURGMANN** [6.14 p.m.]: I should like to comment briefly about that aspect of the bill that abolishes the antiquated common law granting immunity to a wife against conviction for being an accessory after the fact to a felony committed by her husband. It seems strange that women should support this aspect, because it was a plus for women. We continually face the

problem that arises if people of today try to get rid of those discriminatory sections of old law which have provided gains for women in the past. We faced this problem when there was a push to change the retirement age for women. One of the few advantages women had in the past was that they were able to retire at an earlier age than men, but it was undeniably discriminatory against men to allow women to receive an early pension.

I support this change. Women were originally granted immunity because it was believed that they may have been forced by their husbands to help them after they had committed a felony. It is an ongoing problem that wives and partners are often physically afraid of their spouses and believe they have to support them. However, thank goodness, New South Wales judges and magistrates still have judicial discretion to accept a plea that a woman was frightened into becoming an accessory after the fact to a felony. The original law was discriminatory in that it applied only to a wife and not to a husband. I recognise that the need is greater in regard to a wife, and I trust this Government's attempts to modernise the law and remove discriminatory procedures will continue.

**Reverend the Hon. F. J. NILE** [6.17 p.m.]: The Christian Democratic Party supports the Crimes Legislation Amendment Bill. However, after hearing the comments of the Hon. Dr Meredith Burgmann, we share her concern about the abolition of what the Government has regarded as an antiquated common law rule granting immunity to a wife against conviction of being an accessory after the fact to a felony committed by her husband. If that provision is abolished, is the common law right of a wife to say, "I do not wish to give evidence against my husband" removed?

**The Hon. J. W. Shaw:** No, it is not.

**Reverend the Hon. F. J. NILE:** Is it only in the case of a felony committed by the husband?

**The Hon. J. W. Shaw:** That is right.

**Reverend the Hon. F. J. NILE:** The bill contains a number of changes that have come from different sources within the administration of the justice system, including the Director of Public Prosecutions, the judiciary, the sheriff, the Legal Aid Commission and the Environment Protection Authority. Suggestions for reform were put to the criminal law review division of the Attorney General's Department as part of the ongoing consultation about the criminal justice system between that division and various criminal justice

bodies. This bill will make miscellaneous amendments to various Acts such as the Bail Act 1978, Children (Criminal Proceedings) Act 1987, Crimes Act 1900, Criminal Appeal Act 1912, Criminal Procedure Act 1986 and Justices Act 1902.

The amendments appear to improve the legal system and provide further protection in a number of areas. For example, in the Criminal Procedure Act the amendment will strengthen the protection of all victims of sexual and violent crimes by providing that the test for all offences under which they may be required to give oral evidence at committal proceedings is the "special reasons . . . in the interests of justice" test rather than the weaker "substantial reasons" test. That amendment is certainly an improvement. We support the bill.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [6.20 p.m.], in reply: I thank honourable members for their contributions to the debate and for their general support for the bill, which is of course a collection of sensible and non-contentious provisions of our criminal law. One of the matters that has been highlighted by speakers in the debate concerns the proposed revision of the immunity of a wife in relation to certain felonies or acts associated with felonies. The impetus for this change was to be found in a judgment of the Court of Criminal Appeal of 25 July 1996 in relation to *The Queen v Cal*, where the Court of Criminal Appeal made it clear that the law of New South Wales presently provided that a wife cannot be convicted as an accessory after the fact of a felony committed by her husband.

The court commented that the abolition of such a defence is unquestionably a matter for the Legislature. The court drew attention to that provision, that ancient common law protection, and indicated in a sense that Parliament ought to consider it. That is what the Government has done in relation to this bill. It is anomalous, it is sexually discriminatory and it is inappropriate in the 1990s. This bill will abolish that particular defence, in the interests of fairness. I thank honourable members for their general consideration of what is a series of appropriate amendments.

**Motion agreed to.**

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

[*The Deputy-President (The Hon. Jennifer Gardiner) left the chair at 6.24 p.m. The House resumed at 8.00 p.m.*]

## **LOCAL GOVERNMENT AMENDMENT (PARKING AND WHEEL CLAMPING) BILL**

### **Second Reading**

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.00 p.m.]: I move:

That this bill be now read a second time.

I seek the leave of the House to have the second reading speech incorporated in *Hansard*.

### **Leave granted.**

The primary objectives of this bill are to ban the wheel clamping of vehicles, ensure that vehicles are not detained contrary to law, and clarify that private landowners may enter into agreements with councils for the purposes of councils enforcing parking restrictions on their land. The cumulative effect of the measures will be the creation of a fair, transparent, flexible and accountable regulatory regime that meets the needs of both motorists and private landowners. The proposals contained in the bill represent the Government's response to the widespread public concern that currently exists about the unscrupulous conduct of wheel clamping operators purporting to perform parking enforcement services on private land.

As honourable members will recall, in 1997 the Government commissioned a special inquiry into wheel clamping. This was conducted by the Hon Joe Riordan. The inquiry found that people whose vehicles had been wheel clamped were commonly being forced to make on-the-spot cash payments of up to \$285 or more to have the wheel clamps removed from their vehicles or face further substantial tow-away and impounding charges. The inquiry also heard complaints from many motorists about the lack of adequate warning signs on land controlled by the wheel clamping operators, and concluded that the activities of the wheel clampers appeared to be focused more towards making money than controlling parking.

Instances were reported of persons of very limited financial means being stood over by aggressive wheel clamping operators demanding immediate cash payment. I understand that the wheel clampers do not release the vehicle until all the fees and charges are fully paid in cash. If the release fee is not paid immediately, the person is simply left stranded. Often the motor vehicle is then towed away and further fees and charges are imposed. No consideration is given to whether the person is elderly, sick or disabled, unemployed or in severe financial stress. No consideration is given to whether it is late at night, if public transport is unavailable, whether there are ATMs in the area from which to obtain cash, or whether the person may be vulnerable and placed at great personal risk if deprived of his or her vehicle. The behaviour of many of the wheel clamping operators can only be described as unreasonable and oppressive. It cannot be allowed to continue.

By the same token, the Riordan inquiry also found that the lack of clarity in the law relating to vehicles trespassing on private land had been exploited by some inconsiderate motorists. The inquiry received many submissions from occupants of residential flat buildings, business owners, and a range of other persons, concerning the inconvenience and

problems of cars parked illegally on their property. The Government subscribes to the view that landowners have a right to be adequately protected by law from the inconvenience of cars parked illegally on their property. Businesses that have dedicated customer parking spaces should not have to suffer a loss in trade just because a lazy or inconsiderate motorist decides to use those parking spaces for other purposes. Achieving an effective, workable solution to the problems of wheel clamping and vehicle trespass on private land must, therefore, also involve introducing safeguards for the rights of landowners. As stated earlier, the bill now before the House aims to achieve an equitable balance between the interests of both motorists and landowners.

I shall now turn to the specific provisions of the bill. These can be divided into two main parts: those provisions which seek to protect the interests of motorists, and those provisions which seek to protect the interests of landowners and occupiers. So as to protect the interests of motorists, the bill makes the immobilisation of a vehicle by means of wheel clamps an offence punishable either by way of a penalty notice of \$300 imposed by police or a council, or by prosecution of the offender by summons, in which case the maximum fine which may be imposed by the court will be \$2,200. These levels of penalties should provide a very strong deterrent against illegal wheel clamping. However, wheel clamping will not be an offence where it is performed by persons who want to secure their own vehicles against theft or misuse. This discretion will be important to a wide range of vehicle owners and users. For example, councils and public utilities often need to secure heavy machinery on remote job sites. Should it be necessary to ban other forms of vehicle immobilisation, this will be achievable by means of regulation.

The bill seeks to further protect the interests of motorists by also making the unlawful detention of a vehicle an offence. Accordingly, it provides that a person who detains a vehicle will be required to release that vehicle on demand to any person having lawful right to the possession or control of the vehicle. The bill also prohibits a person who has detained a vehicle from demanding any payment for or in relation to the release of the vehicle. No longer will it be possible for landowners, or wheel clamping operators acting on their behalf, to extort substantial cash payment release fees from motorists.

To bolster these measures, the common law remedy of distress damage feasant is to be abolished to the extent to which it applies to trespass on land by vehicles. In other words, an occupier of land will not be able to detain a vehicle on the land until compensation is paid for any damage done unless permitted by other lawful means. However, the provisions relating to vehicle immobilisation will not affect any right a person has to immobilise a vehicle under a court order or under a credit contract with respect to the vehicle. Moreover, the provisions relating to the detention of a vehicle will not affect any right to detain a vehicle that a person may have under the Impounding Act or any other Act, under lien, under a court order, or under an agreement or arrangement in force with respect to the vehicle.

To remove any possibility of misunderstanding, I would like to point out that the foregoing provisions will not affect the operations of private parking stations and similar commercial undertakings that allow motorists to park on the basis of the payment of a fee. Parking station operators will be able to continue to impose parking fees and receive payment of parking fees from motorists in exactly the same way that this currently occurs. I might also add that these provisions will

not impinge on licensed private security industry operators from continuing to provide legitimate security industry services to landowners.

The bill seeks to protect the interests of landowners and occupiers by providing that owners of private land may enter into an agreement with their local council under which all or part of the land can come under the local council's control for the purposes of parking. Once an agreement is finalised, the council would perform parking control functions in respect of the land in generally the same way that it controls parking within its own free parking areas. That is, the council's parking enforcement officers would monitor compliance with parking restrictions or prohibitions, and issue penalty notices where offences occur. The bill provides that where private land is placed under council parking control, the offence of failing to comply with a notice shall be punishable either by way of a penalty notice or via prosecution of the offender in the same manner as currently applies in respect of parking offences in council free parking areas.

Landowners should also recognise that unauthorised parking can be prevented or discouraged by means other than wheel clamping. They can take some responsibility when unauthorised parking is a problem by means ranging from signs to fencing and gates. It is envisaged that not all landowners across the State will need to seek the additional level of deterrence against unauthorised motor vehicles parking on their land that would be afforded by placing that land under council control.

In acknowledging that not all private land needs to be placed under council parking control, it is also recognised that cases will arise where a vehicle is trespassing on private land that is not subject to council parking control. In these situations, other remedies can be taken depending on the particular circumstances. For example, if the vehicle is abandoned or unattended, resort may be made to the Impounding Act 1993 provisions to have the vehicle impounded by the council of the area. If the vehicle has been left on a footpath, or in a driveway, or on the street in such a position as to obstruct the proper flow of traffic or to constitute a danger to pedestrians, either the council or the police may order the immediate impounding of the vehicle under the Impounding Act or the Traffic Act, as the case may be.

Provision also exists under legislation governing the State Emergency Services, fire brigades and the like, to remove vehicles and obstructions in particular circumstances. The broad effect of the bill is to merge the administration and enforcement of parking restrictions on private land into councils' existing powers to regulate parking. The result will be that these functions will be carried out in generally the same way that many councils already carry out parking enforcement in malls and shopping centres.

Importantly, under the provisions of the Local Government Act, a vehicle owner is absolved from liability where that person can provide satisfactory evidence that his or her vehicle was a stolen vehicle at the time a parking offence was committed. That safeguard will carry over to parking offences on private land subject to a council parking agreement. In keeping with the non-prescriptive nature of the Local Government Act, the bill does not seek to prescribe in detail each of the administrative procedures that councils will employ in giving effect to the bill's objectives relating to private land parking control agreements. Instead, the Department of Local Government will provide general guidance to councils in this area.

The department indicates that the guidelines it intends to provide to councils will be based around the principles of fairness, transparency and accountability. For example, the department intends to emphasise the need for councils to ensure that parking agreements only proceed where the landowner has agreed to erect sufficient notices and signs warning motorists about the parking restrictions, or prohibitions, that apply in respect of the land. Councils will also be encouraged to stipulate reasonable standards for fencing, gates, barriers and the like. This recognises that landowners should take reasonable measures to minimise the scope for unauthorised parking.

Most motorists are law-abiding persons who will observe parking restrictions and prohibitions, provided that the relevant notices and signs are prominently displayed and are readily visible. It is envisaged that, in practice, the requirements relating to notices, signs, and gates, et cetera, will generally be reflective of both the council's and the landowner's needs, as well as factors such as the physical characteristics, zoning, location or use being made of the land. For example, at the landowner's request, notices or signs advising motorists of the terms and conditions for parking on land comprising a doctor's surgery might stipulate that certain parking spaces are reserved for medical practitioners and others for patients visiting the surgery, the parking time limitations in force, and the penalty for parking offences, et cetera. I anticipate that the measures that are contained in the bill will gain the support of the local government sector. Moreover, these measures are certain to be welcomed by all fair-minded members of the community. I commend the bill to the House.

**The Hon. D. J. GAY** [8.01 p.m.]: The Opposition does not oppose the bill. It notes that many residents of New South Wales have been calling out for the practice of wheel clamping to be banned. Like other honourable members, I have heard many and varied horrific stories of unscrupulous, aggressive operators clamping wheels of vehicles and demanding large sums of money, leaving vehicle owners stranded, often in perilous conditions. At one stage it seemed that anyone with a welder and the ability to put together a set of wheel clamps was on a handy little earner. It did not matter to them who the people were or where they were parked. They could be pensioners—

**The Hon. J. R. Johnson:** People with prams.

**The Hon. D. J. GAY:** Yes, people with young children. They were also having their wheels clamped. The Opposition supports the thrust of this legislation. The Minister for Local Government stated in his media release of 28 April:

I don't want to see families held hostage by unscrupulous operators.

The Opposition agrees completely with the Minister's stance. There seems to be a large degree of money-making going on, overriding the original intent of parking control. The Victorian Parliament banned wheel clamping in 1996—as usual, this Government is a couple of years behind—and by all

accounts it seems to be working pretty well. There are exemptions in the bill, and the Opposition agrees with those exemptions. Those exemptions are for owners to be able to clamp their own wheels against theft and for organisations like local councils to be able to secure heavy machinery against theft.

