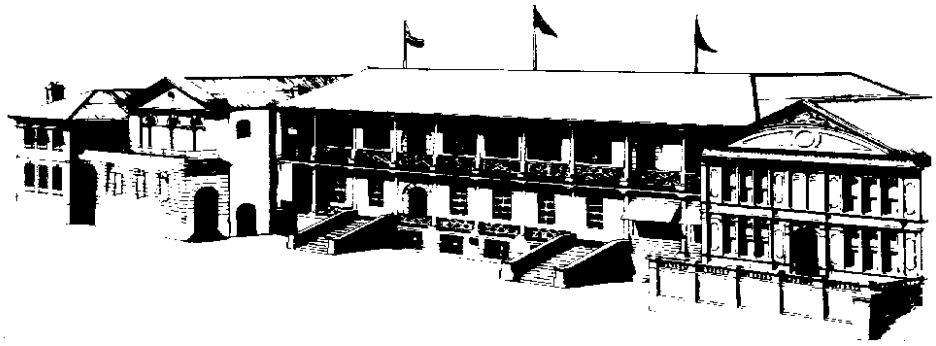
NEW SOUTH WALES



Legislative Council

PARLIAMENTARY DEBATES

(HANSARD)

FIFTY-FIRST PARLIAMENT
THIRD SESSION

OFFICIAL HANSARD

Thursday, 25 June 1998

AUTHORISED BY
THE PARLIAMENT OF NEW SOUTH WALES

LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY

Thursday, 25 June 1998

JOINT SITTING TO ELECT A MEMBER OF THE LEGISLATIVE COUNCIL

The two Houses met in the Legislative Council Chamber at 11.34 a.m. to elect a member of the Legislative Council in the place of the Hon. Elisabeth Kirkby, resigned.

The Clerk of the Parliaments read the message from the Governor convening the joint sitting.

The PRESIDENT: I am now prepared to receive proposals with regard to an eligible person to fill the vacant seat in the Legislative Council caused by the resignation of the Hon. Elisabeth Kirkby.

Mr CARR: I propose Arthur Chesterfield-Evans as an eligible person to fill the vacant seat of the Hon. Elisabeth Kirkby in the Legislative Council, for which purpose this joint sitting was convened. I indicate to the joint sitting that if Arthur Chesterfield-Evans were a member of the Legislative Council he would not be disqualified from sitting or voting as such as member, and that he is a member of the same party, the Australian Democrats, as Elisabeth Kirkby was publicly recognised as being an endorsed candidate of and who publicly represented herself to be such a candidate at the time of her election at the fifth periodical council election, held on 25 March 1991. I further indicate that the person being proposed would be willing to hold the vacant place if chosen.

The Hon. M. R. EGAN: I second the nomination.

The PRESIDENT: Does any other member desire to propose any other eligible person to fill the vacancy? As only one eligible person has been proposed and seconded, I hereby declare that Arthur Chesterfield-Evans is elected a member of the Legislative Council to fill the seat vacated by the Hon. Elisabeth Kirkby. I declare the joint sitting closed.

The joint sitting closed at 11.37 a.m.

LEGISLATIVE COUNCIL

Thursday, 25 June 1998

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

The President offered the Prayers.

LEGISLATIVE COUNCIL VACANCY

Resignation of the Honourable Elisabeth Kirkby

The PRESIDENT: I report the receipt from His Excellency the Governor of a communication notifying the resignation of the Hon. Elisabeth Kirkby, and intimating that it had been accepted with effect from 25 June 1998. His Excellency advised also that the resignation had been acknowledged, and that the Hon. Elisabeth Kirkby had been informed that the President of the Legislative Council had been notified of the resignation. I have acknowledged His Excellency's communication and the resignation has been entered in the Register of Members.

Joint Sitting

The PRESIDENT: I report the receipt of a message from His Excellency the Governor convening, at 11.30 a.m. in the Legislative Council Chamber, a joint sitting of members of the Legislative Council and members of the Legislative Assembly to elect a person to fill the seat in the Legislative Council vacated by the Hon. Elisabeth Kirkby.

JOINT STANDING COMMITTEE ON SMALL BUSINESS

The PRESIDENT: I report the receipt of the following message from the Legislative Assembly:

Mr PRESIDENT—

The Legislative Assembly desires to acquaint the Legislative Council that on Wednesday, 14 June 1998, it agreed to the following resolution—

That the terms of reference for the Joint Standing Committee on Small Business be amended by inserting the following:

(7) That should either House stand adjourned and the committee agree to any report before the Houses resume sitting:

(a) the committee have leave to send any report, minutes and evidence taken before it to the Clerk of the House;

(b) the documents shall be printed and published and the Clerk shall forthwith take such action as is necessary to give effect to the order of the House; and

(c) the documents shall be laid upon the table of the House at its next sitting.

And the Legislative Assembly requests that the Legislative Council pass a similar resolution.

Legislative Assembly
24 June 1998

JOHN MURRAY
Speaker

INDEPENDENT COMMISSION AGAINST CORRUPTION

Report

The President, pursuant to section 78(1) of the Independent Commission Against Corruption Act 1998, announced the receipt of the report of the Independent Commission Against Corruption entitled "Investigation into the disposal of waste and surplus assets in TransGrid, Pacific Power and Integral Energy", dated June 1998.

The President announced that pursuant to section 78(3) of the Act, he had authorised that the report be made public.

Ordered to be printed.

JOINT SELECT COMMITTEE ON VICTIMS COMPENSATION

Reports

The Hon. Jan Burnswoods, on behalf of the Chairman, tabled the following reports:

The Collection of Restitution from Convicted Offenders—A Discussion Paper, dated June 1998

Third Interim Report: Complaint by the Walsh Family concerning Rakus Solicitors, dated June 1998

Ordered to be printed.

BUDGET ESTIMATES AND RELATED PAPERS

Financial Year 1998-99

Debate resumed from 24 June.

The Hon. I. M. MACDONALD [11.12 a.m.]: It is indeed a pleasure and a privilege to have the opportunity to speak on what is one of the most magnificent budgets in the living memory of this State, and I am sure the Treasurer would agree with my gracious comments.

The Hon. M. R. Egan: It is the greatest.

The Hon. I. M. MACDONALD: The Treasurer has concurred and said that it is the greatest. The Treasurer is an economist of note, and I would have to agree with his comments.

The PRESIDENT: Order! The Hon. I. M. Macdonald will address his comments through the Chair, not to his devoted audience.

The Hon. I. M. MACDONALD: From the way honourable members opposite have interjected and carried on this morning, one would have thought they were the equivalent of the Footscray Bulldogs on an end-of-season footy trip. The Hon. M. R. Kersten would know all about that. It is a pleasure to contribute to the budget debate, but this will be my shortest ever budget speech in this House. I am sure honourable members opposite will be disappointed, especially the Hon. D. J. Gay, because I was planning to speak at great length about Labor's regional development program.

The budget allocates $600 million to regional New South Wales in an effort to redress the harm done by the Greiner and Fahey governments, which cut funding to rural and regional areas. One could almost blame the rise of the One Nation party on the Fahey and Greiner governments for winding back regional funding in New South Wales. It is a shame that the Hon. M. R. Kersten has not stated in this Chamber that he will put One Nation last in the preferences, and I challenge him to say that in his contribution to the budget debate.

The Hon. D. J. Gay: Where were you on Monday?

The Hon. I. M. MACDONALD: I was present at a committee hearing that morning and I was elsewhere that afternoon. There was no committee hearing on the Monday afternoon so the Hon. D. J. Gay must be thinking of the wrong day. The $600 million budget allocation will keep the wheels of regional New South Wales turning.

The Hon. M. R. Egan: It is a little more than $600 million.

The Hon. I. M. MACDONALD: According to your press release it was $600 million. The Government's policies seek to improve the economy of regional New South Wales after the Greiner-Fahey government years. I shall illustrate how seriously the Government regards the needs of regional New South Wales. All honourable members would have had an opportunity to read the landmark document of the last decade on regional development in this State—a great document, as is the one that I helped write—entitled "Rebuilding Country New South Wales".

The Hon. Virginia Chadwick: Have you read it?

The Hon. I. M. MACDONALD: I have read it from cover to cover. I would not refer to a document that I had not read. It lays the groundwork for the fight of all decent people against the rise of One Nation in this State. This document lays the basis for the regeneration of New South Wales. For the benefit of honourable members opposite I shall quote some features of the Government's strategy to rebuild this State. I hope that the Hon. M. R. Kersten will ensure that One Nation is last on his ticket at the next election and that he will act with the same decency that he has brought to bear on many other issues.

The Hon. D. F. Moppett: Are you going to be his campaign director? You just endorsed him.

The Hon. I. M. MACDONALD: The Hon. D. F. Moppett is not intending to run for a lower House seat for the National Party and I am sure that he would not be seduced by One Nation, as other members of the National Party have been seduced, in the lead-up to the next election. Yesterday I said the Hon. M. R. Kersten was in bed with One Nation. Today it is looking as though he could be seduced, and I use that word advisedly and with great emphasis. I hope that the Hon. D. F. Moppett, a man of great talent and fine vision, will advise his colleague to take a strong stand against One Nation, that his colleague will show the decency he has developed from his association with Government members, and that he will put One Nation last on his ticket for the seat of Murray-Darling.

Then the honourable member might put One Nation last. In fact, he should have a chat with the

Hon. Virginia Chadwick, a declared and strong opponent of One Nation, so that she may advise him, and advise him well, as to the approach he should take with regard to One Nation in the next election. I welcome the interjection of the Hon. D. F. Moppett for it has given me the opportunity to put on record the belief of this House in the decency of the Hon. M. R. Kersten in putting One Nation last on his ticket in the next ballot.

[*The President left the chair at 11.20 a.m. The House resumed at 11.48 a.m.*]

LEGISLATIVE COUNCIL VACANCY

Joint Sitting

The PRESIDENT: I report that at a joint sitting this day Dr Arthur Chesterfield-Evans was elected to fill the vacant seat in the Legislative Council caused by the resignation of the Hon. Elisabeth Kirkby. I table the minutes of proceedings of the joint sitting.

Ordered to be printed.

BUDGET ESTIMATES AND RELATED PAPERS

Financial Year 1998-99

Debate resumed from an earlier hour.

The Hon. I. M. MACDONALD [11.49 a.m.]: I was about to quote from a major report released by the Government relating to regional development. The report, titled *Rebuilding Country New South Wales*, is significant because it tackles the major issue of how we are to deal with the very dangerous developments in our society, particularly in regional New South Wales. The report states:

> Regional Australia has borne an unfair share of the pain of structural change that has occurred in the Australian economy in the last two decades. This in part has come from the effects of globalisation and the application of economic rationalism in an unbridled fashion in some sectors. This has led to major restructuring and rationalisation in the agricultural and manufacturing sectors, deregulation of the services sector in areas such as banking, and corporatisation of business enterprises.

The report continues:

> Economic commentators, for example, have led us to believe that intervention by government in the market causes distortions and that government should only become involved where there is market failure. Clearly the free market mechanism has not always delivered to regional New South Wales the range of jobs and services that are available in cities such as Sydney.

In the time available to me I want to refer to the report in detail because it reflects heavily upon the current budget that members of this House are debating, in terms of the resources allocated to regional New South Wales, and particularly for regional development. As honourable members would be aware, over the past two or three years major initiatives have been orchestrated, in effect, by the Department of State and Regional Development to attract investment and jobs to regional New South Wales.

On various occasions I have put forward an assistance program for various projects submitted by esteemed members of our business community. Occasionally the Treasurer has supported those initiatives by providing assistance for necessary regional development projects. I remind honourable members, for example, of the feasibility funds that were provided to the Inland Marketing Corporation for the study into the Parkes airport. In his wisdom the Treasurer took up the promise that had been made at a Federal level but reneged on in John Sharp's attack on regional development in June 1996. The Treasurer again came to the rescue of that great project and provided further assistance for the environmental impact statement and other studies.

In effect, the State Government has carried the load—probably quite unfairly, given that the Federal Government should be prepared to assist projects aimed at rebuilding regional areas. The Federal Government has failed to deliver one red cent for those projects. In fact, the only contribution that the Federal Government made to Parkes airport was to appoint Mr David Asimas, the Chancellor of Charles Sturt University—on which I am privileged to serve—to head an inquiry. David Asimas is a very fine fellow, I might add. The clear purpose of that inquiry is to nobble and delay the project and to allow the Federal Government to avoid providing funds for that project.

"Rebuilding Country New South Wales" suggested that it is absolutely vital that the Government intervene in the market. The report also makes it clear that economic rationalism is undermining New South Wales. One could extrapolate and suggest that the impact is the same across Australia. I will cite the report so that honourable members can appreciate clearly what I am saying. Speaking of the pain that regional New South Wales has suffered, it states:

> This in part has come from the effects of globalisation and the application of economic rationalism in an unbridled fashion in some sectors.

That hits the nail on the head! It points to the problems in regional New South Wales and

Australia in the past few years. It is a clear example of what can happen with a change in governments. Similar changes will have to occur at the Federal level if it is to respond to the challenges of the structural development occurring across Australia. The New South Wales Government has changed direction and is leading the country in that regard, while the Federal Government continues to pursue dry economics. For instance, it wants to privatise Telstra. The people of regional New South Wales do not like privatisation. I can see the Hon. M. R. Kersten looking at me intently.

[*Interruption*]

The Hon. A. B. Kelly points out that the National Party conference—obviously before the Queensland election—moved to privatise the railways. That might be one of those policy mixes that will be regurgitated in the next three or four months as people search for answers to the rising popularity in certain regional areas of One Nation. At the heart of the problem is economic rationalism. Not more than six weeks ago I was in Inverell to attend some meetings. I had the opportunity to visit the local markets on the Sunday morning prior to going to a meeting that was attended by such eminent figures as Mr Mark Arbib. The market stalls displayed a wide range of arts and crafts and local horticultural products. One stallholder was distributing One Nation pamphlets.

I found it interesting that a number of the documents I collected from this stall for my research did not, in any shape or form, touch on race. In many areas One Nation has been characterised as linking all the structural adjustment and economic rationalisation problems of regional areas to race—Aborigines, Asians or some other group. That is how the party endeavours to philosophically design its construct. The documents were really designed to draw together people's concerns about the downside of the structural adjustment in regional areas. Economic-related documents referred to large containers of orange juice imported cheaply from Brazil and Argentina, which impacts on the horticultural industry in regions around Griffith. It is subsequently reprocessed and then sent through country areas.

That was the appeal being made by One Nation. I ask honourable members to reflect upon that. This Government and all other governments have to change course. I hope that the Federal Government realises that its set of policies may be okay for those in city areas who have a spare million dollars to invest in a Telstra float, but people in regional New South Wales do not have those millions to invest, nor will they have access to an adequate level of communication in regional areas. They will lose out. They will not have full online services or be able to communicate in this new and changing world. This structural adjustment downside is at the heart of what is going on in regional New South Wales.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

CONSTRUCTION INDUSTRY CREDIT SURVEILLANCE

The Hon. R. T. M. BULL: I address my question without notice to the Minister for Public Works and Services. Why has he called tenders for the establishment of a unit in his bureaucracy to become a credit surveillance bureau on the construction industry? Why has this decision been taken so stealthily and without public consultation? What is the Minister proposing to do to protect private and personal financial information from misuse?

The Hon. R. D. DYER: In responding to the question asked by the Deputy Leader of the Opposition I note that a question in similar terms has been placed on the notice paper in another place by the Deputy Leader of the National Party, the Hon. George Souris, who has chosen to address his question to the Premier, for some reason that is not readily apparent. The question that the Hon. George Souris has asked is in remarkably similar terms to the question asked by the Deputy Leader of the Opposition. However, the question of the Hon. George Souris is somewhat confusing in that it relates not only to the matter asked by the Deputy Leader of the Opposition but to an unrelated matter—the security of payment issue within the building industry. I am advised that this question was placed on the notice paper only yesterday by the Hon. George Souris. My department is pursuing the matter and I will supply an answer to the Deputy Leader of the Opposition in regard to the matter he has raised. I take the view that I should always give an accurate and complete answer to matters I am questioned about, and that is exactly what I intend to do.

STONEFISH

The Hon. A. B. KELLY: My question without notice is addressed to the Minister for

Public Works and Services, representing the Minister for Mineral Resources, and Minister for Fisheries. Will the Minister advise the House whether synanceia horrida and synanceia verrucosa, more commonly known as stonefish, are to be found in New South Wales waters? If so, are they considered to be venomous?

The Hon. R. D. DYER: I am glad that not only members opposite take an interest in the fishing industry; the Hon. A. B. Kelly also takes a keen interest in the fishing industry of this State and in fish generally. I am able to advise the Hon. A. B. Kelly that there are two main species of stonefish, the true—sometimes named estuarine—stonefish, synanceia horrida, and the reef stonefish, synanceia verrucosa. They are some of the most venomous fish in Australian waters and are quite capable of causing death. They are distributed in tropical waters from India to Australia, northwards from Sydney Harbour, and north to China and East Africa and the Red Sea to south-eastern Polynesia respectively. Their habitat preference is for muddy reefs of mainland estuaries, bays, inlets, lagoons and on the fringing reefs of mainland islands.

They are a sedentary benthic dwelling species with a large head, mouth and pectoral fins. They are mottled and their colour varies to suit their surroundings, making them extremely well camouflaged and almost indistinguishable from the mud, rock and coral rubble that they rest on. The venom is located in twin sacs at the base of their needle-sharp grooved spines, which are capable of piercing a sandshoe. Wounds from the stonefish produce unbearable pain, muscular paralysis, shallow breathing, cold, white, clammy skin, shock and cardiac arrest, and the victim must receive medical attention as soon as possible. The venom is denatured by heat. So the standard first-aid treatment is to place the wounded area in hot water until the venom is rendered powerless. Stonefish antivenene has also been developed. I am grateful to the Hon. A. B. Kelly for that most important question.

SENIOR CONSTABLE GLENN SMYTH TRAFFIC OFFENCE

The Hon. J. P. HANNAFORD: My question without notice is directed to the Attorney General. Is it a fact that police officer Senior Constable Glenn Smyth had a charge of high-range drink-driving against him dismissed, despite the fact that he pleaded guilty in Newcastle Local Court to being more than three times over the legal limit? Given that this is yet another example of low penalties for crime, what action will the Minister take to introduce better uniformity of sentencing and to have this sentence reviewed?

The Hon. J. W. SHAW: I must say that I was somewhat concerned about the reports of this case but, upon looking at it in detail, I realise that there are some extenuating circumstances which at least make the decision more understandable. I do not particularly want to go into all the personal details of the case or the difficulties that this person had, but they are difficulties of both a medical and a personal nature. Having said that, I make clear my view that with a case involving a medium or high range of prescribed concentration of alcohol, at least prima facie it would seem inappropriate to have the court find an offence proved but not proceed to a conviction, pursuant to section 556A of the Crimes Act.

I have made inquiries about this case of the Director of Public Prosecutions and I am informed by Mr Cowdery, QC, that ordinarily he would be inclined to appeal against a disposition under section 556A for any offence of high-range PCA. I respectfully agree with the opinion of the Director of Public Prosecutions in that regard. These are serious offences. Even if they are first offences, one would expect a penalty for a medium- or high-range PCA. He used the expression high-range PCA; I extrapolated that and included the concept of a medium-range PCA as well.

In this particular case the Director of Public Prosecutions, after considering all the personal and medical matters to which I have broadly referred, has formed the view that an appeal would be unlikely to succeed. He expressed the view that while the result in this case may be regarded as merciful, and even lenient, it is not appealably inadequate. Mr Cowdery has told me that on appeal the District Court would be bound to take into account all the circumstances considered by the magistrate, including the effect of a conviction upon Mr Smyth's future employment in the Police Service. In summary, the DPP thought that the level of culpability was low. After considering this case on its merits, taking into account the subjective material raised in the medical reports, the Director of Public Prosecutions declined to direct an appeal pursuant to section 131A(b) of the Justices Act.

I have expressed my respectful concern about the result of the case, but I have also adverted to the detailed facts and circumstances. It is impossible for any informed member of the public or member of this Parliament to form a concluded or sound view about a particular court case without knowing the

detailed facts and circumstances. The determination of sentence in a prescribed concentration of alcohol case is not a knee-jerk or mechanistic process. It requires consideration of a multiplicity of facts and circumstances, and at times, even in a case of this seriousness, leniency or mercy is apposite. It is a difficult matter. In summary, I express my general concern about the result of the case and my agreement with the DPP that ordinarily appeals should be lodged in cases of this kind when a magistrate declines to convict. But I respect and understand the final decision of the DPP that this was not an appropriate case for appeal.

The Hon. J. P. HANNAFORD: I ask a supplementary question. In view of the Minister's comment on medium- to high-range PCA cases, is he aware that, again in Newcastle Court, on 15 June another magistrate dismissed four out of six PCA cases, all in the mid- to high-range category, and in all of those cases recorded no conviction? Is the Attorney concerned that these determinations could exhibit an attitudinal problem in the Newcastle courts towards this serious charge? Would the Attorney undertake to have all these other cases similarly reviewed?

The Hon. J. W. SHAW: I would be happy to have those other cases reviewed as well.

HERITAGE STONEWORK PROGRAM

The Hon. J. KALDIS: I address my question to the Minister for Public Works and Services. In light of the recent elucidation of the Choragic monument to Lysicrates, will the Minister give the House further examples of how the needs of Sydney's most prominent and historic buildings are being met through the public buildings heritage stonework program?

The Hon. R. D. DYER: I acknowledge the sustained interest that the Hon. J. Kaldis is showing in the heritage stonework program of the Department of Public Works and Services. I trust that some members have made the short trek to the monument I referred to in a response last week to see first-hand the fine work of our modern artisans. In my response today I would like to engage the interest of members of this House in the Sydney Observatory. I will move from classical Greek drama to the scientific and military world of nineteenth century colonial Sydney. Sydney Observatory may not be the largest building, but it is one of the most historic and significant buildings in Sydney.

Sydney Observatory was built in a prominent position on a ridge on the west side of Sydney Cove, the site of the colony's first windmill, then a signalling flagstaff and Fort Phillip, which was built not as a defence against the French or Russians—and I hesitate to say this because of some members seated behind me—but in case of an Irish uprising. Some of the original walls of the octagonal fort are still in place. However, the most dominant building in the complex at the top of the hill is the observatory itself. Members may recall the tower with the black time ball which signalled to shipping in the harbour, they may think of the classic revival Government Astronomer's residence with its Italian villa form, or they may think of the asymmetrically-domed observatory wing. Whatever the case, we all concur as to the building's significance.

The observatory was built between 1858 and 1859 to a design by the colonial architect Alexander Dawson. It is considered to be the most important remaining structure associated with the history of science in Australia. Separate cottages were constructed at various times within the fort's walls for a signal master and a messenger. The observatory building, and especially the tower, had fallen into a dangerous state of disrepair until a make-safe operation was carried out in 1994-95. The process included the removal of loose stone and the temporary fixing of steel straps around the cornice at the top of the tower to help stabilisation until repairs could be carried out. New stone has already been cut to replace missing cornice support brackets around the top of the tower. Work is due to commence on the site early in the 1998-99 financial year.

The historic time ball will be kept intact and other work to be carried out on the site will conform to the requirements of the 1991 conservation plan prepared by Dr James Kerr. The whole program of repairs will take up to five years and cost $4.8 million. The repair work will include the facades of the residence, the observatory itself and other buildings on the site. When the restoration work is finished, the Government will have returned one of Sydney's most delightful building groups in one of the more sublime parts of the city to the people. Locals and tourists will be able to enjoy its pleasure in safety.

SOUTH SYDNEY HEROIN SHOOTING GALLERIES

Reverend the Hon. F. J. NILE: I wish to ask the Attorney General, as first law officer and representing the Minister for Police, a question

without notice. Is it a fact that South Sydney City Council plans to open two heroin shooting galleries, in addition to its distribution of 2.1 million free needles for heroin use each year? Is it a fact that the Joint Select Committee Upon Injecting Rooms and the Government rejected the establishment of legal heroin shooting galleries in New South Wales? Will the Attorney, as first law officer, immediately direct South Sydney City Council to obey the law and not set up heroin shooting galleries in its council area? Will the Minister for Police direct the Acting Commissioner of Police to take any necessary action to prevent New South Wales laws being treated with contempt by South Sydney City Council?

The Hon. J. W. SHAW: It is correct, as Reverend the Hon. F. J. Nile has asserted in his question, that both the Government and the relevant parliamentary committee rejected the idea of the establishment of shooting galleries in New South Wales. All I know about the particular matter raised by the honourable member is from what I have read in the newspaper this morning. It is a reasonable request by the member that both my administration and the acting Commissioner of Police consider the legality of what is being proposed. I will do that and will pass on the question to the Minister for Police to enable his consideration of the matter.

PUBLIC SECTOR SALARIES

The Hon. PATRICIA FORSYTHE: My question without notice is directed to the Attorney General and Minister for Industrial Relations. Is he aware of figures from the Australian Bureau of Statistics which show that for the period from February 1997 to February 1998 the wage of a male worker in the New South Wales public sector increased by nearly 11 per cent compared with only 8.5 per cent for a female worker in the public sector? Is he aware that figures for the same period show that the private sector female wages were increasing at a faster rate than the male wages? Given the Labor Party promise during the last election to develop strategies to correct the gender pay imbalance, how does the Minister explain that after more than three years of his party in government, pay equity is still a long way from being achieved, particularly within the New South Wales public sector?

The Hon. J. W. SHAW: I suspect that the statistics cited by the honourable member are somewhat simplistic but I will examine them in detail and then respond. The Government has initiated an inquiry into pay equity in the wages structure, which is now reaching its conclusion: the final submissions may have been put to Justice Glynn. The inquiry has examined in elaborate detail and with scientific precision allegations of gender imbalance in the wages structure in both the public and the private sectors. I am sure that we will all be much better informed, if no wiser, as a result of Her Honour's report on that difficult and detailed matter. Obviously, that report will be available to members of Parliament when it is presented.

WORKERS COMPENSATION CLAIMS

The Hon. B. H. VAUGHAN: My question is directed to the Attorney General. It has been reported that there has been a decline in the number of compensation claims for employment injuries in New South Wales. Can the Minister confirm this?

The Hon. J. W. SHAW: Latest data available from WorkCover New South Wales indicate that employment injury claims received in 1996-97 were the lowest in five years. There were 173 workers compensation claims for fatalities and 15,605 for injuries in 1996-97, the lowest since 1992-93, when there were 156 claims for fatalities and 12,285 for injuries. Employment injury claims include those resulting from workplace accidents, as well as non-workplace injuries while the worker is still on duty, and occupational diseases. The reduction is attributed to a 44 per cent drop in industrial deafness claims, which have fallen from 10,684 in 1995-96 to 5,979 in 1996-97. This is due to loopholes being closed to ensure that a more genuine level of claims is received. Industrial deafness claims soared in the early to mid 1990s with the growth of companies touting for business.

The Carr Government introduced legislative amendments in 1995 which prohibited unscrupulous claims chasing and claims for small losses of hearing of less than 6 per cent. We are now seeing the benefits of those changes. The mere halving of deafness claims represents a saving of more than $30 million. The latest figures also show that the number and incidence of employment injuries in 1996-97 were down 4 per cent compared with the previous financial year. The total cost of employment injuries in 1996-97 was $864 million, a reduction of $17 million on the previous year. Trades assistants and factory hands recorded the highest incidence of employment injuries—82.8 injuries per 1,000 workers. The incidence was also high for construction and mining labourers at 80.8 per 1,000 workers.

Across industries, non-building construction, which includes civil construction, had the highest incidence of employment injuries at 105.8 per 1,000 workers. The incidence of employment injuries for males was about 2.2 times that for females. Claims for occupation diseases fell from 11,473 in 1995-96 to 6,849 in 1996-97. While it is always pleasing to

see a drop in employment injuries, the Government is certainly not complacent about workplace safety. Any injury is one injury too many.

TOTALIZATOR AGENCY BOARD SHARE ALLOCATION

The Hon. J. M. SAMIOS: My question is to the Treasurer. Why did the Government cash a $10,250 cheque from a TAB investor, Mr Barry Barnett from the northern beaches, when he has been told that no shares will be allocated to him? Will the Treasurer investigate this matter urgently and give a commitment to refund the full $10,250 plus interest? How many complaints have the TAB hotline and the Treasurer's office received from disgruntled investors?

The Hon. R. B. Rowland Smith: I am one of them.

The Hon. M. R. EGAN: What are you disgruntled about? You have made a profit of more than $77. You might think that is a puny amount but for lots of people it is significant. The Hon. J. M. Samios should not have told Mr Barry Barnett that he will not get shares, because he will get shares. If his cheque has been cashed, he will get shares. How many did he apply for? How many is he entitled to?

The Hon. J. M. Samios: That is not specified in the letter but the cheque for $10,250 was sent on 26 May.

The Hon. M. R. EGAN: He will get his shares. He will get what he is entitled to.

The Hon. D. J. Gay: Do you promise that?

The Hon. M. R. EGAN: Yes, I do.

WORONORA BRIDGE

The Hon. ELAINE NILE: I direct my question to the Treasurer, Minister for State Development, and Vice-President of the Executive Council, representing the Minister for Transport, and Minister for Roads. Is it a fact that following the December fires at Menai the Premier announced that the Government would begin to build a new bridge and adjoining roadworks over the Woronora River starting in January, yet there is no sign of the successful tenderer in the area? Does the delay indicate that the Government is considering the community concern that a four-lane rather than the planned two-lane bridge would be better suited to the volume of traffic flowing through the area? Has the contract for the construction of the bridge been signed? If so, who is the successful contractor and when will construction of the bridge begin?

The Hon. M. R. EGAN: I will refer the question to my colleague the Minister for Roads for a detailed answer. I am not conversant with the issues raised by the honourable member but I know that there is an allocation for Woronora Bridge in the budget currently before the House. From memory, the project has a total cost of $30 million or $33 million. I will refer the question of how many lanes there will be on the bridge to the Minister for Roads.

WATERFRONT DISPUTE

The Hon. I. M. MACDONALD: My question is to the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading. Will the Minister elaborate on the proposed framework agreement between Patrick stevedores and the Maritime Union of Australia and its relationship to New South Wales industrial policy under the State Labor Government?

The Hon. J. W. SHAW: It is pleasing that peace is breaking out in the Australian stevedoring industry and ordinary work is resuming on the docks of New South Wales. That is to the advantage of our export trade and our economy. It is no thanks to the Federal Government. Mr Reith has kept a very low profile recently. He has not been as apparent on the media as he was in the heyday of the dispute, when he thought there would be a king hit against the union and the workers. Frankly, it is objectionable that these ordinary, decent Australian people are portrayed as villains because they are earning a certain annual salary.

Honourable members should not react with shock or horror to the fact that workers can earn $50,000 to $60,000 a year. A worker with that income would not find it a huge amount on which to raise two or three children, and could earn it only by working significant amounts of overtime. It is to the credit of the parties—and contrary to the will of the Federal Government—that we have secured re-employment of the union members by Patrick companies, voluntary retrenchment of about 400 workers with an appropriate redundancy package, overhaul of work practices such as the abolition of double-header shifts, increased management control of rostering, contracting out of non-stevedoring work such as cleaning and security, and the introduction of annualised salaries to minimise overtime.

To his credit Mr John Coombs put that proposition on the table some months ago. He said

that if there was a suggestion that overtime is being created artificially the salary should be annualised and the overtime payments averaged in an effort to remove any incentive for inadequate work on ordinary time shifts. That could have been achieved without the trauma experienced by 1,500 families throughout Australia and without the dismissal of workers in some ports where there had been no allegations of impropriety or improper work practices. The Prime Minister virtually conceded that people were dismissed simply because they were members of a union, as was their legal right and entitlement not only under Federal laws but under international conventions about freedom of association.

The Federal Government does not emerge from this saga with any credit. The company, the National Farmers Federation and the Federal Government were content to use the work force as a scapegoat. In reality the so-called battle for waterfront reform was little more than an excuse for the Federal Government to advance its hard-line, political agenda for industrial relations, and its partisan bias was undisguised. Normally governments, Liberal or Labor, have played an honest broker role in industrial relations. Government has always reserved the right to intervene and to broker a deal between parties if they are locked intransigently in controversy. However, this Government is an exception. Times have apparently changed for the Liberal Party in Australia. There has been a qualitative shift and now the Federal coalition Government will be an active and partisan player, though rather crude and incompetent, as its actions have proved.

ERSKINEVILLE AND MACDONALDTOWN STREET LIGHTING FAILURE

The Hon. D. J. GAY: My question without notice is to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. Does he recall that yesterday in question time he told the House that he would go out and fix the street lights in Erskineville himself if they were not switched back on immediately when a problem arose? For the information of the residents of Erskineville the Treasurer's daytime ministerial telephone number is 92283535. However, as streetlighting problems are generally prevalent at night, will the Treasurer supply an after-hours number to the House so that he can be on call 24 hours a day to fix street lights at Erskineville?

The Hon. M. R. EGAN: If anyone anywhere in the State has any problems with after-hours blackouts, I suggest they contact the Hon. D. J. Gay, who I am sure will pass the message on to me.

BUSINESS REGIONAL HEADQUARTERS ESTABLISHMENT

The Hon. E. M. OBEID: My question without notice is to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. Is the New South Wales Government still managing to attract new regional headquarters to New South Wales?

The Hon. M. R. EGAN: Indeed we are. I am pleased to inform the House of yet another big win for Sydney and for New South Wales. Last Wednesday the Premier launched the new Asia-Pacific Data Centre for Lexmark International (Australia) Pty Ltd. The relocation of that company's data centre from the United States of America to Sydney represents a $25 million investment over the next five years.

The Hon. J. M. Samios: It is a very good company.

The Hon. M. R. EGAN: It is indeed a very good company. Lexmark International is one of the largest developers, manufacturers and suppliers of printers. It employs 200 people Australiawide, including 150 staff in New South Wales. It already has regional headquarters and a domestic call centre in Sydney. That company has chosen Sydney as the location for its Asia-Pacific data centre, ahead of strong competition from Hong Kong, India and Singapore. This is an enormous vote of confidence in the State's economy.

Lexmark International joins companies such as Cathay Pacific Airways and American Express International Inc. in setting up regional headquarters in Sydney because of our cultural and linguistic diversity. Almost every day we win new regional headquarters. Recent wins include Rockwell Australia Pty Ltd, Schneider Asia-Pacific, Oracle Systems (Australia) Pty Ltd and First Data Resources Australia Ltd. Since 1995 the Government has welcomed 120 new regional headquarters and operating centres for New South Wales. That is not a bad record—120 since 1995. Sydney is now home to 63 per cent of the nation's 400-plus regional and Australian headquarters and almost half of Australia's $70 billion information technology and telecommunications industry. I am sure all honourable members would like to join with me in congratulating Lexmark International on its decision to relocate its data centre from the United States of

America to Sydney and wish it well with its new operations.

MAITLAND BASKETBALL ASSOCIATION

The Hon. Dr MARLENE GOLDSMITH: My question without notice is addressed to the Minister for Public Works and Services. The Minister would be aware that the Maitland Basketball Association is lobbying the Federal Government to provide funding for the $2.25 million basketball stadium. Is the Carr Government supporting this application for funding under the federation, cultural and heritage project programs? If not, why not? If so, why did the Carr Government reject the application of the Maitland Basketball Association for State government funding for the complex?

The Hon. R. D. DYER: It is not immediately apparent to me why I should be aware of lobbying activities by the Maitland Basketball Association for funding sought from the Federal Government. I point out to the Hon. Dr Marlene Goldsmith that the Department of Public Works and Services is not a budget sector agency and does not hand out money to applicants. On the other hand, the Department of Public Works and Services is a body that charges for its services. That has been the case for a number of years. In the ordinary course of its business the Department of Public Works and Services is a project manager. It constructs schools and hospitals and provides other infrastructure for the State. Why the honourable member chose to direct the question to me is beyond my understanding.

CUT FLOWER INDUSTRY

The Hon. DOROTHY ISAKSEN: My question is directed to the Treasurer, and Minister for State Development. What is the Government doing to encourage the cut flower industry in New South Wales?

The Hon. D. F. Moppett: Cutting the tall poppies.

The Hon. M. R. EGAN: This is a question about cut flowers, not cut snakes. When we get to cut snakes, we will hand over to the Hon. Dr B. P. V. Pezzutti. I am pleased to advise the House that the Government has helped the cut flower industry increase exports by nearly 50 per cent, to some $27 million in the past two years. Now, through the use of grower networks and export advice, the Government is helping the industry expand into the lucrative Japanese and Hong Kong markets. Both those markets will provide real opportunities for our producers. Surprisingly, Australia accounts for only a tenth of the international trade in our own native flowers. I was taken aback to learn that South Africa exports more kangaroo paw to Japan than we do, and that Israel sells more eucalyptus foliage to Europe than we do. That is a situation that must be turned around, and by working with industry we are starting to do just that.

The Government has put in place a number of initiatives to strengthen the cut flower industry. One of those is a series of cut flower export forums that give practical information and valuable stimulus to this growth industry. The second of those forums was held just a few weeks ago in Grafton. I am told that more than 200 people discussed the commercial realities of cut flower production and how new industry players in the north of the State can get a share of the growing export market. The export markets for our cut flowers are expected to rise from $27 million this year—bear in mind that was a 50 per cent increase on the past two years—to more than $40 million by the year 2000.

The Hon. Virginia Chadwick: Even with the Asian crisis.

The Hon. M. R. EGAN: Yes, even with the Asian crisis. There is a huge market for cut flowers. Even if the total market were to decline by 5 per cent, we could much better than the current 10 per cent. I am told that the industry currently employs about 3,000 people across New South Wales.

The Hon. D. J. Gay: When did you go to Crookwell?

The Hon. M. R. EGAN: I have been to Crookwell. Not only did I not see any gladdies but I did not see the Hon. D. J. Gay. If the industry continues to perform as well in the future as it is performing now, it will provide a vital source of employment for regional communities well into the next century.

MULTICULTURALISM

The Hon. FRANCA ARENA: I ask a question of the Treasurer, representing the Premier, Minister for the Arts, and Minister for Ethnic Affairs. Is your Government concerned about the increase in racism and opposition to multiculturalism in our society? Has the Government considered a campaign to promote harmony and unity on a similar line to that used in the "I am an Australian too" campaign? What initiative has the Ethnic Affairs Commission taken to ensure that all

Australians understand the benefits of living in a multicultural society?

The Hon. R. B. Rowland Smith: "Make them speak English."

The Hon. M. R. EGAN: That was unworthy of the Hon. R. B. Rowland Smith.

The Hon. Dr B. P. V. Pezzutti: That is what the Premier said.

