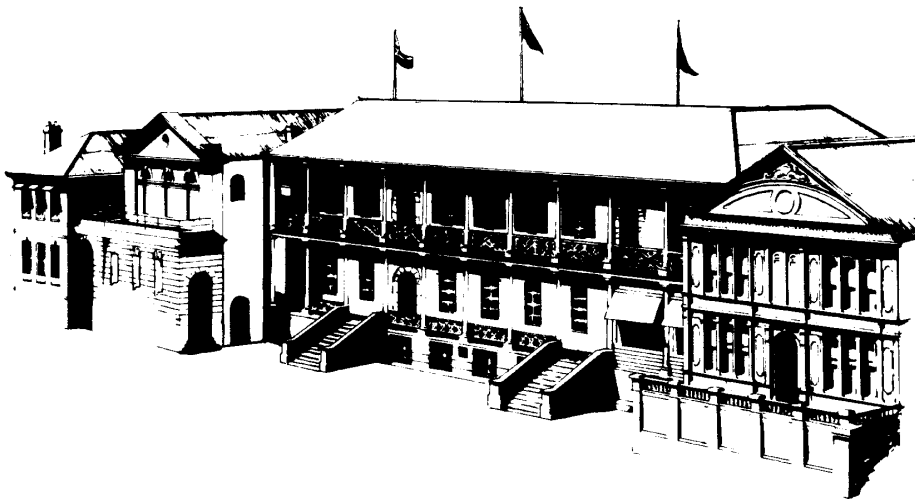
New South Wales



Legislative Council

PARLIAMENTARY DEBATES
(HANSARD)

FIFTY-SECOND PARLIAMENT
FIRST SESSION

OFFICIAL HANSARD

MONDAY 23 NOVEMBER 1998

Authorised by the
Parliament of New South Wales

LEGISLATIVE COUNCIL

Monday, 23 November 1998

The President (The Hon. Virginia Chadwick) took the chair at 2.30 p.m.

The President offered the Prayers.

PETITION

Illawarra Coke Company Prosecution Exemption

Petition praying that the Illawarra Coke Company be required to install air pollution control mechanisms to fulfil conditions for exemption from prosecution for discharge of odour beyond its boundaries, received from the **Hon. R. S. L. Jones**.

WATER LEGISLATION AMENDMENT (DRINKING WATER AND CORPORATE STRUCTURE) BILL

In Committee

Schedule 1

The Hon. R. S. L. JONES [2.35 p.m.], by leave: I move my amendments Nos 1 to 4 in globo:

No. 1 Page 4, schedule 1[3], proposed section 10A. Insert before line 14:

> ***advisory committee*** means the Water Safety Advisory Committee established under section 10D.

No. 2 Page 5, schedule 1[3], proposed section 10A. Insert after line 30:

> ***water safety licence*** means a water safety licence in force under section 10C.

No. 3 Page 6, schedule 1[3]. Insert before line 1:

> **Division 2 Licensing of suppliers of drinking water**
>
> **10B Supplier of drinking water to be licensed**
>
> A supplier of drinking water must not supply drinking water to a person unless the supplier is the holder of a water safety licence.
>
> Maximum penalty: 10,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).
>
> **10C Issue of water safety licences**
>
> (1) Water safety licences may be issued by the Director-General on application by a supplier.
>
> (2) A water safety licence may be issued subject to conditions, not being conditions that are inconsistent with any other licence relating to the supply of water that is held by the supplier (except in so far as those conditions may impose standards or requirements relating to the safety of drinking water that are higher than any standards or requirements imposed under any other law).
>
> (3) It is a condition of a water safety licence that the holder of the licence meets the standards or requirements specified in it in relation to the storage and treatment of drinking water.
>
> (4) The regulations may make provision for or with respect to the following:
>
> (a) the form and manner of making an application for a water safety licence,
>
> (b) the fees (if any) that are to accompany such an application,
>
> (c) the time within which an application is to be determined,
>
> (d) the form and duration of the licence,
>
> (e) the grounds for variation, suspension or revocation of a licence.
>
> (5) The Director-General may require an applicant for a water safety licence to provide further information if the Director-General is of the opinion that the information provided with the applicant's application is insufficient to allow the Director-General to determine the application.
>
> (6) The Director-General may vary, suspend or revoke a licence on any relevant ground specified in the regulations.
>
> **Division 3 Advisory committee**
>
> **10D Establishment of committee**
>
> (1) Within one month after the commencement of this section, the Minister is to establish a Water Safety Advisory Committee in relation to the safety of drinking water.

(2) The committee is to consist of at least 4 members from academia, who are, respectively, experts in the following areas:

(a) environmental health and safety,

(b) water-borne diseases,

(c) water treatment technology,

(d) chemical contamination.

(3) The members of the committee are to be appointed by the Minister.

(4) Schedule 3A has effect with respect to the members of the committee.

10E Advisory committee to report on matters requiring attention

(1) Within 4 months after the date on which it is established, the advisory committee is to provide the Minister with a report containing the following:

(a) a list of the parasites, or other substances or matter:

(i) that the committee considers constitute (or are likely to constitute) a risk to public health, and

(ii) that the committee knows to have been present in drinking water anywhere in the State at any time during 12 months immediately preceding the establishment of the committee,

(b) a list of the catchment areas that the committee considers to be in most urgent need of improvement,

(c) draft protocols for:

(i) dealing with the matters referred to in paragraph (a), and

(ii) the issuing of boil water advices,

(d) proposals for the development of strategies in relation to the catchment areas referred to in paragraph (b),

(e) a list of recommendations for action in relation to the matters referred to in the preceding paragraphs.

(2) Within one month after receiving the report, the Minister is to publish a notice in a newspaper circulating generally in the State stating that copies of the report are available for inspection by the public (at the places and during the times specified in the notice), and inviting submissions from the public (within the period, and to the address, specified in the notice) in respect of the report.

(3) The period during which the report must be available for inspection, and during which the public may make submissions in respect of it, must not be less than 40 days.

(4) The committee is to consider any submissions received within the period specified in the notice and is to provide the Minister and the Director-General with both a summary of those submissions and a final report within one month after the end of that period.

10F Regulations to reduce contamination

(1) Within 6 months after receiving the final report under section 10E, the Minister is to submit to the Governor a draft regulation (with a recommendation that the regulation be made) specifying:

(a) the treatment technologies, treatment techniques or other appropriate methods that are to be put in place by each supplier of drinking water for the purpose of ensuring that the drinking water it has available for supply is consistently fit for human consumption, and

(b) the basis on which a boil water advice is to be issued.

(2) As soon as practicable after the draft regulation is submitted to the Governor, the Minister is to cause the final report under section 10E to be tabled in both Houses of Parliament.

No. 4 Page 13, schedule 1. Insert after line 6:

[5] Schedule 3A

Insert after schedule 3:

Schedule 3A Provisions relating to members of the Advisory Committee

(Section 10D)

Part 1 Preliminary

1 Definition

In this schedule, ***member*** means a member of the advisory committee.

Part 2 Constitution

2 Terms of office of members

Subject to this schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Deputies

(1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy may, if available, act in the place of the member.

(3) While acting in the place of a member, a person:

(a) has all the functions of the member and is taken to be a member, and

(b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

5 Vacancy in office of member

(1) The office of a member becomes vacant if the member:

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by instrument in writing addressed to the Minister, or

(d) is removed from office by the Minister under this clause, or

(e) is absent from 4 consecutive meetings of the committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or

(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

(g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove a member from office.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Chairperson and Deputy Chairperson

(1) A Chairperson and Deputy Chairperson of the committee are to be appointed from the members by the Minister before the first meeting of the committee.

(2) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.

(3) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson.

(4) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if he or she:

(a) is removed from office by the Minister under this clause, or

(b) ceases to be a member.

(5) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

8 Disclosure of pecuniary interests

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

(2) A disclosure by a member at a meeting of the committee that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the committee.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the committee otherwise determines:

(a) be present during any deliberation of the committee with respect to the matter, or

(b) take part in any decision of the committee with respect to the matter.

(5) For the purposes of the making of a determination by the committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the committee for the purpose of making the determination, or

(b) take part in the making by the committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the committee.

9 Effect of certain other Acts

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Procedure

10 General procedure

The procedure for the calling of meetings of the committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the committee.

11 Quorum

The quorum for a meeting of the committee is a majority of its members present at the meeting, of whom one must be the Chairperson or Deputy Chairperson.

12 Presiding member

(1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the committee.

(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of the committee at which a quorum is present is the decision of the committee.

14 Transaction of business outside meetings or by telephone

(1) The committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the committee.

(2) The committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the committee.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the committee.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

15 First meeting

The Minister may call the first meeting of the committee in such manner as the Minister thinks fit.

16 Minutes

The committee is to cause full and accurate minutes to be kept of the proceedings of its meetings.

Part 4 General

17 Exclusion from personal liability

A matter or thing done or omitted to be done by the committee, a member of the committee or any person acting under the direction of the committee does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject a member or person so acting personally to any action, liability, claim or demand.

These amendments would redress significant shortfalls in the proposed amendments to the Public Health Act. The Government's amendments fall far short because, although they enhance and clarify the regulatory powers to some extent, they do not provide for greater public transparency. They fall short of the measures needed to restore community confidence in its drinking water supply. In saying that, I am merely echoing the words of Peter McClellan, QC, in his second interim report, which broadly states:

> Greater public transparency should be introduced in the reporting of water quality data to restore public confidence . . .

These amendments would create a clearer regulatory framework by requiring a licence between the Department of Health and water supply authorities. While the bill gives greater powers to the department, it does not create a clear licensing relationship. A licence would allow for the establishment of prospective conditions and ensure that there would be adequate source of resources flowing from authorities to the department to finance the necessary regulatory activities. To provide a vehicle for the provision of greater transparency, my amendments would also establish an expert advisory committee and set out a process for a committee of experts to prioritise catchments and contaminants, consult the public on actions necessary to minimise potential threats and guide any public health boil-water alert.

Following adequate public consultation the committee would report to the department and the Minister, and the Minister would be given adequate time to consider the report and prepare a regulation which specified treatment technologies, treatment techniques or other appropriate methods to be put in place by each water supplier. The regulation would also establish the basis on which public health boil-water advices are given. This basis should not be obscured within a memorandum of understanding but, rather, should be in the public domain so that consumers know exactly what is going on when an alert was issued. I commend the amendments to the Committee, and I ask for the support of both sides.

The Hon. M. R. EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [2.48 p.m.]: The Government has consulted representatives of the crossbenches and the Opposition concerning the terms of this legislation. That consultation process included briefings with Opposition members, crossbench members and representatives of the Environment Liaison Office. The Hon. R. S. L. Jones has moved four amendments. I understand that the Hon. R. S. L. Jones, the Hon. I. Cohen and the Hon. Dr A. Chesterfield-Evans have proposed a total of 21 amendments to the bill. Of those 21 amendments, the Government will support, with some minor changes, four amendments: Nos 18, 19, 20 and 21.

The 17 amendments which the Government will not support all propose changes to the Public Health Act. The Government has proposed amendments to the Public Health Act in the Water Legislation Amendment (Drinking Water and Corporate Structure) Bill 1998 and it is the Government's view that the amendments it has proposed to the Public Health Act in the bill are more appropriate than those proposed by the Greens and represent a more practical legislative response to the water contamination incidents. The Government has made some minor changes to each of the four amendments that the Government is supporting. In addition, the Government proposes two amendments of its own which correct two typographical errors in the bill. So in total I will move six amendments on behalf of the Government today.

The Hon. J. F. RYAN [2.51 p.m.]: The Opposition's position has been largely worked out in consultations between the shadow minister, Chris Hartcher, and representatives of the Greens and other crossbenchers such as the Hon. R. S. L. Jones and the Hon. Dr A. Chesterfield-Evans. The Opposition's position is not a great deal different from the Government's position just outlined. The Opposition's position has been somewhat different in regard to some crossbench amendments. However, we are grateful that crossbench members have attempted to make the bill more workable. In the time available it is not always possible to consider radical changes to this sort of legislation. The public is keen to have the water legislation passed. As I stated in my speech during the second reading debate, some of the things provided for in the bill were already possible. In Committee the Opposition will make clear its position on some of the minor issues.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 5

Mr Cohen
Mr Corbett
Mrs Sham-Ho
Tellers,
Dr Chesterfield-Evans
Mr Jones

Noes, 30

Mrs Arena	Mr Manson
Mr Bull	Mr Moppett
Dr Burgmann	Mrs Nile
Ms Burnswoods	Rev. Nile
Mr Dyer	Mr Obeid
Mr Egan	Dr Pezzutti
Mrs Forsythe	Mr Ryan
Mr Gallacher	Ms Saffin
Miss Gardiner	Mr Samios
Mr Hannaford	Ms Tebbutt
Mr Johnson	Mr Tingle
Mr Kaldis	Mr Vaughan
Mr Kelly	
Mr Kersten	*Tellers,*
Mr Lynn	Mrs Isaksen
Mr Macdonald	Mr Jobling

Question so resolved in the negative.

Amendments negatived.

The Hon. I. COHEN [2.59 p.m.], by leave: I move Greens amendments Nos 1 to 6 in globo:

No. 1 Page 9, schedule 1[3], proposed section 10F, line 3. Omit "2,500". Insert instead "10,000".

No. 2 Page 9, schedule 1[3], proposed section 10F, line 3. Omit "400". Insert instead "2,500".

No. 3 Page 9, schedule 1[3], proposed section 10G, line 21. Omit "2,500". Insert instead "10,000".

No. 4 Page 9, schedule 1[3], proposed section 10G, line 22. Omit "400". Insert instead "2,500".

No. 5 Page 10, schedule 1[3], proposed section 10H, line 10. Omit "2,500". Insert instead "10,000".

No. 6 Page 10, schedule 1[3], proposed section 10H, line 11. Omit "400". Insert instead "2,500".

These amendments bring into line all penalties contained within the bill. The damages bill from the recent water crisis is unknown. However, solicitors Slater and Gordon would hope to recover a lot more than the $275,000 penalty the bill would impose for water suppliers who do not allow inspectors to enter premises and examine records and equipment. If the damages awarded are as significant as litigants expect, they may be an incentive for larger water suppliers denying access and simply paying the penalty. These amendments increase penalties significantly and achieve consistency with other penalties in the bill. I commend the amendments to the Committee.

Amendments negatived.

The Hon. Dr A. CHESTERFIELD-EVANS [3.01 p.m.]: I move Australian Democrats amendment No. 1:

No. 1 Page 10, schedule 1[3]. Insert after line 11:

10I Results of tests on drinking water

(1) The Director-General is to make the results of tests carried out under this Division or by the Department of Health available on the Internet within 3 days after they have been determined.

(2) The Director-General is also to publish, in the Gazette and on the Internet, reports at intervals of 6 months on the results of tests of water carried out under this Division during the immediately preceding 6 months. The reports are to include analysis of the results and comments on them.

(3) The first report under subsection (2) is to be published no later than 7 months after the commencement of this section.

10J Contamination occurrence register

(1) The Director-General is to maintain a register of all occurrences of contamination of drinking water supplied, or available for supply, by a supplier of drinking water.

(2) The register is to contain the following information in relation to each occurrence of contamination:

(a) the supplier of the drinking water concerned,

(b) the source of the water,

(c) the identity of the contaminant,

(d) the likely source of the contaminant,

(e) the highest level at which the contaminant was found,

(f) the level at which the presence of the contaminant constitutes a health risk,

(g) the nature of that health risk.

(3) The register is to be available for inspection by the public free of charge at the Head Office of the Department of Health during normal business hours and is also to be made available on the Internet.

(4) In this section, ***contamination***, in relation to drinking water, means the presence in the water, at or above the levels specified in the regulations for the purposes of this definition, of any of the following:

(a) cryptosporidium,

(b) giardia,

(c) any other parasite, or other substance or matter, prescribed by the regulations for the purposes of this subsection.

This amendment seeks that information be provided to the public about results of drinking water tests and about identified contaminations. The object of the amendment is to increase public awareness and to enable people to make decisions on whether they drink the water. Cryptosporidium may be present in the water for a long time. Only some cryptosporidium types are infectious to humans, and it is not clear what genotypes caused the recent water crisis scare. I was criticised for demanding a precipitous answer to that question.

The Minister for Public Works and Services said that I had demonstrated impatience at not having received my answer in three weeks. This bill, however, has been introduced in much less time. It is remarkable that a catchment area can be given away in less time than it takes to provide an answer to a question about a couple of laboratory samples. The Division of Veterinary and Biomedical Sciences at Murdoch University has identified various species of cryptosporidium. That information is of great importance to determine whether Sydney's water scare was valid or was a false alarm.

Those suffering from an immune deficiency may want to know about the cryptosporidium species in the water and should be provided with that information. People have a fundamental right to information without having to provide an excuse for its use. This House should be setting the standard about availability of such information, but the task of obtaining it has proved to be a great struggle. The proposed amendment states simply that the information will be made available, and that seems innocuous. I commend the amendment to the Committee.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 5

Mr Cohen
Mr Jones
Mrs Sham-Ho
Tellers,
Dr Chesterfield-Evans
Mr Corbett

Noes, 29

Mrs Arena	Mr Manson
Mr Bull	Mr Moppett
Dr Burgmann	Mrs Nile
Ms Burnswoods	Rev. Nile
Mr Dyer	Mr Obeid
Mr Egan	Dr Pezzutti
Mrs Forsythe	Mr Ryan
Mr Gallacher	Ms Saffin
Mr Hannaford	Mr Samios
Mr Johnson	Ms Tebbutt
Mr Kaldis	Mr Tingle
Mr Kelly	Mr Vaughan
Mr Kersten	*Tellers*,
Mr Lynn	Mrs Isaksen
Mr Macdonald	Mr Jobling

Question so resolved in the negative.

Amendment negatived.

The Hon. Dr A. CHESTERFIELD-EVANS [3.11 p.m.]: I move Australian Democrats amendment No. 2:

No. 2 Page 10, schedule 1[3]. Insert after line 12:

10K Supplier to give public notification of failure to meet requirements

(1) A supplier of drinking water must give public notification, in accordance with this section, of any failure on its part:

(a) to meet the standards or requirements relating to the storage and treatment of drinking water specified in the supplier's licence, or

(b) to meet any requirements of the regulations relating to the safety of drinking water, or

(c) to carry out the testing required by section 10G, or

(d) to produce the information required by section 10H.

Maximum penalty: 10,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).

(2) The notification is to be given, within 24 hours after the occurrence of the failure, by the means that, in the reasonable opinion of the supplier, is most likely to bring it to the attention of the persons to whom the supplier supplies drinking water.

(3) The notification is also to be given, as soon as practicable after the occurrence of the failure:

(a) in a newspaper circulating generally in the locality in which the supplier supplies drinking water, and

(b) by notice in writing to the Director-General.

(4) The notification must specify the following:

(a) the nature of the failure,

(b) the health risks (if any) associated with the failure,

(c) the steps being taken to rectify the matter,

(d) whether, as a result of the failure, the drinking water supplied by the supplier should not be drunk (or should not be drunk unless it has been boiled or otherwise treated).

Again, this amendment goes to the heart of public accountability and information. I commend the amendment to the Committee.

The Hon. J. F. RYAN [3.11 p.m.]: The Opposition does not support the amendment. However, there is merit in some of the proposals put forward by the Hon. Dr A. Chesterfield-Evans. I have no doubt that the answer is known to a question he asked twice about whether the cryptosporidium bug found in the water supply was likely to be dangerous to humans. Sydney Water and the Health Department would have tested ages ago to determine whether the cryptosporidium bug was a severe contaminant. I cannot understand why an answer has not been given to that sensible question. I urge the Government, through the Treasurer, to answer the question.

Amendment negatived.

Schedule agreed to.

Schedule 3

The Hon. I. COHEN [3.15 p.m.]: I move Greens amendment No. 7:

No. 7 Pages 17 and 18, schedule 3[5], proposed clause 5A, line 27 on page 17 to line 16 on page 18. Omit all words on those lines. Insert instead:

(b) 7 directors, who are to have appropriate expertise, to the intent that the board includes directors with separate expertise in at least the following areas:

(i) business management,

(ii) protection of the environment,

(iii) public health.

(2) The directors are to be selected on merit by a panel chosen by the Minister and consisting of the following:

(a) the Minister (or a person nominated by the Minister),

(b) a person holding a senior university appointment in the field of water treatment technology,

(c) a person representing the consumers of the State,

(d) a person nominated by the Labor Council of New South Wales,

(e) a person nominated by the Nature Conservation Council of NSW.

(3) The Minister is to advertise publicly for nominations for selection for the board.

This amendment ensures that Sydney Water has representatives with expertise in areas consistent with the objectives of Sydney Water. Acknowledging that the selection of representatives on the board of Sydney Water is an important process, the amendment provides for the public

nomination process. A panel with representatives from the consumers of New South Wales, the Labor Council, the Nature Conservation Council and a water technology expert would then select members of the board on merit. This is broader than the process outlined in the bill, which has a selection process involving the two shareholding Ministers' nominees and the Labor Council. I commend the amendment to the Committee.

The Hon. J. F. RYAN [3.16 p.m.]: The Opposition supports the amendment on condition that the Greens agree to support the Opposition on a minor amendment to this Greens amendment. Therefore, I move:

That the Greens amendment be amended by omitting subsection (2).

Proposed subsection (2) states that the directors are to be selected on merit by a panel chosen by the Minister. It outlines the regime under which the Minister may make those decisions. They include: people nominated by the Nature Conservation Council; the Labor Council; those representing consumers; and so on. There should be an independent board which does not necessarily consist of particular representatives. The Greens amendment is sound. It will remove the managing director from the board of Sydney Water and make him subject to the board rather than being a member of the board. That is a step forward. The Opposition will support the amendment on condition that it is amended by deleting proposed subsection (2).

The Hon. I. COHEN [3.24 p.m.]: I seek leave to amend my amendment No. 7 by changing the number of directors from seven to nine and incorporating the Opposition amendment to my amendment.

The Hon. M. R. Egan: To avoid confusion, I suggest that the honourable member withdraw his amendment No. 7 and then move a new amendment.

The Hon. I. COHEN: [3.25 p.m.]: I seek leave to withdraw my amendment No. 7 in its present form.

Leave granted.

I move new Greens amendment No. 7:

No. 7 Pages 17 and 18, schedule 3[5], proposed clause 5A, line 27 on page 17 to line 16 on page 18. Omit all words on those lines. Insert instead:

(b) 9 directors appointed by voting shareholders, who are to have appropriate expertise, to the intent that the board includes directors with separate expertise in at least the following areas:

(i) business management,

(ii) protection of the environment,

(iii) public health.

(2) The Minister is to advertise publicly for nominations for selection for the board.

I commend Greens amendment No. 7 to the Committee.

The Hon. J. F. RYAN [3.26 p.m.]: The Opposition supports this amendment. It notes the changes that have been made to the original amendment.

Amendment agreed to.

The TEMPORARY CHAIRMAN (The Hon. Jennifer Gardiner): The wording of the last amendment will require a slight consequential change to the amendment the Hon. I. Cohen is about to move. The last line of his proposed amendment No. 8 should now read "subsection (1) has".

Amendment by the Hon I. Cohen agreed to:

No. 8 Page 18, schedule 3[5], proposed clause 5A, line 17. Omit "subsections (1) to (3) have". Insert instead "subsection (1) has".

The Hon. I. COHEN [3.32 p.m.]: I will not move the remainder of the Greens amendments.

The Hon. M. R. EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.32 p.m.], by leave: I move Government amendments Nos 1, 2, 3 and 4 in globo:

No. 1 Page 19, schedule 3[8], line 26. Insert "company" before "State owned corporation".

No. 2 Page 20, schedule 3[10], proposed section 93A. Insert after line 12:

(3) The portfolio Minister is to publish in the Gazette (and is to make available on the Internet) any direction under section 20P of the *State Owned Corporations Act 1989*, and any notification under section 200 of that Act, given to the board of the Corporation as soon as practicable after it is given.

(4) Any such notification or direction is of no effect to the extent that it is inconsistent with the terms and conditions of the Corporation's operating licence.

(5) However, subsection (4) does not apply in respect of a direction given as referred to in subsection (1).

No. 3 Page 20, schedule 3[13], line 17. Insert "and consumer confidence reports" after "Annual reports".

No. 4 Page 20, schedule 3. Insert after line 18:

[14] Section 101 (3)-(7)

Insert after section 101 (2):

(3) In addition to producing an annual report, the Corporation must publish on the Internet at intervals of 3 months reports (***consumer confidence reports***) on the quality of the water it has available for supply to its customers.

(4) The reports are also to be made available for inspection by the public free of charge at the Head Office of the Corporation during normal business hours.

(5) A consumer confidence report must include, in summary form, the following:

(a) details of the quality and quantity of water in the Corporation's catchment areas,

(b) an evaluation of the effectiveness of the Corporation's treatment of water from its catchment areas during the immediately preceding 3 months,

(c) a review of developments in the literature concerning issues relating to the quality of drinking water, being issues faced by authorities worldwide who are responsible for the quality of any drinking water,

(d) an overview of issues relating to catchment management that were current during the immediately preceding 3 months,

(e) such other matter as the regulations may prescribe.