I appreciate also that there is a concern about wheel clamping in some areas. The central coast *Sun* of 7 May reported a local shopping centre property manager saying that the banning of wheel clamping could lead to more illegal parking and more frustration for law-abiding motorists. The manager stated that since the centre's management group decided to abolish wheel clamping on its properties the incidence of illegal parking had risen. However, the situation remains that the good will outweigh the bad. Some groups may be inconvenienced, although I hope they are not, but there must be an end to wheel clamping, especially where it leads to extremely frightening situations. This is the only way to allay significant and justified community concerns.

Some other concerns have been expressed about this bill, and I would like to speak about those. These concerns have come primarily from operators of pay-a-fee parking. I thank the staff from the Minister's office. It is refreshing and terrific to be able to work with them to overcome problems. I suspect some other bills that are lingering around this Parliament may have focused them, but whatever the reason, in this instance their work in dealing with my office has been outstanding, and I pay tribute to them.

**The Hon. R. S. L. Jones:** You want the same staff if you become Minister, is that right?

**The Hon. D. J. GAY:** I suspect not. We will look at that early next year. A number of issues have come from within the commercial car parking industry, which I will now discuss. When the bill was first introduced there were fears that operators of private parking stations would be disadvantaged. In another place the Opposition raised some of those concerns. We wanted to know, for example, what the remedy would be for private parking operators to stop offending drivers if wheel clamping was no longer an option. I have received a number of letters from the Minister for Local Government. A letter I received on 4 June states:

I re-affirm that the Bill does nothing to disadvantage owners and operators of user pays parking stations from providing parking services to motorists, and charging fees for parking and having those fees paid, in exactly the same way that currently occurs.

The Minister states that a parking station proprietor can stipulate a range of terms and conditions for parking, such as that a vehicle parked contrary to a notice or causing an obstruction or danger may be removed at the proprietor's discretion. If motorists have been informed by signs that parking fees must be paid before a vehicle may be removed from a parking station, a proprietor would be within his rights to detain a vehicle until outstanding fees have been paid. Parking operators were concerned that the bill was unclear as to whether they would be able to detain a vehicle until the fees were paid. The Minister has stated that nothing in the bill changes that position. The Opposition agrees with the Minister.

The Minister has also stated to me that the bill will not alter the conduct of business between car-parking proprietors and their customers except to the extent that if any proprietors currently engage in wheel clamping they will need to introduce alternate vehicle immobilisation and/or detention methods. I emphasise that there are still concerns that other detention methods are impractical for parking station operators. There is the complaint, for example, that collapsible bollards on all bays would be impractical. I must concur with the Minister, however, that alternate vehicle detention methods used by parking station proprietors are essentially operational issues and ultimately are solely for determination by each proprietor. I emphasise also that proprietors will not be prohibited from detaining and immobilising, but they will have to sort that out without having resort to wheel clamping.

It is my understanding that there will be no overlap between council free parking area agreements and the commercial car-parking industry. Therefore, commercial arrangements will remain as they are and the parking industry will not be disadvantaged. Only changes to wheel clamping will affect parking station operators. The Minister has assured me that the implementation of the bill will be closely monitored in the first two years of operation and that feedback from the parking station industry will be welcome. He has said that he will also work closely with the industry to ensure that is so and that industry is not disadvantaged by implementation of the legislation. I ask the Minister's staff who are in attendance to ask the Minister in this House to correct anything I have stated that they believe to be incorrect. My understanding is that what I have stated is within the ambit of letters sent to the Opposition.

The Opposition also had concerns about situations in which residents could not get into their own driveways because people had parked across

them. The Minister has stated that there are a number of legal remedies outside this bill that may be applicable. If a vehicle has been abandoned, the Impounding Act can be used and the vehicle may be impounded by the local council. If a vehicle has been left in a driveway, for example, the local council or the police may order the vehicle to be impounded immediately under the Impounding Act or the Traffic Act. I still have some concerns that there were no details about the way in which councils were expected to take on the extra workload arising from this legislation.

Under the bill, private landowners can enter into agreements with councils for the purposes of councils enforcing parking restrictions on their land. My understanding is that under these agreements councils, in a general sense, would undertake parking control functions in the same way as for free parking areas. Upon reading that provision I immediately thought that it would be another burden on local government. It may still be so, and I shall keep a close eye on this situation. Given the unfortunate burdens that have been placed on local government recently by the Minister, councils certainly do not need any more—and I refer to the companion animals legislation, which is still to come before this House, and the septic tanks regulation.

I understand that the Government proposes an amendment to the bill, which amendment I have recently received, which will require the Director-General of the Department of Local Government to prepare a set of guidelines relating to the agreements to be entered into between councils and private landowners. The Opposition has received a message from the Minister, who has stated that he will provide me with a draft copy of the guidelines by the middle of July. The coalition will not oppose these amendments, because I believe that local government and private landowners should be guided on matters such as frequency of policing, signage and arrangements for out-of-hours policing. This may help lighten the load on local government.

The Minister has also stated that implementation of the new legislation will not commence until those guidelines are finalised. I take the Minister at his word on that. The pity with this legislation, as with other legislation, is that the guidelines and the regulations were not available with the legislation, which would certainly have been of advantage. The Opposition accepts the Minister's word in this regard. The Opposition does not oppose this bill. Unscrupulous wheel-clamping operators must be stopped and the Opposition believes that this bill will go a long way towards doing that.



**Reverend the Hon. F. J. NILE** [8.18 p.m.]: The Christian Democratic Party supports the Local Government Amendment (Parking and Wheel Clamping) Bill, which is an overdue measure designed to address serious problems that have occurred in this State, especially in the Sydney area. Wheel clamping has been the subject of many complaints and television has provided detailed exposures of problems in which some unregulated operators specialising in wheel-clamping, seizure, tow-away and impounding services to private owners had been almost blackmailing vehicle owners to pay very high fees in return for regaining access to their vehicle. Some operators imposed exorbitant wheel-clamping release fees, towing fees, impounding charges and other rip-off procedures on drivers who perhaps did not realise that they had parked on private land subject to wheel clamping.

Illegal vehicular trespass and the unethical, exploitative conduct of some landowners has also been a problem and there have been many complaints in a number of electorates, particularly Cabramatta and Fairfield. There have also been episodes of violence between motorists and wheel clamping operators. The bill will see parking control in respect of private land merged into councils' existing powers to regulate parking. Regulation and enforcement will be carried out in generally the same way that many councils already carry out parking enforcement in malls and private shopping centres.

I believe that this scheme will have to be tested and monitored, as will many changes that will occur through this legislation, so that it will provide a fair balance between the interests of both motorists and landowners. Because landowners should accept some share of responsibility in resolving vehicle trespass problems, councils will have discretion to impose reasonable fencing, signage and related requirements as pre-conditions to entering into parking control agreements with landowners. I imagine that if the landowner will not enter into that agreement he or she will be outside any such agreement. I do not see that they could be forced into that agreement.

A landowner will not be able to operate as has happened in the past to exploit motorists. The process of landowners addressing access issues may also encourage options which are within the control of owners and obviate the need for council involvement. A similar scheme has been operating successfully in Victoria since 1996. The Christian Democratic Party has received a letter from the Minister for Local Government, the Hon. Ernie

Page, in which he advised that he will provide an amendment to the bill. He states:

The amendment will require the Director General of the Department of Local Government to prepare a set of Guidelines relating to the agreements to be entered into between councils and private land owners. Such agreements will allow matters such as signage, frequency of policing and arrangements for out-of-hours policing to be properly regulated.

These Guidelines are currently being prepared and I hope to have a draft copy available for comment by the middle of July. I will ensure you receive a copy as soon as they are available. I will ensure the new legislation is not commenced until they are finalised.

The Christian Democratic Party is pleased to accept that assurance. The amendment will relieve some of the fears outlined by the Hon. D. J. Gay and should make this satisfactory legislation.

**The Hon. R. S. L. JONES** [8.23 p.m.]: The Local Government Amendment (Parking and Wheel Clamping) Bill is certainly timely. As Reverend the Hon. F. J. Nile said, fights and rather nasty scenes which were recounted in the lower House have occurred. The bill bans the unauthorised immobilisation and/or impounding of motor vehicles and provides for private landowners to enter into agreements with local councils to control parking on their land. When private landowners have problems with people parking on their land without permission they can get the council to monitor the area and issue penalty notices and/or prosecute.

While both of these initiatives sound reasonable, the concern is that private landowners will not be required to either undertake sufficient measures to deter motorists from parking on their land or provide sufficient warning of the consequences of parking there. Councils, for example, have to erect a certain level of fencing, gates, barriers, notices and warning signs about parking restrictions or prohibitions before their enforcement officers can issue penalty notices. Before compliance with parking restrictions or prohibitions can be monitored and enforced, motorists need to be made aware of those restrictions or prohibitions.

The Department of Local Government intends to provide general guidance to councils which would emphasise the need for councils to ensure that parking agreements proceed only when the landowner has agreed to erect sufficient notices and signs warning motorists about parking restrictions or prohibitions. There is, however, at the moment no requirement within the bill for the department to develop and issue those guidelines, nor is there a

requirement for private landowners to fulfil those guidelines before they can enter into agreements with local councils.

My administrative adviser, Jeni Emblem, was given a very good reception and received co-operation, as usual, when talking with Ted Plummer from the Minister's office. Mr Plummer assured my adviser that the department is in the process of developing guidelines. She said to Mr Plummer that if that were the case the Minister should not have a problem amending the bill so as to require their development and compliance. Shortly, an amendment will be presented by the Minister. I thank the Minister, I particularly thank Ted Plummer and Jeni Emblem for their co-operation, and I support the legislation.

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.25 p.m.], in reply: I thank honourable members for their support. The only matter I want to specifically address in reply is the impact on operators of private car parks, as raised by the Opposition. It was never an objective of the bill to redefine the fundamental contractual relationships or arrangements that have traditionally been used within the commercial car parking industry. In fact, the relevant section has been inserted into the bill for the express purpose of preserving the commercial arrangements that are an inherent feature of the commercial parking station industry.

I acknowledge the process undertaken in the formulation of the bill. I was pleased to ask the Hon. Joseph Riordan to look at this matter and to give his recommendations, which have been very influential. He undertook a fine process of consultation and took on board the views of various interest groups. The bill is the culmination of that process. I am pleased that it does have broad support from honourable members of this House. For a period of about six months I had members of the Legislative Assembly coming to me saying that there is a real and pressing problem with wheel clamping.

For all of the affection honourable members might have for the Legislative Council, it is true that from time to time members of the Legislative Assembly receive constituency complaints perhaps in a more direct and pressing fashion. I was impressed by the strength and vehemence of the views of members of the Legislative Assembly that something ought to be done to protect the community. I very much compliment my colleague the Minister for Local Government, the Hon. Ernie

Page, for undertaking this task. I thank honourable members of this House for their support. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

#### **Schedule 1**

**The Hon. J. W. SHAW** (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.29 p.m.]: I move:

Page 3, schedule 1. Insert after line 8:

- (7) It is the duty of the Director-General to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6), including guidelines as to:
- (a) the circumstances in which a council may enter into such an agreement, and
  - (b) the matters for which such an agreement must or must not make provision, and
  - (c) the exercise by a council of any functions conferred on it by such an agreement.

The amendment will require the Director-General of the Department of Local Government to prepare guidelines for the agreements entered into between councils and private landowners. It is expected that the guidelines will address issues such as the appropriate wording for signage including reference to penalties, the need to ensure that signs are visible at all times particularly at night, arrangements for and the regularity of policing, the ability of the Impounding Act to permit the impounding of unlawfully parked vehicles in certain circumstances, and a range of other matters.

The Victorian legislation has similar provision and it is expected that agreements will be broadly similar to those operating successfully in Victoria. The Minister for Local Government has advised me that he will ensure that the guidelines are released in draft form for public comment prior to being finalised. Copies will be made available to all honourable members and the Act will not be commenced until the guidelines are in place. In short, the amendment is sensible and appropriate and I commend it to the Committee.

**The Hon. D. J. GAY** [8.31 p.m.]: The Opposition supports this amendment, as I indicated in my contribution to the second reading debate. The amendment helps to address some concerns raised

by parking station operators. As the Minister's correspondence acknowledged, parking station operators have made a large investment and if people park in those stations without paying the operators lose money. Operators need a way to address that concern. The evil of wheel clamping has been removed.

**Amendment agreed to.**

**Schedule as amended agreed to.**

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

## **OFFSHORE MINERALS BILL**

### **Second Reading**

**The Hon. R. D. DYER** (Minister for Public Works and Services) [8.34 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

**Leave granted.**

In the Offshore Constitutional Settlement of 1979 the Commonwealth and the States agreed that there should be common offshore mining legislation in respect of both Commonwealth and State waters. State coastal waters extend three nautical miles from Australia's territorial sea baseline and Commonwealth waters lie beyond the three nautical mile limit. The baseline generally follows the low watermark along the New South Wales coast. This Offshore Minerals Bill covers the State coastal waters out to the three nautical mile limit. It generally mirrors the Commonwealth legislation—the Offshore Minerals Act 1994—which applies seawards of the three nautical miles limit. All States of Australia and the Northern Territory have agreed to proceed with the introduction of this mirror legislation into their respective Parliaments.

The common offshore minerals legislation has been developed in a co-operative effort by each State and the Northern Territory. Under the Commonwealth's Offshore Minerals Act 1994, which, as I have indicated, applies to Commonwealth waters beyond the three nautical miles line east of the coast of New South Wales, the administration of exploration and mining is jointly shared by the New South Wales Government and the Commonwealth Government. This joint administration operates through two vehicles, the joint authority and the designated authority. The joint authority consists of the Commonwealth Minister for Primary Industries and Energy and the New South Wales Minister for Mineral Resources. The joint authority is responsible for major decisions relating to titles, such as grants and refusals. In the event of a disagreement, the views of the Commonwealth Minister prevail. The designated authority is the New South Wales Minister for Mineral Resources. In that capacity, the Minister is responsible for all the day-to-day administration of the Commonwealth's Offshore Minerals Act 1994.