The Hon. M. R. EGAN: It was the insulting way in which the Hon. R. B. Rowland Smith made the comment. No intelligent person would doubt the huge benefits of multicultural diversity to Sydney, New South Wales and Australia. One has only to wander around this great city of ours to realise how our lives have been enhanced by immigration to this country, particularly in the past 50 years or so. It truly is incredible. I will refer the question to the Premier for a detailed reply.

EAST CIRCULAR QUAY

The Hon. Dr B. P. V. PEZZUTTI: I ask the Treasurer, Minister for State Development, and Vice-President of the Executive Council, representing the Premier, Minister for the Arts, and Minister for Ethnic Affairs, a question without notice. Has the Premier honoured his commitment to accompany the Lord Mayor to meet with the Prime Minister to discuss a rescue package for east Circular Quay? If not, when does he intend to do so?

The Hon. M. R. EGAN: I will refer the question to the Premier.

MARINE PARK ESTABLISHMENT

The Hon. I. COHEN: I ask a question of the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading, representing the Minister for the Environment. Where are the regulations that will give effect to and implement the State's two marine parks, Solitary Islands and Jervis Bay? Is the Minister convinced that despite the enthusiasm expressed by both the National Parks and Wildlife Service and New South Wales Fisheries officers, implementation is being delayed by the lack of a cohesive, independent secretariat for the Marine Park Authority?

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

HRJ FINANCIAL SERVICES

The Hon P. T. PRIMROSE: I ask a question without notice of the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading. Can the Minister inform the House about the recent activities of a company that offers over-the-telephone financial advice?

The Hon. J. W. SHAW: I thank the honourable member for his question. Recently a company called HRJ Financial Services came to the attention of my department when it first offered its services in New South Wales. That company had been active, I am informed, in far north Queensland, where it had come to the notice of Queensland consumer protection authorities. HRJ placed advertisements in local newspapers offering personal loans from $1,000. The advertisements read "Pensioners welcome, bankrupts, bad credit OK. No credit checks". Readers were directed to dial a 1900 number, which the advertisement clearly said cost $4.95 a minute, an extremely high rate.

One Armidale single mother, who had been refused credit by her local banks, called the number. She has alleged HRJ used obvious delaying tactics, including putting her on hold and using a non-English speaking operator, so that she had to repeat all her details to another person. The financial advice, when it finally came, was, "You should start a savings plan and try the credit union." Other people were told to "open a bank account and get a credit rating". The Armidale woman was charged $200 for two 20-minute calls. Other callers were billed similar amounts. The simple information the Armidale mother received from the company could have been obtained free of charge from her bank manager, or indeed from the Department of Fair Trading.

Further complaints about this company have been received by the Department of Fair Trading, which is now investigating the company and endeavouring to obtain redress for affected consumers, including the single mother from Armidale. The Department of Fair Trading so far has been successful in having the wording of the advertising altered, to remove inferences that it believed were misleading. Until the department's investigations are complete, I would warn all New South Wales consumers to be extremely careful when dealing with HRJ Financial Services. I have a strong objection to the way that this company has targeted pensioners and other vulnerable people when it comes to credit. These people would be much better advised to consult the many free

financial advice services provided by community agencies with funding from the Department of Fair Trading. I can assure the House that my department is keeping a close watch on HRJ Financial Services and will continue to act on behalf of consumers affected by that company.

GOVERNMENT CONTRACTS INTELLECTUAL PROPERTY GUIDELINES

The Hon. J. H. JOBLING: I ask a question of the Minister for Public Works and Services. Why does the Department of Public Works and Services not have a manual for intellectual property? Given that other States, notably Queensland, have produced specialist comprehensive manuals on intellectual property, when will the Minister meet the challenge of intellectual property rights in capital works proposals for the private sector?

The Hon. R. D. DYER: I note that some questions regarding intellectual property, as that matter relates to the Department of Public Works and Services, were asked, principally by the Hon. Dr B. P. V. Pezzutti, during the estimates committee sitting last Monday. Some of the responses were taken on notice within the estimates committee context. However, the Government's position on ownership of intellectual property for such work carried out by design consultants, which includes copyright, has been very well established over the years and is consistent with the positions of all other State and Federal government jurisdictions.

Intellectual property created by a consultant undertaking an assignment for a government agency belongs to the Government. The rationale for this approach is twofold. First, as the Government is responsible for defining a consultant's commission, it believes it has a right to claim any intellectual property that is created. After all, if Government did not supply a commission in the first instance—and an associated payment for the service provided—the intellectual property would not exist. Second, by clearly declaring its position upfront regarding ownership, the Government is not subject to disputes over intellectual property rights. This aspect is extremely relevant when one takes into account the large quantity and variety of work carried out by government agencies.

I should point out that, in recognition of the effort made by consultants in completing their commissions, standard New South Wales Government consultant engagement contract conditions allow consultants to use any intellectual property that is created, subject to approval, and to which in all fairness the Government could not deny them access. Furthermore, when government agencies define briefs they are required to identify whether the designs are intended either for reuse or as a one-off service. This allows consultants to price this aspect of their services accordingly. When competitive proposals for designs are sought—either through contractors, as in design and construct projects, or consultants—to carry out designs directly for Government, intellectual property contained within the unsuccessful tenders is protected and remains the tenderers' property. The New South Wales Government code of tendering for the construction industry clearly states under section 4.2:

> Confidentiality of information, particularly intellectual property, must be observed throughout the tender process.

Also, when privately funded infrastructure proposals are sought, the intellectual property of unsuccessful proponents is protected. This commitment is clearly outlined in the "Guideline for Implementation of Infrastructure Partnerships", issued by the Department of Public Works and Services. The guidelines recognise that if Government seeks access to any such intellectual property, it is required to make an offer of purchase. Finally, the Australian Procurement and Construction Council—a peak body that represents all government procurement and construction agencies across Australia—recently held discussions with the Australian Council of Building Design Professions, which represents the design consulting profession, on the issue of intellectual property ownership. The Australian Council of Building Design Professions has, in these discussions, accept the Government's position on ownership and the two bodies are now negotiating on how the Australian standard for consultant engagement contract conditions will reflect this. I point out that this matter is not dealt with on a partisan basis. All construction Ministers throughout Australia are engaged in these consultations, and the construction Ministers will want to deal with the matter on an Australiawide and completely non-partisan basis.

REGISTRY OF BIRTHS, DEATHS AND MARRIAGES

The Hon. CARMEL TEBBUTT: My question without notice is directed to the Attorney General. Will the Attorney inform the House of the major plans and priorities of the Registry of Births, Deaths and Marriages over the next 12 months?

The Hon. J. W. SHAW: I can inform the House that the Registry of Births, Deaths and

Marriages is undertaking the conversion of all birth, death and marriage records from 1856 to 1952 to electronically accessible media. That project will involve the conversion of approximately eight million records and will provide the registry with a complete duplicate set of irreplaceable records relating to the lives of New South Wales residents.

The Hon. M. R. Egan: What about before 1856?

The Hon. J. W. SHAW: I do not know the answer to that. The project supersedes previous plans to microfilm these records following a detailed evaluation of the technology now available. The electronic lodgment of death registration information following evaluation of the recent pilot program has been extended. Work is continuing on streamlining the process of registration of deaths and improving the quality and completeness of information collected. A further review of the death registration form will take place in conjunction with the review of the medical certificate of cause of death form later this year.

The registry has established a working party with the Australian Funeral Directors Association, the Australian Bureau of Statistics and New South Wales Health to pilot electronic data transfer of death registration information directly from funeral directors. In 1998-99 the registry will investigate options for a telephone call centre to improve client access to its services, and the potential for electronic ordering of certificates via the Internet and telephone systems. The registry's new corporate identity will be incorporated in all publications to facilitate client recognition and access to registry services. In close consultation with both staff and relevant unions, the registry has completed an organisational restructure in line with new technologies and procedures. The year 1997 saw the completion of a comprehensive restructuring of the organisation. The result is a flexible workplace that is ready to capitalise on its existing and emerging technological infrastructure by redesigning and streamlining its labour-intensive processes.

The registry will continue the development of new discretionary products, including investigation of commemorative marriage and death certificates. The registry's new corporate identity and logo are being incorporated into customer information products, including brochures and the registry's new web site. The registry, working with the department's information technology service, has established a successful home page, receiving an average of 570 hits per day from its customers. The registry is now investigating the electronic delivery of its products and services to clients and electronic lodgment of applications by clients.

MUNMORAH POWER STATION

The Hon. M. J. GALLACHER: My question without notice is directed to the Treasurer. Can the Treasurer guarantee that there is no truth in growing speculation on the central coast that the Government is preparing to close Munmorah power station?

The Hon. M. R. EGAN: Of course, Munmorah power station will always be there.

The Hon. M. J. GALLACHER: I ask a supplementary question. If the Treasurer will not rule this out, is this the prelude to privatisation of the State's electricity industry?

The Hon. M. R. EGAN: Talk about a linking of non sequiturs to come up with an absurd proposition! The Hon. M. J. Gallacher has just done it.

DUTIES ACT

The Hon. A. B. MANSON: I ask the Treasurer, Minister for State Development a question without notice. Will the Treasurer advise the House on community response to the recent changes made to the Duties Act?

The Hon. M. R. EGAN: In 1994 the then Government and the Office of State Revenue set about the task of developing legislation that would make the job of paying and collecting stamp duties easier for all concerned. At that time stamp duties legislation in Australia was in a state of chaos, being a hotchpotch of stamp duty provisions cobbled together over the past 80 years. Taxpayers and their agents had all been scathing of the vagueness of the legislation's language. They were uncertain about their obligations and disturbed by the very real threat of one transaction being taxed a number of times because of inconsistent legislation across different States and Territories. Against this backdrop the Office of State Revenue set about developing draft legislation that would be simple, fair and equitable; reflect modern business practice; be inexpensive for clients to comply with and for revenue offices to administer; achieve uniformity; and be drafted in contemporary language.

In short, the aim was to produce order from chaos. I am pleased to say that the new Duties Act, which takes effect from 1 July this year, has achieved just that. Members do not have to take my word for that, although I am confident that they will.

The new bill has received overwhelming support from key industry groups across Australia. I shall name a few: the Franchise Council of Australia; the Property Council of Australia; the Federation of Australian Commercial Television Stations; the Life Investment and Superannuation Association of Australia; the Australian Finance Conference; the Australian Copyright Council; and the Law Society of New South Wales.

The Government has also gone to great lengths to ensure that taxpayers around New South Wales are familiar with the way in which the new Act will operate. Since late last year more than 50 seminars—33 in regional New South Wales—have been held to explain the workings of the new system. By the time the bill comes into effect, nearly 3,000 people will have seen first-hand how the new system will work. All OSR staff working under the new Act have had special training. Computer systems have been modified, and will have been fully tested by 1 July. All forms have been redesigned and will be ready for the starting date. This new legislation will herald a new era in stamp duty administration. I congratulate everyone on their involvement.

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

FEEDLOT ANIMAL WELFARE

The Hon. R. D. DYER: On 26 May the Hon. R. S. L. Jones asked a question without notice regarding feedlot shade and cooling. The Minister for Agriculture, and Minister for Land and Water Conservation has supplied the following response:

> Yes, requirements for shade and cooling mechanisms are included in the national guidelines for beef cattle in feedlots in Australia—2nd edition, 1997—which incorporates the Australian code of practice for the welfare of cattle in beef feedlots and the Australian model code of practice for the welfare of animals—cattle. The Standing Committee on Agriculture and Resource Management endorsed these guidelines. A copy of the relevant extracts is attached. As far as my department is aware, all approved feedlots in New South Wales have adequate protection. It should be noted that the development of any feedlot with a capacity of 50 or more head has required consent since August 1993 under State environmental planning policy—SEPP—30 legislation. Also, approved feedlots in New South Wales are not located in the area depicted by the Bureau of Meteorology temperature map where temperature exceeds 30ºC for an annual period of 750 hours.
>
> Research conducted by my department has shown that providing shade for feedlot cattle is beneficial in some circumstances, but not in others. Its effectiveness depends on a range of climatic and management factors. This knowledge has been incorporated into the codes of practice. Furthermore, it is one of the strategic directions of my department—see corporate plan 1997-2000—to help industries and the community to adopt recommended and codified animal welfare practices. The New South Wales feedlot manual contains detailed advice about the need for shade and cooling in situations where excessive heat load may occur and also explains in detail the early signs whereby this problem can be detected. My department is doing all that is reasonably possible to ensure that feedlot cattle in New South Wales are not unduly affected by excessive heat load.

LIFE SAVER HELICOPTER SERVICE

The Hon. R. D. DYER: On 21 May the Hon. Dr B. P. V. Pezzutti asked a question without notice concerning the Illawarra-based life saver helicopter services. The Minister for Health has supplied the following answer:

> It is essential that the planning of medical retrieval services is considered in the context of the best use of all forms of transport and networking across New South Wales. Arrangements for a new medical retrieval helicopter service for the south-east of the State are being finalised. On 17 June 1998 the Carr Government signed an agreement with the Australian Capital Territory which is the final link in a comprehensive network of helicopter medical retrieval services. Officials from both governments formally established a joint operating company which will run the south-eastern service. Once the establishment of that company is finalised, it will then sign a contract with Lloyd Helicopters to provide the service. The helicopter is expected to be operational within 12 to 16 weeks.
>
> This new service will benefit families in the south-east of the State who live in coastal fishing villages and towns, who live in and visit the Australian Capital Territory and the ski fields, and who travel the roads through that part of the State. Emergency medical retrieval in the Wollongong region will be comprehensively covered by helicopters from both Sydney and Canberra. Both the New South Wales and ACT governments are committed to providing a high quality emergency medical retrieval network, and the joint operating company will ensure the delivery of services across the State and Territory borders will be jointly and efficiently co-ordinated.

INVERELL COMMUNITY HEALTH CENTRE

The Hon. R. D. DYER: On 21 May the Hon Helen Sham-Ho asked a question without notice concerning access to the Inverell community health centre. The Minister for Health has provided the following response:

> The community health centre was relocated to the grounds of Inverell District Hospital as this provided an opportunity for the centre to offer a more comprehensive range of services in superior accommodation. New England Health Service has been aware that some members of the community have found the new location difficult to access and the health service has been examining ways of overcoming this problem. The health service advises that arrangements have been made for Inverell Bus Company to run a service to carry people from Inverell central business district to the community health centre. The service will run hourly between the hours of 9.30 a.m. and 12.30 p.m. It is understood that in exceptional circumstances passengers may also be collected from their homes. The new

community health centre provides considerable benefits to the community. The transport arrangements organised by the health service will ensure that all people in the community are able to take advantage of these facilities.

BATTERY HEN WELFARE

The Hon. R. D. DYER: On 2 June the Hon R. S. L. Jones asked a question without notice regarding ventilation for caged layer hens. The Minister for Agriculture, and Minister for Land and Water Conservation has provided the following answer:

The Prevention of Cruelty to Animals Act—POCTA—states in part:

> For the purposes of this Act, a reference to an act of cruelty committed upon an animal includes a reference to any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably:
>
> (a) . . .
>
> (b) . . .
>
> (c) exposed to excessive heat or excessive cold, or
>
> (d) . . .

Conviction for an offence of cruelty may result in a maximum penalty of $5,500 or six months imprisonment, or both, and in the case of a corporation a fine of up to $27,500. The model code of practice for the welfare of animals—domestic poultry—3rd edition, will shortly be referenced by regulations under POCTA. Sections 6 and 7 refer in turn to ventilation and temperature. The egg industry has instituted an independent animal welfare auditing process on layer farms throughout New South Wales involving the RSPCA to ensure that the standards set down in the code are being met.

COMPANION ANIMALS EXPERIMENTATION

The Hon. R. D. DYER: On 21 May the Hon. R. S. L. Jones asked a question without notice concerning companion animals. The Minister for Health has supplied the following answer:

The New South Wales Health Department is aware of only one local government in New south Wales that is supplying dogs from its pound for medical research. No official or independent basis is known for the statement that medical research is continuing without any problems in countries that have banned research on pound animals. Advice from the Health Department is that overseas medical researchers have stated that their research has been adversely affected. My colleague the Minister for Agriculture is conducting an inquiry into the supply of companion animals for use in research and teaching. It is therefore important to allow this process to conclude before commenting further.

ROBERT JOSEPH DUNN LEGAL COSTS APPLICATION

The Hon. J. W. SHAW: On 4 June the Hon. Franca Arena asked a question without notice concerning the legal costs of Robert Joseph Dunn. I can now provide the following answer:

In response to the first and second part of the honourable member's question, I am advised the answer is His Honour Justice John Dowd, QC, at the time he was Attorney General. In response to the fourth part of honourable member's question, I can advise that I have refused the request for ex gratia funding.

Questions without notice concluded.

PETITION

Suspension of Standing and Sessional Orders

The Hon. JANELLE SAFFIN [1.01 p.m.]: I seek leave to move a motion to suspend standing and sessional orders to allow the presentation of an irregular petition from 35 members of the New South Wales Bar concerning the removal from office of Justice Bruce.

Leave not granted.

[*The President left the chair at 1.01 p.m. The House resumed at 2.30 p.m.*]

CONDUCT OF JUSTICE VINCE BRUCE

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [2.30 p.m.]: I move:

1. That the following Address be adopted and presented to His Excellency the Governor seeking the removal from office of the Honourable Justice Vince Bruce of the Supreme Court:

> To His Excellency the Honourable Gordon Samuels, Companion of the Order of Australia, Governor of the State of New South Wales in the Commonwealth of Australia.
>
> May it please Your Excellency—
>
> We, the Members of the Legislative Council of the State of New South Wales, in Parliament assembled, have the honour to communicate to Your Excellency the following Address adopted by the House this day:
>
> That this House, having considered:
>
> (a) the Report of the Conduct Division of the Judicial Commission of New South Wales concerning complaints against the Honourable Justice Vince Bruce, dated 15 May 1998; and
>
> (b) the written response of the Honourable Justice Vince Bruce to the Report of the Conduct Division of the Judicial Commission, dated 26 May 1998,

> and having heard His Honour at the Bar of the House, seeks the removal from office by His Excellency the Governor, under section 53 of the Constitution Act 1902, of the Honourable Justice Vince Bruce, a Judge of the Supreme Court of New South Wales, on the ground of incapacity.
>
> 2. That the Legislative Assembly be requested to adopt an Address in similar terms.
>
> 3. That a copy of the address made by the Honourable Justice Vince Bruce at the Bar of the House on Tuesday, 16 June 1998, as to why he should not be removed from office on the grounds set out in the Report of the Conduct Division, be also transmitted to the Legislative Assembly.

I move this motion in pursuance of public duty so that this House can formulate an opinion on the report of the Conduct Division of the Judicial Commission concerning the Hon. Justice Bruce, a Judge of the Supreme Court of New South Wales. I do so without ill will or partisanship. Indeed, I do so with reluctance and sadness. I am a committed supporter of judicial independence from the Executive and the Legislature, but the separation of powers does not mean that a judicial officer found to be incapable of exercising the duties of the office can remain in that office. It does not deny a parliamentary duty to deal with such a finding, a duty stemming from the Act of Settlement of 1700 in England and entrenched in the New South Wales Constitution by referendum in 1995.

I was obliged by statute to table in this House the report of the Conduct Division of the Judicial Commission as soon as practicable. I did so, having given the judge approximately one week to respond in writing. I was also under a statutory duty to cause the report to be tabled in the Legislative Council, and I did this also. Parliament has set up by legislation a process to consider complaints against judges and we must now all exercise a statutory and public duty in this regard. Today I am continuing in the performance of that duty in fulfilling the statutory obligations imposed by the Constitution Act and the Judicial Officers Act.

This is not a political process and I have been careful to maintain an objective approach to it. It would be a tragic day for New South Wales if the judge were removed for political reasons, for this would be anathema to our system of government—the Westminster system—in which the judiciary has a crucial independence from the parliamentary and executive arms of government. Weeks ago Government members rightly agreed that there should be a free—that is, a non-party—vote on this important matter. We act today as a Parliament, not as members of political parties and not for political ends. Each of us must make his or her own decision on this matter; it must be an objective decision based on all of the facts, the evidence, the law and our legal obligations to uphold the law.

If I may use an analogy, in a sense we act as members of a jury, each individual as independent as a judge in this case. Extending the analogy it is my role now to give honourable members the benefit of a summing-up of the case, as a judge might sum up a case to a jury at its end. I did not have a fixed position on this matter until I read all the evidence, and when I developed my own opinion I did not reveal it because I did not want to influence members of this House. I am advocating that honourable members act according to their responsibilities: to come to an objective conclusion on the basis of the facts and legal principle.

I will summarise the facts and circumstances and I hope that each member of the House has had an opportunity to review the material which relates to this matter, for this is an important and, indeed, historic decision. Unfortunately, not all of the information in the public arena about this matter has been based on the objective facts that we must consider carefully and objectively before each of us makes a decision. I emphasise that there is no question of misbehaviour in this case. The Conduct Division of the Judicial Commission concluded—and the Court of Appeal upheld the legal validity of the finding—that there was an incapacity to perform judicial duties.

It was argued that the current incapacity was not caused by depression alone, but rather the judge's inability to complete judgments in a timely manner which has, in this case, come to be called the personality trait of procrastination. The majority report of the Conduct Division found that the indisputably demonstrated incapacity up to February 1998 remains, although the incapacity has been diminished to some extent by the relieving of the severe depression. The Chief Justice of New South Wales, Justice Spigelman, stated in the ruling of the Court of Appeal on Justice Bruce's challenge to the report as follows:

> Notwithstanding the failure of the report to expressly state that the factor of "procrastination" was a substantial cause of the incapacity to deliver reserved judgments in the matters before it, a fair reading of the report indicates that the Conduct Division did form an opinion to that effect.

We are not passing judgment on the judge because he was ill. We are considering whether we agree, on all the evidence, with the majority of the Conduct Division of the New South Wales Judicial Commission that Justice Bruce's inability to deliver speedy justice, even when given time off from hearing cases to write judgments, represents an

incapacity. May I now quote from the conclusion of the report of the Conduct Division, which stated:

> It is the Division's view these substantiated complaints against Justice Bruce could justify Parliamentary consideration of his removal from office. The reason for that opinion is that, having taken into account, pursuant to s.31 the 27 additional matters together with the complaints of Commander Beveridge and Mr Bradley, there has been proved an incapacity to perform judicial duties judged by any reasonable standard.
>
> The number of instances of delay is great. The extent of individual delays is unacceptable by any reasonable standard. The failure to adhere to assurances of performance which Justice Bruce knew or suspected would be conveyed to litigants has been shown to result in both distress and hardship to litigants. Incapacity to perform judicial duties has been proven to have been present from, at least, early 1995 and continues.

Parliamentary involvement in the removal of judges of superior courts was a principle of great importance in English parliamentary and judicial history. In relation to the removal of judges, the Act of Settlement in 1700 was the culmination of a long struggle concerning the contest for power between the English Parliament and the King. That Act provided that, during good behaviour, judges could not be removed, nor their salaries reduced, except on an Address of both Houses of Parliament. Therefore the concept of removing judges only on an Address to the King by both Houses of Parliament has, since 1700, been a fundamental feature of the Westminster system of government.

In the early years of our colonial history judges could be, and were, removed by colonial authority in England. However, since the last century the protection of the tenure of all superior court judges in New South Wales has been provided for by statute requiring an Address to the Governor by both Houses for dismissal. It was extended to all judicial officers by the amendments to the Judicial Officers Act 1986 and, of course, as a result of the Constitution Amendment Act 1992, part 9 of the Constitution Act was introduced which contains the present provisions of section 53. I would like to briefly outline the statutory basis that has taken us to this point. Section 53 of the Constitution Act sets out the procedure for the removal of a judicial officer. Section 53(2) provides:

> . . . the holder of a judicial office can be removed from the office by the Governor, on an address from both Houses of Parliament in the same session, seeking removal on the ground of proved misbehaviour or incapacity.

Section 53(3) provides that legislation may lay down additional procedures and requirements to be complied with before a judicial officer may be removed from office. That additional procedure is set out in the Judicial Officers Act 1986. The Constitution Act works in conjunction with the Judicial Officers Act. Section 41 of the Judicial Officers Act provides that a judicial officer may not be removed from office unless the Conduct Division of the Judicial Commission has presented a report in which the division expresses an opinion that the matter referred to in its report could justify parliamentary consideration of the removal of the judicial officer from office. So the Judicial Commission's report—a judgment by the judicial officer's peers—is the trigger, a necessary precondition for deliberations by the Parliament. And when that trigger is activated, it is important for the Parliament to take the Judicial Commission's report seriously.

I must now refute any suggestions that members of Parliament are incapable of performing the role prescribed for them by section 53 of the Constitution Act. The proper interrelationship between the Parliament, the Executive and the judiciary which emanates from the Westminster system of government clearly gives Parliament the important role of being the ultimate supervisor of the judiciary, in the sense of dealing with dismissal from office.

It is not appropriate that the Executive should play a role in this procedure, so that this onerous task falls naturally, and importantly, upon the Parliament. Difficult as it is, when occasion demands, the Parliament must consider in the public interest whether a judicial officer should be removed from office. I propose to outline briefly the Conduct Division's proceedings which led to this report being presented to the Governor on 15 May 1998. This outline was set out in the Chief Justice's judgment in the proceedings involving Justice Bruce as follows:

1. A complaint was made to the Judicial Commission concerning the "ability or behaviour" of Justice Bruce.

2. In December 1997 the members of the Judicial Commission of New South Wales appointed a panel of three persons to constitute the Conduct Division for purposes of exercising the functions of a division in relation to a complaint.

3. The Conduct Division was constituted by two judicial officers, the Hon. Terrence Roderick Hudson Cole, QC RFD, and the Hon. Justice David Henry Lloyd and, as is permitted, one retired judicial officer, the Hon. Dennis Leslie Mahoney, AO QC.

4. The functions of the Conduct Division were then "to examine and to deal with complaints referred to it by the Commission".

5. The Conduct Division had then to conduct an examination of the complaint. It decided to conduct a hearing.

6. The commission had power to classify a complaint as "serious" in the following circumstance: "If the grounds of the complaint, if substantiated, could, in its opinion, justify parliamentary consideration of the removal of the judicial officer complained about from office."

7. After the complaint had been referred to it, the Conduct Division had power to reclassify a complaint.

8. In the course of dealing with a complaint, the Conduct Division had power to treat it as extending to other matters, including matters arising in the course of dealing with the initial complaint, and matters "which might constitute grounds for a complaint".

9. In a report dated 14 April 1998 the Conduct Division decided to extend the original complaint to 27 additional matters. It also decided to reclassify the original complaint, as so extended, together with a further complaint that had been referred to it, as "serious" in the sense that I have identified.

10. Pursuant to section 30(4), the Conduct Division furnished a report to the commission setting out its reasons for reclassifying the complaint. This decision to reclassify the complaint as "serious" has not been challenged.

11. A document entitled "Reasons of the Honourable D. L. Mahoney, AO QC, Re: The Honourable Justice Bruce" is dated 14 May 1998.

12. On 15 May the Conduct Division completed a report entitled "Report of the Conduct Division to the Governor Regarding Complaints against The Honourable Justice Vince Bruce".

The initial complaint against Justice Bruce that was considered by the Conduct Division was a complaint by Commander R. L. Beveridge in September 1997. A second complaint, by a Mr Bradley, was also considered by the Conduct Division, and the Conduct Division also took into account earlier Judicial Commission proceedings in 1995 involving Justice Bruce arising out of a complaint by a Mr Woodward, a solicitor. Although this complaint itself was not considered by the Conduct Division, the division did consider statements by Justice Bruce concerning why he had failed to deliver judgment in matters involving Mr Woodward's clients.

The Conduct Division also took into account 27 other matters in which there had been considerable delay by the judge in delivering judgments. As honourable members will know from examining the material that I tabled last week, many of these matters are set out in an affidavit sworn by the then Chief Judge at Common Law, Justice Hunt. In essence, the complaints against Justice Bruce concerned his failure to deliver reserved judgments in a considerable number of matters, with the delay in some matters approaching a period of just under three years. The Conduct Division found the complaints by Commander Beveridge and Mr Bradley substantiated, along with other matters taken into account by it, and found that there was an incapacity in the judge to perform judicial duties, and that that had been proved.

I will now consider the Conduct Division's report in two parts. First, I will briefly summarise the situation up to February 1998, at which time, evidence was given, Justice Bruce's depression was brought under control by the drug Luvox, and then I will deal with the issues relating to the period after February 1998, for as a House we must decide whether we agree with the Conduct Division that Justice Bruce's incapacity, manifested in a character trait of procrastination, continued despite the alleviation of his depression. We must determine whether we agree with the Conduct Division that his pattern of behaviour did not change, so that the incapacity to perform his judicial duties continued following that alleviation.

Although there are a great number of matters of relevance in relation to Justice Bruce's conduct between 1994, when he was appointed, and February 1998, I will not canvass those matters in detail. The Conduct Division's report contains a detailed history of that period. The Conduct Division found what it called "an indisputably demonstrated incapacity" from at least 1995 to February 1998, and that fact was not challenged by Justice Bruce or his legal advisers. The report states that:

> . . . in the light of the plain position of proved incapacity to perform his judicial functions, at least up to February 1998, the Division does not think it necessary to reach a firm conclusion regarding the operation of any element of procrastination during that period, or whether, if it was so operating, it constituted misbehaviour.

The report said:

> The evidence before us established that, not only was there great delay in the delivery of a large number of judgments, and that there were a great number of assurances given regarding judgment delivery dates which were not adhered to, but also that throughout the whole of his judicial career the position of having outstanding a significant number of judgments was common.

The division states in paragraph 59 that in 1995 the judge had a considerable period out of court to write judgments. This period was said by the former Chief Judge at Common Law to be a period of 10 weeks and two days. It is evident from the Conduct Division's report, and from the affidavit of Justice Hunt, that Justice Bruce had not only failed to deliver many reserved judgments but had given many undertakings that he would deliver judgments by a certain date and then failed to honour those undertakings. Unfortunately, Judicial Commission correspondence directed to the judge went

unanswered and remained unopened by the judge because, in the words of Justice Bruce's counsel, he did not feel able to face up to what he figured was in them.

I sympathise with a person not wanting to hear bad news or being depressed about receiving bad news, but I also have a deal of sympathy for the litigants waiting expectantly for judgments which, in many cases, had a serious impact on their lives. Perhaps I should not have used the word "sympathy", for it is not on that basis that we should make our decision. But I am sure that all honourable members have sympathy for both the judge and the members of the community who suffered and were disadvantaged by the long delays in finalising their litigation.

The contentious period to which we must now address our minds is the period between February 1998 and the present. The question before us is whether we agree with the majority report of the Judicial Commission that Justice Bruce's demonstrated propensity to delay judgments constitutes an incapacity, and whether this incapacity has continued to exist, because it was not caused by the judge's depression alone but, rather, by procrastination. In regard to this period considerable medical evidence was advanced by Justice Bruce's treating doctor, Dr Dent, to show that the severe depression the judge was suffering in December 1997 was, by February 1998, largely under control because he was using a drug called Luvox.

At the Conduct Division's hearing of 20 February 1998 a list of outstanding judgments was compiled by Justice Bruce showing the date the judgment was reserved and the date upon which the judge proposed that judgment in each matter be delivered. I will refer to this as "the schedule". As the Conduct Division's report notes, there were 22 judgments on the list. Two of those judgments had been reserved since August and October 1995; 17 were reserved during 1997; and three were reserved on 16 and 17 February 1998. Apparently, the then Chief Justice had signified his agreement with the schedule. The schedule was prepared on the basis of substantially reduced sitting hours. All the outstanding judgments were scheduled to be delivered by 26 May 1998. On 20 February the Judicial Commission adjourned the matter for mention to 1 May 1998. The chairperson stated:

> The purpose of the adjournment is to enable a schedule of judgments which is attached to the letter to Messrs. Holman Webb, Exh J, to be implemented by delivery of judgments in accordance with that schedule. Whether or not delivery occurs is a matter which is of importance in the deliberations of the Conduct Tribunal . . .

It seems that on 12 March, by which time 11 of the 22 judgments listed on the schedule were to have been given, the chairperson asked the Chief Justice whether he had received notification of delivered judgments. Notifying the Chief Justice was part of the proposal agreed to by the Conduct Division. The Chief Justice advised that he had not received notification of delivery of any of these judgments.

The matter was then brought before the Conduct Division on 19 March, by which time 12 judgments were to have been delivered. The Conduct Division's report states that while two judgments had been delivered as at 17 March 1998, 11 other judgments had not been delivered. Meanwhile, the Chief Justice had received a further complaint about the matter of *Civic Transport Services Pty Ltd v Bradd*, in which judgment was due on or about 10 March 1998 but remained outstanding. I return to the Conduct Division's report, which reads:

> Since 19 February 1998, Justice Bruce has sat in court in civil matters on six days and on the Court of Criminal Appeal on three days. This is very much less than the times anticipated as sitting days at the time the schedule of 19 February 1998 was prepared. It was then anticipated he would sit for 3 weeks and 2 days, equivalent to seventeen sitting days. Otherwise he has been given time out of court to write judgments . . .
>
> This analysis makes plain that Justice Bruce has, since his appointment, been able to deliver judgments in cases which he has heard only by the making of extraordinary arrangements for him to be given unusually long periods out of court to endeavour to catch up with judgment writing. This demonstrates an incapacity to perform the judicial function satisfactorily.

The Conduct Division then stated:

> The question remains whether the incapacity to perform the judicial function continues notwithstanding removal or alleviation of the depressive illness. There is much to support the view that it does so remain.

The Judicial Commission then listed its reasons, which included: first, the "ingrained personality attribute of procrastination", as identified by Dr Gilandas—evidence of its continuance being Justice Bruce's inability to adhere to the schedule he himself had set after the depression had lifted; and second, the fact that the departures from the February schedule were "significant in both number and extent". A number of reasons were advanced by Justice Bruce as to why the schedule had not been adhered to.

The reasons are detailed in paragraph 73 of the report and included: first, a dispute about the amount of time out of court Justice Bruce would be given to write judgments—however, the report states that the

judge had sat for six days instead of five and that the extra sitting day alone could not explain the failure to adhere to the schedule in the first month after it was agreed; second, a longstanding back complaint which disabled him for five days from 20 February; and third, a migraine which disabled him for five days from 12 March to 15 March, and again on 17 March. The report states:

> Apparently it did not disable him on Sunday 16 March, when he was able to attend, as chairman, a meeting of the Asthma Council Foundation.

In essence, two of the three members of the Conduct Division considered that the lack of adherence by Justice Bruce to the schedule he had prepared, and his failure to notify the Chief Justice of his failure, were evidence that the incapacity that Justice Bruce indisputably displayed until February 1998 in fact continued as a result of his habit of procrastination, notwithstanding the evidence given by Dr Dent that he has recovered from the incapacitating factor of his depression. I again refer to their decision, which reads:

> . . . Dr Dent recognised that procrastination was "an issue". We did not understand him to dissent from Dr Gilandas in that respect: rather his view was that the onset of depression may render more powerful the effect of the pre-existing character trait of procrastination . . . Notwithstanding the very significant improvement in the depressive illness from which Justice Bruce suffered in December 1997, which improvement resulted from the treatment given by Dr Dent, the failure to adhere to the schedule agreed with the Chief Justice, and the failure or inability to confront and give a timely explanation for that departure is strongly indicative of the continuation of an incapacity to perform the judicial function to an agreed level which cannot be attributed to the previous severe depression.
>
> The Division has given ernest consideration to these competing contentions. Ultimately the Division has come to the view that as the medical condition of Justice Bruce has, with treatment, now plateaued, it cannot be said that the incapacity satisfactorily to perform the judicial function has been removed. That is so whatever may have been the cause of that incapacity prior to treatment by Dr Dent.
>
> The Division is of the view that the indisputably demonstrated incapacity up to February 1998 remains, although the incapacity has been diminished to some extent by the relieving of the severe depression.

That led to the following conclusion:

> It is the Division's view these substantiated complaints against Justice Bruce could justify Parliamentary consideration of his removal from office. The reason for that opinion is that, having taken into account pursuant to s.31 the 27 additional matters together with the complaints of Commander Beveridge and Mr Bradley, there has been proved an incapacity to perform judicial duties judged by any reasonable standard . . .
>
> The failure to adhere to assurances of performance which Justice Bruce knew or suspected would be conveyed to litigants has been shown to result in both distress and hardship to litigants. Incapacity to perform judicial duties has been proven to have been present from, at least, early 1995 and continues.

It must be noted, however, that Mr Mahoney, one of the three members of the division, being a retired judge, while agreeing with the majority that "incapacity has been substantiated up to January-February 1998", did not agree that incapacity continued during the period February to May 1998. I shall summarise his dissenting opinion by quoting part of his conclusion:

> In the end the main point made against him is that he did not do what he said he would do, that he did not face up to the significance of his failure and that he failed to meet the inquiries that were attempted to be made of him at the time. The contention made is that these and the other things to which reference has been made in the material show that he is still incapable of carrying out his judicial duties . . .
>
> The suggestion is, in effect, that the inferences to be drawn from the material relating to the schedule warrant putting aside the evidence of the Judge that he can do what he is required to do and the evidence of his doctors that he can do so. In my opinion that is a course that on the evidence as it is before the Division is not justified.

I propose now to turn to the Court of Appeal findings before addressing Justice Bruce's submissions. As honourable members are aware, after the Conduct Division's report was delivered to me and Justice Bruce, the judge commenced proceedings in the Supreme Court of New South Wales seeking a declaration that the report was not a report of the Conduct Division and therefore invalid, and restraining me from tabling the Conduct Division's report before both Houses of Parliament. On 26 May the Court of Appeal, comprising the five most senior judges of this State, declined to restrain me from tabling the reports, and set down the other matters raised by Justice Bruce for an expedited hearing. On 12 June the Court of Appeal unanimously dismissed the proceedings instituted by Justice Bruce.

The decision of the Court of Appeal has also been made available to members of this House, and I urge them to pay particular regard to the reasons of the Chief Justice who delivered the main judgment, and whose judgment was concurred in by other members of the court, although Justice Priestley provided a separate, concurring judgment. The Court of Appeal findings include that there was evidence from the report that all members of the Conduct Division were in agreement that between at least early 1995 and February 1998 there was proved incapacity in Justice Bruce to properly perform his judicial duties. There was disagreement as to whether the plaintiff's incapacity continued after February 1998.

Although the report does not expressly state it, the majority finding was that the plaintiff's failure to adhere to the judgment schedule set by the Chief Justice after the medical condition of depression had been resolved or substantially attenuated could not be substantially attributed to depression, but rather procrastination, which was of such a degree that the judge's incapacity had to be seen as continuing to exist. The failure of the plaintiff to adhere to the schedule of judgments was conduct sufficiently similar to the delay in delivering judgments displayed in the past for the Conduct Division to take it into account in deciding whether the medical condition had been the sole source of the plaintiff's incapacity.