(6) Each account for the supply of water that the Corporation sends to its customers must contain a summary of the most recent consumer confidence report and must state that the full report is published on the Internet and is available for inspection by the public free of charge at the Head Office of the Corporation during normal business hours.

(7) The first consumer confidence report must be published within 4 months after the commencement of this subsection.

Amendment No. 1 corrects a typographical error. As I have mentioned previously, the Government has been negotiating with the crossbenchers and the Opposition. I understand that the remaining Government amendments are supported by the crossbenchers and the Opposition.

The Hon. J. F. RYAN [3.34 p.m.]: The bulk of these amendments are designed to make more information available to the public. That would be one of the areas in which, in the recent water contamination crisis, the Opposition was critical of the Government. At various times it appeared that information was withheld from the public when it appeared to be inappropriate. These amendments are designed to address those concerns. The Opposition supports them and compliments the crossbenchers who moved the original amendments on which these amendments have been based.

The Hon. I. COHEN [3.34 p.m.]: I would like to speak particularly to Government amendments Nos 3 and 4, which require Sydney Water to prepare consumer confidence reports. Such reports are prepared quarterly and include information relating to the state of the catchment, effectiveness of the treatment of the water supply, analysis of all the water quality results as required under proposed section 10G, a literary review of all the current trends in water supply internationally, and any other matter that may be required. Consumer confidence reports will be included with each customer's account. The Greens are pleased to see this degree of education and transparency take place.

Amendments agreed to.

Schedule as amended agreed to.

Schedule 4

The Hon. M. R. EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.35 p.m.], by leave: I move Government amendments Nos 5 and 6 in globo:

No. 5 Page 29, schedule 4[8], line 29. Insert "company" before "State owned corporation".

No. 6 Page 30, schedule 4[9], proposed section 64A. Insert after line 12:

(3) The portfolio Minister is to publish in the Gazette (and is to make available on the Internet) any direction under section 20P of the *State Owned Corporations Act 1989*, and any notification under section 200 of that Act, given to the board of the Corporation as soon as practicable after it is given.

(4) Any such notification or direction is of no effect to the extent that it is inconsistent with the terms and conditions of the Corporation's operating licence.

(5) However, subsection (4) does not apply in respect of a direction given as referred to in subsection (1).

Government amendments Nos 5 and 6 seek to amend schedule 4. I understand that they have been the subject of consultation between the Government, the Opposition and the crossbenchers. We are in furious agreement. I take this opportunity to thank the Opposition, the crossbenchers and their staff for their co-operation in this matter.

Amendments agreed to.

Schedule as amended agreed to.

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

Message forwarded to the Legislative Assembly seeking its concurrence with the Legislative Council's amendments.

RURAL LANDS PROTECTION BILL

In Committee

Consideration of the Legislative Assembly's message of 12 November.

The Hon. R. D. DYER (Minister for Public Works and Services) [3.40 p.m.]: I move:

That the Committee does not insist upon its amendments Nos 1 to 11 inclusive, disagreed to by the Legislative Assembly.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [3.40 p.m.]: The Opposition does not support this motion. When this issue was addressed some two weeks ago Opposition members canvassed a number of reasons for amendments. The Government is being precious about some of the amendments, which do not alter the general thrust of the bill. I went to a great deal of trouble to persuade the Government to agree to amendments, and certain amendments were agreed to. However, the industry as a whole could not support that. People from rural lands protection boards, ratepayers and directors are extremely concerned about this bill and specifically about the level of direction the State council will have over individual boards. There is concern that such direction will have the potential to deny boards of their ability to make decisions relating to the management of travelling stock reserves and of programs for the eradication of noxious animals.

There are compelling reasons that the amendments should stand. I have had discussions with the Government about amendments Nos 9, 10 and 11, which relate to access to properties by rangers and other officers of boards to inspect for noxious animals or for other reasons. I acknowledge that those amendments are probably unnecessary. I would be happy to support the deletion of those three amendments but insist on my other eight amendments. I foreshadow that I will move an amendment to the Minister's motion. I foreshadow that I will move that the Committee insist on amendments Nos 1 to 8 inclusive but does not insist on amendments Nos 9, 10 and 11 as agreed to by this Committee some two weeks ago.

The reasons for seeking acceptance of amendments Nos 1 to 8 have been canvassed very well. Opposition members are of the view that the amendments allow boards to retain their individuality. In the context of the Rural Lands Protection Act and of the rural lands protection boards movement it is important that the 48 boards retain their individuality and that their management plans not be under the direction of the State council. Amendments Nos 1 to 8 relate to boards' management plans. Most of the other amendments proposed by the Opposition were not insisted upon. The Opposition insists on National Party amendments Nos 1 to 8.

The Hon. R. D. DYER (Minister for Public Works and Services) [3.45 p.m.]: I seek clarification regarding the procedure that the Committee ought to be adopting. I have moved that the Committee not insist on amendments Nos 1 to 11 disagreed to by the Legislative Assembly. It is my understanding that in order for the matter to be considered in proper form the Deputy Leader of the Opposition should now move that my motion be amended by the omission of the word "not". As I understand it, that is the threshold for the further consideration of the amendments that the Committee is supposed to consider.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [3.47 p.m.]: I clarify my earlier remarks by stating that the Opposition does not insist on amendments Nos 9, 10 and 11 but does insist upon amendments Nos 1 to 8 inclusive.

The Hon. FRANCA ARENA [3.48 p.m.]: I wish to clarify a matter. I voted with the Opposition on these amendments. I have received many representations on these issues and have consulted Peter Mullins of the Rural Lands Protection Board, the State council and many other people. Reverend the Hon. F. J. Nile has circulated amendments that he intends to move. It is my belief that the amendments proposed by Reverend the Hon. F. J. Nile constitute a compromise that will be acceptable

to most parties. I do not change my vote easily. I have to be guided in these matters by people who know better than I do and in whom I trust. Therefore, regrettably, I have to change my vote. I will not vote for the Opposition's amendments; I will vote for the amendments to be moved by Reverend the Hon. F. J. Nile.

The Hon. R. S. L. JONES: [3.49 p.m.]: After consulting a number of rural lands protection boards I voted for the Opposition's amendments on the last occasion that this matter was debated. I understand why the Deputy Leader of the Opposition is insisting on his amendments. However, I believe that the amendments which will be moved by Reverend the Hon. F. J. Nile represent a sensible compromise. I will vote for those amendments.

The Hon. R. D. DYER (Minister for Public Works and Services) [3.51 p.m]: The Government opposes Opposition amendments Nos 1 to 8. The Committee is well aware of the amount of consultation over a number of years that preceded the introduction of this bill. After careful consideration of the Opposition's amendments the Government cannot support the changes. In moving its amendments to this bill the Opposition seems to view the incorporation and empowering of the State council as a threat to boards. There appears to have been a misunderstanding as to the role that the State council will play as reflected in those amendments. The Opposition, through its amendments, is trying to reduce the role of the State council in the development of function management plans.

Management plans are modern management tools used by efficient businesses and government agencies. The function management plans required by the bill will make board activities more transparent to ratepayers and the public. The bill makes it compulsory for boards to implement function management plans in respect of travelling stock reserves and any other function as directed by State council. The Opposition wants to remove the role of State council in approving the contents of these plans and in their implementation. It wishes to reduce the role of State council to only an advisory one. That means that a board could write an inappropriate plan and not adopt any suggestions from State council to approve it. It also means that a board would not be required to implement any travelling stock reserve function management plan that it adopts.

The Opposition wants to make it optional for boards to prepare and implement all other types of function management plans, such as those for animal health and pest management. Some boards may not prepare function management plans in the absence of a requirement to do so. That has been demonstrated already in respect of some pest animal management plans. The democratically elected State council has much to offer in this area. Its staff will be equipped to assist boards in relation to the standard of the function management plans that are required. It will be able to lend its resources to ensuring that boards' function management plans comply with important legislation, especially in the area of pesticides and animal health. It will also ensure that statewide functions, such as animal health, are consistently managed across boards.

This is of particular importance as overseas export markets must feel confident that New South Wales has a secure mechanism in place for monitoring animal health. It is also important in respect of animal diseases such as anthrax that are contractible by humans through contact with infected stock. Boards must be monitored in their use of pesticides. The pesticide 1080 is an important tool used by boards to control rabbit populations. However, mismanagement of that pesticide could lead to the current permitted use being withdrawn or restricted. A similar situation exists in respect of the poison fenitrothion, which is vital to the control of plague locusts. State council will consult with relevant government agencies to ensure that function management plans are consistent with the activities of the National Parks and Wildlife Service and New South Wales Fisheries. The advantage of this to boards is that all 48 boards will not have to individually consult with government.

It is to the benefit of boards that they prepare and implement appropriate function management plans. These plans can improve board efficiency and raise the credibility of boards in the eyes of the public. The proposal to give State council power to direct boards came from the board movement itself and not from the Government. The Clough task force and the rural lands protection review team both recommended this change. These bodies were representative of board directors and staff. Another important issue is the request by boards to be indemnified by the Government in relation to functions that they perform under government policy directives.

If boards want such a surety of cover they must be prepared to operate in a transparent manner and be subject to the standards set by the Government and State council. The bill as it is presently drafted combines modern, administrative principles with traditional functions to enable boards to perform more efficiently and effectively for ratepayers and for the public of this State. For the

reasons I have outlined to the Committee the Government opposes the amendments insisted upon by the Deputy Leader of the Opposition.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [3.58 p.m.]: There is some confusion about the amendments that have been moved. The amendments circulated in my name, which were proposed to be moved today, have not been moved. Honourable members should consider only the amendments that have been dealt with in the message from the Legislative Assembly. I am insisting upon amendments Nos 1 to 8 and not upon amendments Nos 9, 10 and 11.

Reverend the Hon. F. J. NILE [3.59 p.m.]: I move:

> That the question be amended by the addition of the following words: "but proposes a further amendment in the bill as follows":
>
> No. 1 Page 5, clause 12, line 15. Omit "directions". Insert instead "requests".

The effect of this amendment will be that local boards will regain and maintain some authority so that they do not consider that they are subsidiaries of the State board, which was not the original intention. I note that in a letter to me dated 23 November relating to my amendment the New South Wales Farmers Association said:

> . . . effectively change the word 'direct' to the word 'request' in relation to the powers of State Council over individual Boards. Given that Section 29 of the legislation remains unchanged, and that the implications for a Board in refusing a 'request' are identical to the implications of refusing a 'direction', we believe that these amendment do not overcome the deficiencies of the original legislation.

Does the Government agree that if the wording is changed from "directions " to "requests" the State council will give some consideration to the views of the local board? Will the Government agree to give some consideration to any objection raised by the local board?

The Hon. R. D. DYER (Minister for Public Works and Services) [4.01 p.m.]: The Government supports the amendment that Reverend the Hon. F. J. Nile has moved.

Pursuant to sessional orders business interrupted.

Progress reported from Committee and leave granted to sit again.

QUESTIONS WITHOUT NOTICE

COMPUTER MILLENNIUM BUG STRATEGY

The Hon. J. P. HANNAFORD: My question without notice is directed to the Minister for Public Works and Services. Has the head of the Federal Government's millennium bug program, Mr Graeme Inchley, stated that the Victorian Government has done more work on Y2K than any other State during the past 12 months? Why is the New South Wales Government not the leader in fixing the millennium bug problem? When will the Minister table a report on the readiness of New South Wales?

The Hon. R. D. DYER: There is no obligation on me or the Government to agree with anything Mr Inchley might have said. I am confident that the New South Wales Government is making substantial progress toward meeting its targets regarding the millennium bug action and compliance. I point out that the primary responsibility for action regarding the millennium bug rests with my colleague, the Minister for Information Technology, Mr Kim Yeadon. My responsibility is limited, so far as the Department of Public Works and Services is concerned, to various practical contracts—described as a suite of contracts—that are available to assist government agencies to meet their millennium bug obligations. I recall that on a previous occasion I gave a detailed answer to the House—

The Hon. D. J. Gay: Several.

The Hon. R. D. DYER: Perhaps on several, occasions, at least on one and possibly more—relating to the suite of contracts issued by the Department of Public Works and Services to assist government agencies to meet their obligations. I can tell the Leader of the Opposition that the Minister for Information Technology and his department have indicated that my department has reached all milestones to date in meeting its millennium bug obligations and is very much in the clear in that regard. If the Leader of the Opposition requires further information, I will be happy to obtain it from my colleague the Minister for Information Technology. However, the Leader of the Opposition can be assured that the Government is making sound progress toward meeting its millennium bug targets.

[*Interruption*]

There is no embarrassment in regard to this matter to the Government. I can assure the Leader of the Opposition that very sound progress is being made toward achieving millennium bug targets.

WORKCOVER AUTHORITY WORKPLACE ACCIDENT INVESTIGATIONS

The Hon. B. H. VAUGHAN: I address my question without notice to the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading. Last week two companies received substantial penalties following the death of one worker and serious injury to another. Could the Minister please inform the House of the circumstances that led to the imposition of those penalties?

The Hon. J. W. SHAW: The Hon. B. H. Vaughan is referring to two judgments in WorkCover New South Wales prosecutions which were handed down by Justice Kavanagh of the Industrial Court on Thursday, 19 November. Ian George McIntosh, a factory foreman at a Coffs Harbour company called Hydraulics Hotline, died when he was pulled into the operating arms of a tree-harvesting machine being tested by the company on 15 May 1997. As part of its commercial operations, Hydraulics Hotline manufactured and tested a machine known as a tree harvesting head which was to be used in tree logging and forestry operations to fell, delimb, debark and cut a log into required lengths.

The WorkCover investigation of the accident found two crucial flaws in the safe testing of the machine that day. First, the tree harvesting head was connected to an excavator by a connecting bracket and a large pin which had been removed the day before to allow the head to be weighed. After weighing the head, the pin was not put back. Instead, a different sized pin was used to connect the head. Second, the electrical wiring was redirected causing the proximity switches fitted at the chainsaw part of the machine to be disconnected. Mr McIntosh was standing in front of the machine. The disconnection caused full hydraulic pressure of approximately 16 tonnes to be applied to the clamping arms which crushed him to death.

WorkCover told the court that had the proximity switch been connected the machine could have been started and no automatic action would have occurred unless one of the functions was set and selected. The court also heard that Mr McIntosh had been employed by the company for only six months. He was a friend of the company's owner for more than 20 years and had recently moved to the area to take up employment at the owner's request. In imposing the conviction and penalty of $30,000, Justice Kavanagh took into account, "the good industrial record of the company, the contrition demonstrated [and] the introduction of a thorough and updated safety program".

In a separate case Pepsico Australia Pty Ltd was fined $50,000 plus costs after a night shift delivery driver received severe spinal injuries when carrying frozen foodstuffs into the Lindfield outlet of Kentucky Fried Chicken. Shane Barry Williams, aged 27, fell backwards onto the front step of the building as he pulled a laden trolley over a makeshift ramp. He was pinned under the trolley and freed by passers-by. The accident occurred on 4 December 1995 when the maximum penalty stood at $250,000. In handing down her judgment, Justice Kavanagh said:

> The defendant was clearly aware of the risk of injury as the employees had requested of the employer alternative ramps and there was not a properly designed piece of equipment for the task.
>
> The court finds that in the circumstances there was a known and perceived danger within the knowledge of the defendant that was left unchecked. This puts a severe obligation on the defendant and the penalty to be imposed should reflect the circumstances of the breach.

GOVERNMENT POLITICAL ADVERTISING

The Hon. R. T. M. BULL: I address my question to the Minister for Public Works and Services. Is it a fact that only three of the 16 recommendations relating to taxpayer-funded government advertising, made in 1995 by the Auditor-General, Mr Tony Harris, have been taken up by the Carr Government, even though Mr Carr promised that once elected he would ban government advertising for party political promotion and appoint an independent committee to veto such advertising? As a member of the Government's advertising subcommittee, will the Minister explain why his Government has broken that promise and has failed to take decisive action on those recommendations?

The Hon. R. D. DYER: The Australian Labor Party made a commitment in 1995 to prevent government advertising being used as a campaign tool before elections. Our commitment followed a massive politically motivated blitz by former Premier John Fahey and the coalition in the two months leading up to the 1995 State election, which, perhaps, the Deputy Leader of the Opposition has forgotten about. Ironically, the Hon. John Fahey has now moved to the Federal Government, which spent more than $18 million in the weeks before the last

Federal election on pro-goods and services tax advertisements. That is the record of the Opposition's Federal colleagues.

The public is entitled to have confidence that government advertising is not misused for party political purposes, such as it was by the Federal coalition during the recent Federal campaign. I am advised that since the Carr Government came to office not one advertising campaign has been referred to the Auditor-General with allegations of political interference.

The Hon. J. P. Hannaford: We will fix that.

The Hon. R. D. DYER: If there were any scandalous examples during any campaigns, then the Opposition has not seen fit to complain. When the shadow minister for education and training was questioned about government advertising during the recent Federal election campaign he said:

> Well having said that yes . . . because people are looking for information, when they provide it in the form of TV advertising, one of the forms that our society gets information, should we really complain?

Leaving aside the appalling syntax and English expression, the honourable member for Ku-ring-gai was trying to say that there was nothing wrong with the Federal Government's advertising during the Federal election campaign. Clearly, there was something wrong. If that were not enough, the honourable member for Ku-ring-gai, referring to the Heritage Trust, the GST and the work-for-the-dole scheme advertisements, said:

> These are campaigns by the public service for public information. There's a place for that.

The Deputy Leader of the Opposition should speak to the honourable member for Ku-ring-gai and straighten him out about this matter. The Opposition has its wires crossed. It advocates one rule at a Federal level and another at a State level. The Opposition is guilty of hypocrisy. It ought to decide whether to be consistent.

COMPUTER MILLENNIUM BUG CHRISTMAS WARNING

The Hon. J. R. JOHNSON: My question without notice is to the Attorney General, and Minister for Fair Trading. What advice does the Minister's Department of Fair Trading give to people considering buying, inter alia, electronic equipment this Christmas?

The Hon. J. W. SHAW: The Minister for Fair Trading traditionally releases a number of warnings to consumers at Christmas. I have already warned about the use of credit and the Department of Fair Trading is examining dangerous toys that are on sale for Christmas. Some members might think it a cliche, others might think it a tradition. However, a warning about dangerous toys ought to be pointed out by a fair trading Minister. Some traditions are worth supporting, as I am sure Opposition members would agree. It is understandable that a number of fair trading warnings should be given at Christmas because it is the time of greatest consumer activity. People make a large number of purchases at Christmas.

This year there is a new consumer problem—how to avoid being caught by the millennium bug, or the Y2K problem, when buying products that have a computer chip with a date function, such as watches, personal computers, software, video cassette recorders, fax machines, motor cars and a large number of other articles. As honourable members would know, the millennium bug problem refers to a malfunction in computer chips with a date function. The date is stored using only two digits, so the year 2000 is read simply as two zeroes. It is not immediately apparent which products will have a millennium bug problem, since it will only become evident on or after 1 January 2000. Products with the problem are likely to malfunction or stop altogether on that date.

No product that is bought by a consumer this Christmas should malfunction just over a year later. To avoid this problem, the Department of Fair Trading is issuing the following advice to consumers. Before buying any product with a computer chip date function, consumers should look for point-of-sale advice or product literature which specifically state that an item is Y2K free or Y2K compliant. If no specific advice is on display, consumers should check the millennium bug status of a product with retailers or manufacturers. Consumers should insist that a retailer provide a written guarantee from his or her shop, or from the manufacturer, stating that a product is Y2K free or Y2K compliant. Further information on the millennium bug and shopping can be obtained from any Fair Trading centre or by visiting the department's web site.

A brochure entitled "Squash the Millennium Bug this Christmas" has just been released by my department. Consumers should be sure that they are dealing with a legitimate supplier. A good guide is that if the price or deal seems too good to be true it probably is. Consumers cannot generally know if a product is millennium bug free without asking. Since Christmas is usually a time of buying presents for others, it would be a pity to give presents which do

not work in just over a year's time. Although manufacturers have now had some time to correct products with millennium bug defects, consumers should not rely on that and should always check.

ELECTRICITY INDUSTRY PRIVATISATION

The Hon. J. M. SAMIOS: I ask the Treasurer, Minister for State Development, and Vice-President of the Executive Council a question without notice. Does the Treasurer agree with the Premier's statement of 31 October 1997, as reported in the *Australian Financial Review*, that privatisation of the New South Wales electricity industry is inevitable? Will the Treasurer give a guarantee that should the Australian Labor Party win the next election a Labor government will not privatise the electricity industry during its term of office?

The Hon. M. R. EGAN: I thank the Hon. J. M. Samios for his question. I look forward to joining him on the hustings on this issue.

TAXIDRIVER IMPROPRIETY COMPLAINTS

The Hon. FRANCA ARENA: I ask the Treasurer, representing the Minister for Transport, and Minister for Roads, a question without notice. Is it a fact that in the 1997-98 financial year 3,171 complaints were lodged against taxidrivers, most of which related to rudeness and impropriety? Is the Treasurer concerned about those figures? What action does the Government propose to take to ensure a courteous taxi service, especially in view of the large number of overseas visitors expected in the next few years?

The Hon. D. J. Gay: Lucky the Treasurer doesn't drive taxis.

The Hon. M. R. EGAN: I catch a number of taxis.

The Hon. D. J. Gay: Are you more pleasant to the taxidrivers than you are to us?

The Hon. M. R. EGAN: I believe that I would be a very entertaining taxidriver. If I were a taxidriver I would have very fixed opinions and every customer would know my opinions by the time they got out of my cab. The Hon. Franca Arena mentioned 3,000 complaints, which, of course, is a large figure.

The Hon. Dr B. P. V. Pezzutti: It is, it is 3,000 too many.

The Hon. M. R. EGAN: Yes, one complaint is one too many. This should be kept in perspective, because each year literally millions of taxi journeys are undertaken. As I mentioned at the beginning of my answer, I am a frequent user of taxis. In general my experience of Sydney taxidrivers is better than my experience of taxidrivers in almost any other city in the world, excluding London. Next to the London taxidriver, the Sydney taxidriver, in general, is pretty good. It is a pity that the excellent service provided by the overwhelming majority of our taxidrivers is occasionally spoilt by one who does not provide good service, does not drive well or does not enjoy his job.

I assure the Hon. Franca Arena that both the former and the current Minister for Transport are only too well aware of the poor reputation that can be gained by a city if even a small fraction of its taxidrivers are unsatisfactory. I assure the honourable member that not only are the Government and the Minister trying to do everything they can to weed out unsatisfactory taxidrivers, so too are the good taxidrivers. They are anxious that the few who have the potential to give them all a bad name are weeded out of the industry. I will refer the question to my colleague the Minister for Transport.

BANKING SERVICES

The Hon. J. KALDIS: I ask the Minister for Fair Trading a question without notice. Can the Minister inform the House about efforts to assist older consumers with access to banking services?

The Hon. J. W. SHAW: Most members of this House have been concerned about bank branch closures and the obvious dilution of face-to-face services at a time when banks in Australia are profitable. Of course, older Australians are more disadvantaged by changes in the industry than other customers. Usually older people have done business with a particular bank for many years; paying off a mortgage and dealing with tellers. Many older people are not able to cope with new banking systems such as automatic teller machines, phone banking or Internet banking. They need assistance to cope and should not become victims of technological change.

I call on the banking industry to devote substantial resources to a project to provide assistance to older customers and not leave them behind. This week I wrote to six banks asking them to outline the extent of educational programs they

run for older Australians. I have asked them to list their programs, such as one-on-one training, group workshops and video training sessions. I have also asked those six banks to tell me what funds they are devoting to those projects. I am aware that the Australian Bankers Association [ABA] intends to launch a campaign early next year to assist older Australians, and I am awaiting details of that campaign with interest.

The ABA is liaising with a number of pensioner groups and with the Government. Both individual banks and the ABA should ensure that their programs are not too little, too late. Early next month Rockdale City Council will hold three one-day banking education seminars for older Australians and for those whose first language is not English. Recently the ANZ bank announced a freeze on further branch closures, and Westpac said it would not reduce the number of its branches but would retain a presence in every rural centre where it currently operates.

Following Westpac's announcement I met with Mr Mike Hawker of that bank to hear in greater detail the changes being made by the bank. I commend the ANZ and Westpac banks for responding to public concern about bank branch closures and giving those positive undertakings. Other banks are conspicuous for not having given the same guarantees. When rapid social change occurs it is often to the detriment of particular groups. It is important that major public corporations are sensitive to social problems arising from their actions.

BUSINESS ENTERPRISE CENTRE AUDIT

The Hon. D. J. GAY: My question is directed to the Treasurer, in his capacity as Minister for State Development. Is it true that business enterprise centres [BECs] in New South Wales were audited last year by Ernst and Young, that those audit reports have not yet been made available, and that the cost of the service has not been made public? Is the Department of State and Regional Development conducting a similar audit this year? Is it also true that a company, Delta Outlook, is now making inquiries of BECs' clients about the level of service provided, despite the fact that those clients were, rightly, led to believe that their approach to the centres was in confidence? How much public money has been spent on secretive audits and service reviews in this term of government and why has money not been spent on providing the public with better services?

The Hon. M. R. EGAN: It is my recollection that an audit was conducted, but I cannot recall whether it was last year or whether it was conducted by Ernst and Young.

The Hon. Patricia Forsythe: Haven't you got anything in your House folder that might help you?