In regard to State coastal waters, a model bill was prepared by the Western Australian Parliamentary Counsel in consultation with the Parliamentary Counsels in each of the other States and the Northern Territory. This work was arranged through the efforts of the Australian and New Zealand Minerals and Energy Council—ANZMEC—and in particular by the minerals legislation subcommittee of that council. The result of this common legislation for the waters offshore of Australia will ensure that exploration and mining proposals in both Commonwealth and State waters will be dealt with in exactly the same way. This is particularly important if projects straddle both coastal waters and Commonwealth waters. It is also important where projects could straddle coastal waters offshore of two adjoining States. The intention is that the Offshore Minerals Bill 1998 will replace the Mining Act 1992 in so far as that Act presently covers coastal waters offshore of New South Wales.

The Mining Act 1992 will continue to apply onshore and in waters landwards of the territorial sea baseline. This bill provides the legislative measures for the administration of various types of mining and exploration tenure in New South Wales coastal waters. It contains regulation making powers to address such issues as control of offshore exploration and mining activities, conservation and protection of mineral resources of coastal waters, any environmental effects caused to the seabed or subsoil in coastal waters by offshore exploration, protection of the environment and keeping of records and samples. While it is not possible to deal with every aspect of the bill, there are a number of salient points that need to be explained. The bill provides for the grant of five forms of licences or consents. These are an exploration licence, retention licence, mining licence, works licence and special purpose consent.

Exploration licence applications can be made in respect of any lands not held under licence or in response to the Minister's calling of tenders for particular areas. Exploration licences can be granted for a term of five years and in respect of areas up to 500 blocks in size. A block is one minute of latitude by one minute of longitude and offshore of New South Wales would be about three square kilometres in size. Provision is made for up to three renewals of an exploration licence, unless the Minister considers there are special circumstances. At each renewal application stage there must be a 50 per cent reduction in the number of the blocks. Each renewal can be granted for periods of two years. Exploration licences authorise exploration and the recovery of mineral samples. Retention licences are designed to cover the period between exploration and commercial mining development. The holder of an exploration licence may apply for retention licences in respect of areas not greater than 20 blocks in size within the exploration licence area. Retention licences can be granted for periods not exceeding five years and may be renewed for periods not exceeding five years.

Mining licences may be applied for by a person to cover any area that is vacant and not covered by an existing licence. Mining licences may also be applied for as the result of tenders being called for or may be applied for by the holders of exploration or retention licences. The size of each mining licence area is limited to not more than 20 blocks. Mining licences authorise the holder to carry out commercial mining operations and can be granted for not greater than 21 years and renewed for further periods, each of 21 years. Works licences cover those situations where a licence holder may need to carry out engineering or other activities outside the licence area of the exploration, retention or mining licence concerned. They may be granted for periods not exceeding five years and renewed for periods not exceeding five years.

Special purpose consents are designed to cover situations where a person wishes to carry out scientific investigation, reconnaissance surveys or collect only small amounts of minerals. The duration of these consents is not more than 12 months.

The bill provides that all licence and special purpose consent holders must carry out their activities in such a way that does not interfere with navigation, fishing or the exercise of native title rights and interests or other lawful activities someone is carrying out to a greater extent than is necessary for the reasonable exercise of the person's rights and duties under the licence or consent. Provision is made for each licence or consent to be granted with appropriate conditioning to protect the environment and to ensure professional operating practices. Security deposits will be required to be lodged in respect of every licence to ensure compliance with conditions. As with onshore exploration and mining, occupational health and safety matters involved in activities under licences and consents are matters which will be dealt with under the Mines Inspection Act or the Coal Mines Regulation Act. The proclamation of the provisions of this new bill will not alter the current application of other New South Wales legislation such as the Marine Parks Act, the Environmental Planning and Assessment Act, the Coastal Protection Act and the Mines Inspection Act.

The Marine Parks Act is paramount over the existing Mining Act 1992 and will remain so in respect of the new bill. The Coastal Protection Act requires the approval of the Minister for Land and Water Conservation to be obtained before any development is carried out in the coastal zone or before a right or consent is given to any person to use or carry out development in the coastal zone. There will continue to be appropriate administrative arrangements between the Department of Mineral Resources, New South Wales Fisheries, the National Parks and Wildlife Service, the Department of Land and Water Conservation, the Department of Urban Affairs and Planning and other government bodies involved with coastal waters. The greater consistency of legislation between each of the States, the Northern Territory and the Commonwealth will provide an important base for future exploration and mining in the waters offshore and surrounding the Australian coastline.

In so far as New South Wales is concerned, there are presently five exploration licences in existence in coastal waters. Provision is being made in the bill for these titles to remain in existence pursuant to the current legislative regime provided by the Mining Act 1992. Any dealings in these titles, including any reduction in area, et cetera, and their renewal, will continue to be dealt with under that Act. If the holders of such licences decide to apply for a retention or mining title, those applications will however be made under the new legislation. Also, the opportunity has been taken to include in this new bill reference to the new geodetic datum of Australia which has been agreed to by the nation's Surveyors General in each State and the Northern Territory. This datum will be the basis for the establishment of the block system to be used by those wishing to apply for exploration, retention and mining titles.

Under the transitional provisions of the bill four existing reserves under the Mining Act 1992, which prevent the lodgment of applications other than for exploration, are being saved. This will ensure that the reserve system, which has applied offshore of New South Wales since 1968, will be preserved. The reserve system adds to the controls the Government has to ensure that only responsible mining operations would ever be allowed offshore of the New South

Wales coast and then only after full assessment of environmental impact and feasibility studies. The introduction of this bill will mean that the minerals industry will have a system of legislation similar to that which has been in place for the petroleum exploration and mining industry for several years. It will also ensure that offshore exploration is regulated in an environmentally responsible fashion and at the same time providing generation of employment and investment in the State of New South Wales. The acceptance of this bill will achieve the State's obligations pursuant to the arrangements made under the Offshore Constitutional Settlement. I commend the bill to the House.

**The Hon. J. H. JOBLING** [8.34 p.m.]: The Opposition will not oppose the Offshore Minerals Bill. This enormously large bill has 445 clauses and three schedules. However, it is the Opposition's belief that it meets the requirements of the Offshore Constitutional Settlement of 1979 between the Commonwealth and the States establishing common law for the operation of offshore exploration and mining. I propose to move a number of amendments on behalf of the Opposition which will deal with the provision of royalty rates by way of regulation rather than by the Minister in an instrument in writing. I will do this because of the Opposition's belief in transparency. I will amplify the proposed amendments at the Committee stage.

There will be a similarity between the amendments proposed in the Legislative Assembly and those moved in this House. The New South Wales legislation will clearly mirror the Commonwealth Offshore Minerals Act of 1994. The bill relates to State coastal waters extending three nautical miles from Australia's territorial sea baseline, or what is known as the low watermark along the New South Wales coastline. The legislation will ensure that exploration and mining proposals will be dealt with in the same way when they cover both State and Commonwealth waters and also when the areas concerned straddle waters of two adjoining States. This matter will be clarified by the legislation.

It is quite clear that the bill will contain regulations to address a number of issues, important amongst which will be control of offshore exploration and mining activities to deal with the conservation of mineral resources of coastal waters and any environmental effects of exploration caused to the seabed or the subsoil and coastal waters. Again, that issue is of great long-term importance for the benefit of this State, and particularly for the seabed. The bill will without doubt provide protection of the coastal environment, a matter of great concern and importance to New South Wales. It will at long last improve the keeping of records and samples. It may be suggested that the bill will create a fair amount of bureaucratic red tape given

the huge number of departments involved in administrative arrangements before licences can be granted for coastal water mining or exploration.

For the record, five major departments are involved: the Department of Mineral Resources, the National Parks and Wildlife Service, the Department of Urban Affairs and Planning, New South Wales Fisheries and the Department of Land and Water Conservation. It seems to me that the involvement of those five departments will ensure that all environmental concerns will be correctly addressed. The bill will cover the granting of five different types of licences and/or consents—the exploration licence, the retention licence, the mining licence, the works licence and the special purpose consent licence.

The legislation will, therefore, put in place for the minerals industry a system similar to that already in place for the petroleum exploration and mining industry and will ensure that offshore exploration is carried out in a responsible fashion. It will ensure that no damage is done to the delicate coastal environment of this State. The New South Wales Marine Parks Act 1997 precludes any exploration or mining in marine parks. This legislation takes that fact into account. I note that mining or exploration in aquatic reserves, and where fishing closures have been ordered, cannot be carried out without the specific consent of the Minister. The Opposition will support the inclusion of these exemptions in the bill, with the exception of the amendments which I will move in Committee. The Opposition does not oppose the bill.

**The Hon. I. COHEN** [8.39 p.m.]: The Greens are concerned about the proposed Offshore Minerals Act, which will provide for the exploration for and mining of minerals in New South Wales waters uniformly with the Commonwealth Offshore Minerals Act 1994. The New South Wales Greens are opposed to offshore mining in any guise as it is not compatible with conserving marine ecosystems. It is fraught with danger and can result in pipeline ruptures, as we have seen in the North Atlantic rigs. Many protests against offshore mining have been held. In many cases offshore mining has caused significant damage to the surrounding environment. Exploration involves seismic and explosive activities which impact on marine mammals and fish. Offshore mining is not consistent with the ethics of the much stated clean and green New South Wales.

The Green movement is concerned that encouraging offshore mining is not consistent with the ethics of conservation and the precautionary principle. The New South Wales Greens note that it

has been possible for each State to finetune the legislation to fit respective State and Territory requirements. Apart from the principle of whether uniform legislation is a particularly good idea, given the tendency for uniform legislation to cater to the lowest common denominator, and problems that flow from binding State Supreme Court decisions to precedents of other State Supreme Court decisions, the New South Wales Greens note the particular difficulty of negotiating amendments that safeguard usual New South Wales procedures.

In particular, this bill limits the opportunity for public participation in the standard licence process. Applications for an exploration licence must be advertised. However, there is no requirement for the advertisements to disclose details of the proposed licence activities. The public may be aware that a mining company plans to explore an offshore area and that the Minister is inviting public comment, but will not know exactly on what to comment. The time period for exploration is not stipulated, and there are no details as to what constitutes exploration activities and no statement on the likely unacceptable impact of those activities on whale and dolphin watching, recreational and commercial fishing, yachting, and many other pastimes. Offshore mining would result in a clash of usage of the marine environment.

There is no expressed statutory requirement that the Minister take into account submissions received in response to the advertisement in determining whether to grant a licence. The conservation movement and the legal fraternity are concerned that the legislation will enable the Minister to override the concerns of the community when granting an offshore mineral exploration. Mr Chris Norton of the Environmental Defender's Office is concerned about this bill. For example, he is concerned about public participation in licence applications for tender blocks. An exception to the advertising requirements is provided for applications for exploration and mining licences in respect of tender blocks. The Minister may reserve certain blocks and invite applications for the granting of exploration licences under clause 74 or mining licences under clause 218 over these blocks, which are referred to as tender blocks.

The bill does not provide for public notification of, or participation in, the reservation process; nor is the Minister required to carry out an assessment of the suitability of a block for mining before applications for licences are invited. The only public notification of the fact that a licence is to be granted over a tender block is the invitation to tender. There is no requirement that this invitation

contain an invitation for public submissions on the granting of a licence over a tender block or that the name of the successful tenderer be publicly notified. In these circumstances it could be inferred from the legislation that there is no requirement on the Minister to take public submissions into account, especially when the provisions relating to blocks are contrasted with those relating to ordinary blocks. Therefore, the scope for public participation in licence applications for tender blocks is extremely limited.

The bill provides for the renewal of licences. However, there is no scope for public participation in the renewal process and that is a significant defect. The renewal process provides an opportunity to review the performance of a licence holder and to vary the conditions of a licence when appropriate to respond to deficiencies in performance or to take into account circumstances that have come to light subsequent to the granting of the original licence. Public participation at that stage would be appropriate. However, the environmental impact assessment process may provide an opportunity for public participation. One must ask what type of environmental impact assessment will be carried out. There is no environmental planning instrument requiring development consent to be obtained under part 4 of the Environmental Planning and Assessment Act 1979 to carry out offshore mining. Accordingly, the granting of a licence or consent would require assessment under part 5 of the Act as the licence would be an approval to carry out an activity.

The Minister, as the determining authority, is required to take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity. Section 112(1) of the Environmental Planning and Assessment Act requires a proponent of an activity to prepare an environmental impact statement for an activity that is likely to significantly affect the environment. Under section 112(1B), a species impact statement is required to accompany an application for any activity to be carried out in critical habitat or which is likely to affect threatened species, populations or ecological communities, or their habitats. Under section 113 an environmental impact statement must be publicly exhibited, and representations made must be forwarded to the Director-General of the Department of Urban Affairs and Planning for a report.

What types of conditions may be imposed on a licence? The Minister may impose whatever conditions he or she thinks appropriate. However, specific conditions that may be imposed are set out

in the bill, including a condition requiring the holder to take steps to protect the environment of the licence area, including protecting wildlife or minimising the effect of the activity on the environment of the licence area and its surrounds; a condition requiring the holder to repair any environmental damage caused by the activity; and a condition requiring payment of a penalty if a licence condition is not complied with. These conditions may be imposed on exploration licences under clause 118, retention licences under clause 177, mining licences under clause 254, and works licences under clause 304. These conditions are not set out in clause 327, which provides for the imposition of conditions on special purpose consents, but that clause provides the Minister with the power to impose conditions.

The broad power of the Minister to impose conditions means that the bill provides a mechanism for controlling mining activities to protect the environment. However, full public participation in the environmental process would be more appropriate. The Greens seriously and keenly seek that participation. If there is no opportunity for public participation the Greens have grave fears that offshore mining could severely damage New South Wales waters and lead to a significant loss of habitat from the conservation viewpoint and that of other resource-based industries, such as the fishing industry.