The division was entitled to give the plaintiff's failure to adhere to the judgment schedule the weight it did. Finally, there was before the Conduct Division probative material capable of supporting the conclusion that the plaintiff's capacity continued after his medical condition had been alleviated. In fairness to Justice Bruce, I should point out that the Chief Justice made it clear that he was not indicating his own views as to whether incapacity in Justice Bruce continued beyond February 1988, but that there was material before the Conduct Division to allow it to infer and conclude that incapacity continued. The Chief Justice stated:

> I emphasise again that it is not permissible for this court to proceed by asking itself whether it would come to the same conclusion on the basis of the material before the Division. The issue is whether or not the Division drew the inference of continued incapacity from primary facts which were themselves based on probative material.

That being so, Chief Justice Spigelman stated at page 52 of the judgment:

> One of the submissions made by Mr Conti, QC, counsel for Justice Bruce] was to the effect that the character trait of procrastination could not constitute a relevant form of incapacity.

The Chief Justice said:

> I reject this submission. The relevant manifestation of incapacity is inability to write judgments within an acceptable time. There can be no doubt that Justice Bruce demonstrated such an inability. A personality trait of procrastination of itself and without the intervention of a medical condition of depression, could entail such an inability.

Justice Spigelman also referred to an authority in Canada, *Minister of Citizenship and Immigration v. Tobias* (1997) 142 DLR (4th) 270, where the Federal Court of Appeal, in particular Judge Marceau, said:

> In my judgment, a Chief Justice cannot entirely disinterest himself or herself from the pace of progress of a timeliness of disposition of the cases the court has to deal with. He or she has a responsibility to ensure that the court provides 'timely justice'.

His conclusions on the matter are as follows:

> Notwithstanding the failure of the Report to expressly state that the factor of procrastination was a substantial cause of the incapacity to deliver reserved judgments in the matters before it, a fair reading of the Report indicates that the Conduct Division did form an opinion to this effect . . .
>
> In accordance with the strict legal tests applied in this area of law, there was before the Division probative material capable of supporting the conclusion that His Honour's incapacity continued after his medical condition had been alleviated. I have concluded that this is so, even on the Briginshaw test, appropriate to the gravity of the consequences which may flow from the formation of the statutory opinion. There was probative material before it to ground such a conclusion and accordingly to infer that incapacity continues.

I would now like to turn to the issues raised in Justice Bruce's written and oral responses to Parliament. First, the depression issue. There is the statement of Justice Bruce that there is no suggestion of misbehaviour anywhere or at any time. Of course, I agree with that proposition. However, misbehaviour is not the issue. The issue is whether there is incapacity due to procrastination. Both Justice Bruce's written reply to Parliament, which I tabled on 26 May with the Judicial Commission's full report, and his address to Parliament on 16 June address at length his depression. He did not address in substance or detail the crucial issue of whether his personality trait of procrastination persisted thus creating an ongoing incapacity. He did not address fully this critical issue in either his written report to Parliament or his address to Parliament. At one point in his written report to Parliament, Justice Bruce states:

> The majority [of the Conduct Division] omitted to deal with the cause of the incapacity which they concluded existed.

As we have seen from its report and the Court of Appeal's analysis of it, this is not correct. In his address to Parliament, Justice Bruce disposes of the procrastination in this way:

> I would respectfully say that the finding that I procrastinate, which was arrived at by the majority, is just too silly for words.

With respect, I submit that perhaps if this had truly been so, Justice Bruce's Court of Appeal challenge to the Conduct Division's findings would have been successful, because the Court of Appeal would have held that the finding was not reasonably open. As we know, that was not the fate of his action in the

Court of Appeal. It was unanimously dismissed by the five most senior judges in New South Wales. In his written response to Parliament, Justice Bruce summarises the case in these terms:

> It is a case of alleged partial incapacity on health grounds.

In his address to Parliament the judge implied, by omission, that the procrastination issue is irrelevant by his statement:

> There is criticism, and justifiable criticism, of the delay by me in delivering some judgments which, when I got behind, I was unable to deal with because of the medical condition from which I suffered. That, honourable members is why I am here and only why I am here.

That is, I submit, incorrect, as we know from both the Judicial Commission's report and the Court of Appeal's judgment that I have already summarised. The crucial issue is whether the incapacity continued after the lifting of the depression in or about February 1998, and the majority of the Conduct Division found, as we know, that there was evidence of inability to deliver judgments according to the schedule he set for himself on 19 February 1998. It is, with respect, misleading to put the issue in the way Justice Bruce did in his address to Parliament, in which he stated:

> . . . most important, I believe that my removal would send a message to the people of Australia that if you have an illness from which you recover, especially an illness about which there is widespread misinformation and public ignorance, that you are unemployable.

I submit that statement is both wrong and irrelevant. While Justice Bruce's statements about depression have led to a valuable public discussion about this serious and debilitating illness, and aroused an understandable sympathy, they are strictly irrelevant to the question before us today. We all have sympathy for the health problems of the judge. However, we, as a House, with a statutory responsibility to both the justice system and the public, must consider whether, even after the alleviation of his depression, Justice Bruce was still unable to fulfil adequately his judicial duties. I respectfully submit that another part of Justice Bruce's written response to Parliament is incorrect. He stated that the majority of the Conduct Division:

> . . . based their conclusion upon some ill-defined assertion of what they described as 'procrastination'. They appear to rely on an expression of view by Dr Gilandas to the effect that if depression has resolved (and it has) and if there was a lack of progress in delivery of judgments (which there was not illustrated clearly by the above material and the evidence) then such hypothetical delay would have had a medical cause.

I disagree with this statement also, for the Conduct Division's majority judgment clearly demonstrated that its determination that procrastination was still a problem following the alleviation of the depression derives from the judge's inability to adhere to a schedule which set out specified dates for delivery of reserved judgments and for which he had time out of court to complete. I am informed that there are still two judgments listed on Justice Bruce's 19 February schedule that are outstanding: *Williams v Maritime Services Board*, which was due to be delivered on 12 May 1998, and *Prosser v Eagle*, which was due to be delivered on 26 May 1998.

As honourable members are aware, the long and complex Nutrasweet judgment was not included on the schedule. The evidence concerning procrastination that was before the Conduct Division is also analysed in detail in the judgment of the Chief Justice in the Court of Appeal proceedings. I would like to return to that judgment briefly. On page 51 of his judgment, Chief Justice Spigelman identifies the issue before the Conduct Division. He states:

> Nothing in the reasoning of a report suggests that the Division proceeded on any basis other than that Justice Bruce had had a significant and long-standing incapacitating medical condition. The issue was whether or not that was the only factor which caused his inability to settle judgments within an acceptable time.

Under the heading "The Procrastination Issue" the Chief Justice noted that in paragraph 71 the Conduct Division referred to Justice Bruce as having an "ingrained personality attribute of procrastination". Counsel for Justice Bruce made a submission that the character trait of procrastination could not constitute a relevant form of incapacity but that was rejected by the Chief Justice. Secondly, I refer to the action taken to speed up delayed judgments and in particular to the affidavit of Justice Hunt. Justice Bruce claims in his written response to Parliament in the section headed "Delivery of Judgments—Pre-December 1997":

> The Chief Judge of the Common Law Division was often provided with lists of the Judge's outstanding judgments by the Judge's Associate. No inquiry was ever made by the then Chief Judge—

that is the Chief Judge at Common Law—

> as to why any judgments were outstanding or why any indication as to when any judgment was to be delivered had not been complied with, or whether there were any difficulties being experienced by the Judge or whether there was any assistance which might be provided to assist in overcoming any problems which were being encountered.

I regret to say that this statement could lead to the misapprehension that nothing was done by the former Chief Judge of the Common Law Division,

Mr Justice Hunt, in relation to Justice Bruce's outstanding judgments. If honourable members have had a chance to peruse the five-page affidavit and its 113 pages of attachments of the former Chief Judge of the Common Law Division, they would have seen ample evidence of the action taken by Justice Hunt in response to complaints about outstanding reserved judgments. I quote now from Justice Hunt's affidavit:

> My administrative duties, as Chief Judge at Common Law, include dealing with complaints in relation to judgments reserved, and not delivered, by judges of the Common Law Division. In dealing with such complaints, my practice has always been to require the complaint in writing in order for me to deal with it; and when I have received a written complaint to speak to the judge personally and to record the judge's statements of intention in relation to the outstanding judgments in a letter to the complainant while the judge's statements are still fresh in my memory. When I have discussed complaints with Justice Bruce in this way, in relation to some matters Justice Bruce has stated an intention to deliver the judgment within a period or by a particular date, and in relation to other matters he has promised to deliver the judgment on a particular date. In my practice of recording his intention in correspondence, I have been careful to record his express state of mind accurately. I keep records relating to this activity under the name of each Judge and Master of the Division.

The attachments, which are copies of letters that verify this statement, include letters to litigants stretching over the years 1994 to 1998. If I may take a moment to refer to just two of these cases that are documented in the affidavit, one of the two still outstanding judgments is *Prosser v Eagle* and the other is in the Williams case. The solicitors for the plaintiff wrote a letter of complaint to Justice Hunt on 16 December 1997. In it they wrote that this was a medical negligence case in which the plaintiff instituted proceedings on 12 July 1994. They added that the matter was not reached in the Goulburn sittings of the Supreme Court in February 1996. However, they said:

> Justice Dowd expressed concern at the plaintiff's mental health and referred the matter back to Sydney to be dealt with as an '***expedited matter***'. It subsequently came on for hearing before Justice Bruce in February this year.
>
> The delay, particularly in an '***expedited matter***' is of grave concern to the plaintiff. Her financial situation is precarious and she is in poor health physically and mentally.

Justice Hunt replied on 18 December, stating in his letter to the solicitors that he had:

> . . . spoken to Justice Bruce, and he says that he will deliver judgment in this matter by the beginning of the 1998 Legal Term (2 February), and hopefully before then.

I am advised that as of today—and I put aside the Nutrasweet judgment because it is a complicated and difficult case—both of these two judgments, *Prosser v Eagle* and *Williams v Maritimes Services Board*, remain outstanding. In his address to Parliament Justice Bruce stated:

> To ensure that I delivered judgments and performed my work properly in future I approached Justice Wood, who was to become the new Chief Judge of the Common Law Division of which I am a member. I made an arrangement with Justice Wood to report to him weekly on what I had done and on the state of my outstanding judgments.

I am not sure when Justice Bruce approached Justice Wood, as he does not state that. However, I can inform the House that Justice Wood was appointed Chief Judge of the Common Law Division on 1 April 1998 and, therefore, would have been unable to perform a supervisory role until then. I commend Justice Bruce for taking that approach and, naturally, Justice Wood. However, it is both unfair and misleading to state or imply that no supervisory role was played and no action taken to address the problem of Justice Bruce's delayed judgments until Justice Wood assumed his position as Chief Judge of the Common Law Division of the Supreme Court on 1 April 1998. Justice Bruce also failed to address in his written response and his address to the Parliament how and why he continued to take part in a wide range of non-judicial activities, which would have taken up time and could have been devoted to catching up on his judicial work.

I would like now to turn to a consideration of the other activities of the judge during the time he has had these reserve judgements outstanding. I refer honourable members to pages 261 to 264 and 275 to 279 of the exhibits before the Conduct Division as tendered in the Court of Appeal proceedings. These documents quite clearly show that during the period of his depression Justice Bruce continued with a broad range of non-judicial activities. These activities range from being Chairman of the Law Foundation for a period of this time, Chairman of the Asthma Foundation of New South Wales, Chairman of the Advisory Committee of the Technology Risk Management Centre, member of the International Olympic Committee's Court of Arbitration for Sport, member of the special court established for the Atlanta Olympic Games, and being involved in a committee to review the appointment of Dr Arbeit as the national coach for Athletics Australia.

In February 1998 Justice Bruce also heard a case involving the selection of Australian athletes for the Nagano winter Olympic Games. I will leave it to honourable members to decide whether it is appropriate for such a wide range of extrajudicial activities to be undertaken while litigants in

proceedings before the Supreme Court were waiting for substantial periods for judgments in matters which, on many occasions, were reasonably straightforward. It is unfortunate also that the 19 February schedule, as noted in the Court of Appeal judgment, did not allow for work to be done after 5.00 p.m. or at weekends in order that the backlog of work could be addressed. I do not accept that judges have no obligation to work at weekends or after office hours.

Justice Bruce also made mention of judges being overworked, with the obvious implication that this may result in judgments being reserved for a substantial period. With respect, the facts do not bear this out. The vast majority of judgments are delivered expeditiously, notwithstanding the frequent heavy burdens carried by judicial officers in this State. However, that was clearly not the case with Justice Bruce. He was frequently given substantial periods out of court to prepare judgments, which on many occasions he still failed to do. I do not consider that it can be seriously suggested that overwork was a significant reason for the delay by Justice Bruce in producing judgments for litigants before the Supreme Court.

Other judges have not contended, as Justice Bruce did before this House, that if judges need time to deliver judgments they should be given that time; that they should not be required to scribble them at night or at weekends when they should be doing what ordinary people do, that is, having time off. However, I doubt that many people have the luxury of set hours of work nowadays. I do not believe that professionals have that luxury. I believe that there would be very few extremely high income earners who have that luxury. I put Justice Bruce into that category—in fact, in the high upper range of high income earners—as the salary for a Supreme Court judge in this State is more than $196,000 per annum.

I will not list here the other benefits of this office, but they include generous leave entitlements and a pension package, which are provided in consideration of the demands of these crucial positions of high responsibility that are often taken by people who have been earning a greater amount at the private bar. I now turn to the relevance of the Conduct Division report. Another inaccurate statement in Justice's Bruce's address to the House on 16 June was his statement that:

> The findings of the Conduct Division are completely irrelevant to you, except in so far as they constitute a trigger which enables both Houses of this Honourable Parliament to consider the question of my removal.

With respect, I do not consider that to be an appropriate statement of what reliance the House can place upon the findings of the Conduct Division. This House must consider those findings and determine whether Justice Bruce should be removed from office on the basis of those findings. Pursuant to section 28 of the Judicial Officers Act, if the Conduct Division decides that a serious complaint is wholly or partly substantiated, it may form an opinion that the matter can justify parliamentary consideration of the removal of the judicial officer complained about from office.

Section 29(1) requires the Conduct Division in relation to a serious complaint to present to the Governor a report setting out the division's conclusions. Section 29(2) requires that if an opinion has been formed under section 28 that the matter could justify parliamentary consideration of the removal of the judicial officer from office, the report shall set out the division's finding of fact and that opinion. I do not consider that the findings of fact by the Conduct Division are irrelevant to the considerations of this House. To the contrary, I consider them to be most relevant and they should be given appropriate weight. I am not sure what Justice Bruce expects this House to base its decision on if it is not the report of the Conduct Division.

As to the Court of Appeal's decision in the matter commenced by Justice Bruce, the judge told the House that the decision in no way gives credibility, credit or imprimatur whatsoever to the majority view that was espoused by the Conduct Division of the judicial commission. He said that the Court of Appeal ultimately said, in effect, "Well, I suppose it was possible that someone could come to that view." With respect, the Court of Appeal's decision was a little higher in its effect than saying that someone could come to that decision. The Court of Appeal had to determine whether there were reasonable grounds for the Conduct Division reaching the conclusions that it did. I could perhaps summarise the court's decision by quoting the Chief Justice, who said:

> In accordance with the strict legal tests applied in this area of law, there was before the Division probative material capable of supporting the conclusion that His Honour's incapacity continued after his medical condition had been alleviated.

It is true, of course, and I readily concede, that the Court of Appeal was not hearing an appeal from the Conduct Division's decision. It did not have to form the view that Justice Bruce's conduct demonstrated an incapacity for judicial office. But it did have to form a view that there was evidence available from which the Conduct Division could reach the conclusions it reached. The Court of Appeal so held.

The courts of this State have protocols and/or time standards in place which vary from jurisdiction to jurisdiction. Procedures in the Supreme Court, instituted by the former Chief Justice, Mr Justice Gleeson, which are referred to in the material before the House, allow litigants to confidentially raise matters with the head of the particular division in which the matter is reserved. This procedure was used extensively by litigants, particularly with Justice Hunt, but to no avail. The procedures are also set out in letters by the former Chief Justice of New South Wales, now the Chief Justice of Australia, Justice Gleeson, to the New South Wales Bar Association and the New South Wales Law Society in late April 1993, and those procedures are annexured to Justice Hunt's affidavit.

While I am sure there have been other instances of serious delay in relation to other judicial officers, Justice Bruce's case is an exceptional one. Fault in other cases does not excuse in any way the delays in the delivery of these particular judgements. I have already had discussions with the heads of jurisdictions in relation to these matters, and I will be having further discussions in the immediate future. If there are complaints about other judges, they too can be dealt with by the Judicial Commission. It is open for any other litigant to refer any complaint about the judiciary to the New South Wales Judicial Commission. As I have indicated, I will be holding further discussions with heads of jurisdiction about improvements to the system, but I cannot accept that the individual judicial officer who bears ultimate responsibility for the cases conducted before him or her is not personally responsible for the events which unfold.

This is not an easy matter to determine and it requires members to sift through a considerable amount of material carefully and with a degree of critical analysis. I have heard suggested in some quarters that it may be appropriate to adjourn this matter for a period of up to 12 months to allow Justice Bruce's conduct to be further evaluated. That is not a position I can support. Litigants before the Supreme Court cannot be used as some kind of experiment for the evaluation of Justice Bruce's future conduct. It is in the public interest that this Parliament determine as expeditiously as possible whether there is the relevant incapacity in Justice Bruce so as to warrant his removal from office immediately. Either there is or there is not. This is not a matter for compromised positions. Litigants and the public interest demand better.

In this regard mention has been made of the Nutrasweet case, a very complex case involving months of evidence, which no doubt caused difficulties and stresses for the parties before the court. In my view, it is not appropriate to consider delaying these proceedings to allow Justice Bruce to deliver judgment if the Parliament otherwise considers that he does suffer from incapacity. I have already had discussions with senior counsel for both parties in the Nutrasweet case and have offered to facilitate a resolution to this matter that is acceptable to both parties should Justice Bruce be removed from office prior to a decision being handed down. Should that ultimately be the decision of Parliament I will hold further discussions in an effort to reach a conclusion which is acceptable to both parties and which would not require a complete rehearing of the case.

The real question to be determined by the Conduct Division and by this Parliament is whether the depression suffered by the judge was the sole cause of his failure to properly perform his judicial functions or whether there was an element of procrastination which continued after treatment for depression in February 1998. Honourable members will recollect that when the 19 February schedule, prepared by the judge, was considered by the Conduct Division, it adjourned proceedings against the judge to allow judgment to be delivered in accordance with the schedule, and stated that whether or not delivery of the judgments occurred was a matter that was of importance in the deliberations of the Conduct Tribunal. Justice Bruce, through his legal representatives, submitted a response for his failure to adhere to the schedule. Those reasons are fully set out in paragraph 73 of the Conduct Division's report.

In brief, they include the time Justice Bruce was required to sit in court, the fact that he suffered back complaints and the fact that he suffered from a significant migraine attack which occurred on 12 March, disabling him for five days. I do not propose to re-examine those matters in detail. It is sufficient to say that having considered all of those matters the Conduct Division, or at least two members of it, considered that incapacity to satisfactorily perform the judicial function remained, notwithstanding the medical condition of Justice Bruce that had plateaued with treatment. The Conduct Division was of the view that the indisputably demonstrated incapacity up to February 1998 remains, although the incapacity had been diminished to some extent by the relieving of the severe depression.

The judgment of the Chief Justice in considering these matters indicates that in his opinion the facts and matters upon which the Conduct Division chose to rely in reaching the conclusions it reached were within the range of

matters permissible to be taken into account. In his judgment the Chief Justice also considered whether, although there was substantial failure to adhere to the agreed terms or time frames in the schedule of judgments, the delays were such as to warrant the Conduct Division reaching the conclusion that it did. Those delays ranged from three to 29 days and, as such, are obviously not comparable to the many months of delay which had previously occurred. However, in considering this question the Chief Justice said:

> Whether delays measured in days, in all the circumstances of the case can be given the weight attached to them as a matter on which reasonable minds may differ as the reasons of Mr. Mahoney plainly show. In addition to the period of delay, the Division took into account the nature and purpose of the arrangement with the Chief Justice. It also took into account His Honour's "failure or inability to confront the issue". I am not prepared to find that the Division was not entitled to give this conduct the weight that it did.

It is clear from the Conduct Division's report, and with the benefit of the Chief Justice's comments about the Conduct Division, that it found that the procrastination factor was a substantial cause of the incapacity to deliver reserved judgments within reasonable time frames. The majority of the Conduct Division clearly considered that in all of the circumstances the judge's performance in relation to the delivery of judgments was still not up to an appropriate standard. Honourable members will note in paragraph 31 of the division's report a quote from a decision of an English Court of Appeal judgement in the matter of *Goose v Wilson Sandford and Co.*, wherein the following remarks are made:

> A judge's tardiness in completing his judicial task after a trial is over denies justice to the winning party during the period of the delay. It also undermines the loser's confidence in the correctness of a decision when it is eventually delivered. Litigation causes quite enough stress, as it is, for people to have to endure while a trial is going on. Compelling them to await judgment for an indefinitely extended period after the trial is over will only serve to prolong their anxiety, and may well increase it. Conduct like this weakens public confidence in the whole judicial process. Left unchecked it would be ultimately subversive of the rule of law. Delays on this scale cannot and will not be tolerated. A situation like this must never occur again.

The Conduct Division noted that the delay being addressed in that material was 21 months and related to one matter only. I proffer the view to this House that Justice Bruce is incapable of performing judicial duties due to his inability to provide timely justice and that he should be removed by Address of both Houses of Parliament to the Governor. To quote from Justice Mahoney's dissenting report, "Removal is not a punishment but a protection of the public and the system of justice." I urge honourable members in the public interest, and particularly in the interests of future litigants in the New South Wales Supreme Court, to make an objective decision based on all of the documentary evidence and the proven facts and with earnest consideration of the issues arising in this case—and to make their decision on that basis and on that basis alone.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [3.31 p.m.]: I support the motion moved by the Attorney General. I do so with a heavy heart because I have known Vince Bruce for 25 or 30 years. Most people who have practised as a solicitor in this city would have had dealings with him. I recall 25 or so years ago briefing him as a barrister, although I do not now recall the nature of the matter. I support the motion with a heavy heart also because it was I as Attorney General who recommended to the Governor that on 4 July 1994 Vince Bruce be appointed a judge of the Supreme Court.

There is absolutely no doubt that Vince Bruce is a lawyer of outstanding capability. His appointment in 1994 was universally welcomed. He was held in the highest of professional regard. Any person who has dealt with Vince Bruce outside the legal environment is aware of the impression he makes as an individual. He has great depth of heart, a great sense of humanity and a great commitment not just to the law but also to the community. But members of this House have to put aside all those thoughts and feelings because we have a constitutional responsibility to act based upon the information that is placed before us.

I recall that during his address to this House Justice Bruce said to us, "You must be the judges and you must do as judges do. Look into your hearts and do right." I agree with that comment, but members of Parliament have the responsibility to do right by the community and to protect the community. In doing so we must act fairly towards Justice Bruce, but our obligation is to decide this issue in the interests of the total community. We must do right by the community because we are the gatekeepers charged with the responsibility of protecting the community from having inappropriate judicial officers. That is the position that I come from.

The protection of judges from capricious removal was entrenched into the Westminster system by the Act of Settlement of the United Kingdom some 300 years ago. It protected judges by providing that during good behaviour they could not be removed from office except on an address of both Houses of Parliament. I emphasise the expression "during good behaviour". In the colonies,

as they were then known, the Act of Settlement did not apply and in the absence of an Act of Parliament that protected their position, judges could be removed capriciously. Until the Judicial Officers Act of 1986 only Supreme Court judges were protected from removal by the requirement of a vote of both Houses of Parliament. Until then District Court judges and magistrates could be removed by a decision of the Governor.

All members who were here in 1986 will recall that the Judicial Officers Act was passed in the midst of much controversy. Section 4 of the Act provides that every judicial officer remains in office during ability and good behaviour and may not be suspended or removed from office except in accordance with an Act of Parliament. It provided the mechanism of a vote of both Houses of Parliament. Again I emphasise that judges could hold their position "during ability and good behaviour". It is interesting to note that the Federal Constitution at that time used a different expression and in 1992 the Constitution Act was amended: the concept of protection for judicial officers was taken out of the statute and put into the Constitution. Section 53(2) of the Constitution then provided:

> The holder of a judicial office can be removed from the office by the Governor, on an address from both Houses of Parliament in the same session, seeking removal on the ground of proved misbehaviour or incapacity.

The reference is to "proved misbehaviour or incapacity". The decision of Justice Spigelman in the Bruce case also refers to proved misbehaviour or proved incapacity. Section 53(3) of the Constitution provided that legislation may lay down additional procedures and requirements to be complied with before a judicial officer may be removed from office.

The Judicial Officers Act embodies the constitutional measure that stipulates the additional procedures that have to be observed before a judicial officer can be removed from office. Section 41(1) of the Judicial Officers Act provides that a judicial officer may not be removed from office in the absence of a report—of the Conduct Division to the Governor under the Act—setting out the division's opinion that the matters referred to in the report could justify parliamentary consideration of the removal of the judicial officer on the ground of proved misbehaviour or incapacity. Therefore, this Parliament cannot remove a judicial officer until it has a report from the Conduct Division, given to the Governor under the Act, that the judicial officer could be considered for removal on the ground of proved misbehaviour or proved incapacity.

The report on Justice Bruce from the Conduct Division of the Judicial Commission makes it clear that there is no allegation of proved misbehaviour. During the debate members might seek to argue against the Conduct Division findings in relation to misbehaviour, but it would be a waste of their time to do so because without a report from the Conduct Division recommending parliamentary consideration of the judge's removal on the basis of proved misbehaviour the Constitution prevents the Parliament from taking action. Therefore, members can only consider the issue of proved incapacity. Before I deal with that matter, I should like to remind the House of what Justice Priestley said in the Bruce decision about Parliament's role in considering the report. He said:

> The Conduct Division's report was based on the opinion that the matters referred to in it *could* justify parliamentary consideration of removal. The very different question for decision which will face each House is whether the material before it, including but not necessarily limited to the Conduct Division's report, leads the House to decide that it *will* address the Governor seeking removal on the ground of incapacity of the judge which the House *itself has judged to be proved*.

Though it is not clear, I infer from the judge's comments that members of the House must consider all the material placed before us, including the report of the Conduct Division. It is for us to decide whether the information we have is sufficient for us to form the view that there has been proved incapacity. It has been suggested by some that before the Parliament makes its decision, it should establish a parliamentary committee to rehear all the evidence. I do not believe that is necessary. In the legislation that established the Judicial Commission, the Parliament gave the Conduct Division the role of investigating and reporting to Parliament on whether, having considered all the evidence, the Judicial Commission believes there is sufficient evidence upon which the Parliament could form a view. The Parliament must also consider all the issues and form a view on whether the Judicial Commission was reasonable in recommending that the Parliament consider the removal of the judge. That is the view I advocate to the House.

Before dealing with the issues in detail, it is important that I outline, from what I have been able to glean from publicly available material and from the report, the history of Justice Bruce's performance as a judicial officer. Justice Bruce was involved in a serious accident in 1988 that, as he admitted, was of almost catastrophic proportions. From 4 June 1990 until 3 August 1990 Justice Bruce was appointed an acting judge of the Supreme Court. Again, from 1 July 1991 until 30 August 1991 he was an acting judge of the Supreme Court. During 1990 or 1991—

the report of the Conduct Division does not make it clear—Justice Bruce was treated by Dr Dent, his psychiatrist, for depression.

On 4 July 1994 Justice Bruce was appointed a permanent Judge of the Supreme Court. Again, the report of the Conduct Division is not clear on the dates, but it becomes relevant when we consider some of the incidents I will outline. In April or May 1997 Dr Dent again treated Justice Bruce for what is described as light depression. In December 1997 Dr Dent treated Justice Bruce for severe depression, which he identified as having evolved from at least 1995. I outline those facts because, as will become clear to those who have read the report, the depression recurred on three occasions, somewhat in relation to the problems with which we are now confronted.

I wish to go back through the history of the complaints that have been made involving delays in Justice Bruce's administration as a judge. The first matter relates to a judgment that was delivered by Acting Justice Bruce on 30 August 1991. A supplementary hearing of that matter took place on 2 June 1992. There were two complaints to the Chief Judge and a further complaint to the Chief Justice made during 1995—and I emphasise that date. That is, three years had passed without a supplementary judgment having been given. This relates to a matter he heard when he was an acting judge and at around the time he was receiving treatment for depression.

On 17 August 1994 Justice Bruce had received written and oral submissions in relation to another matter and a complaint was made on 27 April 1995 that judgment had not been delivered. That matter was subsequently settled before a judgment was ever delivered. The Woodward matter was heard on 24 November 1994 and was dealt with in some detail in the report of the Judicial Commission. At that time the judge indicated that judgment would be given within a week. Judgment was not delivered. On 5 July 1995 he indicated that the judgment would be completed shortly. It was not. Then in August 1995, which again I believe is important—Justice Bruce was withdrawn from hearing all cases until all of the reserved judgments in 1994 had been delivered. Within 12 months of being appointed a judge he was relieved of the task of actively hearing any cases for 10 weeks and two days for the purpose of delivering those judgments.

It will become clearer later that even with time off he still did not deliver all of the judgments that were then outstanding—judgments that had accumulated over the 12-month period that he had been on the bench. In relation to the Woodward matter, the files indicate that on 19 September 1995 a complaint was lodged with the Judicial Commission because a judgment had not been handed down. On 20 September 1995 the Judicial Commission wrote to Judge Bruce. He did not reply.

On 10 October 1995 the Judicial Commission again wrote to Judge Bruce, and again he did not reply. On 14 November 1995 the Judicial Commission again wrote to Judge Bruce. He did not reply to that letter either. On 11 December 1995 he gave an undertaking to the Judicial Commission that all but two judgments would be delivered and that those two would hopefully be delivered in the new year. On 12 December 1995 the Judicial Commission asked Mr Justice Bruce to produce a list of all reserved judgments by 9 February 1996. Justice Bruce did not reply to that request.

On 13 February 1996 the Judicial Commission wrote to Justice Bruce seeking that he reply by 9 March to a request to provide material sought by the commission. Justice Bruce did not reply by 9 March, but he did so on 11 March. Justice Bruce said in his reply that seven judgments and five defamation judgments were outstanding, and he indicated that all but three of them would be delivered by the end of that week. In relation to the Woodward matter, having received the undertaking from Justice Bruce about the delivery of judgments, the Judicial Commission effectively closed its inquiry.

On 3 October 1996 there was a newspaper article about delays in Justice Bruce's delivery of judgments. On 18 November the Judicial Commission again wrote to Justice Bruce inquiring about the delay in those judgments and asking whether the delayed judgments were those which Justice Bruce had promised would be delivered on 11 March 1996. On 9 December that year Justice Bruce acknowledged that "the judgments referred to were delayed". On 20 December the Judicial Commission again wrote to Justice Bruce asking "when the two judgments referred to were reserved and delivered". The evidence placed before the Conduct Division did not reveal that any response was ever received by the Judicial Commission in relation to those inquiries.

I think at this time I should note a disclaimer because I was the defendant in one of the defamation judgments that Justice Bruce had promised would be delivered, but had not been. That is not a matter that has in any way affected my judgment on this matter. They were defamation proceedings in which I, as Attorney General at that time, was a defendant. However, the House should be aware that Justice Bruce never delivered judgment in that matter.

I outline all those instances of what might be described as procrastination to indicate that there was significant concern as to the way in which Justice Bruce dealt with those matters. Another delayed judgment related to a hearing that was concluded on 13 March 1995. The Chief Judge advised on 9 June 1995 that Justice Bruce hoped that he would dispose of the case "before the end of the month". Judgment was delivered on 1 December. In another case the judgment was reserved on 15 March 1995. Complaints were received in November 1995, and judgment was finally delivered on 18 December.

In another matter, judgment was reserved on 6 April 1995. A complaint was received in November 1996, nearly 18 months later, and judgment was finally delivered on 29 November 1996. In a matter heard on 26, 27 and 28 February 1997 complaints were made to the Chief Judge on 8 December 1997. On 9 December the Chief Judge conveyed to the solicitors for the parties Justice Bruce's statement that he expected to deliver judgment by Christmas. On 20 February 1998, 12 months after the matter was heard, Justice Bruce assured the Conduct Division that judgment would be delivered on 27 March 1998. However, on 19 March the Conduct Division was advised that the judgment would be delivered on 3 April 1998. Ultimately it was received on 30 March that year.

The Attorney General referred to an important matter that had been expedited because of the mental health of the plaintiff. Justice Bruce heard the case in February 1997, and a complaint was received on 18 December 1997 that the judgment had not been delivered. On 20 February 1998 the Conduct Division was advised that judgment would be delivered on 26 May 1998. That ultimately occurred.

The next matter that the Judicial Commission dealt with in some detail was the Bradley matter, which was heard on 5 and 6 March 1997, and judgment was reserved. The matter involved three parties who were aged between 81 and 88 years and identified as being in poor health. It was noted that their financial position depended upon the outcome of the case. After approaching Justice Bruce, on 13 August the Chief Judge responded to the complaint by advising that Justice Bruce had indicated that judgment would be given "by the end of next week". No judgment was delivered.

On 26 September 1997 the Chief Judge wrote to Mr Bradley's solicitors and told them that Justice Bruce had advised him the judgment would be available "by the end of next week". Again, no judgment was delivered. On 23 October 1997 Justice Hunt wrote directly to the complainant, Mr Bradley, and informed him that Justice Bruce had assured him that judgment would be available "by the end of next week". Again no judgment was delivered. Finally, on 14 April 1998—13 months after the matter was heard—judgment was delivered.

The next matter that I bring to the attention of the House is referred to in the reports. A case involving Mr Beverage was heard on 10 March 1997. On 7 August 1997 Chief Judge Justice Hunt wrote to Mr Beverage advising him that Justice Bruce had assured the Chief Judge that judgment would be delivered "by the end of next week". Judgment was not so delivered. On 29 August 1997 Justice Hunt again wrote to Mr Beverage to advise him that Justice Bruce had assured him that judgment would be delivered by 3 September 1997. It was not. On 20 February 1998, after a complaint was lodged with the Judicial Commission, the Conduct Division was advised by Justice Bruce that judgment would be delivered that day. The judgment was not delivered until seven days later.

In respect of the complaint lodged by Mr Beverage with the Judicial Commission, on 16 October 1997 the Conduct Division wrote to Justice Bruce seeking a response by 3 November. No reply was received. On 13 November 1997 the Conduct Division again wrote to Justice Bruce to advise that the division was viewing the matter extremely seriously, and requested a reply by 1 December 1997. No reply was received by that date. We now know from the reports that the reason was that the judge did not even open the letter, that he could not do so because of what was identified as depression. I could refer to a large number of other matters that are outlined on page 14 of the Conduct Division's report and identify that on a number of occasions Justice Bruce would give assurances about being able to deal with matters and that those assurances were never adhered to.

I outline those matters to provide some evidence of what the Judicial Commission described as a personality trait of procrastination. I gave that detail because those familiar with this problem know that procrastination is characterised not only by delay but by denial—an inability to come to grips with the issues that are to be dealt with. All these cases identify that Justice Bruce had that trait. Members might well ask whether procrastination should be considered to fall within the general definition of incapacity. I urge the House to take the same view as was taken by Justice Spigelman, who at page 52 of his judgment said:

> One of the submissions made by Mr Conti QC—

who appeared for Justice Bruce—

> was to the effect that the character trait of procrastination could not constitute a relevant form of incapacity. I reject this submission. The relevant manifestation of incapacity is an inability to write judgments within an acceptable time. There can be no doubt that Justice Bruce demonstrated such an inability. A personality trait described as "procrastination", of itself and without the intervention of the medical condition of depression, could entail such inability.

From the debate I have heard it seems that two issues weigh on the minds of members. The first is whether the evidence justifies a finding that Justice Bruce exhibited a personality trait of procrastination. I will not refer to the judgment in detail, as the Attorney has already done so. However, the facts clearly sustain the finding by the majority of the judges that Justice Bruce had a personality trait of procrastination. Indeed, the evidence shows that that personality trait existed probably from the time he was an acting judge in 1992, and it was further manifested in 1997.

The issue has been raised as to whether it is appropriate for the House to remove from judicial office a judge who was acknowledged as suffering from depression. The majority of the judges of the Judicial Commission took the view that the depression was an aggravation of the pre-existing trait of procrastination. Justice Mahoney rejected the concept that procrastination was proven. He found that the evidence of Dr Dent and Dr Galandis did not sustain the view that the judge possessed the personality trait of procrastination. Justice Mahoney was of the view that the issue related purely to depression, that as at the date of his judgment depression was no longer present and that therefore a decision to remove the judge on the basis of incapacity was not justified.

The majority of the judges, after having outlined all the circumstances relating to the previous delayed judgments, and taking the view that this exhibited the trait of procrastination, then considered the way in which Justice Bruce dealt with the judgments after he was acknowledged as being cured of his depression. As the Attorney outlined, the Judicial Commission has advised the House that on the first occasion when a schedule of judgments was prepared and was to be complied with only one of those judgments was in fact delivered. The judge, having given an undertaking that he would communicate with the Chief Justice as he delivered his judgments, did not so communicate. It was only when the matter came before the Judicial Commission that the Judicial Commission and the Chief Justice became aware that the judgments had not been delivered.

At about the same time the Judicial Commission wrote to Justice Bruce's solicitors seeking a response on matters. We now know that the judge did not respond even to the solicitors. The solicitors were unable, effectively, to locate the judge to take instructions from him. That also suggests a classical illustration of a person who is not able to come to grips with the pressures of his responsibility, and is consistent with the trait of procrastination. Finally, another schedule of judgments was prepared. Again, in respect of all of those judgments except one, Justice Bruce was not able to comply with the schedule and was between two and 29 days late delivering the judgments.

The Judicial Commission—and also the Supreme Court in the judgment of Justice Spigelman—has made it clear that an ability to deliver judgments in a timely fashion is an essential ingredient in the role of a judicial officer, and that procrastination undermines the ability of a judge to perform his duties appropriately. It is for that reason that the Judicial Commission recommended that this House consider the judge's removal. It is clear from all this material that there were sound reasons for the Judicial Commission, in its majority decision, to make the recommendations to the House that it did.

I advocate to the House that if we are to sustain the integrity and future role of a Judicial Commission—the task of which is to undertake these investigations and to report to the House—we should accept the findings of the Judicial Commission unless we can be satisfied that the findings of the Judicial Commission are manifestly wrong. There is no evidence to suggest that the Judicial Commission in making its recommendations or findings was manifestly wrong, and that the judge therefore does not suffer the incapacity based upon the trait of procrastination.