The Hon. M. R. EGAN: The Hon. Patricia Forsythe asked me whether I had anything in my folder that might assist me. She is not very observant. I have been the Treasurer for almost four years and in that period have answered more questions than any leader of any government in any comparable period. One thing I never do is look at my question time folders. They are available, but I take the view that if I do not know the answer no purpose would be served by my reading a piece of paper that is filed away in a folder.

The Hon. D. J. Gay: What about the confidentiality issue?

The Hon. M. R. EGAN: I will pursue that.

The Hon. Dr B. P. V. Pezzutti: Is it a waste of money to prepare that folder?

The Hon. M. R. EGAN: No, they come in very handy for my staff. Therefore, my staff do not have to ask me for information, they can find it in the question time folder. I am not the research officer for my staff and they understand that. They do research, and I just know.

The Hon. Dr B. P. V. Pezzutti: When do you know? All the time!

The Hon. M. R. EGAN: That is right. The Hon. D. J. Gay raised a question of confidentiality. I assume he is suggesting that business enterprise centres may have supplied information about clients to an organisation called Delta Outlook. I will follow that up and come back to him with a response. I point out that BECs are not government agencies; they are community endeavours which the Government funds, from memory on a contract basis. In other words, rather than give them a block funding grant the Government contracts with them for the provision of services to clients, but they are not actually run by the Government.

By and large the feedback I get is that BECs do an excellent job. I have not had experience with one as a client, but I am sure that my department, and the centres themselves, are only too keen to

make sure that the service provided to clients is of a very high standard. I will ensure that my department follows up the issues that the honourable member raised in his question.

KANGAROO CULLING

The Hon. R. S. L. JONES: I ask the Attorney General, representing the Minister for the Environment, a question which I asked almost two years ago to the day and to which I have never received an answer. Is it a fact that the Hon. David Wotton, the former Minister for the Environment and Planning in South Australia, expressed concern that the taking of large male kangaroos by the commercial industry could, in his words, result in the deterioration of the quality of the population as a whole? Have similar concerns been expressed by Dr Ian Gunn of the Animal Gene Storage and Resource Centre of Australia, who says that the practice of eliminating the largest, healthiest kangaroos has the potential to result in reduced genetic viability and a lower reproductive efficiency? Will the Minister advise the House what scientific research is being undertaken by the National Parks and Wildlife Service to determine the genetic impact of the removal of large numbers of elite males from the kangaroo population? If this research has not yet been undertaken, how can the Minister justify the continuation of a taxpayer-subsidised industry that may well have serious long-term effects on the genetics and the survival of our large macropods?

The Hon. J. W. SHAW: I regret the suggestion that an earlier question to the same effect was not answered. I will look into that and use my best endeavours to supply the honourable member with an answer to the question.

GOLD PRODUCTION

The Hon. JANELLE SAFFIN: Will the Treasurer, and Minister for State Development inform the House on the latest research into the New South Wales gold industry?

The Hon. M. R. EGAN: The latest research by the New South Wales Department of Mineral Resources shows that it is cheaper to establish and run a goldmine in New South Wales than it is in any other State in Australia or in most other major competitor countries. I am told that the New South Wales gold industry is the lowest cost gold producer in Australia in terms of both production and discovery costs. Continued industry expansion is forecast to result in total State production of some 34 tonnes by the year 2002.

The Hon. Dr B. P. V. Pezzutti: Why are you reading the answer?

The Hon. M. R. EGAN: These are notes I have made so I can give a comprehensive rather than a rambling response. That is significant because it is almost three times the present level of 11.7 tonnes—

The Hon. I. Cohen: Because you rip off the New South Wales environment.

The Hon. M. R. EGAN: I happen to be a supporter of the goldmining industry.

The Hon. I. Cohen: I know you are, and you have ripped off the New South Wales environment.

The Hon. M. R. EGAN: You do not have to sound so surprised about it, and you should not take umbrage at others in this House who have a different political and philosophical position to you. That is just a fact of life. We all represent—

The Hon. Dr B. P. V. Pezzutti: Philosophical differences.

The Hon. M. R. EGAN: Different views.

The Hon. Dr B. P. V. Pezzutti: From the Greens.

The Hon. M. R. EGAN: That is absolutely right, and I have a different political and philosophical view to the Opposition—thank heavens!

The PRESIDENT: Order! The Leader of the Government will direct his remarks through the Chair.

The Hon. M. R. EGAN: As I have said, that is almost three times the present level of 11.7 tonnes and reflects the climate for investment, growth and job creation fostered by the Carr Government in New South Wales. The research has found that the New South Wales gold industry has the lowest discovery costs of gold in Australia, which are estimated at around $10 per discovered ounce compared with the Australian industry average of $19. In addition, New South Wales has the lowest allocated capital cost per ounce of annual capacity when compared to the world average, and the lowest operating cost per ounce of gold extracted in Australia.

Those figures indicate that it is much cheaper to establish goldmines in New South Wales than in other areas of the world. I am told that New South Wales goldmines have lower operating costs than those in both the United States and South Africa. Some of the reasons for this State's advantage have been identified in the research as including lower transport costs than other States—

The Hon. I. Cohen: Lower environmental standards.

The Hon. M. R. EGAN: That is silly and you know it.

The Hon. I. Cohen: It is not silly. It is quite a serious business.

The Hon. M. R. EGAN: You should never ask a question unless you know the answer, and you should never make a gratuitous interjection. New South Wales has lower transport costs than the other States. In New South Wales the average distance from a goldmine to a population centre exceeding 5,000 people is 45 kilometres compared to many hundreds of kilometres in Western Australia. New South Wales has lower labour on costs, again because of the closer proximity of regional centres, and ready access to road, rail, water and electricity services. That is simply the fact of the matter. The State Government's stimulation of rail freight competition has resulted in reduced transport costs. Cheap electricity is also a very important element because over the past two years negotiated industrial tariffs for consumers of large amounts of electricity have fallen by as much as 40 per cent.

Finally, New South Wales has had the fastest rate of growth in its gold resource base, some 670 per cent in the past ten years. That has eclipsed the national gold resource growth of around 170 per cent in the same period. With New South Wales possessing 9.1 per cent of the nation's gold resources while only accounting for 3.7 per cent of the production, the New South Wales gold industry has significant scope for increase. That is why the State Government's commitment to continuing Discovery 2000, which resulted in exploration expenditure in New South Wales to increase to a record amount of more than $100 million in 1997, is part of its jobs plan for New South Wales.

POLICE GUIDELINES FOR BRIEFING THE DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. Dr B. P. V. PEZZUTTI: Is the Attorney General aware that over the weekend the Director of Public Prosecutions expressed concern that he was not briefed prior to the charging of Judge Bell with paedophile offences? Is the Attorney General aware that police have assured the DPP that they will provide details according to the guidelines to the DPP? Given that court action begins on Friday of this week, is the Attorney General satisfied that justice will be served in the case by the late delivery of documents to the DPP? Is the Attorney General happy with the guidelines under which the police say they are acting? Will he provide a copy of those guidelines to the Legislative Council?

The Hon. J. W. SHAW: I am aware of the reports to which the honourable member refers. My understanding is that whether the police consult the DPP before the laying of charges is a matter for the discretion they exercise in relation to a particular case. I am also aware of some apparent disagreement as to whether all of the evidence has been provided to the DPP by the police, but I assume, as has been asserted, that the guidelines are being complied with. I do not believe there is any sensitivity about those guidelines. I will check on that, but I will be happy to provide honourable members with the guidelines if they are, as I believe, a publicly available document. I do not propose to comment on the procedures adopted in this particular case or, indeed, in any particular criminal prosecution, and so I have answered the question in general terms.

SCHOOL VIOLENCE

Reverend the Hon. F. J. NILE: I ask the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading in his own capacity and representing the Minister for Education and Training, and Minister Assisting the Premier on Youth Affairs and the Minister for Police, a question without notice. Is it a fact that a Vaucluse High schoolteacher, Mr Allan McFadden, was charged with assault after clipping a student across the head with an open hand when the child had disobeyed a perfectly reasonable instruction and had then sworn at the teacher? I understand the charge was later dismissed. Is it a fact that a teacher at Westfields Sports High School at Fairfield was punched in the face by a student trespasser on school grounds resulting in a broken nose and no charges have been laid against the assailant? What is the explanation for this stark contrast between a teacher being charged with assault for a minor contact with a student and a student getting away with an actual bodily assault upon a teacher? Will the Attorney General investigate why charges were not laid as a result of the Westfields assault and ensure that steps are taken to uphold the rights of teachers to protection from physical assaults?

The Hon. J. W. SHAW: Whether charges are laid in a particular case is a matter for the exercise of discretion by the police. At common law a police constable cannot be directed with respect to a discretionary decision as to whether charges are laid. I do not want to comment on either of the cases to which the honourable member referred, although I am aware of the first case, in which a teacher was apparently acquitted of any criminal charge. That was the decision of the court, and I am happy to look at the magistrate's reasoning.

Reverend the Hon. F. J. Nile: I am not critical of that.

The Hon. J. W. SHAW: I thank the honourable member for that; I understand what he is saying. I confess that I am unaware of the second case to which the honourable member referred, in which a teacher was allegedly assaulted and no charge was laid. I am happy to see if I can get a report for the honourable member on the reasoning behind that decision.

GOVERNMENT CONSTRUCTION CONTRACT PROCEDURES

The Hon. A. B. MANSON: My question without notice is directed to the Minister for Public Works and Services. Will the Minister inform the House of recent initiatives to improve contract procedures on government construction sites?

The Hon. R. D. DYER: The question asked by the Hon. A. B. Manson again demonstrates his continuing interest in the New South Wales building industry. The Department of Public Works and Services is shortly to commence a number of trials aimed at improving the performance of contractors on government construction projects, as well as evaluating the department's performance in administering tenders and contracts. The trials are in line with the Government's commitment to encourage reform and best practice in the construction industry. Two sets of trials will be conducted involving contractors in the Department of Public Works and Services best practices contractor accreditation scheme covering contracts over $2 million.

The first set of trials will involve contractors working on five government projects, comprising three building jobs and two water supply and sewerage schemes, reporting on the role of the Department of Public Works and Services as tender administrator. Appraisals will take place following the letting of the contract, at stages during the construction phase and at the completion of works. The information obtained over this period will be invaluable to the department in its desire to deal fairly and responsibly with contractors. I am pleased to say that the trial scheme already has the support of the Newcastle Master Builders Association, and similar formal support is expected from the New South Wales Master Builders Association following ongoing discussions with its executive.

In the second set of trials a number of subcontractors holding subcontracts worth more than $100,000 will be asked to appraise the performance of their head contractors. The reports to be used in these trials were developed in conjunction with the Airconditioning and Mechanical Contractors Association of New South Wales, which will share in the feedback received. I propose to trial these reports on four contracts involving three building projects worth between $5 million and $10 million and one water supply project worth $2 million. The evaluation of performance will include adherence to codes of practice and tendering; security of payment; industrial relations; occupational health, safety and rehabilitation; and environmental issues.

Contractor and subcontractor industry associations will be consulted in the review of the results of both sets of trials. The information received from these appraisals will be studied in detail by my department and recommendations made for future contract arrangements. If the trials are successful it is likely that the initiative will be extended to other Government construction agencies, and may become a standard feature of public construction work. Both sets of trials will commence early next year, and I look forward to having the opportunity in the future to update the House on the results of this initiative.

MOAMA POLICE ACCOMMODATION

The Hon. M. R. KERSTEN: My question is addressed to the Attorney General, representing the Minister for Police. Is it a fact that three of the four policemen stationed at Moama in New South Wales are forced to rent houses in Echuca, Victoria, because of an acute shortage of police housing in Moama? Is it further a fact that the only police house in Moama will soon be sold and that the proceeds of that sale will be returned to Treasury? Will the Minister's department use the proceeds to build more police housing in Moama?

The Hon. J. W. SHAW: I will refer that question to the Minister for Police and obtain a response for the honourable member.

CASTLE HILL TO MUNGERIE PARK RAIL LINK

The Hon. Dr A. CHESTERFIELD-EVANS: I ask the Treasurer, representing the Minister for Transport, whether the action for transport 2010 plan

released by the Premier today shows that there will be no fixed public transport or rail link from Castle Hill to Mungerie Park until after 2010. Given that this area will have a population the size of Canberra just 10 years after 2010, does it not make sense to ensure that the rail line goes in first and all the way to Mungerie Park so that commercial centres and car parks can be developed before this highly car dependent region becomes further clogged with more private vehicles?

The Hon. M. R. EGAN: I will refer the question to my colleague the Minister for Transport.

CARNES HILL PUBLIC SCHOOL

The Hon. JAN BURNSWOODS: My question without notice is addressed to the Minister for Public Works and Services. Will the Minister update the House on the progress of construction at Carnes Hill Public School in south-western Sydney?

The Hon. R. D. DYER: The interest of the Hon. Jan Burnswoods in educational matters is well known to the House, and I commend her for continuing to evidence that interest. Honourable members may be aware of the construction of a new primary school at Carnes Hill at Hoxton West. The Department of Public Works and Services is the project manager for the $4 million works. Honourable members would be aware of the prolonged spell of wet weather earlier this year which disrupted a number of projects in south-western Sydney and the Blue Mountains. Regrettably, these storm events delayed works at Carnes Hill and the project initially fell several weeks behind schedule.

Following these storms Department of Public Works and Services officers worked closely with the main contractor, Donnelly Constructions Pty Ltd, to redraw the construction timetable to help bring works back on track. I am pleased to report to the House that the redrawn timetable at Carnes Hill has proved successful and the project is back on time and on budget and will be handed over in August 1999. Construction is now 30 per cent complete with work on building frames nearing completion and roofing works well advanced. Since the project commenced in May all earthworks have been completed and more than 500 cubic metres of concrete poured for the building slabs.

The new school will include six single-storey blocks, containing 14 home bases, a library, a canteen, a clinic and administration, as well as a large communal hall and a covered learning area. Architects from the department have worked closely with the Department of Education and Training and the school community to design a facility that maximises efficiency and environmental awareness. For example, the design maximises natural lighting and ventilation using skylights and wind-driven roof ventilation. Extensive landscaping works have also been prepared to create a pleasant learning environment and green space surrounding the school.

The project is also a significant boost for local employment with the subcontract and supply packages all going to western Sydney firms. Up to 100 people are employed on the project, both directly and indirectly, including 40 workers engaged in building and installation works on the site. The new school is extremely important for the local community at Hoxton West, and I congratulate Donnelly Constructions on its dedication in returning the project to its original timetable after the wet weather delays.

I draw attention to the persistence of and interest shown by the honourable member for Badgerys Creek, Diane Beamer, in progressing this project on behalf of local residents. All local members would welcome new school construction in their areas, but Mrs Beamer's commitment to the Carnes Hill construction has been especially significant and should be acknowledged by the House. Once again I am pleased to report another project on time and on budget, and providing essential public infrastructure to a western Sydney community.

LEBANESE NATIONAL DAY SPEECH

The Hon. J. M. SAMIOS: My question is to 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. Is it a fact that the Government today made representations to the New South Wales representative of the Lebanese Government opposing a speech given by a representative of the Opposition at the function held today to commemorate Lebanese National Day?

The Hon. R. D. Dyer: On Saturday.

The Hon. J. M. SAMIOS: Why did the Government put such pressure on the Lebanese Government today?

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

SNOWY RIVER WATER

The Hon. I. COHEN: I ask the Treasurer, Minister for State Development, and Vice-President of the Executive Council when the viability analysis for the Snowy scheme will be made publicly available. Was the analysis incorporated into the Snowy water inquiry final report?

The Hon. M. R. EGAN: I do not know the answer to the question but I shall find out and respond to the honourable member as soon as I can.

FLETCHER CHALLENGE PAPER

The Hon. A. B. KELLY: Will the Treasurer, Minister for State Development, and Vice-President of the Executive Council inform the House on the latest international company to set up its regional headquarters in Sydney?

The Hon. M. R. EGAN: I am pleased to advise the House that last Friday I had the pleasure of opening the Australasian headquarters of one of the world's largest newsprint producers, Fletcher Challenge Paper. The company—Australia's largest supplier of newsprint—has invested $2.6 million in its new headquarters in Darlinghurst, creating 30 new jobs directly. The company currently supplies the Fairfax and News Corporation groups and all of Australia's major publishers. I am told that Australians spend around $22 million a week on newspapers. I contribute a fair bit of that amount.

The Hon. Dr B. P. V. Pezzutti: You don't read them, though.

The Hon. M. R. EGAN: They are always a very good reference tool. Fletcher Challenge Paper turns over more than $1 billion a year and employs some 2,000 people in Australia and New Zealand. It employs 300 in Albury. This is another win for New South Wales and the latest in the rapidly growing list of local, interstate and international companies moving their operations here. The decision is also further evidence of Sydney's position as Australia's number one city to do business from. It is also the regional business capital for those entering Asia.

In June Fletcher Challenge Paper announced a $6 million upgrade of its thermomechanical pulp mill in Albury. It also has a paper mill in southern Tasmania and another in New Zealand. The company's chief operating officer for Australasia, Mr Russ Horner, whom I had the pleasure of meeting on Friday, said that the move to Sydney would strengthen the company's relationship with its key customers, most of whom are based in Sydney. Fletcher Challenge Paper is an international company with operations involving building, energy, forests and paper. The businesses produce goods sold in more than 50 countries which were valued at $NZ3.6 billion last year. I am pleased to welcome Fletcher Challenge Paper to Sydney and I wish it all the best in the future.

COONAMBLE DISTRICT CATTLE CO-OPERATIVE

The Hon. D. F. MOPPETT: My question is addressed to the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading. Is the Minister aware that the Department of Fair Trading assisted in the formation of a co-operative in the Coonamble district with the objective of establishing a feedlot and downstream processing for the cattle industry? Does the department assist co-operatives in the preparation of prospectuses for raising cattle? In view of the co-operative's recent unsuccessful efforts, what assistance was given, if any, to the co-operative in the venture?

The Hon. J. W. SHAW: My understanding is that the Department of Fair Trading generally assists co-operatives and gives them appropriate advice. I am unaware of the particular case to which the honourable member referred in his question but I undertake to obtain information about it and inform him accordingly.

VICTIM IMPACT STATEMENTS

The Hon. C. J. S. LYNN: Is the Attorney General aware of the recent case in which a District Court judge, John Nader, refused to accept four statements from the family of a 16-year-old girl, Emma Long, who was killed while driving a high-powered car owned by William Cramp while she was intoxicated? Is he also aware that Justice David Hunt, when delivering the judgment of the Court of Criminal Appeal, reduced the sentence of a man convicted of manslaughter by 12 months because the trial judge "had fallen into serious error" by taking into consideration victim impact statements before sentencing? What action will the Attorney General take to ensure that victim impact statements are given more than clayton's status so that victims of crime can be made to feel that justice has actually been done?

The Hon. J. W. SHAW: I am aware generally of the Cramp case, although I have not seen the text of the judge's reasoning process. However, I will look at that. The judge sentenced Mr Cramp to nine years and four months gaol with a minimum term of seven years for the manslaughter

of a young woman. I understand that in determining the punishment he declined to consider victim impact statements which were tendered by members of the victim's family.

To understand that process one needs to go back to the legislation which was passed by this House. It requires that judges and magistrates consider victim impact statements as part of the sentencing process in all cases other than those in which the victim is no longer alive and the victim's relatives want to put the information before the court. In the great majority of criminal cases the victim impact statements, which this Government enacted, have been useful in putting before the courts details of the psychological and physical injury that victims have suffered.

During consideration in this House the legislation was expanded from its original conception by an amendment moved by the Hon. J. S. Tingle which expressly leaves it to the court's discretion whether it will take into account the victim impact statement in a case which involves the death of a person. The legislation requires the court to accept the material and consider it but it does not require the court to regard it as relevant in the determination of a sentence.

I did not frame the provision, the Hon. J. S. Tingle did, but it seems to reflect the view that we all know the consequence of a crime involving death—the extinction of human life. So in a sense there is no need for evidence about the consequences resulting from the loss of a human life. As a matter of logic it is difficult to say that the sentence ought to be any less when a human life is extinguished and the deceased person has no loved ones, relatives or friends who desire to lodge victims impact statements. This House—and I do not take any credit or blame for it—crafted an amendment which leaves it to the judges and magistrates in death cases to determine the weight, if any, that a victim impact statement will have.

But let us not be distracted from the fact that in regard to the vast majority of criminal proceedings this Government took the step of including in legislation provision for victim impact statements. Such statements apply and have relevance in the courts in relation to the vast majority of crimes which result in psychological or physical damage to individuals. The former Government declined to do that: it baulked at the task. I think that victims have been ignored in the criminal justice process over the years.

The Government has the runs on the board with the enactment of provisions for victim impact statements; the establishment of the Victims Advisory Bureau, which helps people to compile statements and assists them through the court processes; and, for the first time in New South Wales, the establishment in law of a victims statutory charter of rights. They are positive achievements, and I doubt that anyone on the Opposition benches would dispute them.

I hope I have articulated the particular difficulty that judges have using these statements when determining the sentence in cases involving a death. Nonetheless, responsible representatives of victims groups have told me verbally and in writing that they consider it useful to put before the court material concerning their response to the matter. They understand the statements of judges and magistrates as to why they cannot take the statements into account as logically relevant to the determination of a sentence. I have been gratified by the response of leaders of victims groups to this process. I believe broadly that they are satisfied with it and acknowledge that what the Government has done in this respect with the criminal justice system has been wholly positive.

DARLING HARBOUR DEVELOPMENT

The Hon. DOROTHY ISAKSEN: My question without notice is directed to the Treasurer, and Minister for State Development. Will the Treasurer give the House details on the state of development in Darling Harbour?

The Hon. M. R. EGAN: I am pleased to inform the House that after 10 years the work to convert Darling Harbour from a derelict precinct into a recreational and commercial showcase is now complete. The final piece in the Darling Harbour development jigsaw, the Cockle Bay Wharf complex, was finished last week.

The Hon. Dr B. P. V. Pezzutti: I thought you knew everything.

The Hon. M. R. EGAN: Yes, I do. I have been down to Cockle Bay three times since it was opened.

The Hon. J. H. Jobling: Down to the new night club?

The Hon. M. R. EGAN: No. I regret to say that on each occasion it was on business. Cockle

Bay completes the eastern boundary of Darling Harbour, providing a vital link to and from the city. It is in perfect sync with the State Government's 1984 vision for the area: a vision that has created a major cultural, leisure and business hub for residents and local and overseas visitors alike. The recent construction work at Darling Harbour generated many new jobs, including 400 on building the Cockle Bay complex and 150 on upgrading the Sydney Convention and Exhibition Centre.

More than 4,000 people work in Darling Harbour every day, predominantly servicing our booming tourism industry. I am told that Darling Harbour has an annual turnover of approximately $570 million a year. The economic benefits flowing out of Darling Harbour are huge. Money flowing through the Sydney Convention and Exhibition Centre alone contributes some $200 million a year to the Sydney economy. That figure is over and above its own revenue stream.

The New South Wales Government has invested approximately $1 billion in Darling Harbour. This money has been spent on the construction of the Sydney Convention and Exhibition Centre, the Chinese Gardens, the Entertainment Centre and harbourside car parks, the Cockle Bay marina and seating around the bay. This investment has been complemented with a further $3 billion from the private sector. The completion of Cockle Bay does not mean that work has stopped at Darling Harbour. Facilities are constantly being upgraded and new amenities are being added. The Sydney Aquarium has just completed a $11 million Great Barrier Reef exhibition. I was unaware of that and I intend to see it.

The Hon. M. J. Gallacher: Again?

The Hon. M. R. EGAN: No, I have not seen it. Neither had I seen the Great Barrier Reef until a few months ago.

The Hon. M. J. Gallacher: Tell the House about the breakfast with the old lady!

The Hon. M. R. EGAN: I will tell our colleagues about one of your party colleagues whom I met up there, but that will wait for another day. The harbourside shopping centre is undergoing a $60 million remodelling and the Sydney Convention and Exhibition Centre is in the midst of a $57 million expansion. One has only to visit Darling Harbour to see that all this work is paying off: Darling Harbour is alive with visitors! Last year more than 15.2 million people visited the complex. That is almost 3,000 a day and with the completion of the Cockle Bay Wharf restaurant and entertainment centre that number is sure to increase. I congratulate everyone involved in the development of Darling Harbour, and particularly Cockle Bay, and wish them all the best for the future.