**Reverend the Hon. F. J. NILE** [8.48 p.m.]: The Christian Democratic Party supports the Offshore Minerals Bill, which will enact legislation dealing with the exploration for, and mining of, minerals in the coastal waters of the State; being legislation that is uniform with the Offshore Minerals Act 1994 of the Commonwealth and with legislation and proposed legislation of other States and Territories. This bill is impressive. Uniform legislation resulting from much input from the Federal and State governments is generally comprehensive and often provides the best way of dealing with a specific issue.

This bill will apply to New South Wales coastal waters that extend from a baseline that generally follows the low watermark along the coast, out to a line three nautical miles from the coast. Further seaward than the three nautical mile line the waters belong to the Commonwealth, and the provisions of the Commonwealth's Offshore Minerals Act 1994 will apply. Up to the present time the New South Wales Mining Act 1992, which covers onshore mining and exploration, has, by convention, extended offshore out to the three nautical mile line. The same has applied in other

States and the Northern Territory. All States, the Northern Territory and the Commonwealth have agreed that there should be common offshore minerals legislation for exploration and mining. This is an important component of the 1979 Offshore Constitutional Settlement.

By co-operation between Parliamentary Counsel in all jurisdictions, a draft model bill for the States and the Northern Territory was drafted. This draft mirrored the Commonwealth's Offshore Minerals Act 1994. Each State and the Northern Territory has finetuned or is in the process of finetuning the model bill to fit respective State and Northern Territory requirements. The aim is to have common exploration and mining legislation applying offshore around Australia as far as is possible, given that each State and the Northern Territory may need specific provisions to address particular matters. New South Wales has the Marine Parks Act 1997, which precludes exploration and mining in marine parks. The Coastal Protection Amendment Bill has recognised this, and that situation will remain unaltered. In addition, a reference has been included in the Fisheries Management Act 1994 to aquatic reserves and waters the subject of fishing closures under that Act.

Clause 38A provides that offshore exploration and mining may not be carried out within these reserves and closures without the specific written consent of the Minister. Administrative arrangements will continue between the Department of Mineral Resources, the National Parks and Wildlife Service, the Department of Urban Affairs and Planning, New South Wales Fisheries, the Department of Land and Water Conservation and other government bodies involved in coastal waters before any offshore licences are granted for exploration and mining. That covers assurances from the Minister for Mineral Resources, and Minister for Fisheries, the Hon. Bob Martin. My only closing comment is that over the past couple of years there has been controversy regarding the boundary between Indonesia and Australia and whether the boundary excludes or includes possible natural gas or oil reserves in the waters to our north.

The boundary appears to be irregular lines, and part of the potential benefit to Australia may have been accidentally included in waters now under Indonesian control. It would be a tragedy if that occurred through oversight or laxity on the part of the Federal Government. New South Wales could not be directly involved in that tragedy. Initially it would have involved the Northern Territory, but the Federal Government would have been the body that negotiated the territorial boundary between Indonesia

and Australia. I do not know whether the boundary has been set in concrete, but someone at Federal level should make inquiries to determine the boundary lines and how they affect future reserves of oil, natural gas and other valuable minerals in that area. The Christian Democratic Party supports the bill.

**The Hon. R. D. DYER** (Minister for Public Works and Services) [8.54 p.m.], in reply: I thank all honourable members who have spoken in the debate, and I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time.**

## COASTAL PROTECTION AMENDMENT BILL (No 2)

### Second Reading

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [8.55 p.m.]: I move:

That this bill be now read a second time.

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

**Leave granted.**

The Minister for Urban Affairs and Planning introduced the Coastal Protection Amendment Bill 1997 on 19 November 1997. Since then further consultations have taken place with community groups and a number of enhancements have been added to the bill as a result of those consultations. One of the enhancements is the inclusion of the definition of the "coastal zone" from the coastal policy. A number of groups raised the issue of the deficiency in the original bill, which referred only to the maps of the coastal zone.

The inclusion of the coastal policy's coastal zone will ensure that everyone is aware of the exact boundaries. Maps will also be provided in the principal office of the Department of Urban Affairs and Planning. I have also included a definition of "ecologically sustainable development"—ESD—which is consistent with recent bills that have passed through this Parliament. The term is defined as "the principles of ecologically sustainable development" that are described in section 6(2) of the Protection of the Environment Administration Act 1991.

Parliamentary Counsel advised that the inclusion of that new definition of "ESD" was technically outside the leave of the original bill, hence the need for this Bill. The bill contains an amendment to schedule 2, which will allow the Nature Conservation Council to nominate a person from a panel of three to the Coastal Council. The Nature Conservation Council is the peak environment group in New South Wales and this amendment is also consistent with other legislation recently passed through Parliament. The other matters to be amended

in this bill were set out in the Minister's original second reading speech on 19 November 1997. I commend the bill to the House.

**The Hon. PATRICIA FORSYTHE** [8.55 p.m.]: No doubt it is with some degree of relief that the Government welcomes the final arrival in the upper House of the Coastal Protection Amendment Bill (No 2). It could be said that this bill has been a long time coming—indeed, a very long time coming—so much so that quite often in this House honourable members have heard me refer to *Groundhog Day* in the context that we seemed to be repeating ourselves. Of course, all honourable members in this House know that coastal policy has been a live issue since the Greiner Government won office in 1988. At that time a number of members made an appalling attempt to develop a picture of the Greiner Government and its interest in coastal development that bore no relevance to reality by alleging that it would concrete the coastline. It was only when the coalition raised Labor's pre-1988 record that Labor went silent.

I should like to turn to this Government and its coastal policy. Honourable members may recall, but I shall remind them, that in May 1995, just two months after the election of the Carr Government, the Minister for Urban Affairs and Planning, the Hon. Craig Knowles, announced with some degree of fanfare that the New South Wales coastline would have greater protection. On 27 May 1995 the *Sydney Morning Herald* ran a headline "Greater protection for the NSW coastline". The article talked about how under the Carr Government the Coastal Committee would be disbanded and replaced with a more powerful body answerable only to Parliament. I emphasise those words "answerable only to Parliament". The Minister said that the coastal zone would be redefined to cover Sydney, Newcastle and Wollongong and would include coastal lakes, estuaries and rivers.

Perhaps the Minister had not yet been captured by his bureaucrats or perhaps he had some view that did not seem to be borne out by the reality of the past couple of years, but the Minister announced that we would have a new coastal policy based around a strong role for Parliament and around a new zone and definition for the coastal zone that would include Sydney, Newcastle and Wollongong. He talked about a range of things that would be developed. He said that the Coastal Committee, which was previously an advisory body and answerable to the Minister, would be disbanded and replaced with the Coastal Council, that its powers would be wider and that it would report exclusively to Parliament. He expanded his earlier comments about Sydney, Newcastle and Wollongong by saying

that the council would expand the reach of new protection policies. Since May 1995 many people have waited with bated breath to see the Minister's new coastal bill and coastal policy.

This legislation has been a very long time coming. The first of these bills, the Coastal Protection Amendment Bill, was introduced in the other place in November last year and we have waited since then for it to finally make its way to the Legislative Council. Let me retrace the history of this bill. So much has been written about coastal policy, and about the attitude of the coalition and of the Labor Party—and indeed of many of the minor parties in this place—that it must have a familiar ring to honourable members. I remind honourable members of what was said in this House on 30 October 1991 when a former Minister for Planning and Energy, Robert Webster, introduced the Coastal Protection Amendment Bill No. 2.

In his second reading speech Minister Webster talked about reconstituting the Coastal Council—bearing in mind that the Coastal Council had been in existence in New South Wales until the Carr Government put it in abeyance in about 1985. Robert Webster said he would expand it from 10 to 15 members to allow it to function more effectively. He proposed to include a broad range of representatives, including representatives from local government, because he considered that local government had a crucial role in planning and protection of the coastline. The Minister said that the coastal council would include representatives of a number of government bodies, including the State Pollution Control Commission, which was part of the Environment Protection Authority, the Tourist Commission and a number of other organisations. In particular he said:

The Government's willingness to take seriously natural environmental protection on the coast will be reflected in the addition of a representative from the Nature Conservation Council of New South Wales. This will mean that the views and knowledge of the many constituents bodies of the Nature Conservation Council can be made known to the Coastal Council . . .

It was to be a body largely representative of government departments, about seven of them, and it was to include representatives of local government and the Nature Conservation Council. All of this will sound very familiar to honourable members perusing this bill. Minister Webster went on to redefine the coastal zone. He said he would adjust the western boundary of the coastal zone so that it conformed to the line of a road, railway, watercourse, watershed or other topographical feature, or an allotment boundary that was close to either side of the western boundary.



He also said the bill would amend the functions of the Coastal Council to ensure that its advice, reports and recommendations to the Minister for Planning were directed towards policies that should be adopted by the Government and public authorities. So the council was to have an advisory role. As I said earlier, one could describe this as groundhog day. In October 1991 the Hon. Delcia Kite led for the Labor Opposition in the debate. She had a number of things to say that I believe are worth recalling in the context of tonight's debate—not that this Opposition will oppose the bill, unlike the Labor Opposition in 1991.

On that occasion Labor opposed the bill and, putting the argument for Labor at that time, Delcia Kite spoke of how representatives of a number of councils in Sydney had come together. She said it was significant that those councils had combined to express their mutual concerns because the coastal protection policies introduced by the coalition Government did not include coastal regions in the metropolitan areas. One ground of opposition noted by the Hon. Delcia Kite was the fact that Sydney, Newcastle and Wollongong had been excluded from the coastal zone. She said:

The amendments will make no significant difference to the planning, land use and pollution problems which are critical along the coast of New South Wales.

She was critical of the definition of the coastal zone, and particularly critical of the proposed formation of the 15-member Coastal Council. Her grounds of concern were firstly that the proposed legislation would confer significant powers on the Minister, including the power to appoint and dismiss the council. One of those to be appointed by the Minister was a person who, in the opinion of the Minister, had expertise in coastal protection, and her criticism was that it would be an opportunity for the Minister to have almost unfettered power over the council. She feared that the council would be a toothless tiger appointed by the Minister to report to the Minister; and that it was in some ways totally unsatisfactory in terms of the needs of the coast of New South Wales and the desire of people to be represented and to have local government and other organisations appropriately represented on such a council. They were the grounds upon which the Hon. Delcia Kite based her opposition on behalf of Labor. She said:

I am unable to support the bill because there is insufficient detail to convince me that it will not involve a repetition of the secretive committee previously appointed where ministerial appointees could not even reveal to their own local government council the findings of the Coastal Council . . .

In November 1991 the Labor Opposition took the stand of opposing the bill. Indeed, having been introduced into the lower House, the bill did not proceed. We have waited since then for New South Wales to have in place an appropriate coastal policy—the coastal policy that Craig Knowles promised in May 1995. Certainly since May 1995 Craig Knowles has come a long way in his views about the role of this legislation. I should like to refer to some of the comments made in 1991 by the Hon. R. S. L. Jones, who was also largely opposed to the legislation. The Hon. R. S. L. Jones believed that the definition of the zone did not go far enough, that there was still a danger that wetlands would be exposed to inappropriate development.

A significant scare campaign was conducted by the honourable member, who questioned why the legislation provided a distance of one kilometre. "Why have one kilometre?" he asked at the time. He said that according to the bill the coastal zone comprised one kilometre. I have put all this on the record because when honourable members review the 1991 bill and this bill it will be perfectly obvious that very little has changed. The coalition will not oppose the bill because, unlike honourable members opposite, we are not hypocritical about these sorts of issues. In 1991 the Hon. R. S. L. Jones described the Coastal Council that was to consist of 15 members as very large. He suggested it would become merely another interdepartmental committee.

**The Hon. R. S. L. Jones:** Was I right or was I right?

**The Hon. PATRICIA FORSYTHE:** The honourable member was right to note some of the issues that the Labor Opposition raised at that time. What he did not do was significantly convince anyone of his argument. As he will be aware, this bill is almost identical to the 1991 bill. The honourable member noted at that time that the coastal zone excluded Sydney, Newcastle and Wollongong—and one could say that during the past almost seven years very little has changed. The definition of the coastal zone is not much different from that proposed in 1991.

**The Hon. R. S. L. Jones:** Why is that?

**The Hon. PATRICIA FORSYTHE:** Because I believe we were right in 1991, not only in regard to the definition of the coastal zone and some of the other issues, but also in regard to the proposal to reconstitute the Coastal Council. The sad thing about this bill is that we have wasted seven years. What was proposed by the Greiner Government in 1991 is

in large measure what we are debating tonight. This legislation could have been in place seven years ago had the then Opposition been a little more conciliatory.

Let us look at the Coastal Council proposed in this bill. In May 1995 the Minister said the council would report to Parliament and that it would be significantly different from that which was originally proposed in 1991. Schedule 2 to this bill states that the functions of the Coastal Council will remain unchanged. The coalition was right previously, and it is right now. The principal function of the council will be to advise the Minister in relation to the conservation and utilisation of the coastal zone and its resources. The coalition does not oppose the Government on this measure.

I note that this is the second bill to be introduced by this Government, not the bill that was introduced in the lower House last November. That in part takes into account the fact that the Coastal Council as originally proposed did not include, as the coalition had proposed in 1991, representatives of the Nature Conservation Council. Honourable members will acknowledge that that is an improvement—but the coalition got it right in the past. The Coastal Council is not, as the Hon. Delcia Kite was worried, large, with 15 members. In fact, it now has 20 members, and the Opposition does not object to that. It will have an expert in coastal protection, who is to be the chairperson of the Coastal Council, as was proposed in 1991; it will have a member of Parliament; and it will have a person nominated by a whole range of government departments—all of them included in the 1991 legislation.

As the former Government had proposed, it will have representatives covering areas such as tourism, and sport and recreation. The difference is that those representatives will be nominated by the Minister for Tourism and the Minister for Sport and Recreation. The former Government's proposal was that those people would be representatives of their departments. This Coastal Council gives Ministers a far stronger role; it is a far stronger Government body than the coalition envisaged. Our council represented a more independent approach, which would give more independent advice to the Minister.