Justice Mahoney acknowledged that there was an incapacity based upon depression. If the House were to take the view that it should accept Justice Mahoney's view that depression existed, it would not then be appropriate for the House to accept that that incapacity has disappeared. I shall outline to the House the reasons why I advocate to the contrary. On the material that is available Justice Bruce was treated for depression in 1990 and 1991. He was treated again for light depression in 1995; and he was treated for severe depression in 1997. The findings and advice before the House indicate that, having received treatment for that depression, Justice Bruce's condition has now plateaued. This House is asked, if it does not remove Justice Bruce from office on the basis that his condition has plateaued, to return him to the bench, provided he continues on the regimen of treatment prescribed by Dr Dent, which is clearly on the record.

As the gatekeepers for the community, members of this House would be saying to the community that although a judicial officer has suffered depression on three occasions, and during those periods has embarked on conduct which has resulted in significant delay in the delivery of judgments, provided he continues on his regimen of treatment it is appropriate in the public interest that he should remain on the bench. I do not accept that view. I believe that as members of Parliament we have a duty to the community to ensure that members of the judiciary deliver judgments in a timely fashion. It is for that reason that I support the motion.

The Conduct Division dealt with this matter in a way that surprised me. The Judicial Commission found that misconduct was not proven. In fact, no such allegation was made against Justice Bruce. I note, however, that on close to a dozen occasions the judge gave undertakings to the Chief Judge or the Chief Justice but did not adhere to them. On a number of occasions undertakings were also given to the Judicial Commission, but they were not observed. In relation to investigations conducted by the Judicial Commission, correspondence pursued by the commission was ignored. I am surprised that the Judicial Commission did not consider that those matters should be pursued as allegations of misconduct. I note in his judgment that Justice Spigelman adverted to the fact that such matters could give rise to an allegation of misbehaviour, but that such an allegation was neither made nor pursued.

That surprises me. I do not know upon whom it reflects. If we are unfortunate enough to have this sort of incident occur again, and I am not so naive as to believe we will not, I expect that the public will justifiably lodge complaints if they believe they are not being treated appropriately and receiving timely judgments. The Judicial Commission should investigate those complaints. If they are justified, appropriate action should be taken. When exercising its authority to ensure that appropriate justice is delivered in New South Wales, the Judicial Commission should consider the conduct of the judge in dealing with the chief judges, the Chief Justice and the Judicial Commission.

Reverend the Hon. F. J. NILE [4.12 p.m.]: As all members of this House will be aware, we are considering one of the most serious motions that has been moved in this House: a motion for the removal from office of a judge of the Supreme Court. The Attorney General has moved:

1. That the following Address be adopted and presented to His Excellency the Governor, seeking the removal from office of the Honourable Justice Vince Bruce of the Supreme Court:

> To His Excellency the Honourable Gordon Samuels, Companion of the Order of Australia, Governor of the State of New South Wales in the Commonwealth of Australia.
>
> May it please your Excellency—
>
> We, the Members of the Legislative Council of the State of New South Wales, in Parliament assembled, have the honour to communicate to Your Excellency the following Address adopted by the House this day:
>
> That this House, having considered:
>
> (a) the Report of the Conduct Division of the Judicial Commission of New South Wales concerning complaints against the Honourable Justice Vince Bruce, dated 15 May 1998; and
>
> (b) the written response of the Honourable Justice Vince Bruce to the Report of the Conduct Division of the Judicial Commission, dated 26 May 1998,
>
> and having heard His Honour at the Bar of the House, seeks the removal from office by His Excellency the Governor, under section 53 of the Constitution Act 1902, of the Honourable Justice Vince Bruce, a Judge of the Supreme Court of New South Wales, on the ground of incapacity.

2. That the Legislative Assembly be requested to adopt an Address in similar terms.

3. That a copy of the address made by the Honourable Justice Vince Bruce at the Bar of the House on Tuesday, 16 June 1998, as to why he should not be removed from office on the grounds set out in the Report of the Conduct Division, be also transmitted to the Legislative Assembly.

I have been a member of this Parliament since 1981, and I remember the debates about the establishment of the Judicial Commission and the operation of the Conduct Division. It was always my understanding that the removal of a Supreme Court judge would be a most serious action. The Judicial Commission was established to deal with matters of corrupt behaviour and serious misbehaviour. Incapacity was also included. I am sure that when the Judicial Commission was established no-one ever imagined that today we would be debating the dismissal of a judge of the Supreme Court who has suffered from depression and how serious that depression may be. I assumed "incapacity" would relate to insanity, complete mental inability to operate as a judge or physical collapse rendering one unable to sit as a judge in a court.

Evidence indicates that the judge's depression is now controlled medically. I was surprised at the

off-handed manner with which the Leader of the Opposition acknowledged that the judge is on medication and therefore no longer incapacitated, but said that it makes no difference. I believe he was wrong. As Justice Bruce stated in his presentation and as is said in correspondence I have received, a number of judges are taking medication for various reasons, and at least two of them are suffering from similar medical conditions of depression.

I would be so bold as to suggest that many people in our society are on medication as a result of the skill of modern medicine. I imagine that many judges would take various types of medication, and I daresay a number of members of this House are also on medication. I am on medication. I suffer from asthma and I have to take one Theo-Dur tablet morning and night to prevent asthma attacks. But that certainly does not affect my ability to be a member of this House.

I am sure other honourable members suffer from medical conditions such as high blood pressure or diabetes and they would also be on medication. If medication is effective and enables a person to function efficiently—whether as a member of Parliament or as a judge—that person is no longer incapacitated. The concluding remark of the Leader of the Opposition was very strange. The Attorney General, Minister for Industrial Relations, and Minister for Fair Trading, when speaking to the motion, stated a number of times that there is no question of misbehaviour, and we all accept that. He said the only question is the judge's incapacity to perform judicial duties. He said, "We are not passing judgment because he is ill. We are only here considering his incapacity to make judgments." If the prescribed medication is effective, the judge is able to operate in his role as a judge, to perform his duties and make judgments as required.

We acknowledge—and there is sufficient evidence to show—that there have been delays. No-one denies that there were delays. Justice Bruce made no attempt to conceal the fact that there were delays. At that point he was aware of the delays but he did not know why he could not bring himself to make decisions or final judgments. Justice Bruce now knows that he was suffering from depression—I would say severe depression—which was aggravated by severe migraine headaches. I am sure honourable members will agree that that would restrict anyone's ability to function. Obviously, in the case of Justice Bruce, it restricted his ability to function.

I make now what I believe to be an important point. This is the first time in which such a motion has been moved in the Legislative Council—a Chamber which was established and which has been functioning since 1825. We are debating an historic and serious motion. If this is the first time a motion has been moved to remove a Supreme Court judge it raises a far more serious issue, that is, the independence of the judiciary. This motion might be agreed to in both Houses, but I certainly will not be voting for it. I acknowledge that there is a lot of pressure on all honourable members. Prior to the commencement of this debate the Premier and the Leader of the Opposition stated that they believed Justice Bruce should be removed from his position as a Supreme Court judge.

Because of the seriousness and delicate nature of this matter the leaders of the respective parties should not have expressed their opinions publicly. One does not have to be some sort of professional academic or psychologist to establish that that would place pressure on members of those respective parties, especially the younger members. All honourable members want to be accepted by their parties. They might believe that the judge should not be removed but, because the leaders of their parties think there is sufficient justification for his removal, they might not question those leaders. The leaders, by making continual public statements, have put undue pressure on the members of their parties. That should not have occurred.

The Hon. J. F. Ryan: They have not put any pressure on.

Reverend the Hon. F. J. NILE: I am not saying that members have been taken into a room and threatened. I am simply saying that those leaders have created that environment by making public statements. One of the serious matters before the House is the independence of the judiciary. We all want judges in this State who will be fearless when making judgments, especially when they are hearing cases involving the actions of governments. It is not unusual for judges to hear cases in which citizens have brought matters against a government or a government department. We want judges who are able to make decisions without fear or favour; who do not have to look over their shoulders in case they upset the Executive Government of whatever political persuasion.

An example of that, announced only yesterday by the Attorney General, is the matter of Justice Tony Fitzgerald. It has been announced that he will take up a 12-month appointment as an acting Supreme Court judge. Why is Justice Fitzgerald leaving Queensland? Why was he totally disillusioned in Queensland? Some of the reasons he gave include:

> He watched himself being repeatedly passed over for senior judicial positions.
>
> He saw the January High Court vacancy go to a fellow Queenslander, Justice Ian Callinan. Perhaps more hurtful was the break with convention by the Borbidge Government Attorney-General Mr Denver Beanland, who appointed a less senior judge as Queensland's Chief Justice last January.

I quote from a *Sydney Morning Herald* article dated 25 June, which states:

> Justice Fitzgerald said soon after that he would retire as President of the Queensland Court of Appeal.

He went on to say:

> When I decided to leave earlier this year it was because I thought it was no longer possible to contribute fully to public life in Queensland . . .

The Attorney General is pleased to welcome Justice Fitzgerald as an acting judge, but the report in the *Sydney Morning Herald* makes it quite clear that, in the mind of Justice Fitzgerald and in the minds of many others, Justice Fitzgerald was being punished for his outstanding work as the head of the Criminal Justice Commission. He has come under a great deal of criticism by the National Party Government for that inquiry which resulted in the gaoling of a police commissioner and a number of National Party members of Parliament. So Justice Fitzgerald left Queensland because of the Government's politicisation of judicial appointments. Judges must be totally independent and must be able to make decisions without fear or favour. If this House votes today to remove Justice Vince Bruce for reasons that are not justified, we will send a chill through all the judges in this State.

The second matter that is basic to the issue we are debating is discrimination and the issue of disability or incapacity. As I said earlier, I acknowledge that the medical condition Justice Bruce has is under control through medication. I was surprised to hear some of the statements being made in and outside the House. I referred earlier to those statements as showing an off-handed attitude to a person with a disability. Honourable members have spent a great deal of time in this House arguing that there must be no discrimination on the basis of a person's disability. But today we are saying that we accept that. I acknowledge the speech made by Justice Vince Bruce. He indicated in that speech that he had been involved in a serious accident in September 1988. As I studied some of the background material for this debate I was amazed at the extensive nature of the injuries he suffered.

A broad statement was made that he was involved in a car accident. His injuries included a fractured skull, frontal lobe brain damage, compound fractures of the jaw, compound fracture of the right elbow, seriously injured right shoulder, collapsed left lung, fractured pelvis, compound fractures of both ankles, and both feet crushed. Those injuries left him with a number of permanent residual orthopaedic disabilities. I interpret that to mean that on occasions he suffers pain or discomfort from those injuries. It can be said that depression is a medical condition but I, as a lay person, strongly relate that to the serious injuries he received, such as the frontal lobe brain damage.

Again, I believe that members of the House need to think very carefully. Should a judge of the Supreme Court be removed from such esteemed office because the judge was involved in an accident and has a medical condition that is now under control through medication? Apparently, many judges were aware of Justice Bruce's health problems; that he was suffering from depression. Yet, from my reading of the documents, he willingly took on cases that other judges would not take. If any criticism is to be levelled at anyone, it should be levelled at other judges of the Supreme Court for allowing Justice Bruce to carry an unfair workload. In his statement to this House, Justice Bruce said that he often worked at night and on weekends. In that regard I note the statement of the Attorney General here today and comments he has made in press releases. The legal affairs section of the *Australian Financial Review* of 5 June stated:

> The Attorney-General, Mr Jeff Shaw, concedes the pressure on judges is undoubtedly greater than it was 10 or 15 years ago.

In that article the Attorney was reporting as having said:

> There is more time sitting in court and the pressure of business is greater, but I believe that most judges, the overwhelming majority of judges, are able to cope with it, and it has to be said that judges are very highly paid professionals to whom hard work is a normal attribute of their life.

He further said:

> People take these appointments on a substantial salary, they assume these obligations, and I don't think it is realistic for anyone to suggest that it should be a nine-to-five job or a job that does not require great exertion.

The Attorney General does not seem to have much compassion for the pressures felt by Supreme Court judges. It is ironic that a Labor Attorney General should say that they get paid a lot of money and therefore they should put up with a heavy workload.

The Hon. M. R. Egan: Are you suggesting they should stop work at five?

Reverend the Hon. F. J. NILE: I do not think that a judge should work 24 hours a day, seven days a week. Judges should be able to relax on weekends and enjoy a lifestyle that enables them to remain healthy in mind and body, that enables them to deliver timely judgments. A person who is continuously exhausted cannot deliver timely, sound judgments. Interestingly, the Leader of the Opposition now says that he is happy to vote for the removal of the judge. However, in the same article in the *Australian Financial Review* he is reported to have a different view. He stated that budgetary restraint had imposed severe pressure on the justice system. Referring to the Leader of the Opposition, the article stated:

> At the moment, he estimates that the Court of Appeal needs another three judges, the Supreme Court needs another three or four general judges, and the District Court needs at least three more judges.

If the coalition parties were in government, would the Leader of the Opposition move to increase the number of judges? He acknowledged that judges are overworked. I personally do not know how judges cope with their heavy workload. But the Leader of the Opposition acknowledges that they are overworked and that there are too few of them. It could be said that Justice Bruce was a willing horse; that he showed a positive attitude and carried an extra load. Despite his problems, the accident and the depression that is now under medical control, he volunteered to take extra cases. That is acknowledged at pages 36 and 37 of the report of the Conduct Division of the Judicial Commission—without so much as a "Good on you, Justice Bruce". Paragraph 60 of the report stated:

> There was also debate regarding the defamation cases referred to in Table D. The Chief Judge at Common Law noted in a memorandum that Justice Bruce had, contrary to Chief Justice's instructions not to take cases until the Newcastle judgments had been delivered, taken four defamation cases at some time between September and November 1995. Justice Bruce maintained that he took those cases because he was the only judge available to do so.

That is the view of the two judges who are critical of him. They acknowledged in their report that Justice Bruce took extra cases at a time when he was already trying to catch up on a backlog of judgments. Letters that I have received from various barristers in this State—and I assume other members have received similar correspondence—contain the valid point that Justice Bruce was not the only judge who was slow in delivering some of his judgments. I assume that the authors of these letters, Queen's Counsel and Senior Counsel, knew that their views would be made known in this debate. In one such letter P. H. Greenwood, SC, of Wentworth Chambers stated:

> However, may I raise a couple of other matters for your consideration? Firstly, the delay in delivering judgments (that is the basis for this complaint) is by no means exceptional. I will come to the reason why that is so later in the letter. For example I am presently waiting on a judgment which will soon have its third anniversary since the case was heard. I have previously waited 2.5 years from the same judge for a decision.

He is referring to another judge, not Justice Bruce. He continued:

> A delay of 12 months is by no means uncommon and, so far as I am aware, those judges are not suffering from severe depression or other medical problems.

He said further:

> I do not say for a moment that such delays are acceptable.

No-one is happy with that. He continued:

> Rather, I say that Justice Bruce is not exceptional and one must look to the system which is in place as the source of the problem not the individual judges, and in particular not Justice Bruce.

The Leader of the Opposition confirmed that view when he referred to the need for more judges in the article in the *Australian Financial Review*. It defies logic that he no longer holds that view. We were told by the Attorney General that he is the judge and we are the jury. I should like to remind members of a couple of comments of the defendant in this matter. In his presentation to the House Justice Bruce made a number of relevant observations. He said:

> Mr President, this is an historic occasion not only for me but for the honourable members of this House. This is the first occasion on which this Chamber has been placed in a position to rule upon whether a Justice of the Supreme Court of New South Wales should be removed.

He further said:

> There is no suggestion of any criticism of my conduct either in court or out of court. There is no suggestion of any misbehaviour anywhere or at any time. There is no suggestion of any criticism of the quality of my judicial work. There is no suggestion of any criticism of the way in which I have conducted the courts over which I have presided. There is no suggestion of any criticism of the hundreds of judgments which I have delivered promptly in the course of my judicial career. There is no criticism of the manner in which I have conducted the largest and most complex piece of medical product liability litigation in the history of this country.

I believe that is relevant. He continued:

> The findings of the Conduct Division are completely irrelevant to you, except in so far as they constitute a trigger which enables both Houses of this honourable Parliament to consider the question of my removal.

That is a valid point. It means that the Conduct Division has not told us to remove him. All it has said is that it is a matter we should consider. It is not pointing a gun at our heads and saying that because of its decision members of this House should remove the judge from his position. An article in the *Australian Financial Review* of 5 June reports Michael Finnane, QC, as having made that very point. The article states:

> In the Vince Bruce case, Mr Finnane said it seemed to have been assumed that because a Conduct Division of the Judicial Commission had reported, "Parliament then just conducts a vote. I think that's wrong."

I say that it is wrong too—otherwise there is no need for a debate in the Parliament; the Conduct Division could simply vote to dismiss judges. In this case it was a decision of two out of three judges, with the most senior judge disagreeing. Members of Parliament should not feel under any emotional pressure that they have no choice in the matter, that they are part of the process and should act like puppets by taking the next step and voting the judge out. Justice Bruce also said in his speech to the House:

> When I challenged the Conduct Division in the Court of Appeal I did so on two bases. Firstly, I said that the legislation required that the report of the commission be unanimous.

I concede that the Court of Appeal has decided that the decision does not have to be unanimous. Justice Bruce went on to say:

> It was plainly established that the most eminent member of that panel totally disagreed with the conclusions which bring me here today.

Justice Bruce was very angry because the dissenting view of Justice Mahoney had been concealed from him. He was under the impression that the decision was unanimous. Later he was very relieved to discover that Justice Mahoney, who he believes is the most senior of the three judges, wrote a dissenting judgment. Justice Mahoney stated on page 6 of his decision:

> The complaint is not that what he did constituted misconduct which itself would or could justify consideration of his removal: it is that it shows incapacity. It is to be emphasised that it is incapacity alone which is in question.

The same comment was made by the Attorney General. Justice Mahoney concluded:

> For these reasons I am of opinion that the Judge is now able to discharge his judicial duties and for that reason the matter could not justify parliamentary consideration of his removal from office. The report of the Division should so state.

Of course, the report did not state that. As I understand it, his views were not conveyed clearly to Justice Bruce, who was given the impression that the Judicial Commission's Conduct Division was unanimous in its decision that the judge still was not able to perform his duties because of his incapacity. As was pointed out earlier, more than $200,000 was spent on the Judicial Commission inquiry. After hearing all the evidence Justice Mahoney said that Justice Bruce should not be removed from office and found that the judge could now discharge his judicial duties.

Members of Parliament have not heard all the evidence but Justice Mahoney has. Is it suggested that Justice Mahoney is somehow misleading the House by his decision? I believe that his decision is valid and that the House should take note of it. On 26 May the solicitors representing Justice Bruce, Holman Webb of Macquarie Street, Sydney, issued a response to the Conduct Division report stating:

> Mr Cole and Justice Lloyd in effect concluded that the Judge's performance from 20 February, 1998 until 7 May 1998, namely:
>
> (1) Sitting in court on 10 days.
>
> (2) Delivering 31 judgments.

This is a judge who cannot make a judgment! It continues:

> (3) Being off work for 6 days ill.
>
> (4) Spending 1 day being examined by a specialist on behalf of the Conduct Division.
>
> (5) Preparing for and/or attending 5 hearings before the Conduct Division.

I seek leave of the House to incorporate in *Hansard* the judgment schedule included with the Holman Webb response.

Leave granted.

JUDGMENT SCHEDULE

	To be delivered	Delivered	Delay in Delivery	Delay Causes	Performance
Holidays-A-Float P/L v. George	22.2.98	2.3.98	4	6	+2
Cseko v. Creek	3.3.98	20.3.98	13	13	+-0
Jennings v. GIO	3.3.98	20.3.98	13	13	+-0
Beswick v. Transport Accident Commission of Victoria	3.3.98	20.3.98	13	13	+-0
Whitford v. Campbell	3.3.98	20.3.98	13	13	+-0
Wainright v. Negrine	10.3.98	20.3.98	8	3	+5
Civic Transport Service v. Bradd	10.3.98	8.4.98	21	13	-8
R. V. Maxwell	10.3.98	30.3.98*	14	15	+1
B.P. Aust. v. Little		10.3.98	30.3.98	14	15 +1
Marwick v. Cullen		10.3.98	30.5.98	14	15 +1
Nortel v. Portfolio Leasing	10.3.98	20.3.98	8	13	+5
R v. Phillips	17.3.98	30.3.98*	9	15	+6
Cook v. GIO	27.3.98	30.3.98	1	15	+14
Ritchie v. Romanov	27.3.98	30.3.98	1	15	+14
Kwasnica v. Lloyd		14.4.98	20.4.98	4	7 +3
Woodley v. Adel	14.4.98	21.4.98	5	7	+2
Talarica v. Law Society	14.4.98	22.4.98	6	7	+1
Commonwealth DPP v. Varias		14.4.98	21.4.98	5	7 +2
Farrow Corporation v. Ross	28.4.98	6.5.98	7	7	+-0
Williams v. Maritime Services Board	19.5.98		5	5	+0
Prosser v. Eagle	26.5.98		0	5	+5

I have already referred to what Justice Bruce said about his accident. Justice Bruce said in his speech to this House:

> To ensure that I delivered judgments and performed my work properly in future I approached Justice Wood, who was to become the new Chief Judge of the Common Law Division of which I am a member. I made an arrangement with Justice Wood to report to him weekly on what I had done and on the state of my outstanding judgments. I did not regard that as being in any way a diminution of my status as a justice of the Supreme Court of New South Wales, but, rather, as a practical way of ensuring that in future I performed my duties in a timely fashion. Justice Wood, for whom I have the greatest respect and admiration, readily agreed, and that is how I propose to carry out my work in future.

It has been shown that Justice Bruce delivered 31 judgments and put in place a system by which he would work closely with Justice Wood to ensure prompt delivery of judgments in the future. Justice Bruce also gave evidence about the serious problems he had suffered from severe migraines. Intellectual work such as studying evidence from witnesses and reaching conclusions would be almost impossible while suffering from severe migraine. But, as with his depression, the judge is no longer suffering from the severe migraines that affected his ability to deliver judgments. In referring to the workload of judges he said:

> If judges need time to deliver judgments they should be given that time. They should not be required to scribble them at night or on the weekends when they should be doing what ordinary people do, that is, having time off to rest and recharge their batteries that they may work efficiently and competently during proper working hours and in proper working conditions.

He also made reference to the Nutrasweet case and said:

> For example, I had the Nutrasweet case, which started on 29 January 1996. The evidence proceeded until 6 November 1996. It was the most complex piece of medical product liability litigation in the history of this country. The evidence, the exhibits and the transcripts fill an entire room. There are hundreds of thousands of pages, I have written hundreds of pages of judgments and I have hundreds of pages to go. That is a major factor in people addressing the workload of judges. There is no system, as I have said, for picking up what is in fact causing delay by judges in the Common Law Division of the Supreme Court of New South Wales. That will no doubt be rectified. As I have said, the new Chief Judge, Justice Wood, for whom I have the highest regard, is attempting to introduce such a system.

Although it was clear that he had problems and had the character trait of procrastination, he was given the most complex cases—and the reason for that was that he was regarded as a brilliant judge. Even the Leader of the Opposition praised the judge

because of his brilliance. It is not fair to accuse him of being slow to deliver judgments. He was also given class actions, which even the layman would acknowledge are most difficult cases. They involve the judge having to analyse and compare the evidence of hundreds of witnesses and weigh the evidence of those affected by a product against that of the manufacturers of the product. Because, potentially, millions of dollars in compensation may be involved, the cases are fought tooth and nail by defendant and plaintiff. The judge, in this case Justice Bruce, is in the middle. The judicial system in this State should be criticised for allowing Justice Bruce to be exploited by the system.

The Hon. Dr B. P. V. Pezzutti: None of the evidence says that.

Reverend the Hon. F. J. NILE: I have quoted from the evidence and there is no doubt about what I have said. The other major class action heard by Justice Bruce was the copper 7 case. There is no justification for removing Justice Bruce as a judge of the Supreme Court. A number of members from both sides of the House agree with me; others disagree strongly. I ask members who believe they have valid reasons to expel the judge to reconsider their positions and allow justice to prevail in this House.

The Hon. I. M. MACDONALD [4.54 p.m.]: I oppose the motion for a number of reasons. This is probably the most serious matter I have had to confront as a member of this House. This difficult and complex matter is not clear-cut; it is confounded by grey areas from beginning to end. This is an historic motion—unique in the 174 years of the Chamber's existence. I wish to comment on matters raised by the Attorney General and the Leader of the Opposition and then proceed to put arguments that support my opposition to the motion.

A decision was made in caucus more than a month ago when the matter was first raised to permit members of the Labor Party a free vote on such a motion. Consequently, I will exercise that free vote without fear or favour. I have difficulty accepting a number of the arguments advanced by the Attorney General and the Leader of the Opposition. First, the Leader of the Opposition suggested that the House could not be said to be imposing a punishment if it resolved to remove the judge from office; rather, that by doing so the House would be protecting the citizens of the State. The aim of every judgment of courts of this land is to protect the citizens of this State. If Justice Bruce is removed from office by a vote of this House, he will be humiliated, his reputation will be destroyed and he will be deprived of many hundreds of thousands of dollars in pension entitlements. Surely, one could not reasonably suggest that that would not amount to the imposition of punishment.

I am mindful that a number of litigants have been deleteriously affected by the delays caused by Justice Bruce. However, delays caused by other judges have not resulted in those judges being brought before the Parliament to explain the delays. Many litigants have been disadvantaged by delays caused by the most eminent of judges. I shall present support for that contention later in my contribution. There can be no doubt that we must address the problem of delays in the delivery of justice, but in doing so we must be careful not to conduct a crusade and victimise a single judge. The bottom line is that the system has failed to deal adequately with a judge who has suffered from mental illness.

The Attorney General and the Leader of the Opposition attempted to deal with the medical evidence in various ways. I think the medical evidence before us is quite clear. If this Parliament were to dismiss the judge on the case that has been presented by the Judicial Commission, and on the contributions of honourable members, that to me would constitute unfair dismissal. It would in effect compound the problems that litigants have experienced as a consequence of the delays in delivering judgment by the creation of a further injustice. That is my basic position, and it is my right under this free vote to put it.

The Leader of the Opposition referred to this House as a gatekeeper. On the evidence before us, to dismiss the judge would be to open the floodgates, not to act as a gatekeeper. I worked for the Attorney General from 1978 to 1983. In that period, hearing delays were also a problem, and various measures were taken to deal with them. However, some matters were never satisfactorily dealt with. There were two main reason for that. One is the adequacy of resources made available to the courts of this land to cope with the increased number of cases resulting from citizens of this country becoming increasingly aware of their rights and being prepared to pursue those rights through the courts.

Australia has become an increasingly litigious society. The country that we tend to follow most in everything we do is the United States, and that country has become unbelievably litigious. We are heading that way. As a result, more pressure will be placed on individual judges, more difficulties will be experienced by litigants, and their complaints will

increase. We need a proper system to deal with this vexed question—that is, how judges operate in this community and how they function within their jurisdictions. That is a very difficult question, and it must be dealt with in another way—not by making an example of one judge, in some way singling out this judge and saying, "In the 174 years of the history of this Chamber, you are the one who is going to go."

I am embarrassed by this motion. I would have thought that a motion for the dismissal of a judge would be based on two particular elements of the charter of the Judicial Commission. One of those elements would be corruption or misbehaviour of a serious nature. If the motion before the Chamber were to do with corruption or serious misbehaviour, I would be far more comfortable dealing with it than I am dealing with a motion calling for the dismissal of a judge on the basis that for some period of time the judge suffered from a mental illness.

I ask honourable members: What message will we send to the community if we dismiss a person who, on all the evidence available, suffered from mental illness at the relevant time? I think the message would be intolerable. We would send to every employer in this country the message: if you have an employee who suffers mental illness at any point of time, the first thing you should do is sack that person, regardless of whether the condition has been treated and is being controlled by some means.

If we support this motion to remove Justice Bruce, we will in effect be punishing the judge after the cure. That is the incredible thing about the motion. We would punish the judge not for what he has been doing over the past three months but for what transpired in 1996 and 1997—in a period in his life when, on the evidence of all the reports we have before us, he was suffering a mental illness. That would be a clear-cut travesty of justice for that individual and a travesty of justice for the entire judiciary—a judiciary that is meant to be independent of the Executive Government.

I know that some media outlets have been putting a lot of emphasis and pressure on this matter, and have been highlighting examples of difficulties that have been experienced by litigants. But if the judge were to be dismissed today some of the cases that were presided over by him would have to be reheard, and we would be back to square one. The Attorney General mentioned in his contribution this afternoon the possibility of an arrangement in relation to copper 7 and the Nutrasweet case, a case that has been going on for some time. It is a complex case, as would be acknowledged by all members of this place and by the community generally. Unless the Attorney General finds some sort of negotiated settlement of that massive case, it will go back to square one. Where would the justice be in that? There would be none, not for the judge and not for the litigants, whose problems would only be compounded. It is, from what I have read about it, a proper and necessary case to be dealt with by the court.

I suggest to honourable members that the course being pursued by some sections of the media seeks to solve an injustice by perpetrating a further injustice. That is not the way to go. The way to solve this problem is to continue with what has been happening since February this year; that is, to put in place an appropriate scheme of arrangement to deal with the backlog of matters and, as far as possible, to ensure that Justice Bruce complies with that scheme of arrangement. The judge, having delivered 30 judgments in that period—10 more than provided for under the scheme of arrangement proposed—on the evidence we have is doing well, as I will show later when I deal in more detail with the issue of delays.

The question now is: Was Justice Bruce capable last year? I think the evidence suggests he was at that time encountering great difficulties in his capacity to prepare decisions. Why was that so? It was because of a medical condition—a medical condition from which, two senior medical counsellors concluded, Justice Bruce was suffering. The question now is: Is Justice Bruce capable at this time? It is not whether he was or was not capable last year, but whether he is now capable of hearing and determining a case. In other words, is he cured of his mental illness?

The Hon. D. F. Moppett: On whom do we rely to determine that question?

The Hon. I. M. MACDONALD: I will deal with that question later. Secondly, it must be noted that Justice Bruce has entered into a scheme of arrangement to reduce the backlog. In other words, the precise questions at stake have not been dealt with by either the Attorney General or the Leader of the Opposition in their contributions to this debate. The plain fact of the matter is that if we accept that Justice Bruce is cured of his mental illness of depression—

The Hon. J. F. Ryan: He is not cured.

The Hon. I. M. MACDONALD: The Hon. J. F. Ryan will shortly have the opportunity to speak, as will the Hon. Dr B. P. V. Pezzutti. I did

not interject when other honourable members were speaking to this motion.

The Hon. Dr B. P. V. Pezzutti: You were not even here.

The Hon. I. M. MACDONALD: I was here for the entire debate.

The Hon. Dr B. P. V. Pezzutti: You were not.

The Hon. I. M. MACDONALD: You might have been outside having a cigarette.

The PRESIDENT: Order! This debate is too serious for trivial interjections.

The Hon. I. M. MACDONALD: We have to assess whether, at this moment, Justice Bruce is cured or largely on the way to being cured of his mental illness. Secondly, we have to assess whether, on balance, the scheme of arrangement entered into with the Chief Justice is proceeding satisfactorily. I might add that the relevant period is from 19 February this year. In other words, honourable members must now, towards the end of June, some four months after the commencement of the relevant period, make an assessment about the judge's capability. The jury must still be out on whether Justice Bruce is capable at this time of discharging his duties as a judge of the Supreme Court. After only four months we are confronted with the decision on whether to take this dramatic step—a step that I believe will destroy the standing of judges in the community.

I do not know how any honourable member opposite could say that to be dismissed by Parliament is not one of the most dramatic punishments that could be exacted upon a judge. I cannot think of a worse punishment, other than being dragged before the Bar of the House and then being sent out to Long Bay for an extended period. Dismissal would strip Justice Bruce of his entitlements, humiliate him, then destroy him. This House would be dismissing a judge who, on all the evidence, suffered from depression in the past. Evidence that Justice Bruce's medical condition has been resolved or has improved is uncontradicted. I have not heard any evidence presented in this House this afternoon that proves that he continues to suffer from that condition.

The Hon. J. F. Ryan: That is agreed all round.

The Hon. I. M. MACDONALD: It is agreed all round that Justice Bruce's condition has now resolved itself for the better. The evidence is that his medical condition has been much-improved for about four months, yet this House is being asked to dismiss him in that period of improvement. It is extraordinary that some newspapers and members of this House would support such a proposal. Both medical witnesses who gave evidence—that is, Dr Dent and Dr Gilandas, the clinical psychologist called by the Crown Solicitor—agreed that depression was the cause of the delayed judgments. The evidence does not dispute that. I wish to quote each of those learned individuals. At page 95 of Dr Dent's evidence he was asked:

> Q. What I wanted to ask you was, firstly, in relation to what you have opined in the seventh paragraph of the letter referring to the "long list of matters awaiting judgment", why would it be, speaking of course as a consultant psychiatrist, that a long list of matters awaiting judgment constituted a very clear symptom of depressive reaction on the part of Justice Bruce?
>
> A. The wish to avoid issues that are providing concern to any individual is often an issue that is delayed and further delayed and one often finds that as a consequence of the lack of motivation that is an essential aspect of depression. It then becomes a reinforced phenomenon. The longer the list, the longer it takes, the worst the perception and the more the inability of the individual to move through that again because of the core aspects of what happens to us in depression, in our minds, our chemistry, our body and our brain function.

Further on in his evidence Dr Dent was asked the following important question:

> Q. I am asking this now generally across the board by reference to, if you like, all of your reports which are before the Commission, have you identified a causal link between Justice Bruce's depressive condition and his failure to undertake and, in any event, to complete judgments?
>
> A. Yes, I consider his inability to undertake and complete judgments as being a symptom of his depression. It is a manifestation of the slowing of cognition and capacity in body chemistry, it is a clinical manifestation of such.

I could read many other portions of the evidence of the eminent medical officers who appeared before the commission. The evidence of those medical officers led the commission to essentially accept that Justice Bruce was suffering a mental illness condition known as depression, and that was unchallenged by other evidence. I find it difficult to accept that one could extrapolate procrastination from the body of evidence and then make the statements that two of the judges made.

The Hon. R. S. L. Jones: They were separate.

The Hon. I. M. MACDONALD: They certainly were not separate, as the Hon. R. S. L.

Jones interjects. The majority decision of the Conduct Division was that, notwithstanding this clear evidence, the failure of the judge to comply with every element of the schedule agreed between Justice Bruce and the Chief Justice on 19 February this year constituted evidence of an incapacity which had previously existed and had remained in existence, namely, procrastination. The majority thought that the judge's explanations for his failure to comply with the schedule were insufficient.

I believe that the majority seemed to have ignored the fact that in the period encompassed by the Chief Justice's schedule the judge had in fact delivered more than 30 judgments, whereas the schedule contemplated the delivery of only 20—in other words, the judge was ahead of the schedule. The Attorney General pulled out two cases and said, "These are not dealt with." I believe that if a judge deals with 30 or 40 cases, the probability is that he will have a couple that he will not finish exactly on time. However, as has been noted, Justice Bruce delivered more judgments than the schedule specified.

As the evidence shows, procrastination was raised by Dr Gilandas, equivocally in his first report and unequivocally in his second report. The second report, however, was based on the premise that the judge's failure to comply with every element of the Chief Justice's schedule was unexplained. In other words, Dr Gilandas came to the conclusion that, amongst all the other problems the judge had, procrastination was in a sense a feature of the judge's make-up. He concluded that as the judge had not complied with every dot point in the schedule this was evidence of procrastination. On the evidence, I believe that the contrary was the fact, and that when Dr Gilandas was made aware of that, he retreated from his evidence, as Justice Mahoney found in his dissenting report. That was not referred to in the contributions of either the Attorney General or the Leader of the Opposition. Dr Gilandas in his evidence, as found by Justice Mahoney in his dissenting report, stated that that situation had been alleviated. I will deal with that in more detail later.

We must deal with the issue of procrastination very carefully indeed. As I have said, the evidence tends to suggest that it was part of Justice Bruce's depressive mental condition at that time anyway. It is important to consider the difference between the roles of the Conduct Division and the Parliament. Much of the addresses of the Attorney General and the Leader of the Opposition were based on procrastination, and the media have also based their arguments for the judge's removal on procrastination. The Conduct Division found—as I believe it had the capacity to do—that on the evidence before it the Parliament could consider the removal of the judge from office. It also found that it is for the Parliament to decide, on the evidence before it, whether the judge should be removed from office. In many respects the Conduct Division is merely a filter—not unlike a magistrate deciding that a case is of sufficient strength to justify it going to a jury.

The jury then decides innocence or guilt. The Parliament is to be the judge's jury. For Parliament to move to remove the judge it would need to form the view that notwithstanding the uncontradicted medical evidence regarding depression and its resolution, the judge's explained failure to comply with each item in the Chief Judge's schedule itself demonstrated sufficient incapacity to justify removal. On no view of the evidence could that be the case, because he exceeded the requirements of the schedule. Depression was at the heart of the problem. When the report was first handed around in this House I skipped over the recommendations and went immediately to the medical evidence. I was horrified to read that the judge had suffered from so many medical conditions, including migraine, horrendous injuries following a motor vehicle accident, a back problem and depression.

Removal of a judge for an incapacity that has been resolved will send a very bad message to the community, namely that mental illness, even though it can be fixed just as readily as a broken leg, casts a stigma such that the sufferer, though cured, is thereafter deemed unfit to hold high public office. There is the rub. If the judge had broken a leg or suffered other serious injuries he would have been treated differently. Society regards physical injury as a normal event but has great difficulty dealing with the stigma of mental illness. For many years I have known a number of people who suffer from depression. It is difficult to comprehend their reactions and problems and to assist them.

Unfortunately, medical treatments only recently have become available to tackle mental illness readily and effectively. Luvox is one such new drug, and many more advanced drugs will be developed to help people who suffer from this problem. Mental illness carries a stigma in this society and the outcome for sufferers is a sad one. Treatment programs for the condition are costly and inadequately catered for. I grew up in this country, and I know that if someone next-door had a mental illness the family would be ashamed of it, which compounded the problem for the sufferer. People were inclined to try to sweep it under the carpet.

Over the years, mental illness has not been effectively or properly dealt with. However, a person who has a broken leg is able to get time off work or school to seek treatment. The community is familiar with such an injury and knows that the medical system can mend it quickly. However, a common feature of mental illness is that sufferers often are not aware that they have the condition. Throughout the judge's dissertation in this Chamber and the documentation placed before members one can find evidence that he was aware of the severity of his condition. Arguments that the judge should be removed because litigants no longer have faith in him or because damage has been done to the standing of the judiciary have cosmetic appeal, but on closer inspection are found to be illogical.