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

DEPARTMENT OF PUBLIC WORKS AND SERVICES CONTRACTOR PAYMENT

The Hon. R. D. DYER: On 18 November the Hon. D. J. Gay asked me a question concerning Monaro Welding Pty Ltd. I am now able to provide the following response:

> The Department of Public Works and Services [DPWS] is project managing the $7 million redevelopment of Goulburn racecourse. A major component of the project is the $1.7 million contract for the patron facilities building. Haskins Contractors Pty Ltd is undertaking the construction. The structural steelwork, worth approximately $153,000, is being provided by Monaro Welding Pty Ltd, a company based in Cooma, as a subcontract to Haskins Contractors Pty Ltd.
>
> The department has a commercial agreement with Haskins Contractors Pty Ltd, but none with Monaro Welding Pty Ltd. Haskins Contractors Pty Ltd receives monthly progress payments for satisfactorily completed work. It is the responsibility of Haskins Contractors Pty Ltd to ensure that all subcontractors, including Monaro Welding, are paid. As the honourable member has rightly pointed out, progress on this project has been slower than predicted because of unusually inclement weather. Nearly all of the structural steelwork has been fabricated and held in store. However, until last week only 10 per cent had been erected, for which full payment has been made.
>
> It is normal practice for payment to be made for materials that form part of a contract only after they are incorporated into the works. This provides protection from such occurrences as default or insolvency of a contractor, theft or damage. Although rare, there are precedents for such events. I am advised that much of the structural steel arrived on site on 18 November, the same day the honourable member raised the matter in the House, and erection is now in progress.
>
> However, prior to this, I am pleased to advise that DPWS officers have already devised a solution to allow payment to Monaro Welding for the materials which the company had already fabricated. On 11 November, DPWS advised the contractor, Haskins Contractors Pty Ltd, that payment for the off-site materials could be made, subject to the receipt of a bank guarantee equal in value to the materials. This arrangement would allow payment to be made to the contractor, who could then pass it on to the subcontractor, while at the same time protecting all the interests in the project.
>
> However, at this stage Haskins Contractors Pty Ltd has not responded to the offer. Like the Hon. D. J. Gay, I am sure each of us is conscious of the need of small companies in the construction industry to be able to obtain a regular cash flow. In this case, DPWS has developed a mechanism to permit cash flow to the affected subcontractor, despite the interruption caused by bad weather, should the contractor wish to avail

himself of it. Perhaps the honourable member could bring my comments to the attention of the directors of Monaro Welding Pty Ltd and suggest that the company approach the head contractor.

POLICE PAEDOPHILE ALLEGATIONS

The Hon. J. W. SHAW: On 14 October the Hon. J. F. Ryan asked a question concerning police paedophile allegations. The Minister for Police has provided the following response:

On 13 October, 1998, the day the Ombudsman's report was tabled, Assistant Commissioner Mal Brammer, Commander Internal Affairs, issued a media statement which addressed the issues raised in the honourable member's question. It said:

> The NSW Police Service has developed a model to help managers identify and assess officers who pose a risk to the community, their colleagues or the organisation.
>
> The Police Service today acknowledged the recommendations in a Report prepared by the Ombudsman in which she noted that Internal Affairs had adopted strategies to deal with the problem.
>
> For sometime the Service has been concerned about the issue of Risk Assessment of Police Officers. It has developed a model of actions which takes a look at the potential risk posed by an officer including duty type, duration, location, performance and complaints history.
>
> This model has been endorsed by the Ombudsman's office and will feature in a series of workshops scheduled for later this year. The model will be implemented in the Regions.
>
> Internal Affairs Command, Mal Brammer said, 'The Police Service will look at patterns of serious, similar complaints, and other indicators in determining what managerial action is required.
>
> 'We will continue to examine our method of operations and functions in regard to risk management, as well as giving managers and supervisors the relevant training on risk standards.
>
> In regards to the cases identified by the Ombudsman, one officer resigned late last year, a second officer was dismissed by the Commissioner. The third officer was served with a Performance Warning Notice in May this year.
>
> The Commissioner is committed to weeding out those officers who do not meet the standards the community and the government expects.

MOREE PRISONER ESCORTS

The Hon. J. W. SHAW: On 15 October the Hon. Jennifer Gardiner asked a question about Moree prisoner escorts. The Minister for Police has provided the following response:

The Premier and I work closely together on issues of law and order policy. Together with the Treasurer, the Attorney General and all members of the Carr Government, we are committed to ensuring that New South Wales police are supported by sufficient resources to do their jobs.

COMPANION ANIMALS

The Hon. J. W. SHAW: On 22 October the Hon. R. S. L. Jones asked a question regarding companion animals. The Minister for Corrective Services has provided the following response:

The Hon. Bob Debus, Minister for Corrective Services, has advised that whether an inmate is allowed to have a companion animal is a matter for the governor of the correctional centre where the inmate is imprisoned. There are two pet cats at Emu Plains Correctional Centre and at Mulawa Correctional Centre. The Kevin Waller Unit, formerly known as the Crisis Support Unit, at Long Bay Correctional Complex kept a dog for some four years. The dog was specially trained by the Royal Society for the Prevention of Cruelty to Animals to mix with a number of people and not to react adversely to the prison environment. Unfortunately, the dog had to be placed outside the correctional complex because it developed health problems due to overfeeding by inmates.

The Department of Corrective Services has established a Wildlife Care Centre at John Morony Correctional Centre. The Wildlife Care Centre is licensed to provide services and care to native wildlife and the program is monitored by the National Parks and Wildlife Service. The centre offers an important rehabilitative program designed to give opportunity to selected inmates to develop improved self-esteem and to gain animal welfare skills by caring for and assisting in the treatment of native wildlife. In many circumstances inmates will be linked with specific animals. This process allows inmates a sense of responsibility outside themselves, and is calculated to encourage personal accountability, reliability of effort and growth of self-esteem. The centre has cared for around 700 animals since it opened in 1994 and generally has over 100 animals in care at any one time, including some on permanent basis.

NEW SOUTH WALES TIMBER INDUSTRY

The Hon. J. W. SHAW: On 20 October the Hon. I. Cohen asked a question about the timber industry. The Minister for the Environment has provided the following response:

This question would be best directed to the Minister for Urban Affairs and Planning.

Questions without notice concluded.

STANDING COMMITTEE ON SOCIAL ISSUES

Report: Enhancing Aboriginal Political Representation—Inquiry into Dedicated Seats in the New South Wales Parliament

The Hon. Jan Burnswoods, as Chair, tabled report No. 18 of the committee entitled "Enhancing Aboriginal Political Representation—Inquiry into Dedicated Seats in the New South Wales Parliament", dated November 1998, together with minutes of meetings, transcripts of evidence and written submissions.

Report ordered to be printed.

The Hon. JAN BURNSWOODS [5.05 p.m.]: I move:

That the House take note of the report.

This report is the result of Legislative Council action in 1995 directing the Standing Committee on Social Issues to investigate the desirability of enacting legislation to introduce dedicated seats for Aboriginal people to the New South Wales Parliament. The committee's report presents the results of its extensive consultation with members of the Aboriginal and wider communities about ways to enhance indigenous political representation, including the possible introduction of dedicated seats.

Consultation included holding a series of public meetings across the State—the first time that the social issues committee employed this method as part of its inquiry process. The inquiry was challenging for committee members and members of the public who contributed to it. The details of implementing dedicated seats are not widely appreciated and involve complex political and constitutional issues. It was not easy to examine these issues fully at consultative meetings, and the committee recognised that consensus was unlikely to be reached in such circumstances.

While general consensus may not have been reached on how dedicated seats could work in practice, many Aboriginals who participated in the consultations and gave evidence expressed a strong desire to play a more active role in the political processes of this State. The committee's conclusions are designed to enhance the possibility of Aboriginal people undertaking that role. I should like to refer to one sentence in the report summary, which probably sums up the inquiry clearly:

> The evidence presented . . . clearly demonstrates that Aboriginal people are under-represented at all levels of government . . .

There has not been, and there still is not, an Aboriginal in the New South Wales Parliament. The inquiry's conclusions seek to provide ways to enhance Aboriginal participation in the political process both as political representatives and as voters. The committee agrees that there is a need for representation of indigenous people in this Parliament. It believes that a just and equitable society requires the representation of indigenous people in the New South Wales Parliament.

Debate adjourned on motion by the Hon. Jan Burnswoods.

RURAL LANDS PROTECTION BILL

In Committee

Consideration of the Legislative Assembly's message resumed from an earlier hour.

Reverend the Hon. F. J. NILE [5.09 p.m.]: Earlier I moved Christian Democratic Party amendment No. 1. I now seek leave to move Christian Democratic Party amendments Nos 2 to 25 in globo and to have them dealt with simultaneously with my amendment No. 1.

The CHAIRMAN: Order! A number of those amendments are similar to the Opposition amendments. I inform the Committee that if the amendments of Reverend the Hon. F. J. Nile are carried, the Opposition amendments cannot be moved. The question is, That leave be granted for Reverend the Hon. F. J. Nile to move his amendments in globo.

Leave granted.

Reverend the Hon. F. J. NILE [5.10 p.m.]: I move:

That the question be amended by the addition of the following words: "but proposes further amendments in the bill as follows:"

No. 2 Page 10, clause 24(2)(c), lines 16-18. Omit all words on those lines. Insert instead:

> (c) the provision of advice and assistance about, and the monitoring of the implementation by boards of, function management plans,

No. 3 Page 11, heading to Division 3, line 19. Omit "**directions**". Insert instead "**requests**".

No. 4 Page 11, clause 27(1), line 21. Omit "direct". Insert instead "request".

No. 5 Page 11, clause 27(2), line 24. Omit "give such a direction". Insert instead "make such a request".

No. 6 Page 12, clause 27(2)(d), lines 3 and 4. Omit "give such a direction". Insert instead "make such a request".

No. 7 Page 12, clause 27(3), line 7. Omit "direction". Insert instead "request".

No. 8 Page 12, clause 28, line 12. Omit "direction". Insert instead "request".

No. 9 Page 12, clause 29(1), line 18. Omit "direction it has given". Insert instead "request it has made".

No. 10 Page 12, clause 29(1)(a), line 20. Omit "direction". Insert instead "request".

No. 11 Page 12, clause 29(1)(b), lines 23-24. Omit "direction within a reasonable period after the direction is given". Insert instead "request within a reasonable period after the request is made".

No. 12 Page 12, clause 29(2), line 26. Omit "direction". Insert instead "request".

No. 13 Page 12, clause 29(3), lines 27 and 28. Omit "direction given". Insert instead "request made".

No. 14 Page 13, note to clause 29, line 5. Omit "direction". Insert instead "request".

No. 15 Page 18, clause 44(2), lines 23-27. Omit all words on those lines. Insert instead:

(2) A board must prepare a draft function management plan for any of its other functions if it is requested to do so by the State Council.

No. 16 Page 19, clause 47(1), line 33. Omit "for approval".

No. 17 Page 20, clause 47(3), lines 6 and 7. Omit "Before approving a draft function management plan for functions with respect to travelling stock reserves, the ". Insert instead "The".

No. 18 Page 20, clause 47(3), line 11. Insert "with respect to any draft function management plan for functions with respect to travelling stock reserves submitted to it" after "regulations".

No. 19 Page 20, clause 47(4), lines 12-14. Omit all words on those lines. Insert instead:

(4) The State Council may either agree to the implementation of a draft plan submitted to it without alteration or refer it back to the board for further consideration.

No. 20 Page 20, clause 47(5), lines 15-17. Omit all words on those lines. Insert instead:

(5) If the State Council agrees to the implementation of a draft function management plan for a function of a board, the draft is the function management plan for the board for the function concerned.

No. 21 Page 20, clause 48(1), line 19. Omit "direct". Insert instead "request".

No. 22 Page 20, clause 48(3), lines 28 and 29. Omit "may direct that sections 46 and 47 do not apply to the alteration". Insert instead "may authorise the board not to comply with sections 46 and 47 in respect of the amendment".

No. 23 Page 93, clause 218(2)(b), line 30. Omit "direction". Insert instead "request".

No. 24 Page 93, clause 218(2)(b), line 31. Omit "direct". Insert instead "request".

No. 25 Page 94, clause 219(2)(a), line 32. Omit "direction". Insert instead "request".

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [5.11 p.m.]: This is putting the proverbial cart before the horse. The amendments of Reverend the Hon. F. J. Nile are preferred to no amendments at all, but the Opposition would have preferred to move its amendments first. The Opposition opposes these amendments, not in principle but because that is the only way we can register support for the original amendments in the bill. The original motion of the Minister was for the Committee not to insist on amendments Nos 1 to 11. The Opposition seeks to amend the motion such that the Committee insist on amendments Nos 1 to 8 but not amendments Nos 9, 10 and 11. I understand the Committee's dilemma with this matter.

In opposing these amendments the Opposition merely indicates that it prefers its own amendments. If the amendments of Reverend the Hon. F. J. Nile are agreed to, the Opposition cannot move its amendments; they will have been negated by the decision of the Committee. The amendments of the Hon. F. J. Nile effectively follow the same path sought by the Opposition, but the language is different. The original bill allows the State council to "direct" the boards. The amendments change "direct" to "request", so the language is watered down. The Opposition amendments went further and gave the boards independence in deciding whether to comply with State council with respect to management plans.

The Hon. R. D. DYER (Minister for Public Works and Services) [5.14 p.m.]: Prior to question time I gave detailed reasons on why the Government opposes the Opposition's amendments so I shall not restate those reasons. However, the Government accepts the amendments moved by Reverend the Hon. F. J. Nile.

Question—That the amendments be agreed to—put.

The Committee divided.

Ayes, 23

Mrs Arena	Mrs Nile
Dr Burgmann	Rev. Nile
Ms Burnswoods	Mr Obeid
Dr Chesterfield-Evans	Ms Saffin
Mr Cohen	Mrs Sham-Ho
Mr Corbett	Mr Shaw
Mr Dyer	Ms Tebbutt
Mr Egan	Mr Tingle
Mr Jones	Mr Vaughan
Mr Kaldis	*Tellers*,
Mr Kelly	Mrs Isaksen
Mr Macdonald	Mr Manson

Noes, 14

Mr Bull	Mr Ryan
Mrs Forsythe	Mr Samios
Mr Gallacher	Mr Rowland Smith
Miss Gardiner	Mr Willis
Mr Hannaford	
Mr Kersten	*Tellers,*
Mr Lynn	Mr Jobling
Dr Pezzutti	Mr Moppett

Pairs

Mr Johnson	Mrs Chadwick
Mr Primrose	Dr Goldsmith

Question so resolved in the affirmative.

Amendments agreed to.

The CHAIRMAN: Before I call the Hon. R. S. L. Jones I inform the Committee that following the passage of Reverend the Hon. F. J. Nile's amendments the Opposition's amendments cannot be accepted. Opposition amendment No. 1 was similar to the Christian Democrats amendment No. 2, Opposition amendment No. 3 was the same as Christian Democrats amendment No. 15, and Christian Democrats amendment No. 16 was in conflict with Opposition amendment No. 4. Christian Democrats amendment No. 17 was in conflict with Opposition amendment No. 5 and Opposition amendment No. 6 was the same as Christian Democrats amendment No. 19. Opposition amendment No. 7 was in conflict with Christian Democrats amendment No. 20, Opposition amendment No. 8 was also in conflict with Christian Democrats amendment No. 21 and Opposition amendment No. 9 was in conflict with Christian Democrats amendment No. 22.

The Hon. R. S. L. JONES [5.23 p.m.]: I intend to move my amendments individually, not in globo. I move my amendment No. 1:

No. 1 That the following amendment be added to the amendment of Reverend the Hon. F. J. Nile:

Page 21, clause 49(2), lines 1 and 2. Omit all words on those lines. Insert instead:

(2) The exercise of that function is not invalid because of a contravention of any such plan. However, this subsection does not prevent the State Council from exercising its powers under section 27 in respect of the function.

Clause 44 of the bill provides that rural lands protection boards must prepare draft function management plans in respect of stock reserves under their care, control and management, and any other functions if directed to do so by the State council. Subclause (1) of clause 49 provides that the functions of the board must, as far as practicable, be exercised in accordance with those plans, yet subclause (2) states that the exercise of a function is not invalid because of any contravention of such a plan. This amendment will ensure that subclause (2) does not prevent the State council from requesting boards to rectify actions that are inconsistent with their function and management plans. It is a fairly mild amendment that has the support of the Nature Conservation Council and, I hope, the Committee.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [5.25 p.m.]: In debate in this place some two weeks ago the honourable member moved these amendments in globo, and the Opposition did not support them. Quite frankly, I do not see the need for us to support them today. I am not compelled by the arguments of the Hon. R. S. L. Jones regarding amendment No. 1, although I may be about some of the others. Consistent with our view that State boards should have as much individuality as possible, I do not think this amendment will improve matters.

The Hon. R. S. L. Jones: It provides for a simple request, not a direction.

The Hon. R. T. M. BULL: That is correct, but I do not believe the amendment would in any way help boards maintain their individuality. The whole thrust of the amendments of Reverend the Hon. F. J. Nile was to provide a little more flexibility and for two-way negotiation on management plans. This amendment will prevent that—in empathy anyway—with respect to that fundamental principle that I believe is important. For that reason the Opposition will not support this amendment.

As a matter of procedure, I was not aware that the Hon. R. S. L. Jones could move these amendments at this stage of the debate, given that we are debating the message from the Legislative Assembly and a motion as to whether we insist on our amendments. I foreshadowed an amendment that we insist on some amendments and not others. Reverend the Hon. F. J. Nile moved an amendment to make various changes. Having dealt with those three possible scenarios, I thought debate on further amendments was well and truly over, but suddenly the Hon. R. S. L. Jones has now moved this amendment and has foreshadowed three other amendments. I would like a ruling on whether that is permissible.

The CHAIRMAN: Reverend the Hon. F. J. Nile moved amendments that were appropriate and were carried. The amendment now before the Committee is not an amendment to the message but an amendment to the amendments of Reverend the Hon. F. J. Nile. It is neither the same as, nor in conflict with, Reverend the Hon. F. J. Nile's amendments, and therefore it is in order.

The Hon. R. D. DYER (Minister for Public Works and Services) [5.28 p.m.]: The Government will accept amendment No. 1 moved by the Hon. R. S. L. Jones.

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

The Committee divided.

Ayes, 20

Mrs Arena	Mr Macdonald
Dr Burgmann	Mr Obeid
Ms Burnswoods	Ms Saffin
Dr Chesterfield-Evans	Mrs Sham-Ho
Mr Cohen	Mr Shaw
Mr Corbett	Ms Tebbutt
Mr Dyer	Mr Vaughan
Mr Johnson	
Mr Jones	*Tellers,*
Mr Kaldis	Mrs Isaksen
Mr Kelly	Mr Manson

Noes, 17

Mr Bull	Dr Pezzutti
Mrs Forsythe	Mr Ryan
Mr Gallacher	Mr Samios
Miss Gardiner	Mr Rowland Smith
Mr Hannaford	Mr Tingle
Mr Kersten	Mr Willis
Mr Lynn	*Tellers,*
Mrs Nile	Mr Jobling
Rev. Nile	Mr Moppett

Pairs

Mr Egan	Mrs Chadwick
Mr Primrose	Dr Goldsmith

Question so resolved in the affirmative.

Amendment of amendment agreed to.

The Hon. R. S. L. JONES [5.35 p.m.]: I move:

That the following amendment be added to the amendment of Reverend the Hon. F. J. Nile:

No. 2 Page 64, clause 143. Insert after line 9:

(4) An order must not specify any method of eradication in relation to a pest that would constitute an act of cruelty committed upon an animal within the meaning of the *Prevention of Cruelty to Animals Act 1979.*

This amendment inserts a new subclause into clause 143 of the bill. The Minister may make pest control orders that ensure that pest eradication orders cannot contravene the Prevention of Cruelty to Animals Act. I do not believe that they would, but this amendment will ensure that they do not.

The Hon. R. D. DYER (Minister for Public Works and Services) [5.36 p.m.]: The Government accepts the amendment.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [5.36 p.m.]: The Opposition does not necessarily see the need for this amendment. We can think of no-one who would destroy a specific animal or a pest in contravention of the Prevention of Cruelty to Animals Act.

Amendment of amendment agreed to.

The Hon. R. S. L. JONES [5.37 p.m.]: I move:

That the following amendment be added to the amendment of Reverend the Hon. F. J. Nile:

No. 3 Page 64, clause 144. Insert after line 26:

(2) The Minister must consult with the Minister for the Environment before making a pest control order declaring any member of the animal kingdom that is a native species to be a pest.

This amendment inserts a new subclause into clause 144 of the bill and will ensure that the Minister for the Environment is consulted before pest control orders are made against native species. In this instance we are dealing specifically and only with native species, not feral species. The Minister for the Environment should be advised or consulted. I have not suggested that the Minister for the Environment should have a concurrence role, but merely a consultation role so that the Minister may suggest other ways to deal with the pests that would not cause the extinction of particular native species. It is a mild amendment, and I hope that both sides of the House will support it.

The Hon. R. D. DYER (Minister for Public Works and Services) [5.38 p.m.]: The Government accepts the amendment.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [5.38 p.m.]: The Opposition will not oppose the amendment. I cannot think of any native species that would fall under the category of feral pest. In the event that a species did—such as fruit bats or overpopulation of kangaroos—we would expect the Minister for the Environment to be consulted. I presume that would happen in the current situation. Nothing much will change. For that reason the Opposition does not oppose the amendment, although we do not see the need for it.

Amendment of amendment agreed to.

The Hon. R. S. L. JONES [5.39 p.m.]: I move:

That the following amendment be added to the amendment of Reverend the Hon. F. J. Nile:

No. 4 Page 75, clause 175(4), line 23. Omit "is final and".

Clause 175(4) provides that a decision of a local land board on an appeal is final. Under division 3, section 26 of the Crown Lands Act, however, local land board decisions can currently be appealed to the Law and Environment Court. This amendment removes the words "if final and" from subclause (4) and therefore restores the existing appeal rights.

The Hon. R. D. DYER (Minister for Public Works and Services) [5.40 p.m.]: The Government supports this amendment.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [5.40 p.m.]: I am disappointed that the Government has chosen to support this amendment, which will clog up the process unnecessarily. I should have thought that an appeal to a local land board would be sufficient to deal with the kinds of matters envisaged. If this amendment is accepted, an appeal to a local land board will not be final, and the ratepayers of individual boards will incur great costs through a case being taken to the Land and Environment Court. I would presume that a Land and Environment Court appeal would be a final step, but the amendment does not deal with that aspect. This amendment is unnecessary and would add to the costs of boards and ratepayers. I urge crossbench members not to support this amendment.

The Hon. R. S. L. JONES [5.41 p.m.]: Governments often state that appeal rights and third party rights lead to open slather and enormous expense.

The Hon. Dr B. P. V. Pezzutti: They do!

The Hon. R. S. L. JONES: That is not correct. It never has been and never will be correct. There may not be one case in 10 years. This amendment merely allows for appeal rights. Very rarely are appeals lodged.

The Hon. Dr A. CHESTERFIELD-EVANS [5.41 p.m.]: The Australian Democrats are concerned about this amendment. If the Rural Lands Protection Board is forced to take a case to the Land and Environment Court then ratepayers may incur a great deal of costs on what may be a frivolous matter. The Hon. R. S. L. Jones has a point that it is good to provide appeals mechanisms, but frivolous claims could cost the Rural Lands Protection Board a great deal of time and money. An attempt has been made to give the board a degree of autonomy. Sometimes local councils seek to prevent awful architectural development but do not have the money to do so, and this amendment could perhaps lead to an analogous situation. The Australian Democrats cannot support this amendment.

The Hon. Dr B. P. V. PEZZUTTI [5.42 p.m.]: The Hon. R. S. L. Jones indicated that third party appeal rights are rarely exercised and rarely cost local government any money.

The Hon. R. S. L. Jones: This does not concern third party appeal rights.

The Hon. Dr B. P. V. PEZZUTTI: As the Hon. R. S. L. Jones well knows, third party appeals are even less likely. I point out that this year third party appeal rights cost Lismore City Council about $140,000. Every year appeal rights cost Byron Shire Council hundreds of thousands of dollars, because that council cannot make a decision—and Byron Shire Council is probably not in the worst situation in that regard. Council cannot make a decision so a developer takes a case to the Land and Environment Court, and the process is started. Appeals have been made time after time and are costing hundreds of thousands of dollars. Who collects when a person who makes an appeal—especially a third party appeal—loses and loses costs? Nobody collects. Local ratepayers face enormous costs.

The Hon. R. S. L. JONES [5.43 p.m.]: It seems to have escaped the attention of Opposition members that the amendment seeks to reinstate a right already contained in the legislation. I do not know of a single case that has come before the Land and Environment Court as a result of the appeals right in the legislation. If the Hon. Dr B. P. V. Pezzutti or the Deputy Leader of the Opposition is able to cite a case in which an appeal has been

made under the existing appeals right, I would be interested to know of it. I do not know of any such case and, to my knowledge, the Government does not know of any such case either.

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

The Committee divided.

Ayes, 19

Mrs Arena	Mr Macdonald
Dr Burgmann	Mr Obeid
Ms Burnswoods	Ms Saffin
Mr Cohen	Mrs Sham-Ho
Mr Corbett	Mr Shaw
Mr Dyer	Ms Tebbutt
Mr Johnson	Mr Vaughan
Mr Jones	*Tellers,*
Mr Kaldis	Mrs Isaksen
Mr Kelly	Mr Manson

Noes, 18

Mr Bull	Dr Pezzutti
Dr Chesterfield-Evans	Mr Ryan
Mrs Forsythe	Mr Samios
Mr Gallacher	Mr Rowland Smith
Miss Gardiner	Mr Tingle
Mr Hannaford	Mr Willis
Mr Kersten	
Mr Lynn	*Tellers,*
Mrs Nile	Mr Jobling
Rev. Nile	Mr Moppett

Pairs

Mr Egan	Mrs Chadwick
Mr Primrose	Dr Goldsmith

Question so resolved in the affirmative.

Amendment of amendment agreed to.

Amendment as amended agreed to.

Motion as amended agreed to.