Having said that, the Opposition will not seek to amend the legislation. It is about time this bill came before the House. The Government should be embarrassed that it has taken so long. It is more than three years since the Minister first pronounced that he was going to have a coastal policy. It is effectively seven years since an almost identical bill

was introduced by the Greiner Government. It is time New South Wales had in place proper coastal protection legislation. Far from opposing the legislation, the Opposition notes that it was right in what it sought to do in 1991, and it is sorry that as a result of procrastination and petty politics from the Labor Party this policy was not in place, as it should have been, in 1991.

As I said, the Opposition does not oppose the legislation. I am only sorry the Government did not move more quickly. It is an opportunity to put in place an appropriate coastal policy. In 1991 I sat briefly on the Standing Committee on State Development as it finalised a report on coastal policy. Honourable members know that the Federal Government has studied the coastline of Australia in significant reports over the past 10 years. It is time we had a policy that set the framework in which appropriate planning can take place for New South Wales. With those comments, I commend the bill.

**The Hon. ELISABETH KIRKBY** [9.13 p.m.]: I had not intended to speak on this legislation and I had so informed the Government Whip. However, having just found a bit of additional information, I would be very happy to make a short statement on the legislation and express some concerns that have been brought to my attention even within the past 15 or 20 minutes. On 11 November 1997 I received a news release from the Minister for Urban Affairs and Planning, and Minister for Housing which revealed that the State Government will protect about 5,000 square kilometres of land under the New South Wales coastal policy. It stated that this is almost three times more than the area previously protected and that 10 per cent more of the ocean will be incorporated into the policy, giving the marine environment greater protection. The Minister said:

This is the third major environmental package . . . in the Government's agenda.

The policy—which covers land and water use, pollution controls and development—will secure our coastal areas for future generations.

This is the best protection the coast has ever had.

We will now have planned, environmentally sensitive development.

Under this policy, a further 500 hectares of coastal wetlands and a further 60 hectares of rare littoral rain forest have been preserved and protected.

Over the years I have been visiting the Tathra area of the south coast. In Tathra there is an area that should have been protected under State environmental planning policy 14. However, the

council decided it would be a good area to develop for housing, in spite of the fact that there was no proper sewerage system to ensure pollution control, no proper road development and none of the other things that are necessary for a residential development in an environmentally sensitive area. This is an environmentally sensitive area because it is a coastal wetland.

At the time I asked many questions. I was amazed to discover at the end of 1997 that the Minister was saying that his policy included the extension and full protection of coastal wetlands and littoral rain forests, and land with high conservation value would continue to be acquired, marine parks would be established and there would be an inventory of areas with conservation value. Further, new sandmining in coastal national parks would be banned and canal estates and tourist resorts which blocked public access to beaches would be banned. This is very important on the south coast. The policy would also include the ending of development on beach foredunes, and would ensure development proposals conformed to design and planning standards, and the preparation of rural residential development strategies would ensure that developments were environmentally friendly and appropriate.

The Minister explained that the Government has already purchased more than \$3 million worth of environmentally sensitive land. He said that land had been earmarked for inappropriate development. The Minister referred to about 81 hectares at Cullendulla, just north of Batemans Bay, which were bought for \$1.5 million. He said that under his legislation—the legislation the House is debating tonight—the Coastal Council will be reformed and will not only advise government but will monitor the impacts of the coastal policy. The Minister finally said:

The Greater Metropolitan Region is not included because it would duplicate the provisions in more than 20 other plans and policies already in place.

I found that very interesting, because I keep receiving from the people of Tathra concerns that their coastal wetland is still under threat of development. I ask the Minister to tell the House in his reply what is going to happen at Tathra under SEPP 14, because that has been a matter of concern to the residents in that area since the 1995 State election, when, at the request of constituents, I visited that area. I visited again at the time of the 1996 Federal election, because the residents were concerned that this coastal wetland was going to be developed for residential properties and, obviously, no main sewerage was going to be supplied. People buying blocks there would have to put in septic

tanks, and the septic tanks would inevitably leak into the coastal wetland. That leaching could not be avoided. A proper sewerage scheme was never going to be provided.

The roads around the coastal headland are just narrow country roads, yet it was proposed to put in a residential development. The roads were never going to be big enough to take the increased traffic. The people of the area were greatly concerned. I have never received an answer to my concerns about Tathra, even though I have asked many questions about it over the years. Only a few moments ago, while in conversation with the Hon. Dr B. P. V. Pezzutti, I was handed an article from a Byron Bay newspaper dated 17 May 1998 which states that house prices in Byron Bay are rocketing. I was amazed to discover that a cottage in Lawson Street, Byron Bay—and I do not know Byron Bay well enough to know exactly where that is—was sold for \$1.6 million and then demolished.

I cannot believe that a cottage on what would have to be a very small area of land could possibly be worth \$1.6 million for further development. The situation is becoming ridiculous. Even though Byron Bay is a very beautiful area and many people like the warm climate of the north coast, I cannot understand that private property values in that area are escalating to such an extent. One can buy a very nice unit on the foreshore of Sydney Harbour for \$1.6 million even today, but the idea that someone would pay that amount for a cottage in Byron Bay and then demolish it is totally ludicrous.

Whatever the Government's intentions with this bill and whatever the Minister for Urban Affairs and Planning may wish to implement, we are still not protecting either the most beautiful scenic areas in this State or the coastal wetlands, which we have a duty to protect. We are talking about development that may protect them but in fact they are not being protected. I am told that in Byron Bay there is a council ban on new development—and I am sure that the Hon. I. Cohen and the Hon. R. S. L. Jones know more about that than I do. Estate agents say that beachfront land prices have increased between \$60,000 and \$80,000 and that residential house prices at the bottom end of the market have increased by up to 10 or 15 per cent. The development freeze was introduced after the council decided that the shire's sewage treatment works were overloaded.

I can understand why the shire's sewage treatment works were overloaded, but it would appear to me that neither the ban introduced by the Byron Shire Council nor this bill and the

Government's intentions have done enough to protect sensitive areas and coastal wetlands. The Tathra development is a matter that I have raised over and over again in this House. I intended to raise the matter in the adjournment debate this evening, but I decided that this was a better opportunity to do so. I again ask the Government what it is going to do about the coastal wetland at Tathra, what it is going to do about the State environmental planning policy 14 development already imposed on that area and whether it is going to allow not a canal development but an overdevelopment of a coastal wetland unless the council in that area has no further ability to proceed with it.

If this bill would make the development at Tathra impossible then it would be valuable and I would support it, but it does not seem to me that SEPP 14 has protected that area and I still have to be convinced that this bill would protect it. What I think is most important is the protection of coastal wetland. I hope that the Minister for State Development—and I realise that this bill is not within his portfolio responsibility, that he is merely speaking on behalf of his Cabinet colleague—will be able to answer some of my questions when he speaks in reply.

**The Hon. R. S. L. JONES** [9.26 p.m.]: I was interested to hear the Hon. Dr B. P. V. Pezzutti say, "Hear, hear!" when the Hon. Elisabeth Kirkby spoke about protecting wetlands. David Hay, when Minister for Local Government, removed large areas from the protection of SEPP 14 and put almost nothing back. After he had had a go at that I checked out the maps. His adviser at the time was the Hon. Patricia Forsythe. At that time the State lost a great deal of wetlands and a great deal of protection, and so far as I am aware that has not been adjusted since. Before the 1995 State election the Labor Party released a document entitled "Labor's Vision for the NSW Coast", which was published in February 1995. It is heartening to see that some of the promises contained in that document have been fulfilled.

Indeed, we have virtually every new national park promised by the Labor Party, with the exception of Stockton Bight. We are still waiting for Stockton Bight, but there are nine months to go and it is to be hoped that more will be heard about that new park later. The Labor Party promised to create two new marine parks, both of which have been created. There is also to be a new marine park at Byron Bay shortly. The Look-At-Me-Now Headland ocean outfall has not gone ahead, and sewage is being pumped south to go through an existing ocean outfall. As we all know, Skenners Head ocean

outfall did go ahead, although it is well treated. The Hon. Dr B. P. V. Pezzutti would be fascinated to know, were he prepared to listen rather than keep talking, that the document states:

The former Labor Government in constructing Sydney's ocean outfalls intended them to be only part of the solution to Sydney's beach pollution problems.

Since then a brand new tunnel has been proposed and is being built. We opposed that tunnel, because it adds to rather than reduces the burden. The Labor Party document states that canal estates would be banned. That has happened, although I notice that there is a canal-type estate occurring up north—it is not quite a canal estate but it is a canal-type estate. The document also refers to water quality. There is an ongoing problem with acid sulphate soil run-offs, which cause constant problems up and down the coastline with sulphuric acid entering the waterways from disturbed soil and killing fish in large numbers.

The Hon. Elisabeth Kirkby has talked about the ban at Byron Bay. The problem at Byron Bay is that the area has grown very quickly. Last year it was one of the fastest-growing areas on the entire coastline, with growth of about 3.5 or 4 per cent a year. The wetland sewage treatment system is unable to cope with all the visitors. The council's previous conservative administration did not put aside sufficient money to enhance the sewage treatment plant. Overflows from that go into Belongil Creek, killing fish and causing other problems.

There is not actually a ban on building applications; building can still go ahead on existing subdivisions but there is currently a ban on development applications on new land. Building is still going ahead at Byron Bay but almost all of the land is sold. The former Government made a number of promises which were referred to in the *Sydney Morning Herald* on 2 March 1995, at about the time of the election. The Government said it would stop a number of developments. Some have been stopped and others have not. I have had an ongoing interest in one development, which was called Sea Ranch and is now called the Koala Beach estate, which has partly gone ahead, although the Minister called it in under his powers under the Environmental Planning and Assessment Act.

That estate was approved by the previous Government and this Government did not actually stop it from going ahead at the first stage at least in one of the best koala habitats on the coast. Development at Coffs Harbour and North Bonville—again amazingly a top koala habitat—which was approved by the previous Minister was

not stopped either. As the Hon. Elisabeth Kirkby said land has been acquired at Cullendulla Creek after some toing and froing with the owner. The owner wanted \$3 million to begin with and he eventually saw the light and finally came down in price.

The owner had made a lot of money from previous developments in the area. He had promised the people who had bought the previous development that this would be his own little park. Later he became a little bit greedy and tried to develop it. It is good to see that most of the Government's promises in this regard have been fulfilled. When going through the list today I was surprised to see that most of that business on the coast has actually been approved. The Hon. Dr B. P. V. Pezzutti was on the Standing Committee on State Development and we had some good times together going up and down the coastline.

**The Hon. M. R. Egan:** You were not on the committee to have good times.

**The Hon. R. S. L. JONES:** We had good times on behalf of the people of New South Wales working out what we should do to create a vision for the coast—and it was a very good vision.

**The Hon. Dr B. P. V. Pezzutti:** When we published the report it was still a good vision.

**The Hon. R. S. L. JONES:** Even today, many years later, it is still a good vision. A conservative member of that committee suggested a moratorium on development along the entire coastline. I will not verbal that person but we were taken aback by that suggestion. The committee was chaired by the Hon. J. P. Hannaford at that time, who was a very good chair.

**The Hon. Dr B. P. V. Pezzutti:** The Hon. J. H. Jobling was the Chair at one time too.

**The Hon. R. S. L. JONES:** The Hon. J. H. Jobling was the Chair, but not for very long. He may have crossed the Minister, David Hay, when the report was leaked and unfortunately he was shifted aside.

**The Hon. Dr B. P. V. Pezzutti:** I got the report published.

**The Hon. R. S. L. JONES:** I do hope the Hon. Dr B. P. V. Pezzutti will refer to that very good report in a minute.

**The Hon. R. T. M. Bull:** It was a good policy.

**The Hon. R. S. L. JONES:** It was a very good policy. That was one of the best committees I had ever served on. We reached agreement on many matters which would normally have been controversial. I did complain, as the Hon. Patricia Forsythe said, that the previous Government's proposal for a one-kilometre coastline was insufficient. Members of our committee suggested that the coastline should be from the mountain to the sea and divided into catchments and the carrying capacity of each catchment worked out individually. There has been a slight change in that the boundary now includes one kilometre landward around any bay, estuary, coastal lake or lagoon. That is an improvement on the original policy.

**The Hon. Dr B. P. V. Pezzutti:** Only if it is not tidal.

**The Hon. R. S. L. JONES:** No, it does not say that in the legislation.

**The Hon. Dr B. P. V. Pezzutti:** That is what it means.

**The Hon. R. S. L. JONES:** New section 4A(3)(b) makes no qualification that it should be tidal. It refers to coastal lakes, which are not tidal anyway. One kilometre beyond the limit of recognised mangroves is a slight improvement. I still adhere to the view of the original committee that the coastline should not be the arbitrary figure of one kilometre. There is bipartisanship on that one-kilometre figure. Unfortunately, it is easy when in opposition to recommend that the entire area from the mountains to the sea should be the coastal zone, but that has not been put into practice.

Twenty members are proposed for the Coastal Council, which appears to be reasonably balanced. Most people on the council, perhaps every person, will have an interest in maintaining one of our most priceless assets not only for its ecological value but also for its revenue value. Often revenue values are enhanced by ecological values; they sometimes go hand in hand. I hope the members of the council will share the view that the coastline is one of our most precious assets and should be retained as much as possible in its current ecological state, or improved. Development should be allowed in appropriate areas which will bring in revenue for tourism or other purposes.

I hope the council will do a really good job. Most people in New South Wales would agree that the coast is important. We tend to cluster along the coast and want to live right next to the beach if we can possibly afford it. There is bipartisan agreement, and I hope that will result in a move towards improving the management of our coastline. I hope that the area covered by SEPP 14 is improved. We need to consider regenerating mangroves for fisheries production and also for the enhancement of the natural environment.