These events are a consequence of the mechanism set up under the Judicial Officers Act to enable both a public hearing of serious complaints against a judge and tabling of a Conduct Division report in Parliament. Any judge who decides to defend himself against serious allegations will do so in a blaze of publicity. The potential harm to a judge from such publicity is a direct result of the system that Parliament established through the Judicial Officers Act. The Leader of the Opposition and other members argued in effect that judges should not defend themselves when serious complaints are made against them. I have heard honourable members express surprise and concern that the judge would appear on *60 Minutes* or in the very papers which, from day to day, traduced his reputation in a most extraordinary way. I have heard members of this House say that he should not have sought such publicity, that it is not the done thing.

Justice Bruce has defended himself in an honourable and correct way rather than remaining silent and thus compounding the problem. Society must grapple with the stigma associated with, and incidence of, depressive mental illness. Judicial resources must be enhanced so that justice can be delivered quickly rather than delayed. If this Parliament dismisses the judge, outstanding cases most likely will have to be reheard. The Nutrasweet case is no exception. Dismayed litigants will lose millions of dollars, and injustice will be compounded.

There is no suggestion in the evidence before this House that Justice Bruce is not performing reasonably well or up to expectations. Honourable members heard the long list of medical difficulties from which he has suffered, but according to the evidence Luvox is effectively treating his depression. This Parliament has never removed a judge from office. Undoubtedly, over the past 174 years many deserved to be removed. This House must not set a precedent by removing a judge who had a depressive illness that has been cured. That would be an appalling message for this Parliament to send to the community. I remind honourable members that in the judge's address to this Chamber he apologised to the litigants for the delays created by his illness. That was a very important point. I have a long list of members of the judiciary, senior counsel and barristers who have spoken to me in the past few weeks.

A number of judges whom all members would respect have rung me and expressed their absolute dismay at the course we are proposing to take. Those judges are worried about this matter for a number of reasons. They do not believe that the punishment fits the so-called crime. They believe that the proposed dismissal strikes at the heart of judicial independence and broadens the present ambit of reasonable grounds upon which the Parliament can remove a judge from office. Those grounds relates to such matters as corruption, criminal activity, improper behaviour, interfering in the course of justice and an illness that prevents a judge from hearing and dealing with cases—a completely different scenario from that been painted for the dismissal of this judge.

The judges who made strong representations to me pointed out that there are delays in many major court cases. I thought I might name some of those cases, but on reflection I think that would create an injustice beyond the injustice that could be perpetrated by this motion. The Leader of the Opposition pointed out that there was a delay of 13 months in one case. I am aware of a case in which an eminent justice of the Supreme Court took 18 months to deliver judgment. The judgment in a major cancer case has been reserved since February 1997. Another justice—one that everyone in this Chamber knows—has a number of outstanding judgments. He has one case in particular, which I will not name, that has been outstanding for in excess of 18 months. Before we proceed with this sort of drastic action we should look at implementing systems that can avert major delays.

We have heard much evidence about the time constraints experienced by members of the bench. If judges need more time to write judgments why do we not implement a system that gives them more time? Why do we not have a system like that in Victoria, which gives judges time off to write judgments; where judges do not sit from 10.00 a.m. until 4.00 p.m. every day and do not have to write

judgments at night or at the weekend? I have spoken to a number of judges and I know that that is common within the system because of the extent of litigation. I have said pretty much what I believe in this matter. I formed my opinion almost immediately upon reading the Conduct Division report. I did not come to a decision after subsequent discussions; I reached a view quite quickly based on what I read in the report. I paid great heed to the opinion of Justice Dennis Mahoney in the dissenting report, and I will refer to it again to substantiate the view I have formed. Honourable members should remember that Justice Mahoney was President of the Court of Appeal and that he often served as Chief Justice in this State when the Chief Justice was away. Justice Mahoney said:

> 4. In general the Judge did not deny that he did not determine and give judgment in the relevant proceedings within an acceptable time or that, standing alone, what occurred would have established incapacity to discharge his judicial duties or misbehaviour in relation to them. His contention has been that what occurred was the result solely of physical and mental conditions from which he suffered at the relevant times or was caused by such conditions to such an extent that he was incapable of carrying out his judicial duties and that he has recently ceased to suffer from such conditions, to the extent that he is now able to carry out his judicial duties. He contends that in such circumstances the Division should be of the opinion that the matter could not justify parliamentary consideration of his removal from office. (I have set forth the contentions of the Judge which are relevant having regard to the way in which this inquiry has been conducted and the findings which have been made consequent on the submissions which the Judge has made to the Division.
>
> IN MY OPINION:
>
> (a) Until approximately January-February 1998 the Judge suffered from physical and mental conditions of such severity from time to time as to cause or substantially cause him to fail to perform his judicial duties in relation to the relevant proceedings;
>
> (b) That from approximately January-February 1998 the Judge has been able to carry out his judicial duties to an acceptable standard;
>
> (c) His failure to carry out his judicial duties in relation to the proceedings the subject of the complaints, being due to such incapacity, was not misbehaviour in relation to his judicial duties;
>
> (d) That the Division should be of the opinion that within ss.28 and 29 the matter could not justify parliamentary consideration of the removal of the Judge from office.

That is a strong warning shot fired across the bows of this Parliament at the more eager members who want to set this precedent today. The matter is not as clear-cut as the majority of the Judicial Commission found. In fact, Justice Bruce is now able to perform his work and, in the Australian vernacular, he should at least be given a go. He should be given an opportunity to establish whether over time he has been finally cured of his illness and can perform his duties. That is the warning shot from Justice Mahoney to all of us today, members, so be very careful about pursuing this course. Justice Mahoney said:

> That from approximately January-February 1998 [until the present] the Judge has been able to carry out his judicial duties to an acceptable standard.

I am afraid that I stand with Justice Mahoney in this matter. Justice Mahoney, the most eminent member of that commission, concluded:

> . . . the Judge has been able to carry out his judicial duties to an acceptable standard.

He then went on to say:

> His failure to carry out his judicial duties in relation to the proceedings the subject of the complaints, being due to such incapacity, was not misbehaviour in relation to his judicial duties.

This matter is difficult to comprehend after getting such an important dissenting report from the Judicial Commission. That in itself would have been an extraordinary step for Justice Mahoney to have taken—to include a dissenting report into the report of the Judicial Commission. Justice Mahoney is giving us a warning about the serious nature of taking a course that effectively denies that Justice Bruce is conducting his duties to an acceptable level now that he has been cured of the illnesses he suffered in previous years; and he is warning us that his behaviour did not constitute misbehaviour.

It is extraordinary that we are debating whether to dismiss this judge when we have such a clear-cut statement from one of this country's most eminent jurists. In effect, he says that if the judge is now carrying out his duties acceptably and his conduct did not constitute misbehaviour, he should not be removed from office. Nothing could be more clear cut. He goes further than the Judicial Commission. The Judicial Commission said, in effect, that we could remove the judge from office. Justice Mahoney makes it clear that we should not dismiss him.

The Hon. J. F. Ryan: Why do you regard Justice Mahoney as more eminent?

The Hon. I. M. MACDONALD: After I finish my speech I will give the Hon. J. F. Ryan Justice Mahoney's curriculum vitae. I ask members to consider a petition signed by 300 members of the bar that has been placed before the Parliament. The petition states:

We the undersigned members of the Bar many of whom have appeared before Justice Bruce and/or have been his colleagues in practice when he was at the Bar:

(A) strongly oppose His Honour's removal from office;

(B) urge the adoption of the views of by far the most experienced member of the Judicial Commission who dealt with His Honour's case namely retired judge Mr D. Mahoney, QC, in whose judgment, wisdom and compassion we place great store;

(C) submit that the foreshadowed sanction of removal from office:

—is out of all proportion to the complaints made against His Honour,

—pays insufficient regard to His Honour's efforts to remedy his delays, his undoubted integrity and goodwill and his desire to continue to serve the community—

We have heard examples of Justice Bruce's goodwill. He has served nobly and well and with a great deal of good sense for the community in a wide range of community organisations, for which he should be thanked. The petition continues:

— having regard to the delays in delivering judgments which have been and are experienced with other judges, is unfairly discriminatory

— sets a precedence of which the legal profession, the parliament and the community ought not be proud.

A large number of eminent members of the bar have signed that petition.

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! I ask the Hon. I. M. Macdonald to desist from reading the petition until I seek advice from the Clerks about it.

The Hon. I. M. MACDONALD: For the Deputy-President's assistance, I am reading a copy of a petition that was presented last week and given to me today by the Clerk.

The DEPUTY-PRESIDENT: Order! The Hon. I. M. Macdonald may proceed.

The Hon. I. M. MACDONALD: I will not detail all the names on the list, only a few who are important in the context of our consideration of this matter. They are Robert James Ellicott, QC, former Commonwealth Solicitor-General, Attorney-General in the Fraser Government, a former Federal Court Judge, and probably the leading member of the bar; M. C. Ramage, QC; M. A. M. MacGregor, QC; Paul Byrne, SC; Ian McClintock; Stephen Norrish, QC; Stephen Rothman, SC, a very eminent barrister in Sydney; A. J. Bellanto, QC; S. D. Robb, QC; P. M. Jacobson, QC; John Garnsey, QC; D. G. Grieve, QC; David Yates, SC; Mark Southwick; Robert Titterton; P. M. Hall, QC; A. Bannon, SC; S. B. Austin, QC; S. G. Finch, SC; L. King, SC; P. J. McEwen, SC; Paul Webb, QC; and Peter Bodor, QC. I have only read a few names from that petition which was presented to the Parliament last week.

The list is extensive and absolutely overwhelming. It includes many of the most eminent members of the legal profession in this city. As thinking people concerned with justice for all, all members of this House should consider the import of those eminent persons signing that petition. I know many litigants have faced an appalling situation, which has been acknowledged by the judge and for which he has apologised. Their matters are now being dealt with in an attempt to clear the backlog. But I have never seen such a comprehensive list of members of the bar who have been prepared to sign a request to this Parliament to desist from a certain course of action. All members should take heed and think carefully about their decision because there has been a strong reaction within the legal profession. I have said that State and Federal judges have rung me about this matter and have made it clear that we should not remove the judge.

All members should listen to what the petitioners are saying: that the punishment of removal from office is out of all proportion to the complaints made. A range of options are available to a judge or magistrate when deciding a matter in court. Unfortunately, we are in the difficult position of having to impose a massive penalty or do nothing. Sanctions are not available. We either vote for dismissal or remove the matter from the list.

We do not have the same luxury as judges, magistrates and other judicial officers of a range of penalties and approaches that can be applied. We cannot impose community service orders, weekend detention or the application of clips to monitor people in their homes. We have only one form of punishment, and that is dismissal. The evidence presented today by the Attorney General and the Leader of the Opposition has fallen far short of the mark. The action they propose we take against Justice Bruce far exceeds the difficulties he landed himself in whilst suffering a mental illness.

In conclusion, a decision by this House to sack Justice Bruce would send a message to the community that we will penalise individuals who suffer from mental illness. All members acknowledge that Justice Bruce was suffering a mental illness yet the motion proposes that we dismiss him from his employment. That is unjust, but the unjustness is compounded because all the evidence before us is that, by and large, he is meeting the schedule of arrangements set from February this year.

Justice Bruce is being penalised on the cusp of his improvement. Sacking him today would be a gross injustice and would be seen to be a gross injustice by any fair-minded member of the

community. I certainly will not vote for the motion, despite the endeavours of some individuals to persuade me otherwise. Far more people have rung me and written to me urging me to support the motion. I oppose the motion because it would compound an injustice with a further injustice.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [6.52 p.m.]: As other members have said, the Legislative Council is considering a very serious matter. All members will make their decision with the utmost solemnity and consideration. As a parliamentarian I have to make a decision after considering all the issues. This is not a time to run away; every member of the Legislative Council will have to take a position. Some previous speakers have trivialised the issue, but we should refocus on the central point.

The Conduct Division of the Judicial Commission has presented Parliament with a great deal of information on which to make a decision on its recommendation that Parliament consider removing Justice Bruce from office. Both Houses of the Parliament approved legislation to set up the Judicial Commission to deal with conduct issues, amongst other things, and to receive complaints. Three peers of Justice Bruce, including a retired judge, constituted the Conduct Division of the Judicial Commission that considered the case of Justice Bruce: he has been judged by his peers. As the Hon. I. M. Macdonald took pains to point out, the decision was not unanimous; one judge made a minority dissenting report.

Members have a responsibility to consider not only the minority report but also the majority report. The Attorney General spoke today about the seriousness of this matter and the separation of powers. Today's proceedings are extraordinary in that the separation of powers is blurred by the Parliament having to make a decision about a member of the judiciary. Under section 53 of the Constitution it is the responsibility of Parliament to make decisions, not to prevaricate or run away or let the media take control of the issues, as they have done.

I resisted the temptation to talk to the media. I detested the newspapers that tried to produce a league table: these members for dismissal, and these members against. They tried to make it a sporting event, speculating about who would win the next round. This is a serious issue, not one for league tables, not an issue on which members should be running off to the press. It should be decided here today by the 41 members of this House.

As the Attorney said, members have a responsibility to provide the people of New South Wales with a justice system in which they can have confidence—one that works, that will deliver, that can make decisions. We often hear criticism of the judicial system, and the Hon. I. M. Macdonald referred to criticism arising from delayed decisions. How often have we been reminded that justice delayed is justice denied? The evidence provided to members documents many such cases. I will not repeat them because the details are available and have been referred to by other members.

Members of Parliament have a solemn responsibility to make an informed decision on this matter. In his address to this Chamber Justice Bruce acknowledged the delays. He said he was embarrassed about the length of time he had taken to deliver judgments and making the litigants to wait. I respectfully suggest that while all this was going on it did not help matters that Justice Bruce spent so much time with many outside organisations, as listed in the evidence and by the Attorney General today. The decision by the Conduct Division stated:

> The Division thinks that there was also operating as a significant factor what Dr Gilandas called "procrastination" . . . it is not without significance that the arrangement made with the Chief Justice was that Justice Bruce would notify him of the delivery of the judgments contemplated by the schedule. When the schedule was not adhered to by the delivery of the first twelve judgments in accordance with it Justice Bruce did not regard it as appropriate to inform the Chief Justice of that fact or of any reasons for it . . .
>
> It is difficult to accept that a judicial officer who is capable of performing to a reasonable standard his judicial duties would not recognise the seriousness of failing to adhere to a schedule agreed with the Chief Justice, or not promptly communicating to the Chief Justice reasons for his inability to so adhere, and for a period of some three weeks isolating himself so as to deny his solicitors the opportunity to convey explanations for the default . . .
>
> Dr Dent recognised that procrastination was "an issue". We did not understand him to dissent from Dr Gilandas in that respect: rather his view was that the onset of depression may render more powerful the effect of the pre-existing character trait of procrastination. It must follow that removal or diminution of that depression would reduce the aspect of procrastination. Notwithstanding the very significant improvement in the depressive illness from which Justice Bruce suffered in December 1997, which improvement resulted from the treatment given by Dr Dent, the failure to adhere to the schedule agreed with the Chief Justice, and the failure or inability to confront and give a timely explanation for that departure is strongly indicative of the continuation of an incapacity to perform the judicial function to an agreed level which cannot be attributed to the previous severe depression.

Justice Bruce appealed to the Court of Appeal, which gave its finding on Friday, 12 June—not years ago or months ago; not even two weeks ago. That judgment contained confirmation of the findings of the first report. The Court of Appeal had the opportunity to read the findings of Justice Cole, Justice Lloyd and Justice Mahoney. At page 5 of the judgment the Court of Appeal found:

> Given there was no finding of misbehaviour made, removal of the Plaintiff could only be a permissible option if his incapacity remained extant at the time of the Report. Nothing in the reasoning of the Report suggests that the Division would have reached the statutory opinion if it did not believe that the incapacity was continuing.

The real issue today is not whether Justice Bruce suffered incapacity up until earlier this year when he was treated but whether that incapacity was continuing following treatment. The judgment continued:

> Although the Report does not expressly state it, the majority's finding was that the Plaintiff's failure to adhere to the judgment schedule set by the Chief Justice, after the medical condition of depression had been resolved or substantially attenuated, could not be substantially attributed to depression, but rather that it was caused by "procrastination." This procrastination was of such a degree that the Judge's incapacity must be seen as continuing to exist . . .
>
> There is no disproportion between the consequences of the expression of the statutory opinion by the Division and the inordinate delays in the delivery of judgments. Therefore, even if proportionality was accepted to be a separate ground of review, it would not impinge upon the process by which the Division concluded that the uncontested prior incapacity was continuing.

On findings of continued incapacity, on page 7 of the judgment the Court of Appeal found:

> It was open to the Division to accept that expert evidence provided them with a diagnosis to the effect that the Plaintiff did have a personality trait of "procrastination".

Page 54 of the Court of Appeal judgment referred to Dr Gilandas' second report of 4 May, which stated:

> If it is correct that Justice Bruce is no longer clinically depressed then the most plausible explanation for lack of progress in delivery of judgements is no longer medical. Rather, it appears to be that most common problem of everyday life . . . ingrained habits of procrastination.

The judgment continued:

> However, the failure of the plaintiff to adhere to the Schedule of Judgments was conduct sufficiently similar to the delay in delivering judgments displayed in the past for the Division to take it into account in deciding whether or not the medical condition had been the sole source of the Plaintiff's incapacity . . . There was before the Division probative material capable of supporting the conclusion that the Plaintiff's incapacity continued after his medical condition had been alleviated.

This is not a time for compassion, although we all have compassion for the person who the Hon. I. M. Macdonald acknowledged—and I acknowledge also—will be penalised and embarrassed if this motion is passed. This is about the provision of justice in this State and the Parliament has a responsibility to ensure the delivery of justice. As a member of Parliament I have a duty and responsibility to act in the best interests of the public and the judicial system that we protect as part of our Constitution. That is the reason that I support the motion of the Attorney General.

The Hon. FRANCA ARENA [6.07 p.m.]: I congratulate all speakers in the debate. Though I do not agree with all their propositions, I listened carefully and enjoyed their contributions. While I was listening, I wondered where Justice Bruce was. He is most probably across the road in his Supreme Court office waiting for our verdict. God only knows what is going through his mind and how he must feel! I hope he has some friends to offer him support because I am one of the few members who would understand what it is like to have the sword of Damocles hanging over one's head. Justice Bruce of the Supreme Court has already been humiliated by having to appear before the House to explain himself. It must have been agonising for him to have faced the Parliament.

I agreed with what the Hon. I. M. Macdonald said, but I am amazed at his hypocrisy. For 25 years I was a member of his party and I am facing expulsion from the Parliament because of a speech I made and in respect of which, when read after the heat of the moment, one wonders what all the fuss was about. He was ready to expel me without a twinge of his conscience, but today he has pontificated that this motion is the most serious to come before the Parliament. It did not worry him or Government members when the motion about me was being debated. Not one Government member asked for a free vote. In caucus they just followed the little dictator of Macquarie Street, Mr Bob Carr, and decided that Justice Bruce and I would be expelled. Even before Justice Bruce came before the Bar of the House Premier Bob Carr was already telling the media, "I think the judge should go." Who does he think he is? Thank goodness for democracy.

I have looked at all the documents that have been tabled in Parliament. I have read them carefully, and I have listened carefully to the debate today. I will not vote for the expulsion of Justice Vince Bruce. There is no doubt that Justice Bruce has been at fault and that he has caused people great distress, but I accept that that was due to his illness.

He has told us so, and I accept his word. I believe that if Justice Bruce was at fault—and there is no doubt that he was—the system also is at fault. How could he be allowed to fall so far behind in his work without proper intervention from people responsible for the good running of the court?

I believe that we should review the system and not make a scapegoat of Justice Vince Bruce, who is most probably agonising while this debate is taking place. I have cut my speech to half its original size because I do not want this debate to go on into the late hours of tonight. That is in deference to what Justice Bruce must be feeling now up there in his room. As I have said, it is the system that needs to be changed. Senior Counsel has written this letter to me. I am not a lawyer. Unfortunately, in the past couple of years I have, unwillingly, had a lot to do with the law and the courts. But Senior Counsel said to me in his letter, which I think he must have sent to all members of Parliament:

> Dear Mrs Arena,
>
> . . . may I raise a couple of other matters for your consideration? Firstly, the delay in delivering judgments (that is the basis for this complaint) is by no means exceptional. I will come to the reason why this is so later in the letter. For example I am presently waiting on a judgment which will soon have its third anniversary since the case was heard. I have previously waited 2.5 years from the same judge for a decision. A delay of 12 months is by no means uncommon and, so far as I am aware, those judges are not suffering from severe depression or other medical problems.

Where is the justice in this motion against Justice Vince Bruce? Where is the justice in this motion when apparently some other judges have made litigants wait for 2½ or three years for their judgments? Nothing has been done about those judges. Senior Counsel continued:

> I do not say for a moment that such delays are acceptable. Rather, I say that Justice Bruce is not exceptional and one must look to the system which is in place as the source of the problem—not the individual judges, and in particular not Justice Bruce.
>
> Unlike some other courts, the Justices of the Supreme Court of New South Wales do not have scheduled times to write their judgments. As soon as one case finishes, they commence hearing a new case. They also deal with other cases which are coming on for hearing before and after regular court hours. So the judges are expected to write learned and often lengthy judgments at night, on the weekends, and on their holidays. The relentless nature of their work conditions is a major cause of stress. Every barrister can tell you stories about judges they know who have changed from being pleasant and easygoing people before they were appointed, to grumpy and discontented people after their appointment.

That statement is very telling. It is made by a barrister who deals with judges every day of the week.

The Hon. D. F. Moppett: That is why we do not want Jeff Shaw to become a judge. He might become grumpy.

The Hon. FRANCA ARENA: He is grumpy already! I am joking. I do not know the Minister well enough to know whether he is grumpy but sometimes in the Chamber he seems to be a bit grumpy. I suppose he is not used to all this discussion and negotiation. He was used to the courts, where people are a lot more polite than members of this Parliament. Senior Counsel said further:

> Of course there are some judges who have a particular gift with judgment writing. Those people should not be regarded as a standard by which others should be judged. Unfortunately for Justice Bruce, the presiding member of the Tribunal possessed such a gift and obviously found it difficult to understand that others may not share his ability. The most experienced member of the Tribunal (by far) in writing judgments was Justice Mahoney, former President of the Court of Appeal. Justice Mahoney over very many years has had the opportunity to work with many judges of very different natures and abilities.
>
> Accordingly, I would urge you to see Justice Bruce in the context of a system which urgently needs change. The situation will not be improved by his dismissal. Indeed, it is assured to get worse as additional strain is placed upon the judges. Justice Bruce should be seen as a victim, not a villain.

I am grateful to Senior Counsel for sending me such a good letter and putting his case so clearly and in such simple language, because sometimes it is very hard to know what letters from barristers really mean. If Justice Bruce falls behind in his work and has not recovered, I am sure he will do the right thing in future. But I am sure that he is well now. He said he is well, and I believe him. I am pleased the Labor Party has allowed a free vote on this issue, as have the coalition parties. This is not a party political issue. We should all consider it as individual human beings doing our best to come to the right conclusion.

I cannot vote to expel a judge who has given reasons for his lack of performance. I will give him the benefit of the doubt. I believe that he is an honest and sincere man. I will vote against the motion. Justice Bruce has apologised in this House. He has recognised what has happened, and he has apologised for his past lack of performance. He has told us of his own family background. He touched my heart when he did that, because I do not come from a wealthy family either, and my election as a member of Parliament has been the greatest honour of my life. To think that I could have been expelled by a bunch of members on this side is really the pits.

One thing that really worries me was raised by Justice Bruce when he spoke to honourable members. It related to what happened when he was given the report of the Conduct Division. Justice Bruce told us that on 15 May he was sent a copy of the report. The report concluded by expressing the view that Parliament was justified in considering his removal from office as a judge of the Supreme Court of New South Wales. Justice Bruce said that with the report was a covering letter, which said:

> Dear Judge: In accordance with s 29 Judicial Officers Act, 1986 enclosed is a copy of the report today delivered to the Governor and Mr Schmatt, setting out the Conduct Division's conclusions, findings of fact and expression of opinion concerning complaints against you.

Justice Bruce said that he was never told that there was a majority report and a minority report. That is unacceptable and unfair, and borders on something even worse.

Reverend the Hon. F. J. Nile: Misleading.

The Hon. FRANCA ARENA: It is really misleading. Justice Bruce told us that he actually had to subpoena the minutes of the Judicial Commission because, even though by statute the commission was obliged to give him those minutes, it refused to do so. That is unacceptable. I ask the Attorney General to follow up this issue and ask the Judicial Commission on what basis it refused the judge a document to which he was entitled as a matter of justice. I was really distressed when I heard Justice Bruce say that. I re-read his speech to ensure that I got it right, that it was true. Justice Bruce said:

> Those minutes disclosed that Mr Mahoney expressed the view that the report should express his dissent and his alternate reasons.

However, the majority opposed the reports indicating that there was a dissenting view, and opposed setting out the reasons for that disagreement. Justice Cole, of the Court of Appeal, held that they were wrong in doing that. Justice Cole, who was one of the majority, circulated a memorandum to other members of the division which said:

> . . . that Parliament should be provided with one finding of fact, one opinion and one expression of reasons and that Parliament should have before it a clear series of findings.

Justice Cole must have thought that members are such simpletons they could not deal with two reports—like President Ford, who could not chew gum and play football at the same time. Justice Cole must have thought exactly the same thing about parliamentarians, because he wanted only one report to be provided. With due respect to the justices, that is unacceptable; it is unfair; it is not what one would call natural justice. I hope that the Attorney, who is at present in conversation with the Hon. J. H. Jobling, will have a chance to read my remarks so that he can perhaps convey them to the Judicial Commission and inform the Judicial Commission that it is not acceptable that the two reports, the majority one and the dissenting one, were not made available to the judge. I do not believe that gave natural justice to Justice Bruce. I feel strongly about that, because it is very important.

The Hon. J. W. Shaw: I tabled it in this House.

The Hon. FRANCA ARENA: You did table it. I did not say it was the Attorney who refused to give the two reports to Justice Bruce; I said the Judicial Commission refused at first to give them to Justice Bruce. Justice Bruce apologised in this House for his actions. His lawyer sent a letter, which I read very carefully, to all honourable members. The letter, from Holman Webb, solicitors, signed by D'Arcy A. Kelly, reads in part:

> His Honour deeply regrets that his illness caused delays in the performance of some of his judicial duties. He wishes to continue and complete his service to the community including the litigants in the large "Copper 7" case.
>
> With respect, the material provided to you is just not sufficient for you to conclude that his Honour now does not have the capacity to perform his judicial functions. As Justice Priestley has stated:
>
> > "The Conduct Division's report was based on the opinion that the matters referred to in it *could* justify parliamentary consideration of removal. The very different question which will face each House is whether the material before it, including but not necessarily limited to the Conduct Division's report, leads the House to decide that it *will* address the Governor seeking removal on the ground of incapacity of the judge which the House *itself has judged to be proved*."

There has been no proof of the judge's incapacity to date. He has been ill, he has got better, and there is no proof whatsoever that the judge is not now capable of doing his job.

The Hon. Patricia Forsythe: You weren't listening.

The Hon. FRANCA ARENA: The Hon. Patricia Forsythe said I was not listening. Not only was I listening, but I read the report of the psychiatrist. I read that Justice Bruce went to have acupuncture—which I am having because of the stress that the privileges committee has given me. I know very well what Justice Bruce is going through.

It was not a unanimous report. I think that we should all have faith in Justice Bruce. I certainly have faith in him. I am sure that he will do the right thing now that he has recovered. He will not fail us, we have put so much trust in him. I wish him well. He can count on the fact that I will never vote to remove him from office.

Debate adjourned on motion by the Hon. Jan Burnswoods.

[*The President left at the chair 6.24 p.m. The House resumed at 7.30 p.m.*]

ENERGY SERVICES CORPORATIONS AMENDMENT (TRANSGRID CORPORATISATION) BILL

MINES INSPECTION AMENDMENT BILL

TRAFFIC AMENDMENT (PENALTIES AND DISQUALIFICATIONS) BILL

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

PARLIAMENTARY REMUNERATION BILL

SUPERANNUATION LEGISLATION AMENDMENT BILL

APPROPRIATION BILL

APPROPRIATION (PARLIAMENT) BILL

APPROPRIATION (SPECIAL OFFICES) BILL

APPROPRIATION (1997-98 BUDGET VARIATIONS) BILL

ELECTRICITY SUPPLY AMENDMENT (TRANSMISSION OPERATOR'S LEVY) BILL

PREMIUM PROPERTY TAX BILL

PUBLIC FINANCE AND AUDIT AMENDMENT BILL

STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL

Bills received and, by leave, read a first time.

CONDUCT OF JUSTICE VINCE BRUCE

Debate resumed from an earlier hour.

The Hon. R. S. L. JONES [7.38 p.m.]: This is an unprecedented debate in the history of the New South Wales Parliament. As the shadow attorney general, the Hon. John Hannaford, has been quoted in the press as saying, honourable members should not jump to conclusions. The matters we have to assess are very serious and important. After all, expulsion is an extreme step to take. The Hon. I. M. Macdonald was correct when he said that we have no discretion: it is either expulsion or nothing. There is no half-way measure. As some honourable members already know, our decision tonight is subject to judicial review. The view of the former President of the Court of Appeal, who was the dissenting member of the Conduct Division of the Judicial Commission, is that a decision by Parliament to remove Justice Bruce is subject to judicial review. In his report he said:

> As at present advised I am of the opinion that the procedure for the removal of judicial officers is now a statutory procedure governed by the terms of the present Act and the Constitution Act 1902, and so subject to judicial review.

Accordingly, it is open to the courts, including the High Court of Australia, to say whether the Houses of Parliament acted properly if they decide to seek the removal of Justice Bruce. His Honour has already conducted proceedings in the Court of Appeal in relation to the majority view of the Conduct Division. On page 2 of his judgment the Chief Justice said:

> At the start it must be emphasised that these proceedings are not in the nature of an Appeal. Nor do they call for a review by the Court of the factual material before the Conduct Division. The Court is not called upon to decide whether the complaints concerning Justice Bruce were substantiated. Nor is it for the Court to decide whether the matter considered by the Conduct Division could justify Parliamentary consideration of the removal of Justice Bruce. This case is restricted to two issues of law.

Four other members of the Court of Appeal agreed with the Chief Justice. Therefore, we must ensure that we get it right. Regrettably, the motion moved by the Attorney General is faulty. The motion says, amongst other things:

> That this House, having considered:
>
> (a) the Report of the Conduct Division of the Judicial Commission of New South Wales concerning complaints against the Honourable Justice Vince Bruce dated 15 May 1998; and

(b) the written response of the Honourable Justice Vince Bruce to the report of the Conduct Division of the Judicial Commission, dated 26 May 1998,

and having heard His Honour at the Bar of the House . . .

Unfortunately, the motion makes no reference to the reasons of the Hon. Dennis Mahoney. In my view, therefore, and as I have been advised, the motion moved by the Attorney General is deficient. Honourable members have to decide whether Justice Vince Bruce does not now have the capacity to perform his judicial functions; not whether a month ago, two months ago, six months ago or two years ago he had the capacity.

Arguments from the Opposition in support of incapacity have been based on allegations that Justice Bruce is a procrastinator. However, how can anyone decide whether that is so without first looking at the record of other judges in handing down judgments. On 25 November 1996 Justice Hunt, Chief Judge of the Common Law Division of the Supreme Court, sent a memorandum to judges of the division asking what judgments they had outstanding and when those judgments had been reserved. The memorandum stated:

MEMORANDUM: All Judges and Masters of the Common Law Division

The following question on notice was asked in the NSW Legislative Assembly on 23 October last:

"(1) In the Common Law Division of the Supreme Court, how many cases have been concluded but are still awaiting judgment?

(2) What is the average delay for these cases since the last day when the case was heard in court?

(3) What is the maximum delay of these cases?"

The Chief Executive Officer has today been asked by the Department to provide the information needed for the Attorney General to answer the question.

I need from each judge the details required to provide the information sought in the first question, together with the date upon which each judgment was reserved. Where written submissions were required, the date upon which all of the submissions were finally supplied should be noted as well as the date when the judgment was reserved.

You will notice that the request is limited to the Common Law Division and that the identity of the judges is not required, nor are the names of the cases. Also, the cut-off date is 23 October, but I would like to know whether any particular judgment has been delivered since that date so that it may be identified as such.

The Chief Executive Officer will then be able to calculate the information sought in the second and third questions.

The Department has sought the information by tomorrow—which, in the light of its own delay, is clearly unreasonable. The information should nevertheless be provided as a matter of urgency, and directly to the Chief Executive Officer.

[Signed] **MR JUSTICE DAVID HUNT.**

The memorandum was sent as a result of a question upon notice in the Legislative Assembly. No records were kept by the court. The information could be provided only by the judge setting out his or her position. The information collected was not made available to the judges of the Common Law Division. A memorandum dated 4 December 1996 was sent by Justice Hunt to a judge who inquired about the result of the inquiry as follows:

"RESERVED JUDGMENTS

The survey disclosed that, as 23 October 1996, 110 judgments were outstanding from twenty-one judges and two masters of the Division. They had been outstanding from between five days and just under twenty-three months. The average was 7.07 months.

I do not think it is appropriate to embarrass those judges by circulating the list. I know that the Court of Appeal does this each month, but I have always thought it a particularly nasty practice.

The memorandum showed that judgments were reserved for an average of 7.07 months, but did not show how long it took to deliver those judgments. Justice Hunt believed it was a nasty practice for judges to know how long it took their brethren to deliver judgments. Outstanding judgments included two by Justice Bruce, but they were by no means the longest outstanding judgments. Had a transparent system been in place, lengthy delays not only by Justice Bruce but also by other judges would have been avoided. Since his Honour's situation was made public, one judgment that had been reserved for nearly three years and another that had been reserved for nearly two years were delivered. Neither case was heard by Justice Bruce.

One of the many judgments outstanding involved a quadriplegic who waited nearly two years for an assessment of his damages that amounted to $8.9764 million when liability was not an issue. That matter was not heard by Justice Bruce. If Justice Bruce is labelled a procrastinator because of the length of time he has taken to deliver some judgments, so too could many other judges of the Common Law Division of the Supreme Court. On the medical evidence, Justice Bruce could hardly be accused of being a procrastinator. Dr Gilandas reported on 25 March that extensive testing showed:

Justice Bruce displayed a classical profile of a high achieving competitive professional with unrelenting/ perfectionistic traits . . .

Dr Gilandas concluded:

> Justice Bruce retains the capacity to engage in the practice of his profession.

The assessment of perfectionistic traits no doubt is correct as I am aware of only one successful appeal against hundreds of his decisions. Therefore, those decisions could be regarded as having been determined by a perfect judge. On 4 May Dr Gilandas reported again on the basis of incorrect information supplied to him by the Crown Solicitor. He said:

> If it is correct that Justice Bruce is no longer clinically depressed, then the lack of progress in delivery of the judgments . . . appears to be that most common problem of everyday life . . . ingrained habits of procrastination.

However, at page 2 of that report the doctor said:

> Learned helplessness is relatively reversible via cognitive behaviour therapy but does require a high degree of motivation and commitment to change. I have formulated a plan of action in my previous report (25.3.98). Justice Bruce retains the capacity to perform his duties. Unless he shows a significant improvement in his work capacity within a reasonable amount of time, I can only conclude that he lacks the motivation and time management and planning skills to take the required action to resolve his ingrained procrastination.

This so-called procrastination was treatable and was being treated. Whilst there is no dispute that Justice Bruce was slow to deliver judgments and that he suffered severe depression, there is no dispute also that he recovered from that illness. Therefore, he is now more than capable of performing his duties. Justice Bruce has delivered approximately 30 judgments in the period in which he agreed with the Chief Justice to deliver only 20. There was no material from which anyone could properly conclude that there was a lack of progress in the delivery of these judgments. The schedule agreed with the Chief Justice had 22 judgments listed on it. Nineteen of those judgments were to be delivered before the Conduct Division hearing. In fact, 20 were delivered.

In addition, his Honour heard 10 cases in the Court of Criminal Appeal; wrote and delivered five judgments of the court on those cases; heard and delivered judgments immediately in two other cases; heard a test case relating to legislation involving mobile houses; reserved his judgment and delivered it; delivered two other judgments in cases not on the list; and heard a three-day case involving legal profession legislation, reserved his judgment and delivered it. In addition, during that time he was off work for six days with a bad back and a migraine. He also prepared for and appeared before the Conduct Division of the Judicial Commission on four occasions. This is not a man who has procrastinated; this is clearly a man who is perfectly capable of doing his work.

I have a list of the judgments which Reverend the Hon. F. J. Nile incorporated earlier in *Hansard*. I will not seek to do the same thing, but I would like to refer to some of the judgments referred to by Reverend the Hon. F. J. Nile to give some idea of the complexity of these cases. The case of *Whitford v Campbell* was a complex medical negligence case and there was a good deal of argument about where and how it should be heard.

The case of *Civic Transport Services v Bradd* was a test case about the power of magistrates to sign stated cases after the time specified in the Justices Act had expired. The case *R. v Maxwell* was a lengthy trial to determine on the basis of extensive psychiatric evidence whether the accused was entitled to succeed on a defence to a charge of murder on the grounds of diminished responsibility. The case of *Marwick v Cullen* was an appeal about the defences a defendant was entitled to raise in a commercial complex case involving fraud.

Cook v GIO was a personal injuries case involving the determination of complex issues relating to brain damage. There was conflicting evidence from a range of specialist psychologists in *Woodley v Adel*, a complicated case relating to an application by a wife to set aside a mortgage that she and her husband had been granted over their home. The hearing lasted a week and there was voluminous documentation. *Talarico v Law Society* was a test case relating to the liability of the Law Society Fidelity Fund to reimburse victims of fraud by solicitors. A range of substantial legal issues were to be determined.

Commonwealth DPP v Varias was an application by a wife claiming interest on property seized by the Commonwealth under the proceeds of crime legislation. There were approximately 1,200 pages of evidence. *Farrow Mortgage Services Pty Ltd v Ross* was a case involving the entitlement of the Farrow corporation to charge high rates of interest to a home loan borrower. There was lengthy evidence and the case involved complicated legal arguments.

Without quoting all these cases, I refer finally to *Buckett v Consumer Claims Tribunal*, a case involving the proper procedures and conduct of the Builders Licensing Board in dealing with claims against builders. Documentary evidence extended to approximately 1,000 pages. All those judgments

were delivered fairly recently. Only two are currently outstanding. Clearly, this judge has speeded up his delivery of judgments enormously over the last few weeks.