Resolution reported from Committee and report adopted.

Message forwarded to the Legislative Assembly advising it of the resolution.

AGRICULTURAL LIVESTOCK (DISEASE CONTROL FUNDING) BILL

Second Reading

The Hon. R. D. DYER (Minister for Public Works and Services) [5.54 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This bill represents a further step in the Government's legislation program to assist the State's primary producers. Earlier this year I introduced the Agricultural Industry Services Act 1998, which allows primary producers to form associations for the co-operative provision of services to the agricultural sector. The Agricultural Industry Services Act 1998 allows an association to impose a compulsory levy on those who benefit from the services which the association provides. In order to permit this to be done, a majority of those who will pay the levy must agree.

The Government recognises, however, that there are circumstances where, whether because of the nature of the agricultural industry concerned or the type of service to be provided, it will not be appropriate for the provisions of the Agricultural Industry Services Act 1998 to be used to form an association to provide the service in question. As well, the Government recognises that, unfortunately, there will be circumstances where not all industry members will voluntarily bear their fair share of the burden of providing a service from which they benefit.

The aim of this bill is to provide a mechanism to allow the agricultural industry to help itself in circumstances where it might otherwise be unable to do so. The bill is complementary to the Agricultural Industry Services Act 1998 and provides an alternative means by which such services may be provided and funded. The object of the bill is to enact a general scheme to assist agricultural industry to provide and fund agricultural services to control diseases in livestock. The heart of the scheme is the approval by the Minister, after consultation with the relevant industry sector, of the funding of a disease control service.

A disease control service is approved in respect of a designated disease and is applicable to producers of livestock liable to be affected by the disease. Once a disease control service is approved the Minister is required to establish an industry advisory committee. The primary function of an industry advisory committee is to advise the Minister on the funding of the designated disease control service, including the expenditure of money in the relevant disease control funds; although a committee may have such other functions as the Minister may direct. The majority of the members of an industry advisory committee are required to be producers of livestock liable to be affected by the disease in respect of which the committee is established.

For each designated disease control service the Director-General of New South Wales Agriculture is required to establish an industry contribution fund to which producers of livestock liable to be affected by the designated disease, and

others having an interest in control of the disease, may contribute. Contributions to the industry contribution fund will be entirely voluntary. The Minister will also be authorised, but not required, in respect of each designated disease control service, to authorise the imposition of an industry levy. The purpose of the industry levy will be to assist in the funding of the designated disease control service.

The most likely circumstances in which the Minister will authorise an industry levy is if it appears that voluntary contributions to an industry contribution fund will be insufficient to fund the designated disease control service. An industry levy might be used to ensure that all beneficiaries of a designated disease control service bear their fair share of the cost of providing the service. I must emphasise, however, that a compulsory industry levy will be subsidiary to the voluntary industry contribution fund; the levy is intended only to top up voluntary contributions. This is as it should be given that the basis of the scheme of the bill is to encourage and facilitate voluntary industry initiatives in disease control.

The scheme of the bill is not to impose a government scheme for disease control; it requires an industry supported scheme in order for the bill to be able to assist. An industry levy will be a special rate levied by rural lands protection boards on designated livestock producers according to the assessed carrying capacity of their land. The levy is, in effect, the same as an animal health rate levied by boards under the Rural Lands Protection Act 1989 except that instead of being paid by all livestock producers it will be paid only by those producers who it has been determined will benefit by the designated disease control service.

Boards will be required to collect the levy, at a rate determined by the Minister on the advice of the industry advisory committee, and to remit the proceeds to the director-general to be deposited in the industry levy fund. Money in the industry levy fund will be spent following advice for the relevant industry advisory committee. The bill also ensures that those producers who do the right thing and voluntarily contribute their fair share of the cost of a disease control scheme through the relevant industry contribution fund are not disadvantaged by being required to pay again through the industry levy. It does this by providing for a producer who has made an adequate voluntary contribution to be exempt from payment of the levy, or to obtain a refund of any levy paid by the producer, in the year in which a levy is imposed.

I must emphasise that the bill provides a general scheme which can be used in respect of any livestock disease. It is not directed to any particular disease. Under the bill there may be many designated disease control services each of which will have its own advisory committee and industry contribution fund. Each may, but will not necessarily, also have an associated industry levy and industry levy fund. Notwithstanding that the bill will be of general application, it is no secret, however, that the need for the bill has been prompted by the industry disease control program proposed in respect of ovine Johne's disease [OJD].

It will be to this disease that the scheme proposed in the bill is likely to be first applied. Ovine Johne's disease is a fatal wasting disease of sheep and goats spread when uninfected stock ingest fodder or water contaminated by the faeces of infected stock. The disease exists in New South Wales, Victoria, South Australia and on King Island off Tasmania. All other States and Territories have imposed movement restrictions on sheep and goats from known infected areas in an effort to contain the disease. OJD was first diagnosed in sheep in New South Wales in 1980. As at 31 October 1998, there were 320 flocks in New South Wales which were infected. In addition, there were a further 333 flocks suspected of being infected.

The great majority of these flocks are located within the central and southern tablelands area, with some infected flocks in the south-west slopes area and isolated cases elsewhere. There have been ongoing discussions at a national level to try to develop a national approach to the control and eradication of the disease. The Australian Animal Health Council Ltd appointed the National Ovine Johne's Disease Committee in March 1998 to prepare a detailed six-year operational plan for a national ovine Johne's disease control and evaluation program. This program aims to investigate the feasibility of eventual eradication of the disease in Australia and to deliver a solid basis for a future decision on the most appropriate course for dealing with the disease.

At the same time the national program aims to maintain control of the disease nationally and complement State control programs. In addition, an interim surveillance program was implemented to further clarify the distribution and prevalence of the disease. The six-year national program is based on the principles of the Hussey-Morris report, which was commissioned by the Commonwealth Minister for Primary Industries and Energy and adopted by the Agriculture and Resource Management Council of Australia and New Zealand and sheep industry peak councils in early 1998 as the basis for developing a national approach to the disease.

The report identified knowledge deficits which required resolution if effective decisions were to be made with regard to managing and eventually eradicating the disease, and outlined potential strategies to resolve these knowledge deficits and facilitate effective disease management. The national program aims to provide, by 2003, sufficient information to allow an informed decision on the national management of the disease, and especially on the feasibility and cost-effectiveness of eradication and to control the disease during the research evaluation period. At Broome on 31 July 1998 the Agriculture and Resource Management Council of Australia and New Zealand [ARMCANZ] approved the business plan for the six-year national program.

The business plan provides for expenditure of $40.1 million over six years and includes continued monitoring and surveillance, research and development, restocking incentives and flock assurance programs. It is now very important that funding mechanisms are put in place to allow New South Wales industry to collect its share of the funds required to implement the national program. In addition to its financial commitment to the national program, the New South Wales Government has pledged $750,000 for three years for a State financial assistance scheme for producers in New South Wales. This money will be made available on condition that industry also contribute to this scheme.

The funding scheme proposed in the bill will be used to raise industry contributions to the national and State programs from sheep and goat producers. Arrangements are being put in place which will allow the scheme to be administered efficiently and at minimal cost. Producers need not be concerned that those who choose to make their contribution to a disease control scheme through the voluntary contribution fund will be disadvantaged. They will not. The scheme of the bill has been dictated partly by forces outside the Government's control but largely it is designed to be complementary to the scheme of the Agricultural Industry Services Act 1998.

It emphasises the Government's commitment to assisting those livestock industries which take responsibility for disease control and ensures that industry contributions to a disease control scheme are equitably spread among those who will benefit from the scheme. The Government sees livestock disease control, indeed all disease control in agricultural industries, as a partnership between government and industry. The Government is prepared to ensure that its part of the partnership is met to the extent not only of providing, in appropriate cases, substantial funds to assist in disease control programs but also by ensuring that industry is provided with efficient legislative tools to enable it to effectively carry out its part of the partnership. This is the purpose of the bill: to further advance the partnership between the Government and industry in livestock disease control. I commend the bill to the House.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [5.54 p.m.]: The Opposition supports this important bill, which will impose a compulsory levy on primary produces and enable the New South Wales Government to fulfil its obligations under a national program to further investigate ovine Johne's disease. Much has been said about this disease over the last few years. The disease, which first became apparent in about 1982, spread across a large area of Australia, in particular, the central highlands and southern tablelands areas. Ovine Johne's disease, which causes sheep to waste away and die, is prevalent also in New Zealand. Up to 50 per cent of flocks in New Zealand are affected. Over the last 20 years the disease has spread into other areas of New South Wales and Australia, in particular Victoria, and, to a lesser extent, Flinders Island, which is located between Victoria and Tasmania, and Kangaroo Island, which is located close to South Australia. The disease has had a particularly disastrous effect on sheep producers.

I said earlier that this bill will enable the New South Wales Government to participate in a national program. As shadow minister for agriculture I recall first mentioning this disease in December 1996. At that time I was concerned that New South Wales was not doing enough and I suggested it should involve itself in an eradication program and learn more about the disease through evaluation trials and other initiatives. It took the State and Federal governments 12 months to agree on some sort of program. I am not laying any blame on the current State Government because, as I said, this disease has been around for about 20 years. I would lack credibility if I were to say that the Carr Government and no other government was responsible for the spread of this disease.

In 1996 public opinion about the disease changed. Many more farmers became aware of it, and farmers and producers called upon the Government to do something about it. It was in that context that I first raised the issue publicly as a potential problem. A lengthy article written by Anthony Hoy which appeared in the *Sydney Morning Herald* detailed the extent of the disease and the problem being visited on a number of producers in the southern highlands, who were vocal in their dismay. Governments took over 12 months to do something about this disease. The current Federal Government decided, against all the advice available to it from the Australian Animal Health Council Ltd and other States, to delay the whole matter by calling on Messrs Morris and Hussey to further investigate the disease and to report to it by the end of January 1998.

I and many other honourable members were dismayed at that decision because the best way to eradicate this disease is to attack it over two consecutive summers, and the investigation called for by the Federal Government was to be conducted during the valuable summer period. The Federal Government, by delaying its decision on the national program, effectively delayed the whole program for 12 months. Since then there have been further outbreaks of the disease in Victoria. The national strategy, in which Victoria participates, will include evaluation and eradication of the disease. Funds raised by the State and Federal governments putting in a considerable amount of money will be topped up by producers in New South Wales and in other States to ensure sufficient moneys to undertake the program.

Across Australia 150 flocks will be selected to participate in the eradication program. During the program the owners of the flocks will be paid to de-stock and will be given assistance to restock. Good information is expected from that three-year de-stocking program. In New South Wales at least 100 of the 306 flocks infected will be participating. Another 15 flocks will be participating in a trial of a killed vaccine, not of the live vaccine, available in New Zealand, which sustains the disease in sheep but prevents death. That live vaccine option must be considered only when all else is lost as has happened in New Zealand, where 50 per cent of flocks have the disease. The proposed legislation will complete the last piece in the puzzle to allow New South Wales to participate fully in the program.

During the last couple of months I have been critical of the Government on a number of issues. By now the Government could well have signed the agreement and bankrolled New South Wales producer commitment to allow more time for the proposed legislation to be put in place. There has been much heartache and dissension among producers on how the levy would be struck.

Restraints placed on the Government by the High Court decision last year do not allow States to raise taxes. That decision stops the Government raising liquor and tobacco taxes under the old franchising tax arrangement or, on this occasion, imposing a levy on sheep producers.

The proposed legislation will overcome that problem by allowing a non-compulsory or voluntary levy to be struck on all sheep producers in New South Wales. For non-complying sheep producers a compulsory levy will be struck in the future based on their assessment rate. I have been critical of this messy arrangement of the Government, and I still am critical, as other options were available. The Victorian Government has ignored the High Court decision and has continued to raise a levy based on sheep transactions. That arrangement could well have applied in New South Wales. However, in defence of the bill, at least under this arrangement all sheep producers in New South Wales will be participating and contributing whereas under a transactional levy only those participating in sheep transactions would pay. That would be unfairly burdensome on those who deal in sheep extensively, whereas those who rarely sell sheep would not be paying their way.

In some respects this new arrangement is fairer than the transactional levy in Victoria. The Government could have applied the levy and the rural lands protection boards could have collected it based on sheep rates declared by farmers in their returns to the board. That course might have been open to a High Court challenge, although one will never know. Had such a challenge been possible, at least 12 to 24 months would have passed before a High Court hearing on such a small issue, and in that time a better proposal than the present one may have presented itself. I am not letting the Government off scot-free, on two counts. First, the Government could have proposed a compulsory levy based on sheep returns. Second, to give more time for evaluation of the method of raising the levy the Government could have bankrolled the $2.2 million required between now and 30 June to allow the signing of the deed of agreement and to allow New South Wales to participate in the national program.

In Committee the Opposition will deal with a number of issues, some of which were raised by the New South Wales Farmers Association and are supported by the Opposition. The Farmers Association raised the following issues: the industry's advisory committee and its make-up; the chairman of the committee not necessarily being a primary producer; industry organisations, such as the Farmers Association or others so affected, not automatically being on the committee; the rural lands protection boards not being represented even though they raise the levy through their good offices; and left-over funds not being appropriated back into the industry from which they came, for the betterment of the industry and the advancement of industry interests.

The Farmers Association expressed concern about the advisory committee not having any role, apart from an advisory role, in the setting of the levy. In other words, the committee did not have a concurrent role with the Minister in setting the levy. I am pleased that the Government and its advisers have accepted and resolved all the issues raised by the Opposition and the Farmers Association. The amendments proposed by the Government in the Committee stage will have the support of the Opposition because the Government has been good enough to listen to and to consult with the Opposition and the Farmers Association to reach a satisfactory conclusion on outstanding issues.

In all respects the Legislative Council has worked to its best effect on this occasion. The Government, with a minority in the Legislative Council, has been happy to consult with the Opposition and the industry to develop solutions to problems. Those solutions will improve the legislation, make it more efficient, allow more transparency, and allow the advisory committee and the peak committee to have enhanced roles. The proposed enabling legislation will apply not only to funding for ovine Johne's disease but to agricultural livestock disease control funding in any livestock industry in the future. There is no reason why the proposed legislation could not be used for the control and eradication of bovine Johne's disease or other serious diseases that the Government and the industry may decide from time to time need extra funding.

The Opposition will place further comments on record about ovine Johne's disease. A number of New South Wales farmers whose sheep and properties are seriously affected by this disease are facing huge economic problems. Many families are on the edge of financial ruin and require crisis counselling. The disease has so seriously affected their properties and livelihood that they have come to the end of the line. This bill is important to assist such people.

Not only will national funding finance programs in the areas I mentioned earlier, but also State-based programs will provide assistance to farmers who have been affected by this disease. In this year's budget the Government agreed to

$750,000 being made available for State-based programs. It is expected that that amount will be met dollar-for-dollar by industry. Therefore, for this financial year alone $1.5 million will be available to assist the primary producers whose properties are affected. As yet, a decision has not been made as to how that money will be spent. It may be spent to assist farmers to eradicate the disease in the control and protected zones, which would contract the disease into the endemic areas of New South Wales, or residual zones as they are called.

It is extremely important that those funds are fully expended to assist the many families, particularly in the southern highlands area, who are suffering greatly because of this disease. In many areas of New South Wales farmers who destroy their sheep because of ovine Johne's disease have a choice of running cattle or planting crops for two or three years while the disease is eradicated. Unfortunately, for many farmers in the southern tablelands and central highlands that option is not available.

I implore the Government to ensure that consideration be given to apportioning funds from the State-based program to farmers who are in desperate need of assistance during this difficult time. I acknowledge those farmers in this debate. I also acknowledge the Sheep Breeders Association of New South Wales, which at all times has tried to keep an objective view about this issue, even though the livelihoods of many of its members have been affected by this disease. It would have been easy to opt for the easy solution.

As the Opposition representative on this matter, a fair amount of pressure has been applied to me by farmers to join the "do nothing" lobby, to run up the white flag and say, "It is too difficult to eradicate this disease. New Zealand is living with it; we should live with it too." I have not acceded to those requests. This is not the time to be running up the white flag, it is the time to be seeking solutions. That is what the national program is all about—seeking solutions through evaluation of programs.

Another reason not to run up the white flag in New South Wales is that many of our sheep are sold to other States—mainly to Victoria, but also to South Australia, Western Australia and Queensland—that are committed to eradication of the disease. If New South Wales were to follow the "do nothing" approach and the "live with the disease" option, borders would quickly be closed to our sheep. Producers along the Murray and Murrumbidgee rivers—such as from Jerilderie, Urana, Deniliquin, Balranald, Hay and West Wyalong in the Riverina—who presently send 80-90 per cent of their sheep into Victoria would be denied access to the Victorian market. Those sheep producers who still call for the "do nothing" option would soon realise that living with the disease is not such a great idea.

We must first evaluate the options and then proceed down the eradication path, if possible. If we do not try, we will never know whether the disease can be eradicated. I commend the proposed legislation, as amended, to the House. I thank the Government for its support of the Opposition amendments and the amendments proposed by New South Wales Farmers. I hope that the bill enables the disease to be successfully eradicated.

The Hon. R. S. L. JONES [6.15 p.m.]: I support the Agricultural Livestock (Disease Control Funding) Bill, which requires ministerial approval for each disease control program, and the establishment of an industry advisory committee and an industry contribution fund for each disease control program. The bill also provides for voluntary contributions to be made by producers. The Minister will authorise compulsory levies on producers if voluntary contributions are inadequate, and will authorise individual exemptions from such levies if adequate voluntary contributions have been made.

I was concerned that livestock producers who have had to destroy their animals and are living on the edge, as the Deputy Leader of the Opposition said, will be levied. I had intended to prepare an amendment to ensure that farmers who have been severely affected will not have to pay the levy. However, I have been assured by the Minister's advisers that farmers who have had to destroy all their animals will not have to pay the levy. Whilst I do not support the meat industry, I still wear wool. I believe in fairness and compassion for those who have been badly hit by this nasty disease.

I was also concerned about the ability of producers to appeal the carrying capacity of rateable land on which disease control program levies will be calculated. Carrying capacity should be subject to review by the Administrative Decisions Tribunal, as are decisions about liability to pay levies, amounts levied and levy refund refusals. The Minister did not see eye to eye with me on that issue. He said it was not appropriate to provide in the bill for review of carrying capacity of rateable land as capacity is already determined under the Rural Lands Protection Act for the calculation of rates. Again, I did not prepare an amendment because I received sufficient assurances from the Minister's advisers.

It came to light during debate on the Agriculture Legislation Amendment Bill on Thursday, 29 October, that meat eaters in New South Wales may be eating the flesh of animals infected with ovine Johne's disease. Given that revelation, honourable members and the people of New South Wales might like to consider the following facts. Ovine Johne's disease, which is difficult to diagnose, is an incurable fatal wasting disease, caused by mercobacterium paratuberculosis. It can infect sheep, goats and cattle and can flourish in areas with heavy stocking rates and high rainfall.

Livestock are usually infected with the disease by eating pasture or drinking water contaminated by faeces containing the bacteria. So far, more than 600 flocks of sheep in New South Wales are known to be or are suspected of being infected with the disease. Livestock known to be or suspected of being infected are subject to strict movement controls, but meat consumers—not I—may be eating sheep meat infected with ovine Johne's Disease. I hope for their sake that there is no possibility of this disease crossing to the human species, otherwise it could result in a tragedy.

The Hon. Dr A. CHESTERFIELD-EVANS [6.19 p.m.]: The Australian Democrats support this bill. My predecessor, the Hon. Elisabeth Kirkby, who was extremely vigilant and active in drawing attention to ovine Johne's disease, would be extremely pleased with the passage of this bill.

The Hon. D. J. GAY [6.20 p.m.]: The coalition acknowledges the work of the Deputy Leader of the Opposition in developing a deep understanding of this tragedy. As he quite rightly said, ovine Johne's disease affects animals mostly in the central highlands and southern tablelands. Honourable members would know that I come from that area. The Deputy Leader of the Opposition said that he did not know the disease also affects livestock in Crookwell and Taralga, but I know of at least two properties that have been affected and there are probably more. However, many farmers, concerned about their financial viability, have not declared that their properties were affected by the disease.

Graziers are travelling close to the wind. The wool industry, of all primary industries, is doing it the toughest. As the Deputy Leader of the Opposition said, a problem is created by people saying carte blanche that we have to rest the country and remove stock. That approach would work for a profitable farming enterprise but farmers in the Gunning, Yass, Goulburn, Crookwell and Taralga region cannot do that. My main concern is that my friends and colleagues from that area are dispirited. I hope that the Minister for Agriculture, the Minister for Public Works and Services and their advisers will also consider offering counselling to help those on the land who are in dire straits facing such difficulties. They need money and they need counselling—and they need them soon.

Reverend the Hon. F. J. NILE [6.22 p.m.]: The Christian Democratic Party supports this important bill, which will enact a general scheme to assist the agricultural industry to provide and fund agricultural services to control diseases in livestock. Recently very serious cases of diseased livestock, chicken and beef, have been reported. Diseased animals have to be put down to protect the remainder of a farmer's stock. A fund to service livestock disease control is essential. Such a fund will give the Minister power, if sufficient funding is not available from voluntary contributions, to establish an industry fund based on a compulsory levy linked to the livestock carrying capacity of rateable land used by livestock producers.

Appropriate exemptions from the compulsory levy will be extended to persons who make a minimum contribution to the industry contribution fund set up to provide the designated service. The bill seeks to establish an industry advisory committee for each designated service to advise the Minister on the funding of the service under the proposed Act. I have received a request from the New South Wales Farmers Association which states:

> We would be grateful if you could move these [amendments] on behalf of NSW Farmers' Association. These are actually amendments to the Government's amendments, which they intend to move in Committee.
>
> Generally we are supportive of the remaining changes to the Bill.
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> **Government amendment No 1:**
>
> 7. Standing Disease Control Advisory Committee
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> | | |
> |---|---|
> | Amend 7(2)(b) to read: | at least 2 members nominated by the NSW Farmers' Association |
> | Amend 7(2)(c) to read: | at least 1 member nominated by the Rural Lands Protection board Association |
> | Amend 7(4) to read: | Any such surplus amount must be disposed of by the Minister for the benefit of the livestock industry concerned having regard to the advice of the Committee. |
>
> **Government amendment No 2:**
>
> 7. Industry Advisory Committee
>
> | | |
> |---|---|
> | Amend old Section 7(3)(b) to read: | at least one member nominated by the NSW Farmers' Association |
> | Amend old Section 7(3)(c) to read: | at least one member nominated by the Rural Lands Protect Board Association |

The association believes that these minor amendments will ensure that industry representation on advisory committees under the Act is independent of the Government and the Minister. The amendments proposed by the Government require both the Farmers Association and the rural land protection boards to nominate a pool of potential representatives for selection by the Minister to the industry advisory committees established under the Act. The association also believes that it is important that industry organisations such as the Farmers Association and the rural lands protection boards be provided with the responsibility of selecting their own nominees to advisory committees if those committees are to be seen by farmers as genuinely representing their interests.

The Farmers Association and the rural lands protection boards are in the best position to judge which individuals within their organisations have the best skills and experience to represent industry interests most effectively. This is not a decision that should be at the discretion of the Minister, particularly given that the Minister and the director-general are responsible for appointing all other members of an advisory committee, including the chairman. Other sections of the legislation provide the Minister with the ability to dismiss, without reason, members of an advisory committee.

Consequently, if the Minister is dissatisfied with the performance of any advisory committee member he may remove that person. There is no reason why the Minister should have the discretion to select the representative for those organisations specified in the bill. Obviously the emphasis has been changed: if there is a panel of five, the Government would select from that panel. The implication, although not stated in the memo to me, is that the committee might find it difficult to find five qualified persons from amongst whom the Minister could select the representatives for the committees.

The Hon. R. D. Dyer: Surely not; not five in the whole State?

Reverend the Hon. F. J. NILE: That is the impression given by the association. One would think that the committee could find five suitably qualified people and that any one of them could be selected by the Minister. I am trying to read between the lines as to why that is not satisfactory to the association. Again, it may be a question of the committee having a more restricted role in nominating the members who would represent their interests. The Government's method appears to offer the same outcome, and thus relates to the conflict between relative independence and overgoverning. Perhaps we are dealing with a perception rather than a reality. However, to keep faith with the association I have asked the Clerk to draft their suggested amendments. Although the amendments are simple, they need to be in the proper form. I apologise that they are not, but I have only just received them. The Christian Democratic Party supports the bill and I foreshadow those amendments.

The Hon. R. D. DYER (Minister for Public Works and Services) [6.29 p.m.], in reply: I thank all members who have contributed to the debate. As it is apparent that there are issues to be dealt with in the Committee stage, which will occur immediately after the dinner adjournment, I reserve my further remarks until that time. With those few words I commend the bill to the House.

Motion agreed to.

Bill read a second time.

[*The Temporary Chairman (The Hon. Jennifer Gardiner) left the chair at 6.30 p.m. The House resumed at 8.00 p.m.*]

In Committee

Part 2

The Hon. R. D. DYER (Minister for Public Works and Services) [8.02 p.m.]: I move Government amendment No. 1:

No. 1 Page 5. Insert after line 11:

7 Standing Disease Control Advisory Committee

(1) The Minister is to establish a Standing Disease Control Advisory Committee.