We need to seriously address the question of acid sulphate soil runoff. The Government has acquired some additional areas, some of which may have been acquired under the previous Government. We should work out which areas should remain protected once and for all and, if necessary, acquire even more areas. In the future people will appreciate that we have conserved much of our coastline in national parks. All in all, even though I agree with the Hon. Dr B. P. V. Pezzutti that it is insufficient to have a one-kilometre boundary, apparently that is the best we can get. I hope that the one-kilometre boundary will be well looked after by the Coastal Council, no matter which party is in government.

**The Hon. I. COHEN** [9.38 p.m.]: The New South Wales Greens are pleased to see the long-promised coastal legislation finally reach this Chamber. We welcome this bill not simply because it is long overdue but because it finally revives the Coastal Protection Act 1979 which has been in abeyance for more than a decade. Honourable members would be aware that the bill is not the bill originally introduced by the Minister in November last year. That bill was withdrawn and this much improved version was introduced only last month following consultation with interested parties, including the Nature Conservation Council of New South Wales.

The 1998 bill includes three important changes to the Coastal Protection Amendment Bill 1997. The bill inserts a requirement for the Minister and the Coastal Council to have regard to the principles of ecologically sustainable development when exercising their functions under the Coastal Protection Act. That is a major achievement. The Government deserves to be congratulated on including that requirement in the new bill since it will set the standard of coastal management at an internationally recognisable level, as the concept of ecologically sustainable development is now accepted around the world.

Further, the inclusion of this provision is consistent with the amendment to the Local

Government Act made last year which requires local councils to manage their areas in accordance with the principles of ESD. Clearly, the Government is saying to local councils, "We will live by the same rules with which you are now obliged to comply." That is a fair and reasonable approach, and will do much to encourage local councils to rise to the challenges that this concept presents.

The 1998 bill inserts a definition of "coastal zone" which is a vast improvement on the definition included in the 1997 bill. This improved definition reproduces the definition of "coastal zone" included in the New South Wales coastal policy released by the Minister late last year. The inclusion of this definition in the bill and ultimately the Coastal Protection Act means that any attempt by a future Minister of whatever political persuasion to rort the coastal zones area will be prevented because to amend the coastal zone the Minister will be obliged to again come before the Parliament and seek to amend the Act.

The insertion of this definition is considered necessary. Under the previous Government the former Minister for Planning made a number of amendments to the boundaries of coastal wetlands registered under State environmental planning policy 14 in order to permit developments in areas which would otherwise have been prohibited or would have required full environmental impact statements. The bill inserts the Nature Conservation Council's name as the body nominating three representatives for selection as the representatives of community conservation groups. The amendment is also sensible since it is consistent with other Acts in which the Nature Conservation Council nominates conservation representatives. These other Acts include the National Parks and Wildlife Act 1974, which provides for representatives to the National Parks Advisory Council; the Rural Fires Act 1997, permitting nomination of representatives on the local councils' rural fires committees; and the Protection of the Environment Operations Act 1997, in which the Nature Conservation Council nominates representatives to the Environment Protection Authority board.

Explicit naming of the Nature Conservation Council is necessary since a future Minister, of whatever political persuasion, could decide to ignore the Nature Conservation Council and seek nominations from another body—a body not so rigorous in its advocacy of the environment or a body less inclined to adopt policy positions independent from the government of the day. The three additional amendments have greatly improved

the original bill. The Minister has done well to recognise their merit and include them in the new bill.

But the bill does not deliver on all the expectations for improved coastal management raised by the fine words used by the Minister in his frantic drive for self-publicity. Significantly, the timing of this bill indicates that the Minister is operating well below community expectations. Even considering the bill introduced in November last year it is plain that the Minister has given coastal protection a lower priority than drastic management of the Environmental Planning and Assessment Act. When the Minister's statements are closely examined it becomes clear that he has been quite inconsistent in his action on the coast: he says one thing and does another.

In the *Sydney Morning Herald* on 2 March 1995, before his election, he said that the Labor Government would be very careful about the coast. It is now over three years since he made that statement, and the great care he promised is still in many ways yet to be realised. On 25 May 1995, more than two years before this bill was introduced, the Minister moved an urgency motion on coastal protection in the other place. In that motion he said:

It is urgent to get on with good coastal management—yet the coastal policy, revised in 1994, was not brought forward until late last year, after numerous delays.

It has been a long wait for coastal communities, first the long delay in the release of the coastal policy, and then the delay preceding introduction of the bill. However glad we may be that the bill has finally seen the light of day, and however supportive we are, there is a long way to go before New South Wales will achieve conservation of its coastal resources. There needs to be a complete review of all legislation which covers the coastal zone.

A number of key areas are currently in conflict with each other; one which immediately springs to mind is acid sulphate soils drainage. This issue is extremely important to me as a resident of northern New South Wales and a member of the Standing Committee on State Development, which is investigating the condition of coastline fisheries and fish stock maintenance. Certainly the acid sulphate soil problem needs to be addressed immediately and co-ordination must be established between the agricultural, fisheries and planning ministries to facilitate protection of invaluable fish breeding zones if the environment and viable fishing industries are to be maintained.

An ad hoc system of drains, floodgates, weirs and other structures impeding tidal flow has locked salt water out of our coastal wetlands resulting in the wholesale devastation of salt marsh, mangrove and wetland communities, the engine rooms of coastal bird, fish and crustacean populations. If honourable members were listening to the State political forum a few weeks ago, they would have heard Richard Glover ask questions regarding the budget. He asked us if we had a few dollars to spare what would we wish to use them for. I suggested that we look at releasing the floodgates at the Hexham marsh and rehabilitate that area, at low cost, which would act as a pump to prime the fish and prawn stocks on the east coast. Certainly that would have been a very effective means of achieving that aim, and it is appropriate that this coastal legislation deals closely with those issues.

Farmers, including sugarcane producers and dairy farmers, are required to maintain their drains under the outmoded Drainage Act 1939. However, the Protection of the Environment Operations Act 1997 makes pollution of waterways an offence. Cultivators of floodplain lands are caught between a rock and a hard place. Under one piece of outdated legislation they are required to dig drains, which results in acid sulphate run-off being discharged from their property into waterways. Under other legislation they may be currently liable and attract large fines for polluting these waterways.

This disgraceful situation has been brought to the attention of the Minister for the Environment, the Minister for Land and Water Conservation and their relevant departments time and again. Yet every time it rains the acid run-off discharges into our coastal rivers, causing fish kills and long-term stress on the riverine environments, and leaves farmers potentially liable under current legislation. It is sad to see acid sulphate soil; I have seen it running out of sugarcane areas. That clear blue material, which has an effect on our fish stocks, was shown to the Standing Committee on State Development when it toured the area. The professional fishers who showed it to the committee are very concerned that it significantly affects the breeding grounds of fish and, therefore, the environment.

The Coastal Council should address this issue as a matter of priority. The New South Wales Greens look forward to the day when coastal lands can be managed by a rational system of legislation which does not result in unfairness for coastal resource users, communities or the environment. Regarding the Shoalhaven, and the Newcastle exclusion, it appears that the Minister does not

believe that urban areas need the protection of the New South Wales coastal policy. Apparently this is because the urban coastal council has not been consulted. The Sydney Coastal Council Group has been consulted and in turn it has produced a report on the reception of the coastal policy by community groups—an interesting read, which I recommend to honourable members.

The New South Wales Greens hope that the New South Wales Coastal Council will progress its consultation with metropolitan coastal councils on the current policy for voluntary inclusion in the coastal policy. If they do not wish to join the current policy a metropolitan coastal policy needs to be drafted as a priority. The Minister promised a "Coastal Council with teeth". The Coastal Council perhaps has baby teeth at this stage and is certainly a long way off being truly representative. One conservationist amongst 20 members and departmental staff can hardly be regarded as representative, nor can omission of an Aboriginal community representative on the Coastal Council. Once again we look to the Coastal Council to progress representation as a priority with the Minister. Once the composition of the council reflects the coastal community of New South Wales it is important that the council's recommendations are considered by the Minister and afforded appropriate weight.

The Minister should report on his acceptance of the council's recommendations and should he choose not to implement its recommendations it should be given a clear explanation why they were not accepted. The New South Wales Greens would have liked to have seen a mechanism which allowed the Coastal Council to report directly to the Premier, as decisions of the council cut across the work of up to 15 government agencies. Rationalisation and consolidation of the myriad of legislative instruments which cover a wide range of activities along the coast should clarify the reporting mechanism of the New South Wales Coastal Council and hopefully reduce the number of government representatives on that council.

There is a need to get the Coastal Council working properly. That means there is a desperate need for adequate funding to allow it to function in an adequate and appropriate manner, and for expertise to deal with the complex problems to be found on the coast. A number of other key laws which currently apply to the coastal zone are in conflict with each other. In an article in the *Sydney Morning Herald* of 2 March 1995 entitled "Labor Government promises to put brakes on 19 coastal

projects" the then Leader of the Opposition, Mr Carr, is reported as saying:

"My warning to developers is that the next Labor Government is going to be very, very, very careful with the coast," he said. "We have lost too much of it. We've got to protect the natural coastline for future generations. This is a finite resource."

The article stated:

The major problem was urban sprawl along the coast. "We want urban expansion to take place pretty largely adjacent to existing centres; that is, the Coffs Harbours and the Port Macquaries."

Interestingly, on 11 November 1997 the Minister for Urban Affairs and Planning, Mr Knowles, said this about coastal protection:

Two years ago the Government committed itself to commence the task of protecting our precious coastline . . . In the last two years this Government has added 770 hectares of wetlands under State environmental planning policy 14 on the north coast and the south coast.

Mr Knowles said that a new coastal policy would ban canal estate developments, new additions would be made to State environmental planning policy 26 dealing with littoral rainforests and new additions would be made to the SEPP 14 coastal wetlands policy. He said that the Coastal Council would be provided with increased powers to oversee the implementation of the policy. He further said:

The Government's addition of 60 hectares of scarce and precious littoral rainforest to SEPP 26 is the first such addition to that planning policy since its introduction by the then Minister for Planning, Bob Carr, in 1988.

The Minister must be congratulated on dealing with those issues. On 25 May 1995 the Minister said:

Second, the existing Coastal Committee of New South Wales will be replaced by a Coastal Council of New South Wales. The role of the new Coastal Council will be inserted into legislation as an amendment to the Coastal Protection Act 1979.

This new Coastal Council will have real teeth, unlike the previous advisory body. It will report directly to the Parliament instead of the Minister for Urban Affairs and Planning, as is presently the case.

I wonder whether that is the case or whether, as I said before, the Coastal Council has only baby teeth. The Minister further said:

We will also be widening the definition in accordance with public opinion to include significant areas of the Sydney, Newcastle and Wollongong metropolitan areas.

**The Hon. Dr B. P. V. Pezzutti:** Where does it say that?



**The Hon. I. COHEN:** That is an extract from *Hansard*.

**The Hon. Dr B. P. V. Pezzutti:** Where does it say that?

**The Hon. I. COHEN:** Someone should lift the needle from the revolving record of the Hon. Dr B. P. V. Pezzutti as he seems to be stuck in a rut and is repeating the same thing. That is aggravating and adds nothing to the debate.

**The Hon. Dr B. P. V. Pezzutti:** It says that it is to include Newcastle, Wollongong and Sydney.

**The Hon. I. COHEN:** Indeed. If the honourable member had been listening he would know that I was quoting *Hansard* of 25 May 1995. The Minister further said:

The Government will strictly enforce SEPP 14. Breaches will be dealt with swiftly and harshly.

I ask the Government to ensure that coastal areas are adequately protected. A major industrial concern, the Batson quarry, is polluting the coastal wetland at Taylor's Lake, which is within walking distance from where I live.

**The Hon. R. T. M. Bull:** Is that the one near you?

**The Hon. I. COHEN:** That is correct. The Minister said:

The Department of Urban Affairs and Planning is purchasing . . . land at North Ocean Shores previously proposed as a wildlife sanctuary and accommodation. These are just some of the examples of where the Government has acted to protect the coastline.

It is to the Government's credit that it has acted responsibly in relation to North Ocean Shores. As for coastal protection, on 25 May 1995 Mr Knowles said:

Our approach will ensure that areas of rare vegetation and rare flora and fauna, clean beaches, productive estuaries and recreational places will be protected through clear and coherent policies.

He continued:

It is important that the House grant urgency to my motion and to recognise the need to act quickly and take the first step in putting in place a new approach to coastal management . . . The clear reason for urgency is that we must act quickly to protect the unique coastal environment.

We are moving slowly but surely in that direction. The Minister further said:

If we do not act now the damage will be irreversible.

Currently, irreversible damage is being done on the coast. I am confident that this coastal legislation will improve the situation on our coastline. The environmental movement has waited a long time for this legislation. The Greens are pleased that this long promised bill has been introduced. Hopefully, it will have an impact on our fragile coastline. Honourable members should remember that in the eyes of the international community our coastline is the primary feature, the gem, of the Australian environment. If we do not protect the coastline appropriately and properly we will destroy the goose that laid the golden egg for the fecundity of the New South Wales environment, which in turn will reflect on the New South Wales economy and the quality of life of those who live here.

The Greens do not want to see the continuation of issues such as those relating to Wallace Lake. We want sewage removed from our coastal waterways. We do not want the blue-green algae mess that exists inland to spread to coastal areas. We want an end to the acid sulphate run-off that is destroying our resources. As the Minister for Urban Affairs and Planning has said, urban developments should be clustered around existing developments. We do not want developments such as those for rivers to destroy our coastline. Once our coastline is gone we will have lost an irreplaceable gem for ever.

**The Hon. Dr B. P. V. PEZZUTTI** [9.58 p.m.]: While the Hon. I. Cohen had baby teeth in parliamentary terms, the Standing Committee on State Development has conducted a major inquiry. That inquiry commenced under the leadership of the Hon. J. P. Hannaford and continued under the leadership of the Hon. J. H. Jobling. Before 1991 the Hon. I. M. Macdonald, who is sleeping in the corner, released the draft report titled "The Labor Party's Policy". He called it a vision for the coast. This report, which was supposed to have that title but the Hon. I. M. Macdonald had filched it, has been used as a blatant and hasty beat-up of the Carr Government's first election lies.