There is no question in my mind that Justice Bruce is perfectly capable of continuing in his position as a justice of the Supreme Court. He should, therefore, be allowed to continue and complete his service to the community, including litigation in the large copper 7 case. This, of course, brings me to my notice of motion for Mr Peter Semmler, QC, and Dr Peter Cashman to be granted leave to be heard at the Bar of the House on this issue. That motion was based on a written request I received from Dr Peter Cashman on 7 June 1998, which I would now like to read on the record. The letter I have from Cashman and Partners, which is headed "Parliamentary Consideration of the Removal of Justice Bruce", states:

> I confirm our concern to ensure that the Parliament is aware of the serious adverse consequences for the litigants in the Copper 7 litigation which may arise if Justice Bruce is removed from office before having had an opportunity to hand down his judgments.
>
> As you may be aware, we presently act for approximately 300 women from throughout Australia, who have claims presently pending in the New South Wales Supreme Court arising out of serious personal injuries allegedly caused by the use of the Copper 7 intrauterine contraceptive device.
>
> The proceedings were commenced over a number of years commencing in 1987.
>
> Prior to Justice Bruce becoming appointed as the trial Judge, orders were made in the Supreme Court proceedings for the selection of a number of women as "lead" or test cases. Nine women were eventually selected and the trial of the nine lead cases commenced before Justice Bruce in January of 1996. The trial itself continued throughout most of 1996. During this year we understand that the judge was not hearing any other cases.
>
> Written and oral submissions were prepared and presented to the Court during 1997. The last written submissions were filed by the court at 4.00pm on December 24 1997.
>
> We understand that the case has become the longest running product liability case in Australian legal history.
>
> Many witnesses, including expert witnesses from around the world, were called by each side during the course of the trial. Many documents were relied upon and tendered in evidence, including a large number of internal company documents.
>
> Each of the nine lead plaintiffs was required to give oral evidence in court and was cross examined, including in relation to a number of intimate matters.
>
> The cost of conducting the proceedings, including the trial of the nine lead cases, has been enormous.
>
> It is our present understanding that Justice Bruce has now handed down judgment in most if not all of his other cases and therefore the only matters outstanding are the judgments in the nine lead Copper 7 cases—

plus one or two others—

> Our clients are understandably concerned that having participated in this long running saga they may now be deprived of a judgment if Justice Bruce is removed from office by Parliament.
>
> It would not be appropriate for either this firm or our clients to participate in the debate on the merits of whether or not there are grounds for Justice Bruce's removal from judicial office.
>
> We are however concerned to ensure that the interests of the litigants in the Copper 7 litigation are taken into account.
>
> In the event that this matter is to be considered by Parliament tomorrow then we would like an opportunity, on behalf of our clients, to indicate to Parliament the present plight of our clients.

That is what I am endeavouring to do as neither the Government nor the Opposition would support my motion to allow these people to come before the bar of the House. I will refer to a few more matters on behalf of the women who have been waiting for justice for many years. I point out this case has not been delayed. There have been no delays whatsoever. Justice Bruce might be considering this matter this very evening while he awaits our decision on him.

The present proceedings on the CU7 case started with the filing of cases in the Supreme Court from 1987. This occurred approximately two years after the CU7 was taken off the United States market following the acquisition of Searle by Monsanto in 1985. The CU7 was an intrauterine device designed to prevent pregnancy. The present cases involve allegations that the CU7 was a defective product which caused or exacerbated pelvic inflammatory disease, infected miscarriages and infertility in women. The defendants are the companies involved, not the women's doctors.

Both the large and small versions of the copper 7 device were marketed and promoted for young women, including women who had never had children. Many such women are now permanently infertile. The proceedings involved both the small and large devices. The small device was never sold in the United States and the large device remained on the Australian market for more than five years after it was taken off the United States market. In the period 1987 to 1994 hundreds of cases were commenced in the Supreme Court on behalf of women from all over Australia.

Prior to 1994 various motions were heard before different judges in the Common Law

Division of the Supreme Court. In 1994, before Justice Bruce was assigned to the litigation, orders were made by the court for the selection of lead cases, that is, cases with features representative of the other cases. In 1994 Justice Bruce was assigned to manage the litigation. Case management orders were made and a timetable laid down for the filing of evidence on behalf of the parties.

In 1995 lengthy and detailed written witness statements were filed with the court by witnesses to be called at trial by the parties. Annexed to many such statements were voluminous documents. This involved evidence from leading experts from around the world in diverse areas of medical and scientific disciplines, including gynaecology, infectious diseases of the female reproductive tract, microbiology, polymer chemistry, epidemiology, biostatistics, psychiatry and biomedical engineering. The case encompassed allegations that the CU7 device was negligently designed, negligently manufactured, negligently tested, and marketed and promoted without adequate warnings to the medical profession or women.

The case involved allegations that the companies involved knew or should have known of the problems and risks for women but decided to market the device and put company profits ahead of the health and rights of women. The plaintiffs are seeking punitive or exemplary damages. A particular issue in this regard was that the warnings received by Australian doctors and Australian women were inferior to the warnings provided to doctors and women in the United States of America at comparable times. The defendants, who have denied the allegations, have raised every conceivable legal and procedural obstacle.

As Justice Smart remarked in 1994, both parties stressed that this was very hard-fought litigation and that no quarter would be given. The defendants have claimed that the company did not have a duty to warn because the medical profession was aware of the risks. They have claimed that the infection, miscarriage, injuries and infertility suffered by the plaintiffs were caused by everything other than the devices. The trial of the nine lead cases commenced before Justice Bruce in January 1996 and continued throughout most of the year. The nine women gave evidence; more than 30 of their treating doctors gave evidence; and 18 independent experts gave evidence and were cross-examined.

Evidence was also given on behalf of the plaintiffs by former employees of the Federal Department of Health in relation to the clinical trials of the devices. One former employee of one of the United States companies gave evidence. Voluminous documents were tendered in evidence by both sides. Justice Bruce has estimated that the documentary evidence, which includes witness statements, scientific articles, medical records and company documents, is contained in approximately 15 metres of folders. From late 1996 until 4 p.m. on Christmas Eve 1997, the parties prepared and presented to the court detailed written and oral submissions. These were voluminous. Pages of transcript number 8,530—that is for the hearing only and does not include interlocutory matters, case management orders or the limitation hearing. There are now more than 5,000 pages of written submissions.

The trial judge saw videotaped evidence and large blown-up photographs of scientific evidence, and had this and other evidence explained to him. Many contested issues may turn on the weight to be given to certain evidence and individual witnesses. A number of issues turn on the question of the credit of witnesses. The weight to be given to the evidence of the expert witnesses depends in part on the credibility of the witnesses, together with their expertise and objectivity. The defendant companies are part of the Monsanto Group, one of the largest multinational companies in the world. No expense seems to have been spared in the preparation and presentation of the defence case. The defendants have no doubt claimed a tax deduction for the legal expenses incurred in conducting the defence of the claim.

In that sense the conduct of the defence has been subsidised out of the public purse. The lead case plaintiffs received a modest grant of legal aid. It was said that legal aid had insufficient funds to help the women. The Legal Aid Commission now does not grant legal aid at all in product liability cases—thanks to underfunding by this Government. Notwithstanding the formidable legal, procedural and economic barriers, the nine lead case women have had their day in court. They have exposed themselves to cross-examination about the most intimate of matters; they have endured the trauma of the litigation process; they have persevered in the face of adversity in part because they are mindful of the fact that these were test cases and that the outcome would be an important determinant in the outcome of the other 300 cases.

If Justice Bruce is removed, the option for litigants is as follows: The assignment of the case to another judge. The paper itself does not tell the whole story; it does not even tell the most important part. This would require months of full-time work simply to read the material. It would be difficult to

exercise judgment not having heard the witnesses and observed their performance in the witness-box. This is a matter of particular importance in evaluating the conflicting evidence of experts in this case. There may be a rehearing of the case, which would be unfair because they cannot afford to do it. It would delay the outcome by years and would bring the administration of justice into serious disrepute. It would cause untold psychological damage and other damage to individual plaintiffs, many of whom already have serious psychological scars. It would be manifestly unfair to the hundreds of other women whose cases have not moved forward or proceeded to hearing because they have been patiently awaiting the outcome of these nine lead cases. I would like to leave honourable members with this statement from Justice Priestley:

> The Conduct Division's report was based on the opinion that the matters referred to in it could justify parliamentary consideration of removal. The very different question that will face each House is whether the material before it, including but not necessarily limited to the Conduct Division's report, leads the House to decide that it will address the governor seeking removal on the ground of incapacity of the judge, which the House itself has judged to be proved.

Damning evidence is required to justify the dramatic public dismissal and humiliation of a serving, well-respected judge—and extremely hard-working judge at that. I do not believe we have the evidence before us. If anything the evidence that we do have proves that Justice Bruce is now more capable than ever of performing his judicial functions. I will therefore, of course, vote against the motion and I urge other members in all conscience to do the same.

Justice Bruce does not deserve to be penalised for being unwell and therefore incapacitated and it is time that we let him continue with his judicial duties. It is also time that we looked at the real issues this motion has brought to light—the lack of accountability which currently exists within the judicial system and the lack of a management system that not only keeps a record of all outstanding and reserved judgments but deals with delays as they occur, and the reasons for them. A moment ago I mentioned the case of Monsanto and its defence of its copper 7 intrauterine device. It is my understanding that a good deal of pressure has been placed on people by the lawyers on behalf of the defendants in this case, on members of this House, to vote for the removal of Justice Bruce.

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! The honourable member should proceed with care. I remind him that parliamentary privilege carries with it a responsibility.

The Hon. R. S. L. JONES: I understand that. I do not intend to name names, but the fact is that there have been a number of reports to me that a lot of undue pressure has been placed on members to vote for the removal of Justice Bruce and there have been allegations, which I will not put on the record tonight but they will become apparent in the future, that if indeed he is not removed, further action will be taken subsequent to this.

The Hon. D. F. Moppett: Absolute rubbish!

The Hon. R. S. L. JONES: Oh, yes, indeed, as we will see. I warn honourable members that there is a hidden agenda to all of this. It is not quite as simple as we think it is. There is a very large corporation involved in this that would love to see Justice Bruce removed, and there are 300 women victims of the product of that company who want justice. I believe their case is more important than the cases of those who have unfortunately received delayed judgments. I believe these women should get justice and I believe there is no way on earth in all conscience that we should remove Justice Bruce from his position, if only for the sake of these 300 women who are suffering and who will never get justice if Justice Bruce is removed.

The DEPUTY-PRESIDENT: Order! I am not a lawyer but I again warn the honourable member to proceed with care. Members should confine their remarks to the motion.

The Hon. R. S. L. JONES: This has relevance to the removal of Justice Bruce. I have put on the record just now, and I hope you were listening—

The DEPUTY-PRESIDENT: I was certainly listening.

The Hon. R. S. L. JONES: I hope you were not just talking, because what I was saying just now about the effects of the removal of Justice Bruce on this particular case is very important. I went into some detail as to the effects it would have on these women. That is where justice will really come undone if Justice Bruce is removed, because these women simply will not get justice. Justice will not only be delayed, it will be denied to these women. That is one of the key reasons I will be voting against the motion by the Attorney General. I am aware that there has been a lot of pressure on members from senior people within this Parliament. I have seen notes from somebody asking to come and see me to talk about and support this motion. This is not really a non-political issue because a lot

of political pressure is being placed on members to vote for the motion. I think that is very wrong when it involves a conscience vote.

The Hon. I. COHEN [8.08 p.m.]: As a member of the Greens I appreciate the gravity of the issue before the House tonight. It is something that I have had significant discussions about with people in the legal fraternity and also with members of the Greens. It is certainly not something that I had expected to deliberate on. It is with some concern that I find myself, as a member of Parliament, placed in the position of judging someone in the judiciary. It has certainly been a learning experience to consider the various implications of the course that we are charting at the present time, given the nature of the relationship of the judiciary to the legislature.

There seems to be no doubt that since his appointment in July 1994 Justice Bruce has been unable to deliver judgments effectively and consistently and has fallen behind in their production. His inability to deliver judgments was caused by a combination of depression and procrastination. I have listened with interest to the many speeches made in this debate to try to decide whether Justice Bruce's medical condition would have affected his judgment, whether he had a passing phase of depression that was ameliorated by modern medicine or whether he has a natural trait of procrastination that makes his position as a member of the Supreme Court bench untenable. My primary concern is the chicken and egg question: where did the procrastination start and where did the depression stop?

Depression and its effects has been the subject of a great deal of debate within the medical fraternity and among other interested people. The Hon. I. M. Macdonald detailed the physical manifestation of depression as it affected the judge. I am confident that in this case an improvement has been achieved, as earlier speakers have said, with the assistance of medication and counselling. Justice Bruce was able to deliver his outstanding judgments only after extraordinary arrangements were made. He was given unusually long periods out of court to catch up with his judgment writing. That demonstrates an incapacity to satisfactorily perform his judicial functions, and that was certainly the case. With the support that he has been given since, which includes staffing changes, psychiatric counselling and medication, his performance has improved.

Justice Bruce has been on medication for depression since December 1997. He claims that he is now cured and is able to carry out his judicial functions. However, it seems that as recently as March he refused to answer calls from his solicitors and failed to follow the schedule he agreed to with the Chief Justice regarding his outstanding cases. It is argued that he is still incapacitated. It is easy to point the finger at one person, but there is a strong case here for systemic reform. Why was the judge not given assistance? He changed his staffing situation, but additional staff were not provided. Support systems should have been brought in to allow him to catch up with his judgments.

I understand that in many instances he has caught up, but he should have been provided even greater support as an acknowledgement of his problem. Why was appropriate counselling not offered? Why is there no proper assessment of people in positions of responsibility? Additional resources should be used to reinforce the safety net, so that people in important positions do not slip through. Many people in the community rely on the judiciary to act in a fair, capable and independent manner.

If the judge is removed from office, what does that mean for future judges who, for example, make findings against the Government? Does it mean that the Government can initiate proceedings to have them removed from the bench? I am fearful that this motion, if successful, may destroy the independence of the judiciary. It is important to safeguard these institutions. That does not mean that we should allow people who are not acting effectively to get away with it, but we have to look at ways and means of maintaining the independence of the judiciary and at the same time make sure that there are inbuilt processes to police the situation and maintain efficiency within the judiciary.

How many judges are made accountable? There appears to be no system in place to deal with that at the moment. How do we solve the problem that some judges take too much time delivering judgments, with the inevitable impact on plaintiffs, defendants and accused? What happens when a judgment is delivered so late that the purpose of initiating the case is defeated, such as with the bankruptcy case listed on page 4 of the report? What happens when an accused is held in custody pending delivery of a judgment? No-one would argue that judges should be made more accountable. But will accountability systems impact on their independence? This is a subject for legal minds. It should also be the subject of an inquiry, dare I say by a committee. What will happen if Parliament votes to remove the judge? At page 6 of his report former Justice Mahoney said:

> As at present advised I am of opinion that the procedure for removal of judicial officers is now a statutory procedure governed by the terms of the present Act and the Constitution Act 1902 and so subject to judicial review.

Does that mean that the decision of the Parliament can be reviewed in a court of law? Will members of this House be called to give evidence? What happens if members have taken into account irrelevant considerations? Will we go through another phase in which the matter goes to a court of law and Justice Bruce appeals against a decision of this Parliament?

The Hon. Dr B. P. V. Pezzutti: Are you frightened of that?

The Hon. I. COHEN: It is not a case of being frightened. I am talking about a never-ending continuum of imperfect procedure, at great cost to the taxpayers and with a resulting loss of respect for the judiciary and the Parliament by the public. When will it stop? Rather than allowing this inadequate system to continue, we should deal with the systemic problems. We need to set in place a judicial system that works properly, rather than having to go through tit-for-tat procedures. Not only is the present system a great problem for the Legislature and the judiciary, but it costs taxpayers a great deal of money. Section 53(2) of the Constitution Act specifies:

> . . . the holder of a judicial office can be removed from the office by the Governor, on an address from both Houses of Parliament in the same session, seeking removal on the ground of proved misbehaviour or incapacity.

The section does not say that the incapacity has to be current. It appears from the evidence that the judge has experienced incapacity and could possibly experience it again. But at this time I believe his situation has been resolved and he is not now suffering from incapacity. I do not believe Justice Bruce will necessarily be able to adequately carry out his judicial functions in the future, but we need to look at broader issues such as judicial independence and the system under which judges currently operate. As I have said, where was the support and the adequate staffing to deal with the workload? Why were more staff not appointed to assist in this situation? Judges must develop a capacity within the system to deliver.

I have been approached in recent days by people I know and trust. One person, who is subject to a court process, described to me vividly the sort of pressures that occur in the whole family—even the family house may be in danger. That is because a judge has not delivered a decision on a very important matter. That is occurring time and time again. That personal experience I referred to involves another judge. How many such matters are there? But we are targeting one member of the judiciary.

I also cite the law and order debate, which was manifest again last night in the debate on the bill relating to ongoing drug dealings, as another measure that increases the workload of the judiciary. We have a responsibility to maintain a system that has an adequate number of judges. As I understand it, in certain circumstances Justice Bruce, perhaps unwisely, took on cases because no other judges were available to deal with them. The workload is increasing and, dare I say, that is in part due to the law and order campaigns of both the Government and Opposition. The problem is bigger than Justice Bruce. It is not a question of misbehaviour. A lawyer, Mr Greenwood, who wrote to me in support of Justice Bruce, said:

> I do not say for a moment that such delays are acceptable. Rather, I say that Justice Bruce is not exceptional and one must look to the system which is in place as the source of the problem not the individual judges, and in particular not Justice Bruce.

I concur with that opinion. I have received a number of letters in that vein. We need to resolve the problems in the system rather than target one individual. It is appropriate that we acknowledge the problems that Justice Bruce has had as a result of the accident, the pain that he suffered and the emotional consequences of that pain. It is also appropriate that we deal with the future. I am sure the pain and the emotional consequences of the accident were debilitating but they can be fixed. That means he can undertake a productive role on the bench.

To that end, as a Green I feel extremely uncomfortable to be calling for the dismissal of a member of the judiciary. I would vote against the motion moved by the Attorney General, which is supported by many people in both the Government and the Opposition. I do believe it is necessary to have a separation between the Legislature and the judiciary and I believe it is not appropriate to dismiss this judge at this time. It is appropriate to take on notice the lessons learned from this episode and, for the benefit of those citizens of New South Wales who are in involved in the legal process, to have a proper investigation into the running of the judiciary.

The Hon. J. S. TINGLE [8.21 p.m.]: I speak on this motion troubled by the question of whether the House should be debating it at all. Honourable

members need to keep in mind that the Judicial Commission did not recommend a specific course of action in its report on Justice Bruce. It said, in effect, that Parliament might care to take some course of action as a result of the report. On that fairly tenuous basis a motion is now before the House which, if successful, would result in the historic act of dismissing a Supreme Court judge for delays in delivering judgments at a time when, we are told, he was ill.

Are honourable members justified in doing that? Are they competent? Are they qualified to deliver such a judgment? Do they understand not only the ramifications of such an action but the circumstances which led to it being considered? I have noted the arguments and have been persuaded by the constitutional matters so clearly outlined by the Attorney General in his address. I do not pretend to be expert enough to understand them all or to be able to argue with them. But I listened to them carefully and I have taken them into account in what I am about to say.

There is no question that Justice Bruce was late, very late, with a number of judgments. In his address to the House he did not dispute that. There is no question that this caused serious suffering and loss to a number of litigants. Honourable members cannot totally ignore those people, and they cannot sweep their right to effective justice under a carpet of judicial privilege. However, they must also ask whether dismissing the judge will right the wrongs or just satisfy a quest for retribution.

I am not a legal expert and I cannot dissect all the dates, details and facts of the case as the Attorney General and the Leader of the Opposition so expertly did. Perhaps I see the matter much too simplistically, but in my opinion it boils down to two matters. First, was Justice Bruce's illness, which was well documented and is not disputed, any excuse for the delayed judgments? If it was, are we satisfied that he is now beyond that illness and capable of carrying out his duties effectively? If the answer to those questions is yes, I do not believe we have any grounds to move for dismissal. If the answer to the question about his illness being an excuse is no, I believe we have to reconsider those delays.

I have done that and was interested to hear from a number of legal experts, including Queen's Counsel, Senior Counsel, barristers and solicitors, that the type of delay complained of in Justice Bruce's case is not unheard of or even unusual. Several litigation lawyers have told me they are waiting for judgments three years after cases were heard. Delays of 2½ years are not uncommon, and delays of 12 months are quite common. These delays are caused by other judges who are not publicly known to be suffering from any problem, let alone depression. These delays should not be happening but, if they are happening regularly, should we be examining the possibility that they are being caused by factors other than judges who have slow reaction times? Some people are fast, some people are slower. Some judges are adept at writing judgments and can do them quickly, and some have more trouble with them.

While seeking advice on this issue I came upon one common theme. That is that the Supreme Court system for dealing with cases needs a thorough reworking. Justice Bruce made the point that he is not aware that a darg for Supreme Court judges exists. That is, he is not aware there is a specific time frame in which a judge is required to deliver a judgment, or that he has to deliver a quota in a set time. To me the important matter is that there is no set timetable for the delivery of judgments. Supreme Court judges in New South Wales do not have scheduled times in which to write their judgments. As soon as one case finishes they may well start hearing a new one, and they are also expected to deal with other cases that are coming on for hearing before and after regular court hours. That is a disorderly system for administering justice.

For instance, I wonder what happens when a judge does not have time to start considering or writing a judgment on one case and he has to start hearing another. In other words, how does he separate in his mind evidence and other essential material in the case that is finished from the evidence in the case that is continuing? Confusion is not only possible, it is probable; it is likely. Confusion slows thought and creates stress and chaos. It seems judges have to deliver judgments in stressful circumstances. Is that the best system? Is it the only possible system, when it places such a load on a judge and when the effect of an illness is such that it will be made much more severe because the sufferer would be much more vulnerable because of that stress?

Surely some judges must be like people and suffer the same frailties of performance under pressure. How is it that there appears to be no established monitoring system of judges' performances which would introduce a counselling system when it was perceived that a judge was in trouble? Did no-one notice that this judge was in trouble? Did anyone decide, during the course of these delays, that something should be done to find out what his problem was? I suggest, with respect to

the Attorney General, an excellent case is being made out for the system of operation of the Supreme Court and the expectations of judges to be carefully reviewed.

The media has had a field day with this issue. I cannot remember a more savage pack calling for someone's head on a platter, except perhaps in the case of Christopher Skase. Mark Day from the *Daily Telegraph* attempted to push us into dismissal by saying we would be wimping out if we did not dismiss the judge. Richard Carlton demonstrated a calculated marginal sneer at the end of his *60 Minutes* interview with the judge. That was when Carlton came back on to say the judge had made it a condition of doing the interview that the program publicise his Foundation of Depression. The editorialising in all the media demanding his sacking has all been designed to try to pre-empt the decision members have to make in this place. Members of the media cannibalise themselves. As soon as one outlet starts crying for blood, the others fall over themselves to outdo the one who started it. It is distasteful, not very judicious, and not very uplifting. It is as distasteful as placing members in the position of having to judge the judge.

My second point is whether we are satisfied that the judge is beyond that illness and now capable of carrying out his duties effectively? One element needs to be brought to the fore in this debate, and so far it seems to have been ignored totally. All the concentration seems to have been on the number of judgments that have been delayed and on the number of judgments Justice Bruce has now caught up on. When are we going to consider the quality of his judgments? Surely, in appraising a judge, quality may be even more important than quantity. I am advised that in his time on the bench of the Supreme Court Justice Bruce has dealt with between 100 and 200 cases and has had only one judgment appealed against. I am told that that is an exceptionally low number. I asked a number of people whom I regard as legally credible about the quality of the judgments Justice Bruce has delivered in bringing himself up to date. My advice is that they are regarded as good—sound, and well reasoned.

So we come to the crunch, which is this: Is Justice Bruce a good judge? Is he good enough that his delay during his illness is outweighed by the overall and later quality of his work? Should the quality of his work be weighed in deciding his capacity or incapacity? Surely the quality of his judgments is a clear barometer of his capacity to function as a judge. That factor has been ignored, but surely it must be taken into account. Does past and recent experience suggest that he can now do the job he is paid to do and is entrusted to do, and continue to deliver sound judgments?

We have to appraise people by what they are now, not by what they have been. That principle surely applies in the whole judicial system, not just in judging judges. It is at the heart of the parole system and it underlies the whole notion that criminals can be rehabilitated. Surely, therefore, we can apply it and give the benefit of the doubt to a learned judge of the Supreme Court of New South Wales. If we judge Justice Vincent Bruce by what he is, not by what he was or might have been, we do not, at this time, have any grounds on which to dismiss him. I cannot—I will not—support the motion.

The Hon. A. G. CORBETT [8.32 p.m.]: I concur with the Hon. R. S. L. Jones that this debate will not end in a true conscience vote. As usual, only my colleagues on the crossbench have thought the matter through for themselves and based their decision on their own values and their reading of the situation. This is extremely disappointing. The major parties promised that they would allow a conscience vote, and Justice Bruce deserves a conscience vote. He deserves to keep or lose his office on the basis of merit, without political games being played in the background.

I am satisfied that the law is clear that this Parliament has the capacity to remove a judge. Such a power is not only legitimate but desirable: it is desirable to ensure that the judiciary can remain independent yet accountable, not only generally to the community through the Parliament but specifically to the litigants who rely on and deserve the timely delivery of judgments. The absence of any sanction against judges incapable or unworthy of holding high judicial office would leave the judiciary vulnerable to charges of being unaccountable.

The power of removal has seldom if ever been used by the Parliament. Therefore, it cannot be argued that we are acting capriciously in considering its application in these circumstances. Never in tumultuous times, in moments of great political passion, in periods of concern and controversy about the state of the judiciary—as recently as the 1980s—has this Parliament actively considered the removal of a judge. Not even Jack Lang, who had little respect for some of the institutions of this State, including this Chamber, seriously challenged the judiciary in this regard. So it is troubling that so much has been said about judicial independence in recent weeks as if a decision to remove Justice Bruce would represent a serious threat to it.

We have adhered to the proper processes. We have had the benefit of a procedure that has afforded Justice Bruce every opportunity to put his case to the Judicial Commission and to the Parliament. This is only right and proper if he is to be treated in accordance with the principles of natural justice. This all leads, however, inevitably and inexorably to the motion the House is now debating. The Conduct Division of the Judicial Commission has made certain findings of fact and expressed an opinion as to what sanctions are available to the Parliament as a consequence of those facts. Notwithstanding that the report of the Conduct Division reflects a majority opinion and is not unanimous, the Parliament decided in 1986 that such an opinion would constitute a valid report for the purposes of considering the removal of a judge.

The Conduct Division report is significant and compelling, but it is not binding. The report is a necessary but not sufficient factor in assessing the motion. The Conduct Division has confined itself to a finding of fact and to an opinion that the facts could—I repeat could—warrant the judge's removal by the Parliament. The ultimate decision and the ultimate sanction rest with us, the Parliament. Given the findings of the Conduct Division, we have to be satisfied that incapacity is proved. If we are satisfied on that aspect we have to be satisfied that the proved incapacity warrants removal.

The law is much clearer on the criteria for proved misbehaviour than it is for incapacity. I imagine that many more instances of incapacitated judges have been identified, and quietly and inconspicuously dealt with, than the public has been made aware of. Extended leave or resignation could be suggested to a judge, who could then go quietly for his own sake and for the sake of the judiciary. In his book *Judicial Ethics in Australia*, Justice Thomas devotes only 18 lines to incapacity. He notes that incapacity is:

> . . . not a problem that can be solved by legislation or by writing guidelines. The law is already clear that incapacity is a ground for removal, but it would usually be a very difficult matter to prove. In the ordinary case of a judge in the twilight zone, I can think of no better solution than a discreet appeal to the judge's decency and self-esteem.

What happens when a judge does not respond to such representations? What happens when a judge's colleagues do not recognise the incapacity? We cannot shy away from the responsibility of dealing with the matter when it reaches this point. We cannot avoid confronting the matter, but it must be dealt with honestly, thoughtfully and carefully. There is nothing more unfortunate or unseemly than an incapacitated judge being allowed to remain on the bench, open to mockery, ridicule and derision. H. V. Evatt's appointment as Chief Justice of the Supreme Court of New South Wales in his twilight years, and his subsequent tenure, and Justice McTiernan's last years on the High Court of Australia are just two, albeit extreme, examples of the need to adequately deal with judicial incapacity.

The Parliament must address and deal with such matter. Certainly since the enactment of the 1701 Act of Settlement Parliament has been charged with the ultimate responsibility of dealing with, and the ultimate sanction of removing, judges who are unworthy or incapable of holding judicial office. This is appropriate. However, in 1986 the Judicial Commission was established, in part, to assist the Parliament to assess the facts of a matter. The difficulty of the Commonwealth Parliament in determining whether Justice Lionel Murphy had been guilty of "proved misbehaviour" must have weighed heavily on the minds of members of this Parliament as they sought a way in which to reserve the power of removal to themselves but to delegate the difficult task of identifying and assessing the relevant facts.

We entrusted the responsibility of establishing a tribunal of fact to the Judicial Commission. In this matter it has responded by presenting the Parliament with certain facts and consequently certain questions and certain choices. We are confronted with these questions as we determine whether Justice Bruce currently has an incapacity that hampers the performance of his judicial duties. If the answer is in the affirmative we are confronted with the choice of determining whether the incapacity warrants his removal.

There is no doubt that Justice Bruce has displayed tremendous courage and honesty during the past few weeks. He has won much sympathy from members of the community, however misplaced that sympathy might be. He has squarely addressed the debilitating impact of depression and has undoubtedly pushed issues of mental health and the workplace to the forefront of discussion and debate. It would be easy if this matter rested solely on whether Justice Bruce was depressed and whether the delays were caused by that depression. It would be simple if we could be satisfied that Justice Bruce, having been cured of depression, is now capable of performing his judicial functions in an appropriate and timely fashion. Unfortunately, it is not that easy and it is not that simple.

At page 212 of the hearing transcript counsel assisting the Conduct Division made an analogy of the division presenting a case to the Parliament with

us acting as a jury. Justice Bruce has been accorded the opportunity of responding to that case and making a case in his defence. In effect, we are now called on to deliver judgment. As I said earlier, the majority report of the Conduct Division is compelling. Its findings are reinforced and amplified by the transcripts and exhibits tabled by the Attorney General last week. A careful consideration of that material and the case made by Justice Bruce to this House last week identifies issues that need to be resolved before settling on the question of incapacity.

The matter of Justice Bruce's depression has been thoroughly canvassed and it is certain that it had a material bearing on some of the delays that occurred. I am concerned, however, with the suggestion that the judge's incapacity was broader than simply that caused by his depression. From the evidence available, it appears that Justice Bruce was incapable of satisfactorily turning his mind to judgments arising from matters that he heard as a judge sitting alone. Given the company of his peers and colleagues, he was able to work in a diligent and effective manner; left alone to consider and deliver judgments, he appeared indecisive and incapable. There is nothing in either Justice Bruce's written response of 26 May 1998 or his address last week that suggests that his capacity in this regard has been restored. I venture to suggest that this incapacity remains and that this incapacity warrants removal.

There are many examples of Justice Bruce having worked effectively in certain work environments both within and beyond his judicial functions, but this is not uniform and it is not consistent. Distinctions can be made between some of those working environments. Justice Bruce seems to enjoy, and work effectively in, environments in which there is both the support of colleagues and a certain level of public and media attention. From all known accounts, he was an effective member of the rugby league judiciary. From the account of the member for Gordon in the other place, he is an effective member of the Asthma Foundation. From the support given by members of the Olympics movement, he is a valued participant in the various tribunals and committees associated with the Olympics, of which he is a member.

The choice of the word "procrastination" by Dr Gilandas and its continued usage in the majority report is unfortunate. A case could be made that a deep-seated problem affected and compromised Justice Bruce's ability, but it would be something different from and deeper than that suggested by the word "procrastination". I accept the facts that have given rise to the opinion of Dr Gilandas and the majority decision, but I have to take exception with the choice of words. Counsel assisting the Conduct Division made this point at page 222 of the transcript:

> . . . you will pick it up out of Dr Gilandas' main report. He says that the Judge is stimulated when he engages in activity which is—and I use the word "exciting"—when he is engaged in activity which involves interchange with people, then he is stimulated and he is able to carry through in that stimulated condition, notwithstanding some degree of depression. When he is sitting in the Court of Criminal Appeal he has got his collegiates' support and he is dealing with a crime or he is dealing with a situation. He appears able to deal with it without a problem. He delivers judgments immediately.
>
> When he goes to the Olympic Games and sits as a judicial member of that tribunal, then again he is in a situation of excitement, of interest. There is media interest in the decisions and what is going to happen and again he appears to perform quite satisfactorily.

The final line of Dr Gilandas' findings, contained at page 247 of the exhibits, sums up the dilemma in which I find myself. Dr Gilandas states, "The major problem is a lack of follow through and completion of projects which require steady, disciplined capacity for routine work." I believe that this sums up the very qualities needed in a justice of the Supreme Court, and I am not satisfied that Justice Bruce is capable of adhering to that standard. A careful consideration of the reports, of the transcript of the Conduct Division hearings and of the exhibits made available initially to the Conduct Division and then to the Court of Appeal identifies several troubling aspects of Justice Bruce's capacity that cannot be simply accounted for, or mitigated by, an explanation of depression in combination with the other health problems he experienced, such as migraines and back pain.

The Parliament will have to take into account that a significant number of cases were delayed even when Justice Bruce was experiencing only what his own doctor called a "light depression"—this period being around April 1995. The Parliament will have to take into account that he even displayed an inability to keep to the schedule agreed to with the Chief Justice and a reluctance to accept responsibility for that delay. The majority report states at paragraph 72:

> The departures from the agreed schedule are significant both in number and extent. One case was advanced ahead of the scheduled delivery date. In every other instance where judgment has been delivered there has been a failure to adhere to the agreed schedule.

Despite the schedule being agreed to, as at 7 May 1998 there were delays in delivering 20 judgments. Those delays ranged from three days to 29 days.

Even in a confined period and at a time when the depression had apparently been corrected by taking Luvox, Justice Bruce could not keep to an agreed timetable. This was a period of time when it was considered that Justice Bruce's condition was as good as it was going to be.

Those delays were unsettling enough, but what is even more troubling is Justice Bruce's failure to account for the delays. When the backlog of judgments started building up again he went to ground. He could not bring himself to explain to his Chief Judge, in whom he has subsequently expressed confidence and admiration, that he was getting behind again. He had confronted his depression at the Judicial Commission but he was not prepared to honestly confront his descent into delay when it occurred again in recent months. The majority report states at paragraph 75:

> When the schedule was not adhered to by the delivery of the first twelve judgments in accordance with it Justice Bruce did not regard it as appropriate to inform the Chief Justice of that fact or of any reasons for it. The matter was simply ignored . . .

At paragraph 76 the majority report notes the efforts of Justice Bruce's solicitors to obtain advice from him regarding the delay. It states:

> They could not obtain instructions because they could not contact Justice Bruce.
>
> Failure to confront departures from the schedule agreed with the Chief Justice or to respond to his solicitor's requests for instructions seems to us not dissimilar to the failure to confront the expected unpleasantness anticipated in the letters from the Judicial Commission to Justice Bruce in late 1997 which he felt unable to open.

The Parliament will have to take into account that the judge and former Chief Judge at Common Law, David Hunt, disagreed on a material aspect of their working relationship. Justice Hunt told the Judicial Commission in a statutory declaration dated 5 February 1998:

> In dealing with such complaints, my practice has always been to require the complainant to put the complaint in writing in order for me to deal with it; and when I have received a written complaint to speak to the judge personally and to record the judge's statement of intention in relation to the outstanding judgment in a letter to the complainant while the judge's statements are fresh in my memory.

At page 147 of the Conduct Division hearing transcript Justice Bruce is asked, "Did you have any dialogue with the Chief Judge?" Justice Bruce replied, "Absolutely none." At page 187 of the transcript Justice Bruce states:

> The fact of the matter is that the Chief Judge never communicated with me in any way in relation to my failure to comply with the things which I had bona fide believed that I could do and it was a situation where I was in fact totally isolated.

I have noted and can accept the various arguments about the stress and isolation of the judiciary. Public office has its rewards but it also has its demands, and those demands can be exacting and sometimes debilitating. Following my most recent speech on this matter, a member of the bar wrote to me advising that in the matter of delayed judgments:

> Justice Bruce is not exceptional and one must look to the system which is in place as the source of the problem not the individual judges, and in particular, not Justice Bruce.
>
> Unlike some other courts, the Justices of the Supreme Court of New South Wales do not have scheduled times to write their judgments. As soon as one case finishes, they commence hearing a new case. They also deal with other cases which are coming on for hearing before and after regular court hours. So the judges are expected to write learned and often lengthy judgments at night, on the weekends, and on their holidays. The relentless nature of their work conditions is a major cause of stress. Every barrister can tell you stories about judges they know who have changed from being pleasant and easygoing people before they were appointed, to grumpy and discontented people after their appointment.

I accept that systemic issues need to be noted, but such notice can only be taken so far. Other judges are able to operate within that system satisfactorily. Allowance can be made, and systems can be changed and modified, but I believe that in the matter of Justice Bruce the allowances would have to be so great and the systemic changes so profound before I could make a case that he was not incapable of carrying out the significant part of his judicial functions.

I accept that judging is a lonely and isolated profession. Too often, judicial independence seems to mean isolation from fellow judges, as it does freedom from external pressure and interference. Changes need to be made. Consideration needs to be given to reducing the isolation and stress associated with judicial office. It will come as no surprise that Justice Michael Kirby of the High Court has an opinion on this subject—as he seems to have an opinion on so many matters. In a paper presented in June 1995 to a conference of magistrates organised by the Judicial Commission he noted the fact that judicial stress was seldom talked about let alone addressed. Justice Kirby quoted a Canadian barrister as saying:

> In our society we isolate judges . . . All of a sudden a lawyer at 40 goes from fraternising with friends to becoming a judge. He can't golf, go to dinner or socialise with his former colleagues. An active man [sic] is now isolated and lonely. It leads to the old expression—if you're hungry, angry, lonely and tired, you are one step from a drink.

Justice Kirby ventured a number of causes of and remedies for judicial stress. These need to be considered with a view to implementation. However, they do not provide sufficient scope to reform the judiciary to such an extent that I would be satisfied that Justice Bruce would be more capable or more productive. Justice Bruce has defended himself by saying that his depression was the cause of the unreasonable and unacceptable delays. The medical evidence is clear that his depression had considerable bearing on these delays. I am not satisfied, however, that it was the only factor that had bearing and I am not satisfied that those other factors have been corrected or, indeed, are capable of correction.