(2) The Committee is to consist of not fewer than 5 members, including:

(a) a person appointed by the Minister, who is to be the Chairperson of the Committee, and

(b) at least 2 members appointed by the Minister from a panel of at least 5 livestock producers nominated by the NSW Farmers' Association or another affiliated organisation chosen by the Minister that represents livestock producers, and

(c) at least one member appointed by the Minister from a panel of at least 3 persons nominated by the Rural Lands Protection Board Association, and

(d) a nominee of the Director-General.

A majority of the members of the Committee is to comprise members who are livestock producers.

(3) The functions of the Committee are as follows:

(a) to advise the Minister on the establishment of disease control services that are to be funded under this Act,

(b) to advise the Minister on the disposal of any surplus amount in an industry fund after the provision of the relevant disease control service for which the fund was established.

(4) Any such surplus amount may be disposed of by the Minister for the benefit of the livestock industry concerned having regard to the advice of the Committee.

The amendment seeks to establish a Standing Disease Control Advisory Committee. It is proposed to provide for a continuity of advice the Government receives from industry on disease control issues between individual disease events. It will ensure that disease advisory committees advise the Minister on how any funds that are raised under this Act but which remain unspent after the completion of a disease control program should be expended for the benefit of relevant primary industries.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [8.04 p.m.]: The Opposition supports this amendment. The establishment of the standing committee—a new concept not included in the original legislation—will overcome some of the concerns raised by producer organisations and the Opposition about the consistency of advice given to the Government. The standing committee will provide advice to the Minister on whatever disease levy program may arise from time to time. The Opposition has much pleasure in supporting the amendment.

Reverend the Hon. F. J. NILE [8.05 p.m.], by leave: I move my amendments Nos 1 and 2 in globo:

No. 1 That the amendment be amended by omitting proposed section 7(2)(b) and (c) and by inserting instead:

(b) at least two members appointed by the Minister on the nomination of the New South Wales Farmers' Association, and

(c) at least one member appointed by the Minister on the nomination of the Rural Lands Protection Board Association.

No. 2 That the amendment be amended by omitting from proposed section 7(4) the word "may" and by inserting instead the word "must".

The wool and livestock division of the New South Wales Farmers Association has requested these amendments. For farmers to be confident that the advisory committees will genuinely represent their interests, industry organisations such as the Farmers Association and rural lands protection boards must be able to select their own nominees to the committees. Both organisations are in the best position to judge which individuals within their organisations have the best skills and experience to represent industry interests most effectively.

The Government is advocating a panel of five and, while it has not said as much, it seems to be arguing that there are only a limited number of people who have the experience to qualify them for this very important position. The Government would prefer to nominate the members rather than allow the industry to nominate five persons. If the Minister were not happy with the performance of a person nominated by the industry, he may dismiss that person. The Government will have the final say.

The Hon. R. D. DYER (Minister for Public Works and Services) [8.08 p.m.]: The Government is opposed to the amendments by Reverend the Hon. F. J. Nile although, at least speaking for myself, more strongly to the first of those amendments than the second. As to the first amendment, which deals with the composition of the Standing Disease Control Advisory Committee, it is conventional for industry appointments to be chosen from a list of nominees proposed by various industry bodies and the Government believes that same principle should apply on this occasion. I assure honourable members that it is common practice in various statutes, not only with agricultural matters but generally speaking, for interest groups and industry organisations to be represented on advisory committees after nominating five or a similar number of members. The Minister in the relevant portfolio then selects one or more of those nominated to serve on the committee.

The Government believes that the same principle should apply to ensure that there is consistency in the manner in which representatives of rural lands protection boards are appointed. Reverend the Hon. F. J. Nile said that New South Wales Farmers may have a difficulty securing the nomination of five such people. I hardly think that that will be a difficulty. The New South Wales Farmers Association will nominate five livestock producers. Surely it will not have much trouble submitting five names from all the livestock producers in New South Wales for consideration by the Government. The Minister would then select two of the nominees.

As I indicated, the Government opposes the second amendment moved by Reverend the Hon. F. J. Nile, although I feel less strongly opposed to it. The bill as currently drafted will ensure that disease advisory committees can advise the Minister on how any funds raised under the Act but remaining unspent after completion of a disease control program should be expended for the benefit of relevant primary industries. While the Government supports the principle of returning funds raised from an industry to industry members, the Government believes that amendment No. 2 would unnecessarily constrain the distribution of unspent funds and would disregard the fact that a government may make a considerable upfront contribution to disease control.

If amendment No. 2 were to be carried, it is not clear how these costs could be recovered. More importantly, the amendment may have the unintended impact of making governments more reluctant to support industry by initially underwriting the cost of a disease control program, thus delaying the introduction of timely disease surveillance and control activities. For those reasons the Government adheres to its amendment No. 1 and opposes the two amendments moved by Reverend the Hon. F. J. Nile.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [8.12 p.m.]: The Opposition will not support the amendments moved by Reverend the Hon. F. J. Nile on behalf of the New South Wales Farmers Association. Over the past week I have had discussions with the Farmers Association about these amendments. My understanding was that in the main the association was happy with them. However, at 4.55 p.m. today I received a fax from the association which stated that it was unhappy with the amendments. The association must realise that the coalition does not go back on its word. I said that the Opposition would not support amendments other than those agreed to by the Government, and I will be true to my word.

If the New South Wales Farmers Association wants to fax members on the crossbench with amendments trying to embarrass me into supporting something that I have given an undertaking I would not support, so be it: I will not be supporting the amendments moved by Reverend the Hon. F. J. Nile, and there are good reasons for that. First, there is nothing unusual about the Minister of the day choosing representatives from a panel put up by an organisation. Indeed, that is the normal process with respect to all appointed positions. Second, the amendments of Reverend the Hon. F. J. Nile have conveniently left out any provision relating to an affiliated organisation chosen by the Minister to represent livestock producers.

One would assume that the amendments moved by Reverend the Hon. F. J. Nile on behalf of the New South Wales Farmers Association cover every possible commodity, disease and organisation in New South Wales, but of course they do not. For example, if there were found to be a disease in bees, the New South Wales Farmers Association would not be the appropriate organisation to represent the bee industry; apiarist organisations could represent the bee industry much more effectively, and the Minister would rightly invite them to nominate appointees to the standing committee. It is important that the Minister have the option of appointing someone from an affiliated organisation. For those reasons the Opposition will not be supporting the amendments moved by Reverend the Hon. F. J. Nile.

Reverend the Hon. F. J. NILE [8.15 p.m.]: The Deputy Leader of the Opposition argued that my amendment would restrict the Government to accepting nominations from the New South Wales Farmers Association. The Government's amendment, if it is not amended, could result in the Government bypassing the New South Wales Farmers Association completely as a peak body and appointing two members to represent the beekeepers of this State. However, beekeepers are only a small part of the livestock industry.

The Hon. R. D. Dyer: I don't think it would be sensible for the Government to do that.

Reverend the Hon. F. J. NILE: That is what the Government could do. I wonder whether the New South Wales Farmers Association has realised that it could be left out in the cold. The emphasis in the amendments is not on the five members of the panel; it is to ensure that the New South Wales Farmers Association, which is the peak body representing the farmers of this State, is the body nominating the people. I assume that if there were an argument the association would consider that one of the two representatives should be from another part of the industry. They would not have to be members of the association, but the association would have the right to nominate them. That is an important distinction between my amendments and Government amendment No. 1, but I will not cause the Committee to divide on my amendments.

[*Interruption*]

The Minister interjected and said that the Government would recognise the New South Wales

Farmers Association as a peak body to make nominations. That assurance may relieve some concerns of New South Wales Farmers.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [8.17 p.m.]: I shall clarify my remarks about the Government choosing a person from another industry. My remarks are more pertinent to amendment No. 2 of Reverend the Hon. F. J. Nile relating to the industry advisory committee. I was making the point that New South Wales Farmers may not be the organisation relevant to the commodity and disease on which the proportion of representatives on the advisory committee will be focusing, and my argument still stands. I believe that the Government will appoint appropriate representatives. Whether they are appointed from a panel or whether they are direct nominations, I maintain that there is nothing unusual about organisations nominating a panel of names. The Opposition supports the concept.

Amendments of amendment negatived.

Amendment agreed to.

The Hon. R. D. DYER (Minister for Public Works and Services) [8.20 p.m.]: I move Government amendment No. 2:

No. 2 Page 5, clause 7(3). Insert after line 19:

(b) at least one member appointed by the Minister from a panel of at least 3 designated livestock producers nominated by the NSW Farmers Association or another affiliated organisation chosen by the Minister that represents producers in the relevant livestock industry, and

(c) at least one member appointed by the Minister from a panel of at least 3 persons nominated by the Rural Lands Protection Board Association, and

The amendment will ensure that there is industry representation on the ministerial advisory committee that is established for each disease event under the Act. The amendment deals with the manner in which industry representatives and representatives of rural lands protection boards are appointed to disease control advisory committees. It is conventional for industry appointments to be chosen from a list of nominees proposed by various industry bodies. In the Government's view the same principle should apply to this bill.

Reverend the Hon. F. J. NILE [8.21 p.m.]: I move an amendment to Government amendment No. 2:

That the amendment be amended by omitting proposed clause 7(3)(b) and (c) and inserting instead:

(b) at least one member appointed by the Minister on the nomination of the NSW Farmers Association, and

(c) at least one member appointed by the Minister on the nomination of the Rural Land Protection Board Association, and

The same argument applies to this amendment as applied to an amendment I moved earlier. I believe that the previous practice has been to appoint a panel from nominees of an industry organisation. It seems that we are widening the procedure by specifying the New South Wales Farmers Association or another affiliated organisation that is chosen by the Minister. The Deputy Leader of the Opposition said that the members should be appointed from the specific industry group the levy relates to rather than from those nominated by the New South Wales Farmers Association. That may be what is behind the concerns of the association.

Amendment of amendment negatived.

Amendment agreed to.

The Hon. R. D. DYER (Minister for Public Works and Services) [8.23 p.m.]: I move Government amendment No. 3:

No. 3 Page 5, clause 7(4)(a), lines 26-29. Omit all words on those lines. Insert instead:

(a) to advise the Minister on the funding of the designated disease control service, including:

(i) the programs to be funded, and

(ii) the policies and priorities for expenditure from the industry funds established in respect of the designated disease control service, and

(iii) any industry levy that may be imposed under this Act,

This amendment will ensure that disease advisory committees established under the Act can advise the Minister on the amount to be raised for disease control programs through industry levies.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [8.24 p.m.]: The Opposition supports the amendment. The advisory committee will advise the Minister on how the designated disease control levy funds will be raised and spent. The Opposition believes that the amendment will overcome the concerns the New South Wales Farmers Association had with respect to how the advisory committee will work. Any Minister that ignored the advice of the

advisory committee would be in fairly hot water with the industry in a short time. The association wanted the role of the committee to be greater than that of making decisions on behalf of the Minister. The Opposition felt that this was not necessary and that pressure from the advisory committee and good consultation would circumvent any problem that might arise from the committee having only an advisory capacity.

Amendment agreed to.

Part as amended agreed to.

Part 4

The Hon. R. D. DYER (Minister for Public Works and Services) [8.26 p.m.], by leave: I move Government amendments Nos. 4 and 5 in globo:

No. 4 Page 8, clause 12(2), line 6. Insert, "having regard to the advice of the industry advisory committee concerned," after "if satisfied".

No. 5 Page 8, clause 12. Insert after line 16:

(6) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* applied to an order giving any such authorisation in the same way as they apply to a statutory rule.

Government amendment No. 4 is merely an enabling clause. It will ensure that a disease control advisory committee established under the Act can advise the Minister on amounts raised from industry for disease control purposes. Government amendment No. 5 provides for parliamentary scrutiny of the setting of disease control levies.

The Hon. R. T. M. BULL (Deputy Leader of the Opposition) [8.27 p.m.]: The Opposition is very keen to have these important amendments included in the bill. Amendment No. 5 will allow the advisory committee to advise the Minister on the rate at which the levy should be set. This will overcome the concern that the Minister could make a decision in isolation from the committee. Amendment No. 6 will allow Parliament to disallow any future funding proposal that does not have the support of industry. This could apply to a levy for any disease, such as bovine Johne's disease. This bill will enable the Government to introduce such levies without having to bring the legislation back to the Parliament to have it amended for that purpose. It covers a whole raft of possibilities. The Parliament should be able in future to reconsider any government decision on disease control programs, including those relating to ovine Johne's disease.

The Opposition has gone to a lot of trouble to ensure that the amendments are acceptable to the Government for a specific reason: it is very late in the process for the new national program to begin. Time is running out for the Minister to sign the memorandum of understanding or the heads of agreement with the Commonwealth and the other States for the national program. The last thing I wanted anyone to be able to say was that the Opposition in New South Wales, through tiddlywinks amendments, was the cause of the program not starting on time. That is not now the case. It is time for the Government to get on with it; it is time for the Minister to sign the memorandum and enable this program to get under way.

Amendments agreed to.

Part as amended agreed to.

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

Message forwarded to the Legislative Assembly seeking its concurrence with the Legislative Council's amendments.

JUSTICES LEGISLATION AMENDMENT (APPEALS) BILL

In Committee

Consideration resumed from 19 November.

Schedule 1

The Hon. R. S. L. JONES [8.33 p.m.]: I move my amendment No. 4:

No. 4 Page 18, schedule 1[2],line 11. Omit "substantial reasons why". Insert instead "reasonable grounds for deciding that".

This amendment reduces the test that must be satisfied in order for evidence to be given in person. The bill will ensure that appeals are heard primarily on the transcript of the local proceedings. New evidence will be permitted only with the leave of the court and evidence in person will be given only if the special or substantial reasons tests are satisfied. The Law Society and the Bar Association have raised a number of concerns about this proposal, including whether court time will actually be reduced or whether the trauma of victims will be reduced by the new proposal. A letter from the Victims Advisory Board outlines its resolution to support the bill despite reservations about some of its amendments. The letter states:

> The Board did have some reservations about the proposed amendment because of the potential delay resulting from interlocutory hearings—namely, to consider "special" and "substantial" reasons for requiring a witness to give evidence again at the District Court. It was felt that these delays, plus the distinct possibility that after the hearings the witness will still have to give evidence, might have the counter effect of increasing, not decreasing, the trauma of victims.

That is the view of the board, despite the fact that the Government has portrayed the bill as a win for victims. My amendment does not seek to change the special reasons test, that is, the test as it relates to alleged victims of violence in an appeal to the District Court; rather, it seeks to lower the test that must be satisfied for persons to give evidence in person as applies to all other cases from substantial reasons to reasonable grounds. If the argument is that substantial reasons are in fact not very substantial and are not a severe test, why not spread the test to be sure that it means what it says. The test should have been one of reasonable grounds in the first place: it means what it says and it says what it means. This modest amendment will ensure that witnesses will be called when they should be called.

Debate has centred on whether the special or substantial reasons test will actually reduce the amount of court time in appeal cases because case law suggests that magistrates have not interpreted the test with consistency and legal representatives are likely to appeal any decisions not to allow witnesses to appear before the court. In *Losurdo v Director of Public Prosecutions* the Supreme Court found that the magistrate applied the special reasons test when the substantial reasons test should have been applied. Further, as outlined by the Bar Association in *Director of Public Prosecutions v Losurdo*, Court of Appeal, 3 September 1998, unreported, on page 5 the court referred "to authority that the term 'substantial' was not only susceptible to ambiguity but was a word calculated to conceal a lack of precision".

The Victims Advisory Board submitted that the effectiveness of the proposed appeals procedure should be monitored over a period of time and a report produced to be used to determine the effectiveness of the new process. The board suggested that the review and subsequent report should list the number of criminal appeals against convictions from the Local Court to the District Court, identify the number of appeals that included interlocutory hearings to consider special and substantial readings, identify the actual delay that resulted from the interlocutory hearings and, as a result of the interlocutory hearings, list the number of witnesses who were required to give evidence again at the Local Court. If the bill is passed without this significant amendment I hope the Minister will undertake to ensure that this review is conducted and that the findings are tabled in Parliament.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.37 p.m.]: I am happy to undertake to keep this measure under review as indeed all reforms of the criminal justice system ought to be under review. However, it is an untenable argument to suggest that this reform package would not save court time. Arguments about whether witnesses should be called, should be short and sharp arguments. When witnesses have to be recalled, as is apparently contemplated by the Opposition's stance on this bill, examination-in-chief, cross-examination and re-examination of such witnesses takes many hours of court time.

Honourable members should read the interim report on committals proceedings headed by Justice John Dowd to see how these criteria work. The suggestion is not that great amounts of court time are taken up by arguments about whether witness X ought to be called. I accept that the Supreme Court has held that certain magistrates have misinterpreted the intention of the Act. The Supreme Court has clarified those matters. There is nothing surprising about a bit of legal argument relating to a new set of criteria in the criminal justice system, but I believe absolutely that this new regime will work efficiently, without depriving anyone of justice.

The proposed amendment would require the court to be satisfied that there are reasonable grounds, as opposed to substantial reasons, why a witness who is not a victim of violence should be recalled to give evidence. There is no a priori reason to think that the adjective "reasonable" is any more certain than the adjective "substantial". These are all words that the court must construe. They often allow a leeway of choice on the part of the court, but the amendment does not propose any more certainty than what is suggested in the bill. It is not apparent how the use of the term "reasonable grounds" will assist the court in deciding whether to recall such witnesses.

The term "substantial reasons" is currently relied upon in deciding whether witnesses in committal hearings should be called to give evidence. It would appear that the courts are giving a flexible—some would say wide—meaning to this term. For instance, in *Losurdo v Director of Public Prosecutions*, a case mentioned by the Hon. R. S. L. Jones, the Supreme Court held that to establish substantial reasons it is not necessary to show that

the case is exceptional or unreasonable. It may be that substantial reasons could be shown in a reasonable number of cases. For those reasons the amendment is opposed.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [8.40 p.m.]: The Opposition does not oppose the amendment. Instead of stating that the court is to be of the opinion that there are reasonable grounds why, in the interests of justice, the witness should attend to give evidence, it would have been preferable if the amendment had stated "the court is of the opinion that it is in the interests of justice that the witness should attend to give evidence". As it presently stands the amendment is convoluted.

The Government has accepted in other places an amendment that "in the interests of justice" is the appropriate test. The Hon. R. S. L. Jones has suggested that rather than having the higher threshold as the test of substantial reason, it should state that "having regard to the interests of justice there are reasonable grounds as to why the witness should attend". That is the reasonable test being argued by the Opposition and the crossbenchers. The approach taken by the Government is to seek to elevate the test and make it more difficult for people to gain access to the courts. The Opposition supports the direction advocated by the Hon. R. S. L. Jones.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 17

Mr Bull	Mr Lynn
Dr Chesterfield-Evans	Dr Pezzutti
Mr Cohen	Mr Ryan
Mrs Forsythe	Mr Samios
Mr Gallacher	Mr Rowland Smith
Miss Gardiner	Mr Willis
Mr Hannaford	*Tellers,*
Mr Jones	Mr Jobling
Mr Kersten	Mr Moppett

Noes, 20

Mrs Arena	Mr Obeid
Dr Burgmann	Mr Primrose
Ms Burnswoods	Ms Saffin
Mr Corbett	Mr Shaw
Mr Dyer	Ms Tebbutt
Mr Johnson	Mr Tingle
Mr Kaldis	Mr Vaughan
Mr Kelly	
Mr Macdonald	*Tellers,*
Mrs Nile	Mrs Isaksen
Rev. Nile	Mr Manson

Pair

Dr Goldsmith	Mr Egan

Question so resolved in the negative.

Amendment negatived.

The Hon. R. S. L. JONES [8.50 p.m.]: I move my amendment No. 5:

No. 5 Page 18, schedule 1[2], line 13. Omit "evidence.". Insert instead:

evidence, or

(c) in all cases, the appellant was not legally represented for the whole or part of the proceedings heard before the Magistrate.

The purpose of the amendment is to provide for an extra instance in which a court may allow evidence to be given in person, that is, where the appellant or the respondent was not legally represented for the whole or part of the proceedings heard before the magistrate. This applies to appeals to the District Court. Later I will move an amendment in relation to the Land and Environment Court. Recent evidence suggests that more than ever it is necessary to preserve genuine access to appeal proceedings. A study conducted at Griffith University shows that more and more people are representing themselves because they cannot get legal aid, and innocent people are pleading guilty in court because they cannot afford to continue legal proceedings.

There are undoubtedly cases where people have been convicted who would have been found not guilty had they been properly represented. My amendment recognises that those who are unrepresented or not fully represented in the Local Court are likely to be at a distinct disadvantage at that court and the outcome of their cases may reflect that disadvantage. Those people, should they appeal to the District Court, may not satisfy the reasons test. Therefore a separate provision is needed to allow the court to require a person to give evidence on that basis.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.51 p.m.]: This amendment will require the District Court, when deciding whether a witness should be recalled, to have regard to whether the appellant was legally represented for the whole or part of the proceedings before the magistrate. If the amendment finds favour with the Committee the District Court will continue to have a discretion as to whether or not to call a particular

witness, but must have regard to this issue in considering a request to recall a witness. It is obvious that this would be only one of the criteria that the court would have regard to in determining the issue, but the Government is prepared to support the amendment.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [8.52 p.m.]: I note the Government's support for the amendment. The Opposition would not have been disposed to support it, but, as the Government proposes to do so, we will not vote against it. The reason for our opposition is that subsection (1)(a) of new section 133 is clearly disjunctive. The amendment of the Hon. R. S. L. Jones will mean that in one category of case the court must be of the opinion special reasons exist; in a second category of case, the court must be satisfied that there are substantial reasons, and now there will be a third category of case in which the court may direct a person to attend to give evidence—that is, when a person is not legally represented for the whole or part of the proceedings before the magistrate.

This provision will be manipulated. I know the games that are played. Everyone in legal practice knows it is their job to act in what they perceive to be the best interests of their client. Therefore, they will manipulate the situation. If a part-heard matter is not going particularly well for them, the next time the case is before the court they will not represent their client. The client will argue before the District Court that he has the right to be heard and that he should be able to call witnesses because he could not afford to have his solicitor present.

The Hon. J. W. Shaw: That would be dangerous and unethical.

The Hon. J. P. HANNAFORD: But that is the effect of the wording. The Attorney argues that this would be only one of a number of reasons. That is not what the provision states. It refers to special reasons in the first category, substantial reasons in the second category, and the third category will be very simple—the client was not represented for the whole or part of the case. By accepting this amendment Parliament is giving a clear message to the court that there are three separate tests. If someone falls into one or other of them he may be able to give evidence, and no other qualification has been put on it. I place that concern on the record. I hope I am wrong, but I know the way the provision will operate in practice.

The Hon. R. S. L. JONES [8.54 p.m.]: If lawyers were to act unethically in the way suggested by the Leader of the Opposition and abuse the provisions of the Act, the Government or the Attorney of the day would move swiftly to close the loophole. That would in turn disadvantage those people who need the provision in the legislation. I hope that lawyers do not act unethically and do not do what the Leader of the Opposition suggested they will, that is, if their case are not going well, leave their clients unrepresented so as to win an appeal. I suggest that would not happen. If it does happen on a regular basis they would soon lose that ability and many people who need this provision would miss out.

Amendment agreed to.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [8.55 p.m.], by leave: I move Opposition amendments Nos 10, 11 and 12 in globo:

No. 10 Page 32, schedule 1[2], lines 28 to 31. Omit all words on those lines.

No. 11 Page 35, schedule 1[2], lines 2 to 8. Omit all words on those lines. Insert instead:

> unless it is of the opinion that it is in the interests of justice to grant the application.

No. 12 Page 35, schedule 1[2], lines 22 to 27. Omit all words on those lines. Insert instead:

> order made as a consequence, if an application for vacation of the order is made within 12 months of the dismissal and the Land and Environment Court is of the opinion that it is in the interests of justice to grant the application.

The purpose of these amendments is to further refine the operations of the Act to make it clear that the interests of justice are to be taken into account by the court rather than the double test being adopted by the Government. In the interest of fairness it should be left to the court to determine all the factors relevant to these matters and to determine the issue having regard to the overall interests of justice. The other aspect of the matter, covered by amendment No. 12, is aimed at ensuring that where an application for leave to appeal is to be made, that application is made within a 12-month period and that that is clearly stated in the provision.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.57 p.m.]: The Government supports these amendments. Amendment No. 10 will remove the requirement for the Land and Environment Court to be satisfied that the failure to file appeals in relation to all matters heard at the one time by the Local Court arose through inadvertence or error. According to the amendment the Land and

Environment Court will be able to deal with appeals in relation to all those matters even though formal appeal documents may not have been lodged in respect of one or more matters.

Amendment No. 11 will replace the two-step criteria currently prescribed in new section 133AJ of the bill that the Land and Environment Court must apply in deciding to grant an application to file an appeal out of time. It is agreed the amendment will result in a more straightforward test and for this reason the Government supports it. Amendment No. 12 will replace the two-step criteria currently prescribed in new section 133AL that the Land and Environment Court must apply in deciding whether an earlier order it made to dismiss an application for leave to appeal should be vacated. It is agreed the amendment will result in a more straightforward test, and for that reason it is supported.