The Hon. I. M. Macdonald released a report as Labor Party policy, or the important features of it. The Government did not intend to keep any of its promises and has not kept any. The committee lost its reference when Parliament was prorogued in 1991. Premier Greiner did not like the report, did not understand it and did not consider its breadth and depth. If I remember correctly, in a radio interview he said he thought it was a terrible report from a committee that did not know its front from its back.

After the election I had to convince the Hon. Nicholas Greiner that a report like this must be tabled because many people had put a lot of work into it. He returned the reference to the committee. The committee approved the change of approximately 20 words and produced this report, "Coastal Planning and Management in New South Wales: A Framework for the Future". The committee received a one-page response from Mr Greiner, but the committee unanimously resolved not to accept it. It was my unpleasant, or pleasant, duty to write to Nicholas Greiner saying, "Dear Premier, this response is totally and absolutely inadequate. Please redo it." He produced a vision for the future for New South Wales that incorporated almost all of the important parts of this document, to which I shall refer shortly.

That document resulted from the enormous influence of Robyn Kruk, who worked in the Cabinet Office at that time; of Robert Webster, who was Minister for Planning; and of Gary Sturgess. Those people were on our side and they convinced Nick Greiner, who had to do a deal on the environment at national level at the Heads of Government meeting. Nick had to go down this path because he had nowhere else to go. He embraced the report and he put into place things that would bring the policies of this report to life. I shall read a few of the committee's recommendations. The committee recommended that the State Government incorporate the concept of pro-active planning into the revised coastal planning and management system of New South Wales; that it incorporate the concept of ecologically sustainable development into the revised coastal planning and management system—

**The Hon. R. S. L. Jones:** Finally we got it.

**The Hon. Dr B. P. V. PEZZUTTI:** The Hon. R. S. L. Jones should just wait and listen. The committee recommended also that the State Government take a stronger role in the coastal development process to ensure that prime responsibility for the coast was vested in the State Government. It recommended development of a vision, which the Hon. R. S. L. Jones said had to be driven by Cabinet. There should be a mechanism to drive that vision to make each council conform to strong regional environmental plans. These proposals were not to be just handed down in the same manner that the Carr Government today hands down coastal policy. The committee produced a document entitled "Alternative dispute resolution primer" to ensure adequate and proper community consultation to determine that plan. I ask the Hon. R. S. L. Jones whether there was community consultation on the tacky bill that the Government has presented today? There was none!

**The Hon. R. S. L. Jones:** With the council.

**The Hon. Dr B. P. V. PEZZUTTI:** But what about consultation on presentation of this bill? This bill is the only step the Carr Government has taken on coastal planning in the 3½ years it has been in government. No consultation was undertaken to produce the bill. The coalition wanted community consultation to drive the REPs and the local environmental plans so that the people of New South Wales had a say in what they would see if they flew over the coast in 50 years time. That is precisely what the committee report contained and what Nicholas Greiner had in the document he released just before he was sacked by Clover Moore and her confederates in the lower House.

**The Hon. R. S. L. Jones:** And ICAC.

**The Hon. Dr B. P. V. PEZZUTTI:** Not by ICAC. He was exonerated by ICAC but was driven out by Clover Moore and others in the lower House. I shall not refer to all of the committee recommendations, but the main ones include the concept and practice of intervenor funding. In other words, the proper funding of people to challenge and ensure proper communication and proper consultation. People with an interest in this issue were to have funds provided to make sure they could make proper input. This bill does not include that provision. The committee recommended that there be alternative dispute resolution mechanisms to ensure a resolution was reached and that the process was not just a lot of words or simply a talkfest. Where is that process reflected in this bill? The committee recommended further that there be a vision for what we wanted to see on the coast. This bill has no vision; it is just tacky. This evening I was insulted by some non-experts, one of whom was the Hon. R. S. L. Jones. In 1997 the autumn edition of "Environment NSW", which is a newsletter of the Nature Conservation Council, stated:

The Carr Government came to power with an impressive array of promises contained in "Labor's Vision for the NSW Coast".

This is the vision from the document courtesy of the Hon. I. M. Macdonald. The newsletter said that a meagre 20 per cent achievement of pre-election promises had been met and noted several important points about the coastal policy of the Government. It said:

- failure to "carry out an urgent environmental survey . . . on the coastal zone to identify priority lands to be protected under the park system";

That has still not yet been done and will not be done under the provisions of this bill. This bill provides

no resources, no mapping ability and no commitment to map or identify important sites which identify priority lands to be protected under the park system. The newsletter continued:

- failure to establish a comprehensive system of marine parks;

Some marine parks have been established, but I would hardly call them comprehensive. There are just two and they are not comprehensive. The document continued:

- backtracking on protection of SEPP 14 wetlands.

The Hon. R. S. L. Jones said that the previous Government, that is, the Greiner and Fahey governments, walked backwards on State environmental planning policy 14. The coalition changed the plan that Bob Carr drew on the back of an envelope and on tracing paper—as he flew from Tweed Heads to Sydney—of where he would put SEPP 14 wetlands. As usually happens, surveyors had to clarify the boundaries. The newsletter continued:

... promoting the practice of substituting "compensatory artificial wetlands"

This Government has not produced a compensatory artificial wetland anywhere in New South Wales.

**The Hon. R. S. L. Jones:** What about the five acres at Ballina?

**The Hon. Dr B. P. V. PEZZUTTI:** That was done by the previous Government, not by this Government. The newsletter continued:

- no coastal protection legislation producing "a development decision-making process that implements ecologically sustainable development" or that creates an independent Coastal Council;

We now have a Coastal Council that is hardly independent. Council members are appointed at the whim of Ministers of the Crown. How independent is that? At least a section 22 committee has more independence. The newsletter further said the Government was supporting mining on environmentally significant coastal land, such as the Stockton Bight, a process that is still continuing.

**The Hon. R. S. L. Jones:** What about that promise?

**The Hon. Dr B. P. V. PEZZUTTI:** This Government promised it would stop that process and make changes to mining legislation, yet tonight the House heard about its offshore mining legislation,

which, I dare say, is not opposed by the Hon. R. S. L. Jones. The Government will rip up and down the coast with offshore sandmining.

**The Hon. R. S. L. Jones:** Your mob did that.

**The Hon. Dr B. P. V. PEZZUTTI:** No, we did not. The coalition will propose significant and substantial amendments to the bill at the Committee stage. A document was produced in March 1997 by the north coast regional co-ordination management group of the New South Wales Premier's Department. It is an important document that refers to guidelines for coastal development on the north coast of New South Wales. Someone spent a lot of time preparing it. It lists the agencies that a developer would have to contact if a proposed development is likely to affect creeks, streams or rivers. It is a guide that you can carry around in your pocket. In regard to drainage and maintenance of drains on acid sulfate soils, it lists the agencies from whom to seek licence approvals or referrals—the Department of Land and Water Conservation, the Environment Protection Authority and the flood mitigation authority. It also lists the relevant legislation, policy or reference—the Drainage Act 1939, the Clean Waters Act 1970 and the Rivers and Foreshores Improvement Act 1968.

It really is a list of disasters. Where is the co-ordination? There is no reference to a regional environmental plan or a local environmental plan, or any suggestion of a vision. It is all so tacky. The relevant legislation, policy or reference relating to a development affecting swamps or wetlands, prime agricultural land, dredging or reclamation are all different. There is no vision, no co-ordination and no central agency to go to. The report that the Standing Committee on State Development produced for Parliament emphasised the need for certainty. I challenge the Hon. R. S. L. Jones to say that a list of 37 different types of activity, 16 agencies and a score or so of legislation suggests that this Government has produced certainty.

**The Hon. R. S. L. Jones:** Do you want to have one piece of legislation?

**The Hon. Dr B. P. V. PEZZUTTI:** Well, precisely. What we wanted was a regional environmental plan that indicated what was going to be done in each area, mapping and identification of resources for the people of New South Wales to make judgments on. Having done all that it would have been a lot easier to have a very simple coastal plan and a process, approved by the community, of either development or non development in certain areas. The result of all this is uncertainty and the

failure of the Government to honour its promises. The promises were produced first of all in 1991 by the Hon. I. M. Macdonald—quick as a flash, out of the committee, onto the table, Carr's plan for the coast. Senator Richardson said during the 1991 election campaign that the Liberal and National parties would concrete the wetlands and put high-rise buildings on the beach.

[Interruption]

In the time that the Greiner Government was in office, not one wetland was concreted and not one high-rise building was erected on a beach. More importantly, this legislation refers to redefining the coastal zone and establishing the Coastal Council. Mentioned is also made of the abandonment of the canal developments. Who approved the last canal development in New South Wales? Bob Carr! When was the last canal development constructed? Under Bob Carr's Government! The Government's new plan will not prevent canal development. It will merely prevent any canal development that has not yet been approved.

Developments already in the approval process pipeline—and the Hon. R. S. L. Jones knows this to be the case—can be approved tomorrow, and probably will be if the right person comes along with the right push and knows Senator Richardson. That is what this abandonment of all canal developments means, and the honourable member knows that is true. Canal developments have not been prevented by this Minister or this Government. Any development now in the pipeline could still be approved.

**The Hon. R. S. L. Jones:** The last development was approved 11 years ago under the previous Government.

**The Hon. Dr B. P. V. PEZZUTTI:** It was, but some are still in the process of being approved.

[Interruption]

The Treasurer, and Minister for State Development knows that that is the case. That is the certainty that this Government has produced. It has formulated a Coastal Council that has no teeth, not even baby teeth. It is gummy.

**The Hon. I. Cohen:** Did your Government do more in regard to coastal development? I am interested to know.

**The Hon. Dr B. P. V. PEZZUTTI:** At least the section 22 committee was—

**The Hon. I. Cohen:** Are you saying your Government did better? I am shocked!

**The Hon. Dr B. P. V. PEZZUTTI:** The new Coastal Council established by the Government has no teeth at all. It comprises appointments by Ministers, almost certainly a series of public servants and experts, with very little community consultation or ability for community input, and no requirement to get out and consult. When this report was produced, the Standing Committee on State Development travelled up and down the coast and took it back to the groups and people in the community who helped us to write it. The committee made seven trips throughout country New South Wales and the Hon. R. S. L. Jones and the Hon. J. H. Jobling accompanied us. This report was applauded by all people from all sides—development and non-development alike.

Together and in a bipartisan fashion we eventually shamed the Greiner and Fahey governments into adopting it, so much so that now we have RACAC, the Resource and Conservation Assessment Council. Mr Greiner set up two other organisations that were replaced by RACAC. That organisation is meant to locate, identify and assess resources, not make a judgment on them. Mr Greiner set up a natural resource audit council to audit and put in place all the bits and pieces.

**The Hon. I. Cohen:** That was NRAC.

**The Hon. Dr B. P. V. PEZZUTTI:** Whatever it was called. The Natural Resource Audit Council was not to make judgments; they were to be made by the people of New South Wales. It was to identify them, map them and carefully assess their value. RACAC has done absolutely nothing on the north coast at all. As a result we have uncertainty. In Byron Bay we have a rotten council that does not have a clue. Those who are benefiting from all this are the residents of Byron Shire who own land. There are two residents of Byron Shire in the Chamber, both of whom are benefiting from a lack of foresight and planning. Property values are rising because no development can be approved. The Hon. R. S. L. Jones and the Hon. I. Cohen are the beneficiaries in this Chamber. I do not say they do so deliberately, but they benefit.

**The Hon. I. Cohen:** Are you sure I am a property owner there? Is that what you are saying?

**The Hon. Dr B. P. V. PEZZUTTI:** Well, you live there.

**The Hon. I. Cohen:** I live there, but you are talking about something you know nothing about.

**The Hon. Dr B. P. V. PEZZUTTI:** I assumed you are a property owner. I will take it back. The reality is that the people on the north coast are not well served and 80 per cent want to live on the coast. My children will never be able to afford to live there as a result of this legislation, because land is too scarce. There is no certainty, no development, and this Coastal Council will not produce the goods. More importantly, the Carr Government promised it would include Sydney, Newcastle and Wollongong and it has not done so. Where is the equity? It is all right for Newcastle, Sydney and Wollongong, but the rest of New South Wales can get lost. All the people in country New South Wales can get lost while those in the city can do what they like. I think it is pathetic. The Hon. R. S. L. Jones knows a lot more than anyone else in this Chamber, but his contribution tonight was pathetic. I have never said that to him before, but he was not positive tonight. He should have looked at this legislation and been as critical of it as I am. He knows as much about this as I do and he is as committed to it as I am. He has not shown his teeth on this legislation.

**Reverend the Hon. F. J. NILE** [10.10 p.m.]: The Christian Democratic Party supports in principle the Coastal Protection Amendment Bill (No 2). The bill is necessary to clarify matters relating to coastal protection. It will amend the Coastal Protection Act 1979 to redefine the coastal zone, to reconstitute the Coastal Council and to require that consideration be given to the principles of ecologically sustainable development in the exercise of certain functions under that Act. I note there has been a lot of to-ing and fro-ing with this legislation. I am concerned about one or two matters in the legislation or, rather, matters that are not in the legislation. One is that the legislation exempts the area virtually from the Illawarra to Newcastle. I am not sure how the Greens accept that. Apparently that zone is exempt from this legislation—Newcastle to Wollongong.

**The Hon. I. Cohen:** Yes.

**Reverend the Hon. F. J. NILE:** You are happy about that? In 1995 the present Premier promised that any new coastal council would have real teeth and would report directly to Parliament, not to the Minister for Urban Affairs and Planning. Under this bill it reports to the Minister, not directly to Parliament. The Minister may then present the report to Parliament, but it will go through him and not directly to Parliament as originally promised. The Hon. Bob Carr, who was then Minister for Urban Affairs and Planning, promised:

We will be widening the definition in accordance with public opinion to include significant areas of the Sydney, Newcastle and Wollongong metropolitan areas. These changes will occur

largely as a result of the work of the coastal committee during the previous two years.