To justify Justice Bruce's delays by reference to delays by other judges is to miss the point. This House is required to turn its mind to what caused the delays in Justice Bruce's case: was it misbehaviour, was it incapacity or was there some other explanation? If it was incapacity, does that remain? If there are concerns about other judges, let the parties in those cases pursue the same remedy as the parties in Justice Bruce's case: complain to the relevant Chief Judge and, if satisfaction is not obtained, complain to the Judicial Commission.

Existence of other cases is no excuse or justification for evasion of duty in this matter. I have given the matter great thought, and I must admit my concerns related to a number of extraneous matters, in particular how Justice Bruce and his family may be affected by an address to the Governor requesting removal. My concerns must be confined to the question of capacity and, upon consideration of the material made available to me, I am not satisfied that Justice Bruce is capable of satisfactorily performing his judicial duties in their entirety. Accordingly, I support the motion.

The Hon. Dr MARLENE GOLDSMITH [8.53 p.m.]: I shall speak only briefly in this debate but it is important that my reasoning in this matter is placed on the record. Many of the points I would have made regarding matters of fact have been placed on the record by the Attorney General and the Leader of the Opposition, and many of my concerns have been eloquently outlined by the Hon. J. S. Tingle. I shall address only the bare outlines of the case as I see it. It is important to do this because it has been the decision of my party that this should be a conscience vote and, consequently, no spokesman has presented the case for the party—each member has presented his or her case.

I applaud both sides of Parliament for the decision to allow a conscience vote. It would be difficult to imagine an issue less party political than the consideration of the removal from office of a senior judicial officer of this State. If the matter had been politicised by party-room decisions enforcing block votes, it would cast a shadow on the separation of powers amongst Parliament, the Executive and the judiciary. As the Attorney said, we act today as members of Parliament, not as political parties seeking political advantage. In this historic matter we are in effect a jury and each of us must answer to our conscience.

We must remember that this case concerns no alleged criminality, corruption, impropriety or misbehaviour on the part of Justice Bruce; it concerns only his capacity to do his job. That capacity was called into question by his failure to deliver judgments over a considerable period of time—up to almost three years. I have said "only" but it is a major failure, especially in such an important position. The delays must have caused considerable inconvenience, financial loss and distress to people awaiting judgments from Justice Bruce. We must not underestimate the seriousness of the distress that has been caused and the fact that such delays have called into question the efficacy of the judicial system, given the old but very good adage "Justice delayed is justice denied."

However, the decision we are making today is in relation to the judge's capacity now—whether he is now in a position to do his job. Our responsibility is to ensure that those who come before the courts of this State can obtain within a reasonable period of time judgments in which they can have confidence. Members of this Chamber have been given two alternatives to consider. First, there is the version of Justice Bruce that he was sick, principally from depression but also from migraine and back pain. He has said that he is no longer burdened with these ailments because of various treatments. Justice Bruce does not deny his procrastination in the period up to approximately February this year. His argument is that he is now cured and thus quite capable of fulfilling his role. The dissenting Mahoney report of the Conduct Division of the Judicial Commission accepted this argument.

Second, there is the version of the two-man majority of the Conduct Division, subsequently upheld by the Court of Appeal—namely, that the incapacity was ongoing and that the judge's procrastination continues. That version was upheld in the strictly legal sense that the judges of appeal could not see any reason why the due processes had not been conducted during that inquiry. In deciding which of these two versions we are to accept the responsibility is considerable. If Justice Bruce has

continued incapacity it is incumbent upon this Parliament to remove him to protect the credibility and the effective operation of the judicial system in New South Wales, and to protect potential litigants from the trauma and expense of having their cases heard by a judge who is incapable of fulfilling his role. On the other hand, if Justice Bruce has indeed recovered, to remove him now is tantamount to punishing him for having been ill and is a denial of justice to any litigant still awaiting judgment from him.

A further injustice is involved here. The fact that the judge's illness was depression risks re-igniting the stigma against mental illness that many people have worked extremely hard to counter over a long period of time. I can sympathise with the judge. When my daughter was born in 1969 I experienced post-partum depression for some months. In those days it was an illness without a name or a treatment. However, while it lasted it was very real. It gave me a profound sympathy for people who have to cope with depressive illness. If Judge Bruce suffered from severe depression I can well understand his being trapped in a fog of inertia. Depression is real—very real. However, if his depression has been successfully treated and, therefore, he can now function fully and effectively without inertia, this Parliament must not remove him. That would be unfair to Justice Bruce, the litigants still awaiting his judgments and to all those who have suffered mental illness.

For me some very real questions remain as a result of the Justice Bruce argument. For one thing, he made several remarkable recoveries within a very short period. Yet it is not unlikely that, having found an effective treatment for an illness he had long believed incurable, he might then seek new treatments for his other debilitating illnesses. I am aware of the effectiveness of acupuncture in treating a bad back, in this case for my husband. The Attorney General and the Leader of the Opposition outlined in their speeches the ongoing, recent and continuing procrastination on the part of Justice Bruce. That is countered by the many cases on which Justice Bruce has delivered judgment as described in his evidence to the Chamber and in a letter to honourable members from his solicitors, Holman Webb. The letter states:

> He has delivered some 30 judgments during a period when he had agreed with the Chief Justice that he would deliver 20 judgments.

It appears that the judge's performance depends on which cases are counted. This is another relevant factor. Just how far is Justice Bruce alone in the matter of procrastination? Information has been provided to me by Mr Phillip Greenwood, SC, that lengthy delays in delivering judgments are by no means peculiar to Justice Bruce. Mr Greenwood states:

> For example I am presently waiting on a judgment which will soon have its third anniversary since the case was heard. I have previously waited 2.5 years from the same judge for a decision. A delay of 12 months is by no means uncommon and, so far as I am aware, those judges are not suffering from severe depression or other medical problems.
>
> I do not say for a moment that such delays are acceptable. Rather, I say that Justice Bruce is not exceptional and one must look to the system which is in place as the source of the problem—not the individual judges, and in particular not Justice Bruce.
>
> Unlike some other courts, the Justices of the Supreme Court of New South Wales do not have scheduled times to write their judgments. As soon as one case finishes, they commence hearing a new case. They also deal with other cases which are coming on for hearing before and after regular court hours. So the judges are expected to write learned and often lengthy judgments at night, on the weekends, and on their holidays. The relentless nature of their work conditions is a major cause of stress.

Members of Parliament can empathise with a workload that includes nights and weekends. Indeed, that is fairly standard practice for many people on high incomes. However, there are real questions to be asked about the mounting level of litigation in this State and what the Government is doing to provide the judicial resources to cope with it. Whatever the reason for the tardiness, it appears to be endemic in certain sections of the judiciary. How much worse is Justice Bruce's record than that of other judges? We do not know. Honourable members are informed in the reports before us that his record is the worst among judicial officers but we are given no details as to how much this is so.

Discussions I have had with lawyers reinforce the view of Mr Greenwood—that judicial tardiness is somewhat endemic. To remove Justice Bruce from office when honourable members do not know how much worse his procrastination is than that of his brother judges is unacceptable. I am informed that the Chief Justice has put into place a system of monitoring all judges for their promptness or otherwise in delivering judgments. I congratulate the new Chief Justice and the former Chief Justice, who I believe began the process. That process was initiated not before time, given the widespread complaints of judicial tardiness over a number of years.

When a system is in place to provide statistical evidence the information that can be provided to the Parliament will be unequivocal. The information currently before this House is not unequivocal. If

Justice Bruce now has his medical problems under successful treatment, to remove him would be an injustice to him, to the cases still awaiting judgment and to everyone in our society who has ever suffered a mental illness. I have not had sufficient information to convince me that the judge is not cured. In fact, his behaviour under the stress of this whole experience has been extraordinarily resilient for one who is alleged to have an ongoing mental dysfunction, whether that dysfunction be depression or procrastination.

In the circumstances, I cannot support the serious precedent of recommending the judge's removal. When, however, a monitoring system is in place and objective measurements of tardiness are available both the Conduct Division and the full Court of Appeal will have stronger material to provide to the Parliament, material that might better justify the House sitting in judgment on a judge. If Justice Bruce is found to fail when such information is taken into account I would be pleased to revisit the issue in the future. There is nothing to prevent this House from doing so, and indeed honourable members would be remiss if they did not, if the judge's performance does not continue at an acceptable standard.

At the moment, however, the matter is not clear-cut. The Conduct Division of the Judicial Commission was divided. There is evidence that Justice Bruce has recovered, and there are serious unanswered allegations of judicial tardiness extending considerably further than Justice Bruce. I am wary of the risk of creating a scapegoat for what may be a system failure—especially in relation to such a momentous issue, which goes to the heart of the balancing of powers between Parliament and the judiciary. I do not support the motion.

The Hon. HELEN SHAM-HO [9.06 p.m.]: I place on the record my position in relation to the Government's motion, which seeks to remove from office Justice Bruce of the Supreme Court. I will be very brief: I will not analyse or argue the facts, as other honourable members have done—it is not a party-political issue, as the Hon. A. G. Corbett said—and I accept the findings of the Judicial Commission and the judgment of the Court of Appeal. I will not debate or dispute the pages of evidence. I agree with the detailed arguments of the Attorney General and the Leader of the Opposition. I commend and applaud the brilliant speech delivered by the Attorney General this afternoon. I feel sorry for the people who have suffered because of the delayed judgments of Justice Bruce.

I am critical of the misery the judge has caused to many people by not delivering the judgments earlier. However, I want to give him another chance. On 6 June he said he is cured and he can continue his judicial duties. I am aware of the illness from which he suffers. Mental illness and depression are debilitating. In my former professional life I had experience with it. Mental illness is a stigma. I suppose all honourable members have mood swings but I do not think I have suffered depression like the judge has suffered. As the Hon. Dr Marlene Goldsmith said, unless one suffers from it one does not understand it.

For a number of years when I was working in the psychiatric field I saw people who suffer from mental illness, such as severe depression. They cannot help themselves. It is an illness. If we accept that it is an illness, and that Justice Bruce has suffered from that illness, we should also accept that he has not committed a crime, that he has not done anything immoral, that he is simply sick. At one stage or another we all get sick, either from physical illness or psychiatric illness. So if we accept that it is an illness and it can be cured, and the judge has said that he is cured, the logical conclusion is that he will perform his duty; he will carry on his duty—

The Hon. M. R. Egan: The evidence doesn't suggest that.

The Hon. HELEN SHAM-HO: The Treasurer said that the evidence does not suggest that. We are talking about the period when the judge was suffering depression.

The Hon. M. R. Egan: No, I am talking about the period since then.

The Hon. HELEN SHAM-HO: I know that, since February 1998. I will not argue with the Treasurer, because I can assess the evidence. I understand the finding. Human nature being as it is, and physical illness being as it is, we cannot argue about it. I have reached this conclusion according to my independent, impartial judgment from what I know. I am trying to discharge my responsibility according to my conscience, because my party has given me the privilege to decide for myself.

I repeat that in my mind there is no proven misbehaviour or permanent incapacity. Justice Bruce may have been incapacitated for a period but I accept that he is cured and that he will be able to continue his judicial duty. I gather that he has been a good judge; I was told that he has an outstanding

capability. Therefore, if the incapacity is an illness and that illness can be cured, and it is not permanent, we must give him a chance. I believe that members of this House are like members of a jury hearing a criminal case. If there is any doubt, the person must be acquitted. I am saying that I will give the judge an acquittal. Therefore, I will vote against the motion before the House.

The Hon. D. J. GAY [9.13 p.m.]: Sometimes it is fortuitous to speak in debate after the Hon. A. G. Corbett. This occasion allows me the opportunity to correct a statement he made tonight that I found to be totally outrageous and out of sync with what is happening in this House. I refer to his statement that members are not able to have a conscience vote on this motion. If he had written his own speech, listened to the debate and understood what was said by honourable members, he would have noticed, as other members and people in the public gallery have noticed, that this debate has crossed party lines. I do not know which way members of my own party will vote. I suspect that three of them will vote for the motion and the other three will vote against it, but I do not know. It is very much a conscience vote—and so it should be.

I suspect that many honourable members did not want to have to make a decision on this matter, but it is one that they will have to make. No member of this House would resile from that. All members who have spoken to the motion, including the Attorney General and the Leader of the Opposition in their fine and detailed contributions, have acknowledged that a decision must be made. Neither the Attorney nor the Leader of the Opposition spoke ill of the judge as a public person, or questioned his legal ability.

At one stage the judge was completely dysfunctional. I regret that something was not done at that stage, and Justice Bruce expressed a similar regret. But we are now well past that stage. It would be a mistake for honourable members to vote to remove the judge because they believed that would fix the past and help the litigants who were disadvantaged and to whom the judge apologised. I am sure all members feel concern for those litigants, but it would be wrong to vote to remove the judge in the mistaken belief that would fix their problems and heal their hurt. We cannot fix the past by delivering some form of tabloid justice. That is not why we are here. We are here to do what we believe to be the right thing, based on the evidence before us.

The Attorney General asked the question: do you believe that the judge is a continuing procrastinator? I believe that is the question that members of this House should be considering. Is the judge a continuing procrastinator? Before making a decision in this House tonight, honourable members should ask themselves whether more people will be disadvantaged in the future. I have examined the evidence, and I do not believe that Justice Bruce is a continuing procrastinator. I do not believe that more people in New South Wales will be disadvantaged if the judge remains in his current position. For those brief reasons I oppose the motion.

The Hon. JAN BURNSWOODS [9.18 p.m.]: I support the motion moved by the Attorney General earlier today to remove Justice Bruce from office. As did the Attorney General, I do so with sadness. All honourable members will agree that Justice Bruce is in a terrible situation. No-one wants to have one's private life debated in the Parliament and in the media, as has happened to Justice Bruce in recent weeks. However, as the Attorney General said today, he had no choice but to bring this matter before the House. Honourable members have a responsibility to debate this motion and consider it carefully. They may not want to debate it, they may not want to make a decision, but they have no choice. The law of the land requires honourable members to make a decision, and it is in that context that the debate should take place.

I express sympathy for the Attorney General and for the Leader of the Opposition in this House, because both of them have received personal criticism which has not been justified. As I said, the Attorney General had no choice but to bring this matter before the Parliament, and some of the comments that have been made about him have been very unfortunate. Similarly, the Leader of the Opposition has taken a brave stand, which would not have been easy, because he appointed Justice Bruce.

I have expressed an opinion about whether that was a wise appointment, given what members know about some of the problems that Justice Bruce displayed prior to his appointment in July 1994. Nevertheless, the comments of the Leader of the Opposition today were proper. As the Hon. D. J. Gay pointed out, the Leader of the Opposition made a careful and dignified contribution to debate on the motion and made sure that nothing he said could be taken as personal criticism of Justice Bruce.

Having said that, I should add that many of the comments about this motion seemed to be irrelevant to the issue, and some were over the top. I am worried that some contributions have cast a real doubt on the ability of members of the Legislative Council to make a hard decision, and have thrown

doubt on their ability to seriously debate and resolve the matter. It is clear that when members eventually vote on the motion they will vote not to dismiss Justice Bruce. I am concerned that that vote will reflect not so much the free choice that each of us has made, but to some extent an unwillingness or fearfulness about making a hard decision. If that is the case, as I believe it is, it poses problems for those members of Parliament who are concerned about the public's perception of this issue.

None of us is in any doubt about the views of members of the legal profession on this subject, as we have received correspondence and messages from them. I fear that the issue of procrastination will not be seen to apply to Justice Bruce but will be seen by the public to apply to members of the Legislative Council. Some issues have become lost in this debate and, therefore, I will repeat several points referred to earlier by the Attorney General. All honourable members are aware of the terrible scourge of mental illness in our community. No-one has anything but sympathy for the problems which Justice Bruce has faced while suffering deep depression.

As the Attorney General pointed out and as is clear from all the evidence that has been present to honourable members, there is no disagreement that Justice Bruce has been cured of that problem since February this year. But he is not coping with his workload and the schedule he was set. He has not coped with them since February this year. As I said earlier, I made comments about problems prior to the onset of his depression. For instance, I am aware that Justice Bruce was an acting judge in 1990 or 1991 and the same problem of massive delay in bringing down judgments affected him then. In fact one or two judgments from that period were not delivered until after he had been appointed to the bench. As the Attorney General noted, that is an important factor.

I will refer briefly to a couple of matters raised in the judgment of the Court of Appeal. The Conduct Division did not find Justice Bruce's problem to be depression; it basically dealt with the problem of the incapacity of Justice Bruce which continued after the depressive illness was cured. That was because the Conduct Division did not discuss depression but "incapacity due to procrastination". Much of the debate today has ignored that fundamental distinction. On page 8 of the judgment the Court of Appeal stated:

> There was before the Division probative material capable of supporting the conclusion that the Plaintiff's incapacity continued after his medical condition had been alleviated.

At page 5 the court stated:

> . . . the majority's finding was that the Plaintiff's failure to adhere to the judgment schedule set by the Chief Justice, after the medical condition of depression had been resolved or substantially attenuated, could not be substantially attributed to depression, but rather that it was caused by "procrastination." This procrastination was of such a degree that the Judge's incapacity must be seen as continuing to exist.

I was going to cite some long quotations in relation to the opinions of Dr Gilandas, but I will spare the House from hearing that, because I understand that the Hon. Dr B. P. V. Pezzutti will refer to a lot of that material and this matter has probably been debated at sufficient length. I will leave the medical points about "an ingrained personality attribute of procrastination" to the Hon. Dr B. P. V. Pezzutti to explain. I was concerned about comments made by honourable members, however I agreed with a great deal of what the Hon. A. G. Corbett said, contrary to the comment made by the Hon. D. J. Gay. I was pleased that the Hon. A. G. Corbett went into detail about the activities of Justice Bruce outside the Supreme Court. He made cogent points about the importance of looking at the performance of Justice Bruce overall.

I agree with the matters raised by the Hon. I. Cohen and the Hon. R. S. L. Jones about the need to look to systemic reform of the courts, how parliamentarians have had to deal with this problem and why it is that the courts do not have satisfactory ways of dealing with problems such as this. Their statements were all true; nevertheless, the law provides that a matter such as this should come to this Chamber eventually. From memory, 118 pages of memos and letters from Justice Hunt, the Chief Judge of the Common Law Division, showed that this problem was the subject of considerable attention in the court system.

Eventually this matter was referred to the Conduct Division and this House is dealing with the end point of the process. Similar comments apply to the remarks of the Hon. J. S. Tingle. He asked whether anyone had noticed that the judge was in trouble, and the answer was yes, that lots of people noticed and tried to do something about it. But members of this House now have to deal with the fact that none of those people apparently succeeded. I am a little worried about some of the extreme conservatism exhibited by members such as the Hon. I. Cohen. I am surprised at the amount of talk about the need to safeguard these institutions and about the independence of the judiciary, and similar matters. That is not because I do not believe that the judiciary should be independent. However, over the past few years, many people have had to face the absolute collapse of job security.

I am old enough to remember being advised to join the public service because my job would be safe. From my experience as a member of the board of the University of Western Sydney I am aware that at one stage we all talked about the importance of security of tenure for academics. It was said that that guaranteed the independence of judgment and action for academics. That has gone by the board as well.

I wonder whether part of the problem is that people such as the Hon. I. Cohen who talk conservatively about safeguarding institutions are not living in an age which for almost every other occupation that I can think of, and most professions, has well and truly passed. Is it time that the legal profession and judges started to deal with the fact that the community cannot leave them as the sole relics of a period of security of work, income and lifetime appointment—rights that every other worker in the community has lost?

Yes, the judiciary should be independent, just as the professions should be independent and just as every member of this House will be independent tonight. We will make individual decisions. There is no need to go overboard about this matter which, after a long time, has come to us for a decision. I worry about the emotionalism of some of the debate, which does not address the matter. The remarks of the Hon. I. M. Macdonald were incredibly offensive. He offended the Attorney General and every member who intends to vote for this motion by stating that this judge is a victim in the crusade against delays.

I shall refer briefly to the victims of the delays without going into detail. People I know who have had anything to do with the court system have had to wait for their cases to be heard and their decisions delivered. They have suffered so greatly that I doubt whether Justice Bruce has suffered any more than they have. As a number of members have pointed out—the Hon. A. G. Corbett did so very well—we should think about the repercussions of our decision on the community when Justice Bruce survives this motion tonight, as I am sure he will. Who will accept Justice Bruce after all this debate, hurtful as it is, has thrown so much doubt on his capacity to bring matters to judgment as the judge sitting in judgment on them? What will we do about the people who come before him in the courts? The Leader of the Opposition said it very well in the *Sydney Morning Herald* this morning:

> . . . whatever happened public confidence in the courts would be diminished if he remained on the Bench and warned that people brought before him may seek to get a new judge.
>
> "I do think if Bruce is left on the bench I would be asking him personally to reconsider", he said.

I, too, would like to conclude by asking him to reconsider the situation in which he finds himself.

The Hon. J. F. RYAN [9.32 p.m.]: I intend to vote to remove Justice Bruce. I shall explain my reasons. I regard this speech more of an explanation rather than an attempt to convince my colleagues. I intend to be brief. I will not detail all the evidence I might refer to, to justify my conclusion. I accept that good and cogent reasons will guide other members to a conclusion different from mine. I regret that some members who think differently to me have attempted to introduce an element of personal judgment into this debate. I regard personal issues, such as whether Judge Vincent Bruce is a good and generous man, or that this is a sad case, as immaterial to the decision we will make today. I accept without qualification that Justice Bruce is a decent and generous person who has served the community well.

I accept that it will be a matter of great regret and sadness for the whole community and, of course, Justice Bruce if he is removed today. I reject totally the suggestion made by another speaker that I or others have been influenced by party leaders or some other circumstance of our political futures. I certainly have not been so influenced. I have to confess that when I commenced considering the matter I was of the opinion that Justice Bruce should not be removed. However, on reading material presented in this House I have changed my mind. I was particularly impressed with the reasoning outlined by new Chief Justice Spigelman. I also reject the assertion that because I support the motion I am without compassion. I very much regret the personal impact my conclusion might have on the future of Justice Bruce.

I am sure judges have to make these sorts of difficult decisions every day when they find against people in their courts or impose penalties. Judges have to act without fear or favour, and in deciding this matter so do we. Two issues seem to have a critical bearing on how members have reached their conclusions. One is each individual member's view about the nature of the task in front of us. The other is the benchmark we use to conclude whether Justice Bruce, in the words of the Hon. D. L. Mahoney, AO, QC, was "capable of discharging his judicial duties" and whether he was capable of doing so after the relevant date of 20 February 1998. All parties agree that from 20 February Justice Bruce was not incapacitated by any mental illness. I am not a lawyer and I have had little to do with the law. I

have no point of reference from which I can subjectively or authoritatively assess whether Justice Bruce has been capably discharging his duties.

With great respect, I do not think many others in this House have that expertise either. To my mind we do not have to have it. The relevant benchmark is the judgment made by his Honour's peers on the Judicial Commission. They found by a majority of two to one that since he became well and was no longer affected by his illness he has still not been working to a satisfactory standard. It is unsafe for us as members of Parliament to second-guess that conclusion. We have not heard all the evidence. We do not work in the courts. That judgment is rightly the task of the Judicial Commission. We are required to audit whether the Judicial Commission went through the proper processes in reaching the conclusion, and whether it has made a legal recommendation to this Parliament. It would appear, not only from the views expressed by the Attorney General but also by other courts, that it has done so.

If we attempt to retry this case we are in danger of doing what many members have said is the worst possible outcome: interfering with the independence of the judiciary. The Judicial Officers Act renders the vote of the Parliament in this process a machinery one. We are not a higher court of appeal. If we are to reject the recommendations of the Judicial Commission, we must have extraordinary reasons for doing so. The position of the Parliament is somewhat similar to the position of the Governor in receiving advice from Executive Council. Whether the Governor agrees with the decision is irrelevant. He is only required to decide whether the Executive is making a legal decision, then implement that decision according to convention. Although I have listened carefully to the contributions made today, I do not believe that we have heard anything that meets the standard of extraordinary reasons.

Accordingly, this House is bound to accept the decision of the Judicial Commission. I cannot say it would have been the decision I might have reached had I heard the evidence. It could be said that even though the judge had to sit in court for only a few days during the two-month period he had entered into an agreement to complete his overdue judgments, it appeared to be a very ambitious workload to be achieved in a short time. However, it would appear that the judge did not complain about this task until he had well and truly failed to meet the test. The test, in part, has been audited by other judicial officers and found to be not an inappropriate test. For those reasons I support the motion. Even though it has had painful ramifications for Justice Bruce, we do not have any other choice.

The Hon. Dr B. P. V. PEZZUTTI [9.39 p.m.]: I listened carefully to earlier speakers in this debate, but unfortunately I missed the comments of later speakers as I was researching the matter. This House should take considerable note of the findings of the Judicial Commission. Chief Justice Spigelman found that Justice Bruce had a retained personality defect of procrastination. Parts of the report should be of considerable interest to honourable members because the only part we have seen is the statement, "A personality prone to procrastination".

Dr Alex Gilandas has an extraordinary number of degrees including a PhD, master of science, bachelor of science and is a practising clinical psychologist. He conducted many investigations on Justice Bruce, and the results are contained in the reports of the Judicial Commission, the Conduct Division and the Court of Appeal. He tested orientation, motor skills, visuospatial, language, memory, intelligence and occupational skills. Dr Gilandas conducted also a range of psychological testing and assessment management systems in an endeavour to determine the makeup of the functional part of the brain of Justice Vince Bruce. Unfortunately, in his report Dr Gilandas mentioned a Justice Vince Warren who is a 55-year-old judge. I trust he is talking about the same person.

I do not know whether the name Warren is Justice Bruce's middle name or whether the report refers to the wrong person. However, assuming that the report relates correctly to Justice Vince Bruce, or Justice Vince Warren Bruce, it states that this 55-year-old judge was referred by the Crown Solicitor's office for evaluation tests. The report goes into the clinical history of Justice Bruce and his past health, and draws attention to the injuries he sustained in a car accident: frontal lobe damage, facial injuries and orthopaedic injuries, which have all been discussed in this debate. An MRI scan was taken by Dr Michael Houang of Sydney CT and MR, New South Head Road, Edgecliff. The scan displayed evidence of an area of enlargement of the space containing the spinal fluid—the subarachnoid space—over the right frontal pole of the brain, suggestive of focal atrophy or shrinkage of the brain in that area. The scan showed sustained frontal lobe damage to the right-hand side.

I draw that to the attention of honourable members because that psychological assessment is not inconsistent with such an injury. Honourable members would know that the frontal lobe is considered to be our emotional control centre. In fact, it is described as the home of our personality.

It is responsible for much of our motor function, problem-solving abilities, spontaneity, memory, language, initiation and judgment, amongst other things. Therefore, injury to the right frontal lobe in various proportions can impact on our ability to function. An article I recently downloaded from the Internet points out that the interesting phenomenon of frontal lobe damage is its insignificant impact on traditional IQ testing. That is why the IQ test of Justice Bruce demonstrates that he is still in the ninety-ninth percentile. The article stated:

> Frontal lobe damage seems to have an impact on divergent thinking, or flexibility and problem-solving ability.

I should like to read onto the record part of the psychologist's clinical assessment of Justice Bruce relating to judgment. It stated:

> Judgment and insight also appeared to be generally intact. However, he may be overoptimistic regarding the amount of behavioural change and self-discipline that will be required to change his alleged habits of procrastination. There was no evidence of major psychiatric disorder at the time of assessment.

That means that at the time of testing on 25 March there was no evidence of any depression and this conclusion is common ground. Having conducted a series of tests, the report states that Justice Bruce's intermediate memory is very low, in the eighteenth percentile, whereas most other investigations were in the mid- or high-range percentiles. I do not know how to interpret those investigations, but I believe Justice Bruce's working memory, which is used to retain memory while working, is still in the ninety-ninth percentile. Therefore, his ability to draw on his memory to use it for delivering judgments is not only perfect, it is very high. The report continued:

> The following personality strengths were documented which serve as protective factors:
>
> - low level of anxiety
> - High ambition
> - Self confident/assertive
> - Optimistic outlook
> - Good leadership capabilities
> - Clear sense of identity
> - Outgoing/cares for people
> - Committed to education/learning
> - Good capacity to influence others/controlling.

Those strengths were clearly demonstrated in the performance and stature of Justice Bruce when he appeared before this House. The report continued:

> The following personality weaknesses may be issues of concern:
>
> - At times may appear insensitive of his effect on others
> - Narcissistic with a sense of entitlement
> - Tendency to behave in a cavalier fashion
> - May find teamwork difficult
> - Moderate capacity to handle stress
> - Tendency to be easily distracted with difficulty in concentration for extended periods.

Those issues drew the psychologist to conclude substantially that Justice Bruce has a tendency to put things off, which is made clearer later in the report:

> Justice Bruce is likely to take on new projects enthusiastically but may also lose sustained interest in them. Consequently, there may be difficulty in meeting deadlines.
>
> He has considerable leadership skills and the ability to influence and persuade others. Thus he easily finds himself in leadership roles. However, his profile suggests he may have difficulty in following a consistent operational pattern, with subsequent inefficiency in maintaining momentum in his activities.
>
> . . . He may have problems with personal efficiency and effective time management. He himself concedes—

and this is a telling point at the end of this psychologist's report—

> that there have been periods of time when he has worked 7 days a week with marginal productivity.

That is a frequent comment by judges, the Attorney General and the shadow attorney general. The report concluded:

> In summary, Justice Bruce is an individual with very superior higher cognitive functions. However, memory processes are mediocre with the exception of superior working memory—

which I described earlier—

> His memory discrepancies are most probably due to the head injury sustained in 1988 . . .
>
> It must be emphasised that despite frontal lobe damage sustained in his accident, he was able to continue to be a successful barrister, thus his legal performance was preserved. He also has been prone to random back pain . . .
>
> It has been documented that Justice Bruce has had difficulty in writing judgements during the past few years. Some have been outstanding since 1995. There is medical evidence that he has been suffering from depression for an extended period of that time. This together with back pain and migraines may have contributed to his inefficient productivity.
>
> Fortunately, his depression has been resolving and he is currently no longer clinically depressed. His personality profile also suggests inadequate time management skills. He is also allegedly extremely active in the community, holding office in a wide variety of important committees. This may further contribute to time management problems.
>
> His personality profile is not unlike other highly ambitious professionals who may tend to have narcissistic traits associated with a sense of entitlement. The major problem is a lack of follow-through and completion of projects which requires steady and disciplined capacity for routine work.

The psychologist makes a number of recommendations and says:

> There is also a suggestion of perfectionism which can paradoxically create procrastination. Work that has been outstanding for long periods tends to be placed in the too hard basket in favour of new work.

I searched for that document because I could not establish where the words "procrastination" or "a tendency to procrastination" came from. I do not know, although the psychologist's report indicates that it may well have been following the 1988 accident. Two things stood out in the speech made by Justice Bruce. His speech refers to some of the traits I have just described. He began his speech by stating:

> I am here because I am proud.

In that speech he talks about himself and the impact that all this is having on him. He does not concentrate on much else, except briefly on one occasion. He said:

> There is criticism, and justifiable criticism of the delays by me in delivering some judgments which, when I got behind, I was unable to deal with because of the medical condition from which I have suffered.

He then refers to the time when he was depressed. On only two occasions does he come close to recognising the impact of his actions on others. He said:

> I did not say before the Judicial Commission, I do not say now and I have never said, that I delivered all of my judgments within proper times. Litigants were forced to wait much too long in a number of cases and I have told you earlier why that was so in my particular case.

That was as close as Justice Bruce got to an apology on that occasion. Further, he said:

> Judges have a duty to do right by those before them and by the community at large. I have tried to do that and in some respects I have failed and for that I apologise.

That is not a full-scale apology for a major dislocation to the lives of a large number of people. Even when he is no longer depressed he lacks understanding and does not take on board the impact of his actions on others. That is not evident in his long 50-minute speech which was delivered with confidence and certainty.

Furthermore, Justice Bruce made a comment about himself, which I find a bit extraordinary. He used the words "before becoming an expert on depression", which state to every honourable member that he is an expert on depression. Justice Bruce might be a lot of things, but I would not hold him out to be an expert on depression, although he presented himself in that way and went to the trouble to try to explain it to us. He also said:

> On the basis of the material before the Conduct Division one of Australia's most highly regarded and respected jurists, the former President of the Court of Appeal, concluded that it was not possible for Parliament to even consider the possibility of removing me from office as a justice of the Supreme Court of New South Wales.

What an extraordinarily arrogant statement from a person who has no insight of the predicament in which he has placed himself. I find that extraordinary.

The Hon. D. J. Gay: Are you an expert on depression?

The Hon. Dr B. P. V. PEZZUTTI: No, I am not saying that I am, but I am saying that Justice Bruce clearly is not an expert. He said he is cured of his depression, yet the psychiatric reports do not say anything like that. The psychiatric reports that have been tendered to the courts by Dr Dent state:

> My view is that if we are able to continue the appropriate counselling, the antidepresssant medication and continue to discuss planning and organisation in the very effective way that has taken place since treatment and return to duties, then the future will be one of a continued good expectation and performance.
>
> I regret to say again, however, that if there is any public airing of these matters then I would be gravely concerned about the prospect for a potential very negative outcome after such hard won recovery.

Justice Bruce is far from being cured. His psychiatric report states that he is still brittle on this matter, but he keeps using the words "I am cured." I hope that even Justice Bruce recognises he is cured as long as he continues the medication and supportive processes undertaken by Dr Malcolm Dent. We have to remember that Dr Malcolm Dent has been treating Justice Bruce from 1991. Only in 1997, when the chips were down, did he recognise and treat in an aggressive fashion what was obviously major clinical depression.

The Hon. R. S. L. Jones: Do you think it was?

The Hon. Dr B. P. V. PEZZUTTI: I do not know whether it was. This was the evidence given to the Judicial Commission, which is common ground for Justice Bruce and his advisers, the Conduct Division of the Judicial Commission of New South Wales and the Court of Appeal. I have no way of gainsaying that, nor do I wish to. Experts

in the field have so advised. It has been accepted by Justice Bruce and his advisers. I have some other problems with the evidence by given by Justice Bruce. However, I do not think it is worthwhile going into those matters at this late hour.

Reverend the Hon. F. J. Nile: What about Justice Mahoney?

The Hon. Dr B. P. V. PEZZUTTI: How is it that Justice Bruce relies upon Justice Mahoney and ignores the other two serving justices in New South Wales? He relies upon the views of a retired judge.

The Hon. R. T. M. Bull: And the Court of Appeal.

The Hon. Dr B. P. V. PEZZUTTI: Justice Mahoney is at variance with the findings of the Chief Justice of New South Wales and the entire Court of Appeal, with the exception of Justice Priestley. Justice Mahoney is a retired judge, not that that downplays his position in this place. Justice Mahoney simply holds a minority opinion which is at variance with the opinions of other judges. His views were tested further and found not to be substantially incorrect. I am not a lawyer. The two senior legal people in this place—the Attorney General and the shadow attorney general—have gone through the legal process of those judgments and the impact that they have had.

The Hon. Virginia Chadwick: It did not deal with the substantive fact.

The Hon. Dr B. P. V. PEZZUTTI: Justice Spigelman does. I refer the Hon. Virginia Chadwick to the contributions of the Leader of the Opposition and the Attorney General which set out succinctly the decision of the Chief Justice and the decision of the Court of Appeal. The problem we have in regard to this issue is that we do not want to remove someone who has a contribution to make. On the other hand, we want to be sure that a litigant who appears before a judge in New South Wales will know that the judge has the capacity to hear the matter and give judgment, and to confirm that judgment in writing so that the judgment can be handed down for the parties to read. There will be winners and losers, but the judgment can be appealed against. Some judgments take time, I accept that, and no benchmarks have been published.

Reverend the Hon. F. J. Nile: I have had three judgments that have taken three years.

The Hon. Dr B. P. V. PEZZUTTI: Reverend the Hon. F. J. Nile should complain. What worries me about this issue is that no matter what we do this evening, it is perfectly obvious that the Chief Justice in this State has lost confidence in Justice Bruce, the Attorney General has lost confidence in Justice Bruce and the shadow attorney general has lost confidence in him. Where does Justice Bruce go from here? Where does this House go, if we cannot take the advice of those who should know? Justice Bruce's peers have no axe to grind. This is the first occasion on which this has happened.

Reverend the Hon. F. J. Nile: The House will make the decision, not the Attorney General.

The Hon. Dr B. P. V. PEZZUTTI: I am aware of that. I trust that honourable members have taken the time and trouble, as I and many others have done, to collect the material and go through it before making a contribution to the debate. I would have made a more lengthy speech, but for the contributions of the Attorney General and the Leader of the Opposition which picked up most of the topics that I had selected, although I would not have been so erudite. Every member who has spoken to this debate and who will make a decision tonight must realise that they have to make a decision, not merely in accordance with their conscience, how they feel on the day or how they feel about the individual, Justice Bruce, but based on how they feel about the conduct of justice in New South Wales and the confidence that people can place in the conduct of justice in this State.

I do not mean to sound like a doctor. I have simply read onto the record the things that I found interesting about the psychological report that accompanied the judgment of the Supreme Court and the Judicial Commission about the issue of procrastination. I have put on the record, together with some other comments, the judgment and the statements by the psychologist, without garnishment, to ensure that honourable members will be able to decide whether the judge suffers from depression or a trait that will be ongoing.

The Hon. C. J. S. LYNN [10.03 p.m.]: I refer honourable members to the contribution of the Hon. I. M. Macdonald, who said that many eminent judges have experienced long delays in delivering their judgments in the court system over the years. He went on to say that delays are embedded in the system and that for the first time in the 174-year history of this Chamber we are proposing to tell a judge, Justice Bruce, that he is the one who has to

go. I thought the Hon. I. M. Macdonald summed up the situation succinctly. I believe it is unfair to penalise a particular person. My view is that something is wrong with a system that allows such delays in delivering judgments.

The system is flawed because of the great personal and economic damage it causes citizens, the litigants who are the victims of such a system. I have been a victim of delayed justice and I know what it feels like to be in that situation, but I do not blame the judge that heard the case. My complaint was always about the system. A number of speakers in this debate have raised many legal arguments; the Hon. Dr B. P. V. Pezzutti has put forward the medical arguments; and I suppose we are presenting the case from the point of view of the layperson. As one such person I am always impressed by any Australian who comes from a battler-type background and achieves great personal success in life.

I believe that Justice Bruce has achieved that success as a scholar, an athlete, a barrister, a judge and a family man. He appeared to have the world at his feet until he was involved in a tragic car accident in 1988. I can appreciate the medical argument put forward by the Hon. Dr B. P. V. Pezzutti, but little is known about mental illness. I finished up at the bottom of a gorge about two years ago, and was unconscious for some time. I suffered from vertigo for about four months, and from concussion. I know that during that time I was being treated by a very good doctor, undergoing CAT scans and other procedures.