Amendments agreed to.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [8.59 p.m.], by leave: I move Opposition amendments Nos 13, 14 and 15 in globo:

No. 13 Page 35, schedule 1[2], lines 29-32. Omit all words on those lines. Insert instead:

(1) An appeal against a conviction or an order is to be by way of rehearing on the transcripts of evidence heard before the Magistrate who made the conviction or order concerned, except as provided by this section.

(2) An appeal against a sentence is to be by way of rehearing on such evidence as is relied on by the appellant and respondent at the hearing of the appeal.

No. 14 Page 36, schedule 1[2], lines 5 to 8. Omit all words on those lines. Insert instead:

(3) On an appeal, new evidence may be adduced by both parties.

(4) On an appeal, witnesses may be subject to further cross-examination:

(a) without the leave of the Land and Environment Court, if notice of the proposed cross-examination is given to the other party, not later than 28 days before the date fixed for the hearing of the appeal or within such shorter period as may be permitted by the Court, or

(b) with the leave of the Land and Environment Court.

(5) The Land and Environment Court may determine that an appeal against a conviction or an order is not to be by way of rehearing on the transcripts of evidence (in whole or in part) if it is of the opinion that it would be unfair to either party to proceed on that basis.

No. 15 Page 36, schedule 1[2], lines 9 to 36. Omit all words on those lines.

These amendments are identical to amendments Nos 7, 8 and 9 previously dealt with by the Committee. The arguments in favour of them are identical to the arguments I put forward at that stage. I note that the Committee rejected the arguments and did not support the amendments. The Committee, therefore, has expressed its view as to the way in which the provisions in the bill should work. I do not intend to call for a division on these amendments, but it is important to have on the record the full argument advocated by the Opposition.

The CHAIRMAN: Order! I remind the Committee that if Opposition amendments Nos 13, 14 and 15 are passed, the Hon. R. S. L. Jones cannot move amendment No. 7 standing in his name. If the Opposition amendments are not passed, or if only Opposition amendments Nos 13 and 14 are passed, the Hon. R. S. L. Jones can move amendment No. 7.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [9.01 p.m.]: As the Leader of the Opposition has said, the arguments have been rehearsed and dealt with by the Committee. In relation to Opposition amendment No. 14, the alternative proposal for the hearing of Land and Environment Court appeals suggested by the Opposition allows for witnesses to be recalled to give evidence on appeal for new evidence to be adduced if 28 days notice is given by the parties that such witnesses are required to attend. The proposal gives the court no discretion in deciding whether the calling of such witnesses is appropriate. The decision lies solely with the parties as to whether certain witnesses are required to be recalled.

Accordingly, that proposal will not relieve witnesses of the burden of having to attend court and give the same evidence twice: whether such witnesses are required to attend court remains solely with the parties to the appeal. The Land and Environment Court will have no role in determining whether the attendance of such witnesses is necessary. For that reason it is expected that a large number of witnesses will continue to be required unnecessarily to be examined and cross-examined twice in relation to the same evidence. It is also questionable whether the Opposition proposal would work in practice. For instance, the proposed amendment provides that 28 days notice is to be given to the court requiring the attendance of a particular witness.

However, leave may be granted to call such witnesses. It is therefore doubtful that any benefits would be derived from the Opposition's proposal if witnesses will continue to be required to attend Land and Environment Court appeals on short notice simply at the request of one of the parties to the appeal. It will also be difficult for the Land and Environment Court to efficiently allocate court time to the hearing of these appeals if no accurate assessment can be given at the time of listing the matter for hearing as to the number of witnesses to be called and the likely length of time it will take for the witnesses to give their evidence, which will only add to court delays.

Amendments negatived.

The Hon. R. S. L. JONES [9.03 p.m.]: I move my amendment No. 7:

No. 7 Page 36, schedule 1[2], lines 13-22. Omit all words on those lines. Insert instead:

(a) the Court is of the opinion that there are reasonable grounds for deciding that, in the interests of justice, the witness should attend to give evidence, or

(b) the appellant was not legally represented for the whole or part of the proceedings heard before the Magistrate.

This amendment deletes reference to the special reasons test in relation to evidence given in person at the Land and Environment Court. According to the bill, the special reasons test should be applied when a witness who is an alleged victim of violence is requested to appear before the court. Given that the jurisdiction of the Land and Environment Court in the context of the proposed legislation is to consider appeals relating to environmental offences, it is hard to understand why there is a reference to witnesses in cases involving violence. Has a case involving violence been heard in the Land and Environment Court? As the Bar Association notes:

> As the appeal jurisdiction from the Local Court, the Land and Environment Court will relate only to environmental offences as defined in clause 133W of the bill. It is difficult to see that the concept of an offence involving violence would have any application in this context. That the term has been used at all in the context of clause 133AN reinforces the view that the text has been inappropriately and inadvisedly lifted from provisions concerning committal proceedings.

Furthermore, it is argued that if the test remains it will be productive of litigation testing interlocutory rulings of judges of the District Court and the Land and Environment Court in the course of appeals. The second part of the amendment is similar to amendment No. 4 standing in my name and seeks to reduce the test for allowing evidence in person to be presented to the court. My amendment reduces the test from substantial to reasonable grounds.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [9.05 p.m.]: The Government supports the amendment, which would replace the requirement for the Land and Environment Court to be satisfied that there are special or substantial reasons for recalling witnesses on appeal with a more general requirement that the court be satisfied that there are reasonable grounds for deciding that in the interests of justice the witness should attend to give evidence.

Because the court's jurisdiction in respect of environmental offences is unlikely to involve offences of violence, I would agree that it is more appropriate to replace the current test provided in new section 133AN with a more general test as outlined in the proposed amendment. The Chief Judge of the court has raised some difficulties in relation to new paragraph (b), saying that the court's discretion in new paragraph (a), that is to form its opinion in the interests of justice, is sufficiently right to ensure that persons who are not legally represented are catered for.

The Hon. R. S. L. Jones: So it could be superfluous?

The Hon. J. W. SHAW: Yes. I will not withdraw my support for the amendment. However, we should keep it under consideration to see how it works in practice, and give the Chief Judge's opinion the due respect it deserves. If this new section needs adjustment, or if something is confusing or superfluous it will be adjusted next year.

Amendment agreed to.

Schedule as amended agreed to.

Schedule 2

The Hon. J. P. HANNAFORD (Leader of the Opposition) [9.08 p.m.], by leave: I move Opposition amendments Nos 16 and 18 in globo:

No. 16 Page 49, schedule 2.8[1], line 17. Insert "(not being a prosecutor)" after "subsection (1)".

No. 18 Page 50, schedule 2.8[2], line 4. Insert "(not being a prosecutor)" after "subsection (1)".

These amendments are the result of advice given to me by the Bar Association. It is appropriate that I

should put on the record the advice from the association. In a letter dated 23 March 1998 to the Attorney General the association suggested an alteration to the proposed amendment to section 5B of the Criminal Appeal Act 1912 contained in the 1997 bill, which was the precursor to this bill. The Bar Association notes that the 1998 bill is in the same form as the 1997 bill in this respect. The second reading speech delivered on 17 September 1998 does not touch upon this issue. The Bar Association letter of 23 March 1998 referred to the report of the Justices Act review steering committee. The Committee proposed an amendment to section 5B. The Bar Association advice stated:

> Recommendation 3.1.14 of the 1992 Committee proposed amendment to s.5B. The Committee proposed that a convicted person be able to appeal to the Court of Criminal Appeal after determination of the appeal on a question of law, but recommended no change to the existing right of the prosecution to seek the stating of a case before acquittal but not afterwards.
>
> The amendment contained in the 1998 Bill would enable a question of law to be submitted under s.5B for determination even though the appeal proceedings during which the question arose have been disposed of. The 1998 Bill allows both the convicted person and the unsuccessful prosecutor after an acquittal to request the submission of a question of law from the District Court to the Court of Criminal Appeal. The Association submits that the view of the 1992 Committee should be supported. A distinction should be drawn between the right of a convicted person and the right of an unsuccessful prosecutor to seek a stated case. The prosecutor must seek a stated case prior to the making of orders upholding the appeal and dismissing the information. The prosecutor should be in a different position because of the rule against double jeopardy and the fact that the appeal is the second hearing of the matter. The prosecutor should be in a position to determine whether a stated case is to be sought prior to the making of orders acquitting the appellant. The Association submits that the proposal of the 1992 Committee accords with this principle and should be supported. No reason has been advanced for rejecting this proposal. The Association contends that the legislation should follow the model proposed by the 1992 Committee in this respect.
>
> The Association's letter of 23 March 1998 [to the Attorney General] observed that the proposed amendment to s.5B does not contain any time restriction for an appeal by way of stated case after the appeal proceedings have been disposed of. The 1998 Bill continues this omission. It may be that it is intended that any time limit be fixed by the *Criminal Appeal Rules*. If this is not the case, however, the Association submits that some time limit, perhaps 28 days after conviction (which might be extended by leave of the Court of Criminal Appeal) should apply to convicted persons.

I asked the Bar Association certain questions about that advice. As I understand it, the result of the Government's amendment is that if a person were found not guilty and acquitted, the prosecution would be able to seek a stated case to have the law clarified. If on that appeal the prosecution were found to be justified in its position, the law would be clarified but the person, having been acquitted, would walk free. If a person were convicted, that person would be able to seek the stated case after being convicted. I should have thought it preferable that if the Crown received advice that the court intended to acquit but the Crown strongly believed that the decision on the point of law were wrong, the Crown would be able to appeal at that point, before the formal acquittal.

In that way, if the Crown's submission were upheld the court would be found to be wrong before actually acquitting the person, and the court would convict that person. As I am informed, that opportunity will not be available because of the amendment to the legislation. People will be acquitted and a stated case taken. On the stated case the Court of Appeal may decide that the lower court was wrong but, notwithstanding that, the person would walk free. I do not think that is what is intended by the Government. Certainly it has been a major problem for the Director of Public Prosecutions [DPP].

The Hon. J. W. Shaw: He has been consulted. He agrees with what the Government has done.

The Hon. J. P. HANNAFORD: This was a major problem for the previous DPP; I have not discussed it with the present DPP. The previous DPP found that this issue arose from time to time. This matter was to be dealt with in a bill before the House prior to prorogation of the Parliament in 1994. The Government will clarify the issue. I hope that in this regard the Bar Association is wrong. The Government will be severely criticised if the effect of its amendment is that the court could proceed with an acquittal that may be overridden on a point of law by the Court of Appeal without there being opportunity for correction of the acquittal. I understand that to be the effect of the Government's amendment. The community would not agree with that approach.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [9.16 p.m.]: The Government opposes these amendments. The Justices Legislation Amendment (Appeals) Bill extends the right of parties to an appeal to the District Court to lodge a further appeal to the Court of Criminal Appeal on a point of law following the decision of the District Court. Currently parties may appeal only before the determination of a case. If Opposition amendment No. 16 were accepted, an unsuccessful prosecutor would be able to appeal to the Court of Criminal

Appeal on a point of law prior to the District Court finalising the matter but not afterwards. The DPP was consulted on this matter and advised that the present position under which a stated case must be requested prior to the making of orders by District Court judges is completely unsatisfactory.

In the case of the Crown, it requires the prosecutor to be aware that the judge is about to commit an error of law such that it is necessary to stop him or her before a final order is announced. The DPP advises that there are many factors that mitigate against that procedure operating effectively. For example, a prosecutor may be reluctant to interrupt a judge in the course of giving a judgment; a prosecutor may fail, understandably, to fully appreciate an inherent error until it is too late; a judge may refuse to permit any interruption; and a prosecutor, if he or she does interrupt, may experience difficulty in obtaining instructions. The DPP further advises that in reality there are very few cases stated under that section.

In the opinion of the DPP there are valid practical reasons that the procedure, if it is to be changed, be the same for both parties. Accordingly, the amendment suggested by the Opposition to prevent an unsuccessful prosecutor from appealing after the determination of the case is not supported. Similar arguments apply to Opposition amendment No. 18 with regard to appeals to the Land and Environment Court. The Government is seeking to deal with the unseemly and impracticable position of prosecutors having to interrupt a judge before the judge has finalised his judgment if they are to prosecute an appeal. There is a difference of opinion between the Bar Association and the DPP. I am persuaded by the DPP that the amendment contained in the bill is an appropriate reform. Consequently, the Government opposes these amendments.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [9.19 p.m.]: I note the advice of the Attorney General as to the views of the Director of Public Prosecutions. The Bar Association and the Director of Public Prosecutions are at loggerheads as to the impact of this proposal. The Committee has to accept the advice of the Attorney General on these matters. I will not call for a division on these amendments. Our different views have been placed on the record and we will have to wait to see how the courts deal with this matter.

Amendments negatived.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [9.20 p.m.], by leave: I move Opposition amendments Nos 17 and 19 in globo:

No. 17 Page 49, schedule 2.8[1], line 21. Insert "The question of law must be submitted not later than 28 days after the end of the appeal proceedings, or within such longer period as the Court of Criminal Appeal may allow." after "of.".

No. 19 Page 50, schedule 2.8[2], line 8. Insert "The question of law must be submitted not later than 28 days after the end of the appeal proceedings, or within such longer period as the Court of Criminal Appeal may allow." after "of.".

These amendments will impose a time limit within which questions of law must be dealt with. I adverted to this issue earlier during debate on other amendments. Some constraint must be placed on all parties seeking to submit the question of law as a stated case. It is for that reason that the Opposition advocates these changes.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [9.21 p.m.]: The Government supports these amendments. The first amendment would put in place a time period for filing appeals from the District Court to the Supreme Court when the District Court is rehearing a matter on appeal from the Local Court. It seems appropriate that a time period of 28 days is put in place for filing such an appeal. Accordingly, that is an appropriate amendment. Opposition amendment No. 19 simply reflects the same concept with respect to the Land and Environment Court. For the same reasons the amendment is supported.

Amendments agreed to.

Schedule as amended agreed to.

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

VICTIMS COMPENSATION AMENDMENT BILL

Second Reading

Debate resumed from 22 October.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [9.25 p.m.]: The Opposition does not oppose the Victims Compensation Amendment Bill. When the victims compensation scheme was introduced in the lead-up to the 1988 election, the former Premier, Barrie Unsworth, advocated a minimal cost compensation scheme to provide some financial support to seriously injured victims of crime. In 1988, when there was a change in government, the former Attorney General—

The Hon. J. R. Johnson: You would have no recollection of that.

The Hon. J. P. HANNAFORD: I do recall the 1988 election victory. It will be replicated in March next year. The former Attorney General, John Dowd, when providing a briefing on the impact of the victims compensation scheme, said that the cost of the scheme would never exceed $10 million. This year $90 million has been allocated for that scheme. The Government introduced a number of amendments to try to contain the burgeoning cost of the victims compensation scheme. In the lead-up to the 1995 election I introduced amendments to bring the cost of that scheme under control. The Labor Opposition vehemently opposed all of those changes as being a scurrilous attempt to reduce benefits available to victims. It is a great temptation to me to be as irresponsible in relation to this proposal as the Leader of the Opposition in the lower House was at that time in relation to those amendments.

I could embrace the strong views advocated by the Bar Association and the Law Society and oppose a number of the provisions in this bill on the basis that they will have a severe impact on victims of crime. However, I will not take that approach. I acknowledge the need to contain the ever-increasing financial cost of the scheme. The scheme was originally intended to provide financial assistance to the most seriously injured victims of crime; to provide them with some financial assistance so that they could get back on their feet; and to enable them to cope with the trauma of crime. Basically, the scheme has now become a milch cow. It does not provide solace to the most traumatically affected victims of crime. It has become a bank account to be drawn upon by all victims who fall within its terms. That is disappointing.

We should be trying to help the most seriously and traumatically affected victims of crime get back on their feet. I have said time and again that money is not the answer. I have spoken to the most traumatically affected victims, and they have told me that they are not after money. They acknowledge that, if money is available and the Government has decided to provide a bank account which can be drawn upon, they would be foolish not to take advantage of that account. They would like a compassionate government to put in place programs which help them get back on their feet, help their families come to grips with the impact of crime and help them to adjust their lives as quickly as possible. That is so with people who have suffered the most physical and psychological trauma and injury, particularly those who have suffered the devastation of a loss of a family member.

The Opposition will not pursue a number of amendments aimed effectively at retaining an expanded bank account for victims, but in Committee the Opposition will move amendments to retain the current level of counselling services for victims, which is a maximum of 20 hours, because, as I said earlier, the Opposition takes the view that victims need services and a much more broadly available system of services. Cutting counselling from 20 hours to six hours would deprive victims of support that they most seriously need. I note the advice of the Government in the Minister's second reading speech and elsewhere that there is a growing counselling industry. Without sounding too disparaging of them, some counsellors would like to make victims of crime an industry of its own, and to that extent they are taking advantage of the statutory provision and entitlement.

Those people know that the Government will pick up the tab, so they continue to prescribe additional counselling. It is another cashflow benefit for them. The system is being abused and therefore mechanisms need to be put in place to deal with those who are abusing it. The Government is proposing a system of accreditation to preclude those who are abusing the system from gaining access to it, or to constrain the abuse in some other way.

Victims should not be deprived of access to up to 20 hours of counselling services if they need it. The Government has also introduced the concept of a $750 deduction from all claims of statutory compensation of less than $20,000. The Government argues that it would appear that the average payment of legal costs in this area is around $750, so it will make a $750 deduction, which effectively will mean that people will pay their own legal costs. That is certainly not the Government's stated rationale but it is clearly inferred from the material available that that is the way the Government is proceeding.

The Opposition will not oppose the Government's philosophy of containing the cost, if that is its approach. However, the Opposition is of the view that the more appropriate approach would be to move the threshold by way of proclamation by this Parliament to the Government, which it has not chosen to do. The Government has chosen to move an amendment to provide for a deduction by way of regulation, as well as the concept of a threshold. That may be one way to deal with burgeoning costs in this area but I would have thought there was a more appropriate way. But, so be it: the Opposition will not oppose the Government's approach.

The strong submissions made by those who work in this area are that there should not be substantial changes for claims based upon shock. The Government has justifiably indicated that claims based upon shock have become a new industry and that just about every claim, or at least every second claim, seems to have an element of shock as a basis for trying to get more money out of the fund. Again, as I said at the time, the moment the gates are open the lawyers have an obligation to act in the interest of their client, and if a basis for a claim is created lawyers will do their job and pursue it.

That entitlement will end up becoming another milch cow. I do not oppose the Government's attempts to constrain claims based upon shock, provided that there are other services available to deal with people with a justified claim who are suffering elements of shock. Again that is one of the reasons why the Opposition opposes the reduction in counselling from 20 hours to six hours.

If access to financial services is to be reduced, the victims should at least have access to counselling services to deal with their shock. The main area for which counselling is needed is for the psychological disorder or need generated by the trauma of being a victim of crime. I am happy to support the Government in this area but I do so only because the Opposition will move an amendment to maintain the availability of treatment services. The Opposition has circulated an amendment to deal with new section 58H(5)(b). That section will deprive lawyers of the right to confidentiality in relation to advice that they convey to, and instructions they receive from, their clients.

Quite rightly, the Government is trying to provide a greater mechanism for recovery of compensation from the perpetrators of crime, and it is putting in place a mechanism to allow the Government to set aside effective transfers of assets to recover compensation orders. In doing so the Government is proposing to set aside legal professional privilege, but that would be a dangerous precedent. The Confiscation of the Proceeds of Crime Act does not remove the entitlement to legal professional privilege. In no other legislation of which I am aware has the Government of the day ever sought to set aside legal professional privilege.

Legal professional privilege is seen as a protection afforded all members of the community to go to their legal adviser and seek advice as to the law and its impact, and then act in accordance with that legal advice. It may well be that somebody will go to their legal adviser to seek information and then ask some other person to give effect to that legal advice. Should the client be deprived of the privilege that attaches to obtaining information from his legal adviser?

It is dangerous for this Parliament to at any stage accept as a matter of principle that legal professional privilege should be capable of being undermined. The Government is saying, for the first time of which I am aware, that people who go to a lawyer and get legal advice know that their conversations are no longer protected. The Parliament has always been prepared to uphold certain categories of privilege. Legal professional privilege is one of them, and the other is the privilege of the religious confessional. The Parliament has always steadfastly maintained those privileges as rights of the community that ought to be protected.

The House will have an opportunity to make a determination on this matter because I will move an amendment to delete the removal of that privilege. The Government should be able to continue to pursue recovery. I do not believe that deletion of the section will in any way undermine the other provisions set out by the Government to recover money from a person who has sought to dispose of his or her assets. However, the fundamental right of any community member to obtain legal advice should not be undermined. For that reason, I foreshadow that I will move the amendment. Otherwise, the Opposition does not oppose the bill.

The Hon. R. S. L. JONES [9.40 p.m.]: The bill stems from the second interim report of the Joint Select Committee on Victims Compensation, of which I am a member, published in December 1997. At the time of the inquiry I queried the cost of the scheme, as suggested by the Government. However, from the evidence given to the committee, it is clear to me that the blow-out in costs is horrendous. The report suggested that the scheme will cost approximately $128.7 million by the year 2000 and recommended potential ways to limit the cost without compromising the Government's record in providing for victims of crime.

This bill will almost remove payments for shock, reduce small compensation payments, and limit counselling to a maximum of six hours, while maintaining provision for homicide victims and victims of sexual assault. A new domestic violence provision will be inserted to mitigate any effect the amendments may have on victims of domestic violence.

A recent article in the *Sydney Morning Herald* stated that the scheme was estimated to cost

taxpayers $200 million this financial year, despite the cost saving measures introduced in 1996. The Combined Community Legal Centre Group stated that it is difficult to identify how much of the cost of the scheme represents applications received under the revised scheme and how much represents the finalisation of applications under the old scheme.

The Combined Community Legal Centre Group considers that a large proportion of the increase in cost stems from applications under the old scheme and, importantly, before the cost saving measures were introduced in 1996. The tribunal continued to process a backlog of applications from the 1987 scheme. At the time of writing the December 1997 report, the 1996 Act had only been in operation for six months, so all figures and predictions were based on a mere six months data. I am concerned that the category of shock will be extremely difficult to satisfy and will exclude too many deserving victims; that limiting counselling to a handful of sessions is harsh, given that counselling is an inexpensive alternative to financial compensation and a qualified benefit to victims; and that the range of the new domestic violence category does not accurately reflect the trauma of the victims.

When lodging an application for compensation, applicants select the main injury received from an act of violence and provide material to support that claim. The committee's inquiry noted that parts of the scheme, particularly the provisions allowing monetary compensation for shock, were being abused. Claimants had a tendency to nominate shock or psychological damage as their main injury, whether or not it was their primary injury.

An example used in the report was a public brawl victim who could not claim soft tissue damage after that category was abolished in the 1996 Act, but could claim between $2,400 and $18,000 for temporary nervous shock lasting more than 28 weeks. At page 42 of the report entitled "The Long Term Financial Viability of the Victims Compensation Fund" the committee stated:

> Provided applicants can substantiate the injury through medical evidence they may receive a higher award by selecting Shock as their primary injury.

As an example, at page 5 of the transcript of evidence dated 10 November Mr Brahe said:

> If a person has minor burns, under the schedule he would collect $3,600 if that were the major injury. If he suffered Shock in excess of 28 weeks, he would collect 10 per cent of $18,000 if that were a second injury, making a total of $5,400. But if he claims Shock as the primary injury, he claims $18,000 plus 10 per cent of the physical injury of $3,600.

The report continued:

> The increased cost to the Fund in the above scenario is $12,900, or 240 per cent higher than if the primary injury was the physical one.

Further, the report stated:

> The report shows that 42 per cent of all assault claims lodged at the Tribunal involved the victim being assaulted in a hotel, a club or upon leaving the licensed premises, in most incidences the victim is claiming Shock as the only compensable injury received, or claiming Shock as the primary injury.

Therefore, 42 per cent of all assault claims lodged at the tribunal were from victims assaulted in hotels or clubs. That is an extraordinary number, especially when one considers the cost to taxpayers. The committee noted a link between abuse of the shock provision and an incentive for counsellors to recommend more counselling than is necessary so that the applicant complies with the six week minimum threshold to satisfy part of the criteria for shock. At page 41 the report stated:

> Evidence was provided to the Committee by the Victims Compensation Tribunal that certain solicitors are not sending their clients to a psychologist until 28 weeks from the act of violence. Consequently when the psychologist makes a diagnosis of post traumatic stress disorder, since 28 weeks has passed since the incident, the victim is considered to have been suffering from the Shock for 28 weeks and is placed in the higher award category.

The committee felt that this approach was being exploited and promoted by some members of the legal profession. Emphasis on the duration of shock is implicit in the schedule of injuries, which increases payment according to the length of time the symptoms and disability are suffered. The table of injuries specifies that a victim may be awarded between $2,400 for shock lasting six to 13 weeks, $9,600 for shock lasting 14 to 28 weeks, $18,000 for shock lasting 28 weeks that is not considered permanent and a maximum of $48,000 for shock which indicates permanent symptoms and disability.

In the transcript of the public hearing of the Joint Select Committee on Victims Compensation on Thursday, 17 September, Dr Michael Large, specialist psychiatrist, Department of Psychiatry, Royal Prince Alfred Hospital, said:

> I think if you have a system which excludes all the people who are exaggerating or fabricating you would also push out some legitimate claims. You have to accept that it will be a system that will be used to a degree.