Apparently that has not occurred. There may be reasons for that but there do appear to be concerns, especially as the State is approaching an election in March next year. With fixed elections we know when they will be held. In the past, when there was a three-year term without a fixed term, elections were often called with little notice. With a four-year fixed term, decisions are being made leading up to the election, even though it is nine or 10 months away. It has been drawn to my attention that bad decisions are quite often made when an election is drawing near, and governments make mistakes.

One of those mistakes, of course, which the Premier will never be able to forget, was the approval of the outrageous east Circular Quay proposal. That was given just before the last election when, perhaps, the Government was more interested in being re-elected than in looking carefully at the implications of decisions. My concern is over the exclusion of the urban regions of Sydney, Newcastle and Wollongong and the central coast—that is an area extending from Newcastle in the north to Shellharbour in the south. As I am informed, it would be appropriate that the central coast have the benefit of this legislation's coastal protection. All honourable members know what an attractive area the central coast is, and because of that attractiveness there has been massive growth in the area.

I understand that Gosford City Council is now considering selling for townhouse development waterfront land on Brisbane Water that is used as a park, even though it is zoned 5A for special purposes and is not designated as a park. That is the sort of practical matter that causes concern. I am informed also about a proposal for a 25-storey building at The Entrance, in the area that is exempt. It may be that honourable members need to ask more questions about whether there will be massive development in the central coast area, a bit like the Gold Coast, which will completely destroy what was a lovely holiday location.

**The Hon. R. S. L. Jones:** Has it been approved?

**Reverend the Hon. F. J. NILE:** The information I have is that the decision to exclude the region was to allow approval to be given to a 25-storey building at The Entrance—an approval completely at odds with any coastal policy. The Hon. R. S. L. Jones might follow that up. That was mentioned during the second reading debate in the other place. I understand that the Coastal Council

will still be led by its first chairman, Professor Thom, who has done a very good job. The continuation of that leadership gives more professionalism to the Coastal Council.

My final comment concerns the procedure whereby the Nature Conservation Council is to be the representative body of the conservation movement that nominates a member of the Coastal Council. The Environment Liaison Office said in a letter to me that it is very pleased to have received this concession from the Government. Personally, I have reservations about tying the nomination of members to particular organisations, so that organisation then becomes part of the legislation. There may be a time when, for example, the Nature Conservation Council is in the hands of unsatisfactory people, maybe people whom even the Green movement does not agree with. I do not believe that representation should be restricted to a particular organisation. Perhaps the Minister could ask for nominations from a number of environmental groups and from the general community, and select the best people to represent those interests. In principle the Christian Democratic Party does not agree with that provision in the bill.

One could argue that representation should come from the New South Wales Surf Life Saving Association, which is intimately involved with the coastal regions of the State. Why should that organisation not be represented? I am sure its members are just as concerned about the environment as anyone on the Nature Conservation Council, who could be a businessman who lives in Dural and has no close association with the coastal region at all. With those observations, the Christian Democrats support the bill, as we need to have a Coastal Council, and the coastal area must be carefully protected. On the surface, that should occur, but the exemption provision will cause concern in the same way as we have had controversy about the development at east Circular Quay. Perhaps after what I have said tonight there will be some headlines about some of the developments in the exempt area of the coast which should not have been approved.

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.27 p.m.], in reply: I thank honourable members for their contributions, and I commend the bill to the House.

**Motion agreed to.**

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

## ADJOURNMENT

**The Hon. M. R. EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [10.28 p.m.]: I move:

That this House do now adjourn.

## MUSICA VIVA IN SCHOOLS

**The Hon. J. M. SAMIOS** [10.28 p.m.]: I wish to speak about a wonderful and spectacular initiative by Musica Viva, one of the icons of the performing arts in Australia, as referred to by Jennifer Bott, the general manager, in a letter dated 3 June 1998. Jennifer Bott writes that the initiative involves more than 20,000 Singaporean students participating in the world's largest music education program, in which more than 350,000 Australian students participate annually. The program, called "Musica Viva In Schools", is a great Australian initiative, involving an incredibly large number of Australian students, of whom we can all be very proud. The program has now extended its benefits to Singapore, enabling students to participate there.

The program was launched in Singapore on 19 January this year. Two leading Australian ensembles, Nova from Perth, and Imbosima from Sydney, will give 67 concerts to students in 30 Singapore primary and secondary schools and junior colleges. In welcoming Musica Viva In Schools to Singapore, Senior Minister of State for Health and Education, Dr Aline Wong, referred to the need for Singapore schools to provide a fully rounded education program, balancing academic and artistic achievements. Dr Wong said:

I have no doubt that, through live performances at our schools, Musica Viva will enthral our students, therefore enthusing them towards music appreciation and inspiring them to make joyful music on their own.

Bernadette McNamara, Manager of Musica Viva In Schools, said that as the Singapore program grows, a wide choice of ensembles will be available to schools. She stated:

It is anticipated that eventually Singaporean groups will also be incorporated into the program. These groups will also have the opportunity to participate in the Australian program, providing a valuable means of cultural exchange for students and teachers in both countries.

The launch of Musica Viva In Schools in Singapore has also been welcomed by Dr Stephen FitzGerald, Chairman of the Asia-Australia Institute at the University of New South Wales. Initiatives such as this ennoble the work of structures such as Musica Viva Australia. They play an important role in

bringing the arts to young Australians and to our neighbours around the world, completing what could only be called a sacred mission for the arts.

### BALTIC DEPORTATION COMMEMORATION

**The Hon. ELAINE NILE** [10.33 p.m.]: This evening I bring to the attention of the House a commemoration concert held on Sunday, 14 June 1998, in memory of the mass deportation of the Baltic people in June 1941. It was a day of remembrance and warning. In June 1940 Estonia, Latvia and Lithuania were occupied by Soviet Russia. One year later, on the fatal night of 14 June 1941, at least 60,000 people from those three countries were deported at a single stroke to the remote regions of the former USSR. Interrogations and arrests for political reasons had been a common occurrence since the day of the occupation.

The deportations of 14 June 1941 were, however, acts of macabre political violence never before experienced by the Baltic people. The vivid memory of that day has remained indelible in the minds of Estonians, Latvians and Lithuanians. Every year they gather on this day to mourn and pay tribute to those who fell victim to the first and subsequent deportations, and to remember their compatriots who suffered under Soviet oppression for more than 50 years.

The experience of the Baltic states, as well as other nations which were swallowed by the expansionist Soviet policy, should serve as a warning to the peoples of the free world. Indeed, may these examples of brutality strengthen the will and determination of the free democracies to preserve the human rights and dignities which they enjoy. The concert was very moving. We have attended these meetings during the years. The fate of Estonia was decided by the German Soviet Nonaggression Pact of August 1939 between Nazi Germany and the Union of Soviet Socialist Republics.

A secret protocol to this treaty assigned Finland, Estonia, Latvia and eastern Poland to the Soviet orbit. After the defeat of Poland this arrangement was revised on 28 September and a secret supplementary clause extended the Soviet's fear of influence to Lithuania. On the same day the Soviet Government imposed on Estonia a treaty of neutral assistance that conceded to the USSR several military bases on Estonian territory, which were manned forthwith. A broadly based nonpolitical government under Juri Uluots was appointed.

On 16 June 1940 a Soviet ultimatum demanded a new Estonian government "able and willing to secure the honest application of the Soviet-Estonia mutual assistance treaty". The following day Soviet forces occupied the whole country. On 21 July the Chamber of Deputies was presented with a resolution to join the USSR and it was unanimously adopted the next day in spite of being contrary to constitutional procedure. On 6 August the Moscow Supreme Soviet incorporated Estonia into the USSR as one of its constituent republics. Meanwhile, Päts, Laidoner and many other political leaders were arrested and deported to the USSR. In the first 12 months of Soviet occupation more than 60,000 persons were killed or deported—more than 10,000 were removed in a mass deportation during the night of 13-14 June 1941.

When World War II started in September 1939 the fate of Latvia had been already decided in the secret protocol of the so-called German-Soviet Nonaggression Pact of 23 August. In October Latvia had to sign a dictated treaty of mutual assistance by which the USSR obtained military, naval and air bases on Latvian territory. On 17 June 1940 Latvia was invaded by the Red Army. On 20 June the formation of a new government was announced; on 21 July the new Saeima voted for the incorporation of Latvia into the USSR; and on 5 August the USSR accepted this incorporation.

In the first year of Soviet occupation about 35,000 Latvians, especially the intelligentsia, were deported to Russia. Lithuania was received into the membership of the League of Nations on 22 September 1921. On 28 September 1926 a Soviet-Lithuanian treaty of nonaggression was signed in Moscow. On 15 June 1940 Lithuania was confronted with an ultimatum demanding immediate formation of a "friendly" government. On the same day, the country was occupied by the Soviet army. Many Lithuanian leaders either fled to the west or were arrested and deported to Siberia. On the night of 14-15 June the next year 30,455 members of the Lithuanian intelligentsia—members of the national guard, civil servants, et cetera—were deported. [*Time expired.*]

### MACLEAN FLYING FOX COLONY

**The Hon. I. COHEN** [10.38 p.m.]: I have been contacted by a scientist, Kerryn Parry-Jones, Ph.D, regarding the flying fox colony site at Maclean High School. He has written to me and explained the problem of the location of Maclean

High School, which is extremely close to a traditional flying fox colony site. The full story of their contribution to the ecology of Australia is not yet known. However, there is enough information available to suggest that their role is critically important. Grey-headed flying foxes are a threatened species under the Commonwealth and New South Wales Acts.

Considerable incorrect information has been disseminated via the media on the topic of relocating flying foxes from traditional colony sites. All the evidence contained in the scientific literature indicates that the only way that a traditional colony can be moved successfully is to remove the trees on which it roosts. At sites where this has been done the colony has relocated to a nearby patch, but there is a worry that those flying foxes will relocate to suburban areas of nearby Maclean.

Less dramatic attempts at traditional colony removals have been consistent failures. There are records of colonies in the past returning to specific sites after seasons of extermination shoots, after considerable development around the site and after seasons of human harassment. However, a number of people from the Maclean area have been recorded by the media as saying that flying fox colonies can be moved, as they were at Mataranka. I have been informed that many methods were applied to shift the animals at Mataranka, but none were successful. A paper entitled "Flying-foxes and tourists: a conservation dilemma in the Northern Territory", authored by a number of scientists including R. Tidemann, suggested that the colony at Maclean could be moved.

However, that has never successfully been done. Mr Tidemann will be experimenting in a situation where relocation has never worked. There is a risk in relocating this site and if the flying foxes disperse to suburban areas the risk could be increased. The editor of a local paper in northern New South Wales, Michael McDonald, has asked that a policy be implemented to protect the maternity colonies of the bats. The colony at Maclean is at least 100 years old, according to Dr Harry Parnaby, an expert on bats who is concerned about their relocation. He has written to me and spoken to me on the telephone regarding protection of this colony.

He said that there is no evidence to show that bats can be transported successfully. I place on record the real reason this issue is being stirred up in northern New South Wales. A document headed "North Coast Media Bytes" stated that complaints have been received indicating legal action and great

worry about disease. This view has been put forward by the turncoat, Bill Day, a candidate in the Clarence area. He is stirring the pot on this issue and deliberately putting forward false information about bats spreading disease. In fact, the bats may not be the problem that has been deliberately touted to destabilise the political situation.

Mr Day will be part of the delegation which will discuss the problem of these bats at the school tomorrow. He should not undertake this activity, because he is obviously doing so for political reasons: to threaten the Labor Government, to threaten Harry Woods and to put forward scandalous scaremongering which may result in the destruction of the bats. In fact, bats are a biological and tourist resource which could be of great benefit to the people of northern New South Wales. The Maclean High School should be relocated to Yamba, where the majority of the student population lives. This ugly propaganda has been put forward by Mr Bill Day for political purposes.

#### MACLEAN FLYING FOX COLONY

**The Hon. R. S. L. JONES** [10.43 p.m.]: I share the concerns of the Hon. I. Cohen about this flying fox colony at Maclean, which consists mostly of red flying foxes and a few endangered black flying foxes. I ask the Minister for the Environment to consider at tomorrow's meeting a program to be developed with the students at the school to establish a new forest for the flying foxes. It might take 10, 15 or 20 years to grow, but if the students and the department got together in Alstonville a new area of four or five hectares could be established to which the flying foxes could be relocated—there is not enough rainforest or suitable habitat left in that area. If this matter had been addressed years ago and a habitat had been planted, we would not have the problem of that colony being isolated near the school. A school building has been constructed two metres from the colony, although the department should have known that it was an inappropriate place to build it.

I ask the Minister to negotiate with the local people to find an area of land suitable for establishing a new rainforest area and planting species that would be useful for flying foxes to inhabit. If necessary, the flying foxes could be moved to that area, where they would survive and grow. Flying foxes are valuable for propagating forests, especially rainforests. Many tree species will not propagate without flying foxes. They are not vermin; they are extremely important animals in our ecology.



**The Hon. R. T. M. Bull:** They should be moved only a short distance away.

**The Hon. R. S. L. JONES:** But there is nowhere for them to be moved to. That is the whole point. That is why they are staying where they are. We must establish new habitat in areas to which they can be moved. I ask the Minister for the Environment to consider establishing new areas for the flying foxes. I agree that it may take 10 years for new areas to develop sufficiently for the flying

foxes. I have been planting many trees suitable for flying foxes, as have the Hon. I. Cohen and my neighbours, and we have some flying foxes there now. However, some flying foxes have been shot illegally by local farmers. It is important to maintain the population of flying foxes as they are extremely important to the environment.

**Motion agreed to.**

**House adjourned at 10.45 p.m.**

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