I found that every day I needed an extra four or five hours sleep than I normally do, more than I need now. Concentration was difficult, physical fitness was difficult to maintain and so forth. Slowly that condition corrected itself. I saw on television photographs of the car accident in which Justice Bruce was involved, and tonight we have had a summary of some of the evidence about the frontal lobe damage that he suffered. His medical condition would have been the cause of his mental illness and subsequent depression, which led to procrastination. My view is that a person suffering from that sort of condition would fall behind with work involving very complex cases. Where would one go for help initially? If the system does not have a managerial check and balance system incorporated into it, where would one go for help?

A judge would find it difficult to come to terms with and admit a weakness. Some people would help and some would take advantage of it. He would become caught in a cycle of losing control, getting stressed and falling into depression. There are many symptoms of the state that Justice Bruce was in when he was refusing to confront it. He was not opening his letters or taking advice. I do not think he knew where to go for help. The system is not such that it was able to detect the problem and help him at that stage. I believe that Justice Bruce showed great courage to eventually come to terms with his illness. I believe he would have been humbled by admitting to his colleagues that he was not up to the task.

It was sad when he spoke about the humiliation of having to go to his family—who, I am sure, regarded him as the Rock of Gilbraltar, so to speak. He had to tell them that he was having difficulty coping. Justice Bruce has had intense media pressure placed upon him, together with the stress of having to address this House to plead for his continued employment; and the possibility that he may have to address the Legislative Assembly at some future time. We have to pass judgment on Justice Bruce's performance. Are we to judge him on his past performance? If we are, we would be using the period when he was suffering from mental illness to measure his performance and make that judgment.

If the House finds that his performance was not up to the standard required of a judge in his position at that time—and there is no doubt that that is so—then we will have to move to sack him. In doing so, we will be punishing him for effectively having a mental illness. He will be punished by the public humiliation that he and his family will suffer. His chosen career will be destroyed and he will suffer a severe financial penalty. I appreciate that many of the litigants who appeared before the judge have suffered similar damage, but the judicial system, rather than the judge, must accept a greater weighting of the blame.

This House is not in the business of doling out punishment. We are in the business of protecting the citizens of this State. So if, as some honourable members have implied, we are to judge him on his performance since his mental condition has been cured through medication, then it seems that he is back on track and meeting the required performance criteria. I believe that the performance of Justice Bruce should continue to be monitored. He should be counselled on a regular basis, and his support needs should be carefully assessed and provided to him without question.

If we take that action, this House will have fulfilled its role of protecting the citizens of the State by ensuring that one of our brilliant legal minds is available to serve our citizens. If Justice

Bruce is unable to meet the criteria of effective legal performance despite being assisted by medication, the House is able to revisit the issue. In the meantime we should give Justice Bruce the benefit of the doubt. I do not support the motion.

The Hon. JENNIFER GARDINER [10.11 p.m.]: My comments will be brief at this hour. Earlier in the debate a number of comments were made about members coming under pressure from various sources. I am pleased to state that I am a member of the National Party, because when the National Party gives its members a free vote, we have a free vote. Like other members, I have seriously considered whether to banish Justice Bruce from the bench of the Supreme Court of New South Wales. I have listened to advocates for both sides of the debate within the House and beyond. There may be some problems with the administration of justice in New South Wales, but I do not believe that is in any way limited to a particular judge. In saying that, I am not casting any aspersions upon other members of the judiciary.

The Attorney General referred in his speech to an experiment. I do not wish to take that word out of context, but I believe that this proposal to dismiss a judge is an experiment. It is not an appropriate moment in the history of the Parliament of New South Wales to be conducting such an experiment. Like some other members, I do not have a problem with banishing a judge on the grounds of proven corruption or insanity. We are dealing here with a grey area—Justice Bruce's recent capacity or incapacity. Yet the penalty that is suggested by the motion before the House is black or white, namely, dismissal.

I respect the case put by the Attorney General, who has done his duty by triggering the debate in this House. But I am not convinced by the contributions to the debate. As time has gone by, I have become even more convinced that my original thoughts about this matter were correct, namely, that the judge should not be dismissed in this way. I have sympathy with affected litigants, and I have sympathy with litigants who could be adversely affected by the dismissal of the judge. Like others in the community, I am also concerned about the lack of benchmarking that attaches to the New South Wales judiciary as distinct from some other jurisdiction. I refer to benchmarking as to acceptable or unacceptable times for delivery of judgments.

Whatever the determination of the House, the Government, the Parliament and the judiciary need to address questions of process which have been thrown up unexpectedly by the report of the Judicial Commission. To conclude on what I consider to be the main problem, there is doubt in my mind as to the judge's capacity or incapacity. Given the black and white sanction that is available to the House, it is inappropriate for the House to impose a sanction of dismissal. For that reason I cannot support the motion.

The Hon. D. F. MOPPETT [10.15 p.m.]: If there is one matter on which we are united in our views in this debate it is the extreme gravity of the motion. From that point our views have diverged. If we were merely talking about the rehabilitation of an individual whose performance of his duties, no matter how high his office, had lapsed for whatever reason, we could perhaps reach a unanimous decision. But the difficulty is that the confidence of the community in the judicial system is equally on trial. A number of speakers have referred to the importance of the independence of our judiciary, which is buttressed in our society by the doctrine of the separation of powers.

That has been invoked on both sides of the argument as perhaps being tendentious towards either of the two conclusions. A number of speakers, who canvassed the subject more exhaustively than I intend to, have pointed out that the doctrine of the separation of powers was established some hundreds of years ago, in approximately 1700, to make sure that judges were not removed capriciously from their office.

The Hon. M. R. Egan: It is the doctrine of the independence of the judiciary. The separation of powers is a foreign concept to a system that operates under the concept of responsible government.

The Hon. D. F. MOPPETT: I am grateful to the Leader of the House for those apposite remarks. Setting aside the separation of powers doctrine, the independence of the judiciary is germane to this argument. Some members believe that it is up to us to step into the arena and make an adjudication about the functions of a judge, which in some ways treads across the doctrine of separation of powers. However, I do not want to canvass that as it is not the gravamen of my argument.

Importantly, and equally in reverse, we should be very careful that the actions of some members in trying to sustain a judge who has been impugned are not capricious. I acknowledge that all members are wrestling with their consciences and with deep emotional responses to some of the issues. Many members have been swayed by contact with family members or others who have been involved with mental illness and other incapacities and believe

they should draw those examples into this argument. I am not persuaded that is appropriate, because the analogy of us sitting as a jury is an inappropriate one.

Reverend the Hon. F. J. Nile: The Attorney General said we are a jury.

The Hon. D. F. MOPPETT: In the context in which he expressed it I do not take exception to that. In a more careful study of what he was saying, our role is much more like a court of appeal.

Reverend the Hon. F. J. Nile: He said it.

The Hon. D. F. MOPPETT: I acknowledge that the Attorney General may have said it, but I do not have to keep acknowledging what Reverend the Hon. F. J. Nile says. I am about to address that.

Reverend the Hon. F. J. Nile: He said it twice.

The Hon. D. F. MOPPETT: Whether he said it once, twice, or one hundred times, the fact is that a jury would be presented with all the evidence so that it could weigh up the strengths and weaknesses of the case. That is not the situation we are in. It is not a situation that any jury would accept. We are not judges in the same way as members of a jury are judges. His peers have judged him. This House is a court of appeal. That is the analogy I am making.

Reverend the Hon. F. J. Nile: Two out of three.

The Hon. D. F. MOPPETT: I will refer to that in a moment. My contention is that the assessment of the evidence was properly made by the Judicial Commission. The Judicial Commission was set up so that on this occasion and on any future occasions—God forbid it ever happens again—a mechanism is in place so that members do not simply indulge their personal opinions and prejudices. A mechanism has been set up so the evidence can be evaluated at the highest level, as would be expected in any legal proceedings, but not in a political debating chamber.

Reverend the Hon. F. J. Nile keeps repeating that the decision of the Judicial Commission was not unanimous. However, it was a majority decision. He never acknowledges that; he keeps referring to the minority decision. The conclusions in that report are couched in carefully chosen terms, which Justice Vince Bruce described as merely the trigger for this debate. I reject that proposal, and I understand the Attorney General did also. It is not only the trigger, it is the evidence. We have to look at the body of evidence to ascertain if it was properly assessed and whether the conclusion the judges reached was a decision one would expect to be reached by a group of rational and unbiased people sitting in a judicial capacity, not subject to the pressures and emotions that are brought to bear on members of Parliament.

Reverend the Hon. F. J. Nile has continually referred to the minority decision of former Justice Mahoney. I took the trouble to read all the reports right from the start. I professed to my colleagues that I was an acquaintance, and no more than that, of Justice Bruce. I am a member of the Asthma Foundation and I have made his acquaintance. Like everyone else, I consider him to be a congenial man and in every other aspect of his life he is an admirable fellow. However, that did not influence me when I read this significant report.

I read the majority report and I thought it was very persuasive. I then thought I owed it to Justice Bruce and to the people I represent to read the opinion of former Justice Mahoney. I found his reasoning to be narrow, legalistic and unconvincing compared to that in the majority report. I believe any fair-minded person who read all the reports dispassionately and with an open mind would agree with me that former Justice Mahoney is entitled to his opinion, but it is not persuasive in the great scope of this debate.

I was shocked when some members attempted to justify to the House the decision they have announced—that is, that they intend to vote against this motion—on the basis that the behaviour of Justice Bruce as set out in this report is not abnormal. What evidence do they have? They only have their opinion that his behaviour is not abnormal, or what someone told them, or what some solicitor wrote to them or what some barrister said. I listened carefully and charitably to what they said and I hope the House will listen to me carefully.

The Hon. B. H. Vaughan: You are shouting.

The Hon. D. F. MOPPETT: I have to, as there is so much interjection. The House has listened to most of the other members with respect, but it seems that I have somehow or other occasioned an improper and unjustified response. I will tone my voice down but I hope honourable members will

listen to me.

The Hon. Franca Arena: We are listening to you, Doug.

The Hon. D. F. MOPPETT: It has had no effect so I will try to make myself heard in the best way I can. Some members, including those who keep interjecting, allege that the behaviour of Justice Bruce was not abnormal. They could not indicate to the House that any action had been taken to overcome the incredible state of affairs that in the State of New South Wales one can expect a three-year delay in the delivery of a judgment. I said a moment ago that I listened charitably and tried to understand what honourable members were saying.

The conclusion I reached was that they were saying some proceedings took up to three years, that is, the full proceedings. That is to say, some proceedings took three years from the time of listing to the conclusion of the hearing, but I did not hear anyone say in unequivocal terms that they were aware of reserved judgments taking three years to deliver. No-one said that. It was a little bit of legerdemain, a little bit of foolery, to claim that other judges delayed proceedings for three years.

I accept that court delays in New South Wales have been unacceptable, and justice delayed is justice denied. However, the system is not on trial. There is nothing we can do about that in this debate. We can do something about a case which has been judicially investigated and about which there is a clear recommendation—not just a trigger but a clear recommendation—as to what should be done.

Another speaker in the debate recklessly canvassed a case that is still before the Supreme Court of New South Wales. He suggested that some members of this House have been influenced by litigants in that case who want to have something done about the judge who is hearing the case so they may get some advantage out of a rehearing. I reject that totally and I am completely unaware of any overtures being made by those litigants that we should form our opinion on the basis of what might be the likely outcome of that case if Justice Bruce was unable to continue the hearing. It is disgraceful that that suggestion was made without any evidence.

The Hon. R. S. L. Jones: The facts will reveal themselves.

The Hon. D. F. MOPPETT: The Hon. R. S. L. Jones is trying to defend the indefensible by saying that the facts will emerge at some stage. He was unable to produce a scintilla of evidence that what he said was correct. It was just one of those fatuous remarks that he often makes to dress up his specious remarks. The only people capable of fairly assessing what a reasonable workload for judges might be are the judges themselves. It is an extraordinary calling. Judges do not go to the Industrial Commission and work out hours of work and penalty rates and that sort of thing. The role of our judges in society is at a different level. The judges are the only people who could discuss the issue that was raised by the Hon. J. S. Tingle. Honourable members know that the quality of mercy is not strained; in the same way, the quality of judgments is not judiciable. If judges are to be independent one cannot have a debate about the quality of their judgments.

The Hon. B. H. Vaughan: What are we doing here?

The Hon. D. F. MOPPETT: We are debating the inordinate delay in the delivery of judgments, not the quality of those judgments. At least, that is what I am doing, because I believe that is the substance of the motion. The thinly veiled reference to the performance of other judges which was made by another speaker in the debate implied that other judges were equally culpable. The member was not prepared to name them, and it was reprehensible and totally mischievous and misleading to make that implication in this debate.

I enjoin my colleagues to restrain themselves a little. We are reaching the end of the debate and the matters I am raising are as serious as any raised by other members. The range or quality of adjectives that I use may produce levity, but because of the seriousness of the subject I should be heard with a great deal more attention. I finish with an exhortation from Cicero: The good of the people is the chief law. What ultimately we have to weigh up tonight is: What is the most important thing for the people of New South Wales? I greatly regret that we cannot divert from that to totally consider the rehabilitation of Justice Bruce. We must concentrate on what is for the good of the people.

If any member still has not made up his or her mind I make a final appeal: consider the situation we will be confronted with in the morning after this debate is over. It will be known publicly that a majority decision—not a unanimous decision—of the Judicial Commission, in layman's language, has condemned the conduct of Justice Bruce and found that he still suffers from incapacity.

The matter has been heard in the Court of Appeal and, within the restrictions of the appeal

process, Chief Justice Spigelman and his fellow judges have ruled that the findings of the Judicial Commission were arrived at after following the due processes. They could find no fault in the processes. At one time the position of Attorney General was second only to that of Chief Justice of New South Wales in that as the first law officer of the State he had a responsibility above that of the parliamentary office. The Attorney General spoke for nearly an hour on the motion. There was not one saving condition in what he said.

The Hon. Franca Arena: He was biased.

The Hon. D. F. MOPPETT: With respect to the Hon. Franca Arena, it was a very dispassionate and carefully argued case. The Attorney General was followed by the former Attorney General, the shadow attorney general, who did not cavil with one point that the Attorney General made. Yet tomorrow morning the public may find that Justice Bruce will remain a judge of the Supreme Court. What are they to make of that? Almost like a burning hulk at the end of a naval engagement, he will be unable to proceed: stuck there because members of this House, for sentimental or whatever reasons—

Reverend the Hon. F. J. Nile: Justice.

The Hon. D. F. MOPPETT: Whatever reasons are claimed, opponents of the motion have set themselves against the people who are qualified to deliver justice in this land, who have the capacity to deliver justice. Reverend the Hon. F. J. Nile has given his opinion and I respect it. But at the end of the day confidence in the judicial system will suffer immensely if this House does not pass the motion. It will be shot to pieces. It will be held that a judge can never be brought to account for such dilatory behaviour. Public confidence in the exalted position of judges will be lost for a considerable time.

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): Order! I suggest that members who are yet to speak in the debate should not canvass matters that have already been dealt with.

The Hon. Dr B. P. V. Pezzutti: I think that is a matter for members of the House.

The DEPUTY-PRESIDENT: Order! I note that the Hon. Dr B. P. V. Pezzutti is not canvassing my ruling.

The Hon. JANELLE SAFFIN [10.34 p.m.]: I note your comments, Mr Deputy-President. I listened carefully to the debate today, including the speech of the Hon. D. F. Moppett. With respect, I have to say that the Judicial Commission's findings do not compel us to agree with any view it came to. The power rests with us to make a decision on the evidence before us. We have to make a decision that ultimately ensures that the public maintains confidence in the judicial system. Our responsibility is indeed grave, and every member understands that.

Recently the judicial system has come under close scrutiny in relation to its relevancy to the community, specifically through the community's perceived view that courts impose sentences which are too lenient. Over the past decade there has been a shift in the community's mood. A sizeable proportion of the community wants a say in matters to do with the judiciary and sentencing. To some degree the mystique that once surrounded the judiciary has dissipated. So I question whether public confidence in the judicial system will be shattered if the House decides tonight to reject the motion. The Attorney said that he moved the motion out of public duty, and that is indeed the position: the Attorney General has a public duty beyond his, and our, parliamentary duty—not that our duty as parliamentarians is a minor one in this matter.

I commend the Attorney for the manner in which he presented the case. He did everything with dignity and probity. His speech in support of the motion to dismiss the judge was certainly erudite and persuasive—but not, I submit, compelling. I extend the same comments to the disposition and speech of the Leader of the Opposition and shadow attorney general. Both honourable members are colleagues for whom I have great respect and admiration, but I will not support the motion. I also disagree with today's editorial in the *Daily Telegraph* on this matter.

The Hon. B. H. Vaughan: And the Herald editorial, too.

The Hon. JANELLE SAFFIN: I did not read the Herald. I have chosen to ignore their advice. We have canvassed the issue of incapacity. Justice Priestley said in the matter of Bruce and others that the Conduct Division's report was based on the opinion that the matters referred to in it could justify parliamentary consideration of removal; and the very difficult decision for each House is whether the material before us, including but not necessarily limited to the Conduct Division's report, leaves them to decide that they will address the Governor to seek the removal of Justice Bruce on the ground of his incapacity that the House itself has judged to be proved.

The Attorney said that it has been suggested in

some quarters that the matter be adjourned for 12 months. He found this unacceptable. Prima facie it is an attractive proposition, but I agree with the Attorney: it would resolve nothing and would severely compromise the judge, the judiciary and any party before the judge. The issue facing us is incapacity for the future. The majority report of the Conduct Division of the Judicial Commission implied, whilst not explicitly stating, that the judge was a procrastinator and that this habit or trait of procrastination was the cause of his incapacity.

So what is incapacity and is it proved? The judgment of, I think, Chief Justice Spigelman said that procrastination of an ingrained nature could constitute incapacity. I accept that, but that was not the issue around which the case revolved. In the evidence submitted to me the finding of ingrained procrastination is not proven. What is proven is that the judge did suffer depression. The shadow attorney said that the judge was relieved of hearing cases for 10 weeks and two days but even then did not deliver his outstanding judgments. My comment on that is that a depressed person finds it nearly impossible to take action.

In another life about 27 years ago I trained for a period as a psychiatric nurse. The first thing I learnt when I began that training—and it was by rote—was a simple definition of depression: the belief that to take action was futile. That is so true. When someone is in a very depressed state—and I do not profess to have expert knowledge on this—it becomes very difficult to take action. Depression can strike any one of us, and in fact it does strike one in five Australians at some time. It is not always difficult for a person suffering from depression to take action in other areas of his or her life, but it is difficult to take action in what I call the core areas of life and family.

Some pressures have come to bear on us as members of this House—I suppose they are lobbying pressures—although we have a free vote. Many people have written to us. I have received pleas both ways; all of us have. I have had pleas from people who say, particularly because of business decisions, that they want the judge to be dismissed. I have had pleas from people who have been affected personally, particularly women, who say that they do not want the judge to be removed. The other day in my bank in Phillip Street a teller said to me, "Don't sack that judge, it would be so unfair." There has been a great deal of comment about this issue. Although some of those representations are persuasive, particularly the personal ones, I do not base my decision on them. We cannot base our decision on them.

The judge was unwell and he could not perform. Evidence demonstrates that he is now well, and to some degree the judge has demonstrated that he has some insight into his illness, which is now controlled. He said in this Chamber that he accepted that the criticisms against him were warranted. I believe that it is very difficult for men who are suffering from depression to come to terms with that. The question I pose in conclusion is: Do I entertain doubts? Of course I entertain doubts. But, on the balance of probabilities I have to say that the material before me leads me to the view that the judge's future incapacity is not proved. I will vote against the motion.

The Hon. B. H. VAUGHAN [10.42 p.m.]: This House is considering the Judicial Commission report on Justice Vince Bruce. As members of Parliament we are in an awful situation, but I have never been more proud of this Chamber, the upper House, the Legislative Council, the State senate, than I am today. This debate began with the Attorney General making a most powerful and fair speech about Justice Bruce. He was followed by the shadow attorney general, whose speech in my view was not up to the standard of the Attorney's speech, but which nevertheless was fair—although I was disappointed that he took the stand he did. When saying that I think it is an awful situation we find ourselves in, one thing that this debate will do, apart from proving the importance of a Chamber such as this, is make us think about a better method of removing a judge from the Supreme Court or any other State court.

Recently I read two reports on this matter by Babette Smith, the daughter of a very famous former Supreme Court judge, Macfarlan. In each report Babette Smith expressed her view that the problem was one of management. The problem is, in effect, that every judge is an island. Judicial independence means that a judge ought not be influenced by the judge in the chambers next door. Judges are independent—they can reject a direction or a request to go on circuit—and it is essential to have an independent judiciary. Most of what I would like to have said has been said; it was said, for example, most competently by my dear friend the Hon. I. M. Macdonald. His speech went on a little too long, but he outlined the essentials of what we are about.

This is not a question of misbehaviour; nobody has suggested that the judge misbehaved. We have

to decide on the capacity or otherwise of the judge to fulfil his role. Everything that has to be said about the judge's capacity has been said, except one thing. I am fascinated, even frightened, by the suggestion—indeed, the obiter dictum—of a judge of the Court of Appeal that procrastination amounts to incapacity. There would not be a member in this House who has not procrastinated. So what I am asking is: How much procrastination amounts to incapacity? Is it a little procrastination or a lot of procrastination? When we can make that decision we will know where we stand with Justice Bruce. I for one am horrified about the possibility, remote though it might be, that this House will vote to remove this judge. Now is not the right time to suggest an alternative, but I have a couple of alternatives. This has all been said before and members have debated this issue long enough. I will not vote for Justice Bruce's removal and I do not consider that this House should remove him.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [10.46 p.m.], in reply: It is indisputable that the timely disposition of cases, the expeditious delivery of judgments, is an indispensable attribute of a judge. If a judge is not capable of delivering judgments in a timely way, the judge is suffering from an incapacity. That ought to be common ground. The question here is one of fact, one of consideration of a particular case. But it ought to be predicated upon the proposition that the community cannot tolerate judges who cannot produce timely or expeditious judgments.

Reverend the Hon. F. J. Nile: You can't sack all the judges!

The Hon. J. W. SHAW: If there are judges who are not producing timely judgments, then let the litigants complain to the Judicial Commission and let them be dealt with. That is the whole idea of the Judicial Commission: for judges' peers to deal with complaints against judges. The argument that other judges may have delayed is illogical. If other judges have delayed, they should be dealt with by the Judicial Commission according to the due process of law and, if necessary, sadly, removed by this Parliament. I hope that will not happen but if it does, so be it. Some honourable members have suggested that it is somehow incongruous or contrary to the idea of the separation of powers that this Parliament should assess and judge a judge.

The Act of Settlement 1701 protected the independence of judges by providing that a judge could be dismissed only for proven misconduct or incapacity by an address of both Houses of Parliament. That was the position in the United Kingdom and the position adopted both Federally and in this State. That was the position entrenched in our Constitution by the great and admirable referendum of 1995, which was sponsored by the former Government. Until then, judges did not have that entrenched protection. A necessary concomitant of the idea of judicial independence is that judges can be dismissed. Let us take an extreme case in which a judge is clearly and indisputably incapable of performing his function. In that situation, surely everyone would agree that there ought to be some method of dismissal. Our Constitution has determined over the centuries that the method is dismissal by an address of both Houses of Parliament.

I suppose from first principles one could argue that maybe some different method ought to have been adopted. However, that is the method we have historically adopted and have entrenched in the Constitution by democratic referendum in New South Wales. Surely members of this House must accept as a basic proposition that that is the way we ought to deal with this situation. In a sense it is too late to start from first principles and to say that members of Parliament should not have a decisive role in deciding whether a judge is either incapable or guilty of proven misbehaviour.

Some members have emphasised—and one understands this entirely—the depression suffered by the judge and have echoed the claims of the judge that we would be sending out the wrong message about depression if we were to dismiss him. I would contest that proposition. Depression is not the basis upon which we make our decision. Justice Bruce is either capable or incapable of being a judge. It would not be a negative message or adverse decision about depression. It would simply mean that a person is not capable of effectively and competently performing the functions of a judge of the Supreme Court of New South Wales. He either is or is not. That is the question that members have to address.

Let us not be deflected by emotive arguments about not adversely finding against a person who has apparently suffered some psychological illness. Members have emphasised Justice Mahoney's dissenting opinion but we ought to give due and adequate weight to the majority decision. Parliament has set up quite an elaborate system of dealing with judicial officers with the Judicial Commission. We have to give great weight to the product of that

adjudicative process. If the Judicial Commission gives us a view about the capacity or incapacity of a judge, it would be a farce if we did not give that very serious consideration indeed, although acknowledging that it is essentially a matter for the House to determine.

This is not a problem of the system but a problem with an individual judge. I do not believe that the criticism, express or implied, of the former Chief Justice or of the Chief Judge of the Common Law Division, Justice Hunt, is in any way justified. Justice Gleeson and Justice Hunt did everything reasonably open to them to facilitate the production of judgments in this particular case. I do not think I need to go into any detail about this. We are dealing with people of such eminence and status that they are really not susceptible to any legitimate criticism.

I am perhaps oversensitive and react emotionally to the veiled criticism of these supervisory judges, Justice Gleeson and Justice Hunt. They are brilliant judicial officers, who have done everything that is humanly possible to provide justice for litigants in that court. Members of this House know that I have expressly supported the appointment of Justice Gleeson as Chief Justice of Australia. It is a fine appointment by the Federal Government and I have a difficulty with the implied criticism of his Honour in this regard. It is clear that the Chief Justice and the Chief Judge at Common Law cannot direct individual judges of the court. They cannot prescribe when they produce judgments but they can counsel, encourage, facilitate and assist, and I believe they have done that.

The Hon. D. J. Gay: It is a systemic problem.

The Hon. J. W. SHAW: I do not believe the problem is systemic, although an ongoing dialogue with the heads of jurisdiction is appropriate. There are other judgments which have not been timely and have been unduly delayed. I accept that. Let the litigants complain to the Judicial Commission; let that be dealt with in accordance with the law and due procedure. However, the fact that there may have been other judgments unduly delayed does not excuse the particular case with which we are dealing. These matters have been ventilated well on both sides of the argument. Members of this House have contributed constructively to the debate and I believe that the House is in a position to determine this matter tonight. I do not know which way the House will pronounce on this topic, but I believe the arguments have been adequately ventilated and that the House should determine objectively and in consideration of the evidence about the position of this particular judge.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 16

Mr Bull	Mr Moppett
Mr Corbett	Dr Pezzutti
Mr Dyer	Mr Ryan
Mr Egan	Mr Samios
Mrs Forsythe	Mr Shaw
Mr Hannaford	
Mr Jobling	*Tellers,*
Mr Johnson	Ms Burnswoods
Mr Kelly	Mrs Isaksen

Noes, 24

Mrs Arena	Mr Manson
Dr Burgmann	Mrs Nile
Mrs Chadwick	Rev. Nile
Mr Cohen	Mr Obeid
Mr Gallacher	Mr Primrose
Miss Gardiner	Ms Saffin
Mr Gay	Mr Rowland Smith
Dr Goldsmith	Mr Tingle
Mr Jones	Mr Vaughan
Mr Kaldis	
Mr Kersten	*Tellers,*
Mr Lynn	Mrs Sham-Ho
Mr Macdonald	Ms Tebbutt

Question so resolved in the negative.

Motion negatived.

SPECIAL ADJOURNMENT

Motion by the Hon. R. D. Dyer agreed to:

That this House at its rising today do adjourn until Friday, 26 June 1998, at 2.30 p.m.

ADJOURNMENT

The Hon. R. D. DYER (Minister for Public Works and Services) [11.05 p.m.]: I move:

That this House do now adjourn.

CONDUCT OF JUSTICE VINCE BRUCE

The Hon. J. P. HANNAFORD (Leader of the Opposition) [11.05 p.m.]: The House has defeated the motion seeking removal of Justice Bruce from office. However, it is incumbent upon the

Government to bring the motion before the lower House. Honourable members of this House make up only one-third of the total number of elected representatives of New South Wales. The lower House should consider whether public confidence will be sustained if Justice Bruce's appointment is continued. If members of the lower House express a view contrary to the view expressed by the Legislative Council, the Government should return the motion to this House for further consideration.

Public confidence in the judiciary is of great significance. I have heard the views expressed by honourable members of this House, but I believe that the matter should be tested and considered by the lower House. The Legislative Assembly is able, by its own resolution, to ask this House to rescind the motion already carried in this Chamber and to reconsider the matter further. I indicated that I do have a personal view about Justice Bruce. However, if the matter is not to be determined by the Parliament it should be determined by Justice Bruce himself in the interest of public confidence in the judiciary.

HOXTON PARK TO PARRAMATTA PUBLIC TRANSPORT CORRIDOR

The Hon. R. S. L. JONES [11.08 p.m.]: A memorandum of advice from a senior government official to his Minister has recently been brought to my attention. The advice refers to a report prepared as a pre-feasibility study, or report, on the Hoxton Park to Parramatta public transport corridor by consultants Rust PPK, now known as PPK Environment and Infrastructure Pty Ltd. The memorandum serves to demonstrate two important facts. First, platitudes cannot replace facts; and, second, governments which fail to expose projects to proper public scrutiny do so at their own peril. The memorandum is scathing in its criticism of the proposal to develop the dedicated public transport corridor for an integrated bus rapid transport system—IBRT—and makes a series of recommendations which were approved by the former Minister for Transport, Brian Langton, on 30 September last year. One of the recommendations states:

> . . . in view of the serious shortcomings and conflict of interest evident in the PPK Report, that firm be not included in the list of firms invited to undertake the Feasibility Study.

In spite of that advice PPK has been engaged by the Government for further work on the project. So that the House is under no illusions as to the extent of the shortcomings of the PPK report, I intend to use the remainder of my available time to draw attention to deficiencies identified by the senior government adviser in a pre-feasibility report which has never been made publicly available. The memorandum states:

> The draft report prepared by PPK consultants covering the Hoxton Park to Parramatta Public Transport Corridor provides a number of conclusions which lack substantiation and in a number of areas intrude into policy.

Policy is the business of government; it is not the business of consultants. Their job is to provide quality advice which is able to be fully substantiated. One would have thought by now that the Government would have learnt the lessons of the M2 fiasco and the ramifications of uncritically accepting consultants' opinions. But from this project it appears the Government still has a way to go. The adviser states that the section on transitway management identifies "significant system management and operational-contractual difficulties".

The adviser goes on to say, "The cost and legal implications and negative public perceptions flowing from these difficulties are alluded to but not significantly addressed." Similarly, the section on ownership and maintenance refers to "critical issues associated with the proposed bus operations [which] are admitted but not adequately addressed". According to the memorandum, page 67 of the PPK report refers to construction staging, and states:

> Great play is made in this section on the potential to develop the corridor incrementally. Such an approach, whilst it would suit the bus industry and the current contract holders, would leave the Government open to the justifiable claim that it was not fair dinkum in meeting the transport disadvantages of Western Sydney whilst at the same time providing major transit improvement projects in eastern Sydney. It would certainly deliver the wrong message to Western Sydney commuters and would fail to address the public transport imbalance currently existing.

This House should note that this is the opinion of the government adviser, and it was supported by the Minister. The memorandum questions the applicability of a public transport system developed in Ottawa for south-west Sydney, and states:

> Ottawa, the Canadian Federal Capital, is a city similar in concept to Canberra, being a provincially located city with a basically white collar workforce serving almost exclusively the Federal bureaucracy. Like Canberra it has a relatively small, well off population and a total lack of rail services, light or heavy.

The memorandum also questions international support for Ottawa-style systems:

> While Ottawa has attempted to export its transitway concept it

> has been singularly unsuccessful in Canada and the United States where numerous large cities have opted for large rail to address transit improvements. Leading transit nations in Europe, the acknowledged leaders in enhancing public transport acceptance and utilisation, have shown no evidence of following the Ottawa Transitway concept.
>
> The one successful export of the transitway has been Brisbane where the City Council has recently made a decision in favour of a transitway. It has been suggested that this decision could be a similar ill informed, colonial cringe decision to that which has seen Adelaide have the only "O-Bahn" outside test installations in the world.

The memorandum states that the conclusions and recommendations on page 72 of the report contain:

> a number of points . . . that cannot be left unchallenged. In particular: IBRT is less costly to develop and can be constructed incrementally so that high levels of priority can be provided throughout the corridor from the early stages of development. Unproven, politically unsustainable and flies in the face of overseas experience where no major cities have adopted this approach in preference to rail based transport . . .
>
> the Transitway be established as an Integrated Bus Rapid Transit System maintaining the potential for future conversion to light rail.
>
> An attempt to lock the Government into continuing the current bus monopoly bus position despite its proven record of failing to provide adequate public transport in Western Sydney. Such an action would effectively rule out any future rail based transit system for significant areas of Western Sydney and once again, confirm Western Sydney as the poor cousin of the transport network.

RETIREMENT OF THE HONOURABLE ELISABETH KIRKBY

The Hon. JAN BURNSWOODS [11.13 p.m.]: I wish to pay tribute to Liz Kirkby, our former member whom we sadly said farewell to this week. I did not speak in that debate, partly because so many other members spoke but also because I wanted to make a few more general points about the position of women in this House in particular and in the Parliament more generally. Members of this House have always been proud of the percentage of women members in this Parliament; indeed, for a long time, of all the Houses of Parliament in Australia the New South Wales Legislative Council had the most. When I was elected to Parliament in 1991, of the 42 members 15 were women. I regret to say that the number of women in this Parliament has now dropped to only 12 of 42, which means that in a few years our representation has dropped from 36 per cent to 29 per cent.

Unfortunately, those losses have come from all sides of politics. We lost Beryl Evans when the Liberal Party failed to preselect her; the Labor Party lost Pat Staunton when she was replaced by the Hon. A. B. Kelly—a fantastic addition to our midst, but not a woman, unfortunately—and, of course, now the Australian Democrats have replaced Liz Kirkby with Arthur Chesterfield-Evans. I hope that this downward trend from our proud record will not continue. One of the problems with redistribution, particularly when the number of seats in the lower House has been reduced, is that it creates a logjam with more members than there are seats. Therefore, there should be considerable pressure to look after sitting members across all parties and again reduce the chances of generational change and gender change.

I have been involved with an Australian version of the original American organisation called Emily's List, which has contributed very largely to the increase in the number of Democrat women in the American House of Representatives and Senate. Emily's List has a proud record of helping to increase the number of Labor women in the South Australian election earlier this year and more recently in the Queensland election. That is well and good, and I certainly hope that record will continue at the forthcoming Federal election. Probably all honourable members, whatever their party and gender, agree that the standard of this House improved when the percentage of women members increased. It made us more representative of the community and brought new voices and views to the House.

I regret that over the past few years the numbers have dropped from 15 out of 42, to 12 out of 42. Recently when the Hon. Carmel Tebbutt made her inaugural speech she commented about Labor's affirmative action strategy to increase the number of women in parliaments. She said she looked forward to there being an increase in the number of Labor women in Parliament. I share her sentiments and, as I said earlier, women in the Liberal Party, the National Party, the Democrats—but perhaps not in the Christian Democratic Party because I have doubts about their views—and in other parties represented in this House have a commitment to getting women elected.

Sometimes that general commitment tends to slip between the cracks when it comes to more ambitious and well-placed male candidates looking to secure their place in the sun. I urge members, male and female, to do something to restore this House to the very proud percentage it had when I was elected which, at 36 per cent, was above the Australian Labor Party's current target of 35 per cent.

HOXTON PARK TO PARRAMATTA PUBLIC

TRANSPORT CORRIDOR

The Hon. I. COHEN [11.17 p.m.]: I have received a memorandum of advice to the former Minister for Transport, Brian Langton, prepared by a senior government adviser on 29 September last year. The memorandum considers the pre-feasibility report on the Parramatta to Hoxton Park public transport corridor, prepared by consultants Rust PPK Pty Ltd. The advice states that the report is a matter of considerable concern and highlights the fact that one of the assisting consultants, McCormick Rankine International, is currently engaged in selling the transitway concept of bus transportation based on its involvement in the Ottawa Transitway in Canada, a facility covering some 24 kilometres. The adviser stated:

> The report appears to be championing the bus industry and a form of transport provision intended to guarantee further work for PPK and their associates, McCormick Rankine International. It is a matter of concern that the PPK Report presents as a viable option a bus based transit system that operates over a mere 24 kilometres in a provincial Federal capital city in Canada. A further concern is that the costs quoted in the PPK Report do not accord with publicly available costs of the Ottawa transitway.

According to the memorandum of advice, the pre-feasibility report contains a distinct bias to the bus preference and uses a set of rubbery figures to justify arguments in favour of a busway, rather than light rail. The day after receiving that advice the Minister for Transport, Brian Langton, approved the recommendation that:

> . . . in view of the serious shortcomings and conflict of interest evident in the PPK Report, that firm be not included in the list of firms invited to undertake the Feasibility Study.

Referring to the report, the advice to the Minister stated:

> [The report] purports to be a study to examine the best way and route for implementing improved trunk urban public transport there appears to be a strong case for considering it represents a pre-emptive attempt to consolidate the bus industry's position as a provider of public transport in greater western Sydney.

As I said earlier, the memorandum refers to the consultant's pre-feasibility report. According to the Government's advice this report is riddled with faults and omissions. For example, the advice states that pages 58 to 60, considering comparisons of cost and mode of operation, contain figures that are based on a number of unsubstantiated assumptions and should be given little credence. It goes on to say that the mode of operation conclusion uses suspect cost estimates to claim that the appropriate short-term mode of operation should be integrated bus rapid transit. In addition, although suggesting that efforts should be made to ensure that long-term options are kept open, it suggests the design should allow for conversion to light rail in the medium to longer term; but it does not factor in the up-front costs that should be provided to ensure the conversion would not cause long-term disruption to the travelling public during the changeover.

The inescapable conclusion flowing from this situation is that the PPK report is attempting to produce an apparently supportive process for ultimate light rail provision which, in effect, will ensure the bus is the only short- and long-term public transport option available to the people of western Sydney remote from current CityRail services. The Government has been advised that its support for the Rust PPK proposal creates an ideal scenario for the bus industry, as it will cement the future of the status quo for service provision for public transport and protect the interests of current contract holders. Given the serious issues raised in this memorandum to the Minister, the Government's support for a bus transitway in the Hoxton Park to Parramatta public transport corridor is utterly inexplicable.

Furthermore, this House needs to know why the Government, contrary to its own advice, employed Rust PPK, now known as PPK Environment and Infrastructure, to undertake further work on the Parramatta to Hoxton Park public transport corridor. I call on the Premier and the Minister to release the Rust PPK pre-feasibility report on the Hoxton Park to Parramatta public transport corridor. I give notice that I intend to raise my concerns with the Independent Commission Against Corruption, the Auditor-General and others as a matter of urgent public interest.

Motion agreed to.

House adjourned at 11.22 p.m. until Friday, 26 June 1998, at 2.30 p.m.