Further, he said:

> It does not involve changing the definition of shock very much. I think taking out the duration would be the very first thing I would change, it is crazy, because you only have to be sick for twice as long to get four times as much money: it should go the other way really.
>
> . . . the relationship between the symptoms the patient presents with and the actual crime is not a close one.
>
> . . . you could have some scale for compensating people in relation to what actually happened to them . . . the seriousness of what happened to them rather than their psychological symptoms and the financial aspect should be on the basis of that and also some counselling could be provided as an additional factor,

The amending bill removes the category of shock and replaces it with one of psychological or psychiatric disorder. Only significant payments upward of $30,000 will be available under the new provision, and then only if chronic psychological or psychiatric disorder that is severely disabling can be proven. An application for compensation under this section must be accompanied by an assessment prepared by a person approved by the director of the tribunal.

The Law Society has expressed concern that the new category of shock is too limiting and that victims of many crimes will not be able to fulfil the criteria. It argues that the amendment will restrict compensation to a small class of claimants who are either permanently disabled, or close thereto, by their condition. The Law Society submitted that the following types of applicants will be prevented from gaining compensation under the new provision: victims of armed robberies, victims of home invasions, witnesses of violent crime, parents of child sexual assault victims and child witnesses of domestic violence.

Recently the Combined Community Legal Centre Group briefed the crossbenchers and expressed serious concerns about the effect of the proposed changes on deserving victims. The group's briefing note stated that victims of racial or homophobic violence, serious assaults, armed robberies and hold-ups who suffer soft tissue injuries often also suffer psychological injuries presently covered by "shock". This type of injury includes: not being able to go out into public places for long periods, having trouble sleeping, relating socially, working, suffering anxiety attacks and serious periods of depression.

The group argued that the effect of the amendments would mean that compensation would not be payable to persons who genuinely present with psychological difficulties for at least six months, but do not suffer them permanently. The group argued that the general concern about the criteria for shock being too easily satisfied can be addressed by the fact that the tribunal receives reports from existing tribunal-approved doctors and clinical psychologists, or those accredited by its professional bodies. The group submitted that if there are concerns about dubious diagnoses, professional bodies are the appropriate forum to deal with them.

The committee's second interim report noted that in the first five months of the new scheme 33 per cent of applicants applied for the initial two hours counselling provided under the scheme. Data from the tribunal suggested that half of that 33 per cent requested the maximum of 20 hours. The committee considered that this figure was likely to increase due to: a greater awareness about the existence of counselling by applicants and solicitors; the link between ongoing counselling and an application for nervous shock; the fact that the current system provides a direct financial incentive to approved counsellors, who receive direct payments from the tribunal; and the lack of regulatory structure ensuring quality of service and professional misconduct.

The committee provided a number of alternative options for reform including providing a mix of in-house and outsourced counselling, as used in Western Australia. Page 50 of the report states:

> Both Western Australia and South Australia provide a support service dedicated to victims of crime through their Justice Departments. These services involve a mix of full-time counsellors within their victims support services based in Adelaide and Perth and partial outsourcing to services within regional areas. These schemes have proved to be extremely cost effective.
>
> Within Western Australia, regional services are provided through the major centre within each region.

The regions are named, and some are quite remote. The report continues:

> These regional centres operate services on a part time basis between 15 and 22 hours a week depending on demand. This work is undertaken under contract at a rate between $36-$38 per hour.

The Combined Community Legal Centre Group noted that the recommendation to cut counselling stems from a view that there is overservicing of counselling. When automatic entitlement to counselling was introduced in the 1996 legislation it was heralded as providing practical support for victims of crime. The group noted that the committee received evidence from the Psychologists Registration Board and did not consult any other

professional bodies or groups or public sector counsellors. The group acknowledges that the present system of counselling is not perfect but considers that capping counselling to six hours is not the solution.

If the cause of the problem is inappropriate counselling, capping counselling to six hours does not resolve the problem. The group also argues that the tribunal should review the procedure for granting approval for further counselling after the initial two hours. Suggestions have been made that the bill be held over until the Joint Select Committee on Victims Compensation hands down its final report next March. I do not know whether the House would agree to that; we will find out. Clearly there are concerns about the legislation, because a number of amendments have been proposed by the Opposition and the Greens. I hope that some, perhaps all, of those amendments will be accepted by the Committee.

The Hon. I. COHEN [9.53 p.m.]: The Victims Compensation Amendment Bill has been introduced partly as a result of the reports of the Joint Select Committee on Victims Compensation. In the committee's introduction to its second interim report, entitled "The Long Term Financial Viability of the Victims Compensation Fund", the following is pointed out:

> The New South Wales Victims Compensation Scheme has historically been financially generous in comparison to its interstate and overseas counterparts. The 1996 amendments have gone some way to addressing the concerns which have been expressed for some time by both the New South Wales Auditor-General and New South Wales Treasury regarding the rapidly escalating liabilities of the scheme. However despite the recent amendments, the future liabilities of the scheme are still expected to reach $128.7 million by the year 2000.

Last year the victims compensation scheme cost $82.9 million. The 1996 amendments were intended to bring the cost of the scheme to under $80 million. A particularly contentious aspect of the bill is that victims of crime will no longer be able to claim compensation for temporary psychological problems such as nervous shock. In 1996-97 the Victims Compensation Tribunal paid out $65.75 million in awards for pain and suffering. This is by far the largest compensatory item that the tribunal recognises. Mr Phil O'Toole, director of victims services, which oversees the tribunal, said that solicitors were converting claims for lacerations and soft tissue injuries such a bruising, which were excluded from the Act in 1996, into claims for shock such as post-traumatic stress disorder. The Joint Select Committee on Victims Compensation report states:

> While it is accepted that compensation should be available for victims of serious violent crime who have suffered a serious injury, the scheme should nevertheless guard against manipulation of the Schedule of Injuries or exaggerated claims.

A submission to the committee stated:

> It would seem that because "shock" is so well compensated, many applicants will claim that as the primary injury rather than their physical injury, thus increasing the award. Many solicitors now routinely send their clients for a psychological report irrespective of the physical injury.

There is evidence that some solicitors are not sending their clients to see psychologists until 28 weeks after the incident. Consequently, when the psychologist makes a diagnosis of post-traumatic stress disorder, the victim is considered to have been suffering from shock for 28 weeks and is placed in the higher award category. The award categories range from: shock lasting six to 13 weeks, $2,400; from 14 to 28 weeks, $9,600; over 28 weeks but not permanent $18,000; and finally, permanent symptoms and disability, $48,000. Many people seem to have shock which lasts 29 or 31 weeks to bring them into the higher category and the award is higher if they select shock as their primary injury. An example submitted to the inquiry stated:

> If a person has minor burns, under the schedule he would collect $3,600 if that were the major injury. If he suffered shock in excess of 28 weeks he would collect 10 per cent of $18,000 if that were a secondary injury, making a total of $5,400. But if he claims shock as the primary injury, he claims $18,000 plus 10 per cent of the physical injury of $3,600.

Under the 1996 Act, 54.6 per cent of applications lodged have claimed shock as their primary injury. Of the 49 per cent of claims for shock resulting from an assault, the only physical injury received was bruising or soft tissue injury. Further, 42 per cent of assault claims involved individuals leaving hotels, clubs or licensed premises. It seems many public brawl victims are abusing the shock category. For instance, one man who went on a stag night to Kings Cross received two chipped teeth while being ejected from the club for unruly behaviour. However, he was still able to claim $9,000 for shock. Another example was a bouncer working at a Sydney pub who had his nose broken during an altercation and received $18,000. Despite these problems the Greens consider that the Government has gone too far with the definition that replaces the shock category. The new category states:

> "Psychological or psychiatric disorder" defined as "chronic psychological or psychiatric disorder that is severely disabling".

It seems that the definition has gone from one extreme to the other. The new category will exclude many deserving people who might not quite fit into the category, but who may still suffer extreme mental anxiety or post-traumatic stress disorder due to an horrendous incident. In Committee the Greens will move an amendment to address that issue. The Greens have received correspondence regarding the abolition of nervous shock. For instance, the New South Wales Combined Community Legal Centre Group stated:

> The removal of "shock" as a compensable injury will have a particularly detrimental effect on many genuine victims of crime who suffer psychological injury state a result of acts of violence.
>
> Community legal centres see many clients who have been the victims of racial or homophobic violence, serious assaults, armed robberies or hold-ups. Many of those clients suffer stab wounds, needle stick injuries, soft tissue injuries or lacerations which are often quite serious, and which are not compensable under the current Schedule. Those people also suffer psychological injuries which are presently covered by the injury of "shock". For example, many of those people cannot go out in public places for quite long periods of time, they have trouble sleeping, relating socially, working, suffer anxiety attacks and have serious periods of depression. Such victims of crime would be disentitled to compensation if the category of shock is removed, and they fail to fall within the proposed new category of "psychological or psychiatric disorder".

The Law Society forwarded to our office a copy of a letter to the Attorney General dated 11 November 1998. The Law Society raised the important issue that the Joint Select Committee on Victims Compensation will deliver a report to Parliament in March 1999 in regard to the shock category. The Greens consider it is inappropriate to proceed with changes to the shock category before the report is issued. The drafting of amendments in an attempt to address this issue was complicated, and the amendments contain medico-legal factors. The changes to the counselling provisions in the bill are also contentious. They would have the effect of reducing the maximum number of hours of professional counselling to which victims are entitled from 22 to eight. The Minister said in his second reading speech:

> The select committee also considers that the present system, which provides an automatic entitlement of two hours of counselling and further counselling of up to 20 hours, may provide an incentive for counsellors to recommend the maximum amount of counselling for their client irrespective of client's needs.

The second reading speech fails to mention the reasons why this is occurring. However, the reasons are identified in the report of the select committee, which states:

> The link between receipt of ongoing counselling and applications for nervous shock claims is evident. It is in the best financial interests of applicants, and solicitors on behalf of their clients, to demonstrate serious post traumatic stress through long term counselling which will place them over the six, fourteen and twenty eight week shock thresholds.

The Greens consider that the removal of the nervous shock category from the four different thresholds should significantly end this link. While it is conceded that ongoing counselling can still be used as evidence to demonstrate that a person has a psychological or psychiatric disorder, once the "weeks" criteria is removed the link should be lessened. The report also stated that the current system provides a direct financial incentive for counsellors to recommend the maximum amount of counselling for their clients. The current system financially rewards counsellors for maximising the amount of sessions a victim receives. This problem would be solved by making in-house counselling available or providing a maximum of in-house and outsourced counselling.

Our current system provides for direct payments to be made to independent counsellors who have received accreditation from the Victims of Crime Bureau. The set rate is $70 per hour for social workers, $90 for psychologists and $110 for psychiatrists. There appears to be no regulatory structure to ensure quality of service delivery and to protect against possible overservicing, fraud or other types of professional misconduct. Western Australia and South Australia have in-house counselling available for victims of crime through their justice departments. The schemes are very cost effective. For instance, in Western Australia the service has provided counselling for 780 victims and overall support for 6,000 victims for just under $1 million.

By comparison, in New South Wales 2,772 clients were counselled at a cost of $3 million. The Greens consider that rather than reducing the number of counselling hours available to victims, in-house schemes should be considered and also methods for reducing the nexus between being able to claim a nervous shock payout and using counselling as a means to demonstrate that an individual has suffered shock or the new psychological or psychiatric disorder. For instance, if the amount of counselling was expressly disallowed as a matter for consideration when determining compensation only truly legitimate people would use the counselling service. On this basis the Greens will support the Opposition amendment to maintain the status quo with regard to counselling.

We recommend that the Government should consider alternatives, such as the use of in-house

counselling, to keep the costs down. The bill will insert into the table of injuries a new category of domestic violence, as recommended by the committee. The Greens support that recommendation. The report states:

> The committee has received figures indicating that approximately 80 per cent of victims of domestic violence claim shock as their primary injury. Therefore, if an amendment is made to the category of shock it would also be necessary to provide a separate category for domestic violence.

The Greens foreshadow an amendment to increase the maximum amount payable from $10,000, which is presently allowed in the table, to $20,000. In a briefing note the Law Society addressed the issue of domestic violence, and stated:

> $10,000 will not sufficiently compensate the most badly affected victims who have suffered unrelenting domestic violence lasting for many years. The society submits that the award range should be significantly extended.

The Greens support the proposal to increase powers of restitution. On 3 May the *Sun-Herald* reported that a convicted paedophile was able to cheat his victims by selling his $400,000 house to his brother for $1. The transfer was made before the perpetrator was gaoled for 16 years for sexually assaulting children. Under the Act, restitution powers apply only after an order for restitution has been made. The bill will respond to the situation in which an offender tries to avoid paying restitution before the order is made. Restitution can still be made; however, care should be taken when seeking to enforce the legislation, especially with respect to its impact on others having any interest in the property and the offender's dependents. Some of the safeguards provided by the Confiscation of Proceeds of Crime Act 1989, upon which the amending bill is based, have been omitted from the bill. The Greens foreshadow amendments in committee to address these issues.

Debate adjourned on motion by the Hon. Dr Chesterfield-Evans.

SPECIAL ADJOURNMENT

Motion by the Hon. R. D. Dyer agreed to:

> That this House at its rising today do adjourn until Tuesday, 24 November 1998, at 11.00 a.m.

FORESTRY AND NATIONAL PARK ESTATE BILL

Second Reading

The Hon. R. D. DYER (Minister for Public Works and Services) [10.08 p.m.]: I move:

> That this bill be now read a second time.

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

Leave granted.

I am extremely pleased to introduce this bill. It represents the culmination of the forestry reform process that the Government embarked upon almost four years ago. The bill ushers in a new era in how we value the forests of New South Wales. This is the most historic forestry reform decision ever reached in New South Wales. This is an era in which the conservation values of our remarkable forests have been recognised through historic levels of additions to the reserve system and an era in which the forest industry has been placed on a sustainable footing, now and into the future. It is an era in which the forest industries and the rural communities that depend on them can face the future with a sense of certainty and security that has been lacking in the past.

The main objectives of the National Forest Policy Statement are the establishment of a world-class reserve system, ecologically sustainable forest management practices, a viable and value-added timber industry and community involvement in decision making. The interim forest assessment completed in 1996 and the comprehensive regional assessments now concluded for Eden and the upper and lower north-east regions fulfil the policy objectives of the National Forest Policy Statement. We have also ensured the adoption of ecologically sustainable forest management practices by improving environmental safeguards, the adoption of agreed indicators to measure forest management outcomes and the maintenance of existing regulatory controls.

The third and equally important objective has also been achieved—the establishment of an environment within which the forest industries and rural communities can plan their future with an improved sense of certainty and security. This will be done by providing to industry 20-year wood supply commitments based on demonstration of value adding and subject to future resource inventory. Significantly, we have done all this with the active involvement of the community and stakeholders. The level of stakeholder involvement in this decision is unprecedented in Australia. It is the most open, transparent case of community involvement in natural resource management ever undertaken in this State.

The provisions set out in this bill represent a fair compromise amongst the differing positions, one which is scientifically and objectively based. The bill protects our forests and all of their values. At the same time it protects and enhances the livelihoods of our forest industries and our forest dependent communities. I am confident that all fair and reasonable citizens will not only support but applaud the outcomes embodied in this bill. The proposition set out in this bill represents the culmination of key elements of the Government's forest policy and forestry reform agenda.

I am pleased to advise the House that the Government has now not only delivered on but exceeded its election commitments. This is a remarkable achievement which many may have thought was not possible. The Government has now established a world-class reserve system in all of the three regions that have been resolved to date. In total, the Government's decisions will add approximately 420,000 hectares to the formal reserve system across the upper and lower north-east and Eden regions. Today's announcement adds 85 new national parks and other reserves to the New South Wales national park system.

The Carr Government has now created a massive 151 new national parks and nature reserves, far exceeding its election commitment to create 24 new national parks. The Government has achieved this while also providing employment growth in New South Wales rural communities. The Government has approved a jobs package that provides for over 200 new positions across timber communities on the north coast and in the Eden region. Further job growth is expected from new investment in the timber industry, as a result of the certainty provided by the Government through long-term wood supply agreements. These wood supply agreements will provide the timber industry with the resource security which is essential to facilitate even greater investment in value adding.

The Government's jobs package will not only compensate for any job losses brought about by the forest land use changes, but will be jobs positive for the forest industries in those areas and their local communities. The bill sets out a comprehensive program of industry restructuring and employment generation projects in the forest industries for the south-east forests and for the upper and lower north-east regions which sets industry on a new, forward-looking and sustainable footing. The scheme set out in the bill also honours the Government's pre-election commitment to improve the existing forest regulatory framework.

The regulatory framework proposed in the new bill retains the existing powers of the regulatory agencies but provides for much greater integration and co-ordination of forest regulation and management. In addition, the Government will continue to support, train and offer appropriate incentives to affected timber workers through the existing forest industry structural adjustment package [FISAP]. It will also continue to strongly support business initiatives through the provision of industry development assistance. The Government has clearly demonstrated its ongoing commitment to timber industry workers, regional communities, and the future direction of the timber industry in this State.

I now turn to the Forestry and National Park Estate Bill in detail. The bill is divided into five major parts and I will outline those parts to the House now. The first part is the preliminary section of the bill—and it is important to note here that the definition of "forestry operations" is aimed at the traditional activities that are carried out on a day-to-day basis in State forests. Part 2 revokes certain lands as State forests and makes provision for those revoked State forest lands to be reserved or dedicated as national parks, nature reserves or historic sites. This part also makes provision for the dedication of certain Crown reserves under the Crown Lands Act 1989 and certain former State forests.

Under clause 9 a reserve trust can be established under the National Parks and Wildlife Act, and the Director-General of National Parks and Wildlife is appointed to manage the affairs of the reserve trust. As the House would be aware, mining and mining exploration is not permitted in national parks or nature reserves. The reserve facility is provided so that lands that have been identified as having high mineral prospectivity can be included in a reserve system but in such a fashion that mineral exploration can continue leading to the possibility of a mining venture on such lands in the future, under appropriate controls and following environmental assessment.

Clause 12 facilitates the transfer of former State forests and Crown lands to the ownership of local Aboriginal land councils. These transfers are made in accordance with division 2 of part 6 of the Aboriginal Land Rights Act 1983. One of the great successes of the regional forest assessment process in the Eden region was the participation of the Bega, Eden and Merrimans land councils. Their participation enhanced the process and it is with pleasure that I note the transfer of lands to the Eden and Bega local Aboriginal land councils detailed in schedule 6 to the bill. When we began the forestry assessment process we did so with the intention of entering into regional forest agreements with the Commonwealth Government.

Unfortunately, the Commonwealth saw fit to withdraw from negotiations and in fact hinder the process in New South Wales. It is still the wish of the Government to enter into regional forest agreements with the Commonwealth and we are exploring ways to open dialogue with them. This Government nevertheless maintains its rights as the State of New South Wales to manage and allocate public lands in accordance with the State's constitutional rights. Part 3 of this bill enables an agreement between government agencies and Ministers administering the Environmental Planning and Assessment Act 1979, the National Parks and Wildlife Act 1974, the Protection of the Environment Administration Act 1991, the Fisheries Management Act 1994 and the Forestry Act 1916.

These agreements can only be entered into and made in respect of a region that has been the subject of a regional forest assessment carried out by or on behalf of the Resource and Conservation Assessment Council. They establish a strategic and co-operative framework across all tenures within a specified region. The contents of the New South Wales forest agreements are such that should dialogue with the Commonwealth become possible, they will provide the very foundations for a regional forest agreement between the Commonwealth and New South Wales. New South Wales forestry agreements will reflect the community's expectation that forestry be undertaken in an ecologically sustainable manner.

Forestry operations carried out by State Forests on private land purchased by it and dedicated as State forest or Crown timber lands will be incorporated into the relevant forest agreement by public amendment of the boundaries. Similarly, the integrated approval will be amended and the same controls applied. In addition, any timber rights purchased by State Forests will be logged in accordance with existing approvals and this will be noted in the relevant agreement. Clauses 17 to 20 of the bill provide the detail of the way in which these agreements will be administered. Included in these provisions are the opportunities for public participation and consultation in both the development of an agreement and in the review process.

It is important that these agreements accurately reflect modern management of forests and provide confidence for the community about that management. The Minister for Urban Affairs and Planning, who administers this Act, will report annually to Parliament on each forest agreement. Additionally, provision is made for the public to have access to agreements, assessment documents, approvals and reports. This Government's forestry process has been marked by its transparency and the inclusion of all stakeholders. This philosophy is continued in the review and development of New South Wales forest agreements.

It is significant that comprehensive community involvement will continue under this bill. Forestry operations in State forests, or other Crown timber lands, are governed by a plethora of regulations, approvals and licenses. Under part 4 of this bill, a co-ordinated approach has been developed. This approach is to be expressed in the integrated forestry operations approvals. These approvals provide a framework for

forestry operations, approvals which are upfront, clearly defined and to which amendments or variations will be transparent and reasoned.

Such an approval may only be granted jointly by the Ministers administering the Environmental Planning and Assessment Act 1979, the Forestry Act 1916, the National Parks and Wildlife Act 1974 and the Protection of the Environment Administration Act 1991, and if the approval includes the terms of a licence under part 7(a) of the Fisheries Management Act 1994, it would include the Minister administering that Act. Such an integrated approval can only be jointly granted for the whole or any part of an area covered by a forest agreement and the integrated forestry approval is revoked if the forest agreement for the area is terminated.

This integrated approval system reflects the modern approach that was undertaken in the amendment and reform of Part 4 of the Environmental Planning and Assessment Act where an integrated approval system was pivotal to that reform. An integrated approval applies in the following licences: a licence under the Pollution Control Act 1970, or after the repeal of that Act, under the Protection of the Environment Operations Act 1997; or a licence under the Threatened Species Conservation Act 1995; or a licence under part 7(a) of the Fisheries Management Act 1994.

An integrated forest operations approval may set out the terms of any relevant licences. If the approval does so, any person carrying out forest operations covered by the approval is taken to hold a licence in those terms under the relevant Act. Currently, variations to a licence can be made on a daily basis even without any requirement to inform the public or Parliament. These new provisions set a much higher standard for accountability and transparency. Any and all changes to an integrated approval must be laid before Parliament within three sitting days, together with the reasons for the variation.

The extraordinarily comprehensive and thorough nature of the forestry assessment process that has been undertaken should be remembered. This has been a massive and vitally necessary undertaking. It has been a systematic and scientific collation of all values of New South Wales' eastern forests. This data has been made available to all stakeholders and the projects and the information bases have been discussed in depth with regional communities. This has been the most open and consultative process ever undertaken on such an issue.

The extent of our studies of the forests is overwhelming and because of that it is the Government's intention that part 5 of the Environmental Planning and Assessment Act will not apply in respect of the carrying out of the forestry operations during any period that an integrated forest operation approval applies to those operations. The environmental impact statement system is a valuable tool in environmental management and assessment, but its application to forest activities, which are diverse in both time and location, has always been under debate. The regional forest assessment process that we have undertaken represents the most comprehensive, informed and in-depth approach to decision making that has been adopted.

Clause 37 provides that an area in which forest operations authorised by an integrated forest operations approval may be carried out cannot be proposed or identified as, or declared to be, a wilderness area under the Wilderness Act 1987 or the National Parks and Wildlife Act 1974. In choosing those areas appropriate for a comprehensive, adequate and representative reserve system close attention has been given to identified wilderness areas. Little remains of such land in the State forest estate and it is not intended that legislation be used to prevent State Forests carrying out its proper and approved operations.

A central theme running through this legislation is the provision of certainty for all parties. The environmental movement quite rightly received the certainty of a substantial area of high-quality land being placed into the national parks system. The industry, workers and the corporate sector also deserve a higher level of certainty. The Government has gone some way towards providing that certainty by the provision of long-term wood supply agreements on a five-year plus five-year basis. Certainty cannot be increased if we continue to allow challenges to the licensing system. Clause 38 removes the rights of third parties to bring proceedings relating to the integrated approval.

The compliance regime that will apply to the integrated approval is clear and unambiguous. The agencies which currently have enforcement and compliance powers will continue to have those powers and continue to use them to ensure that the licences are adhered to. Part 5 of the bill deals with miscellaneous matters. Clause 46 states that the Minister administering this Act will review the operation of the Forestry and National Park Estate Bill as soon as possible after the period of five years from the date of assent and will report to each House of Parliament on the outcome of the review within 12 months.

I now turn to the schedules to this bill. Schedule 1 deals with State Forests' lands reserved as national parks or historic sites or dedicated as nature reserves across the Eden and north-east regions. Schedule 2 deals with Crown lands in the Eden region to be reserved as national parks or dedicated as nature reserves. Schedule 3 deals with lands to be set aside as flora reserves under the Forestry Act 1916. These flora reserves form an integral part of the comprehensive reserve system and are clearly within the International Union of Conservation and Nature Reserve [IUCN] categories 1-6.

Schedule 4 deals with State forests to be dedicated as Crown reserves under the Crown Lands Act. These reserves are being created to ensure that mineral exploration can take place in future years. These reservations are also included in the IUCN categories 1 to 6. Schedule 5 deals with State forests identified as being of high conservation value but where a State forest has been gazetted over a leasehold. These leaseholds are now being vested by way of this bill in the Minister responsible for national parks, which changes the Minister administering the lands. There will be no compulsory acquisition of these lands. Rather, the Government will seek to enter into some conservation arrangements with the leaseholders to protect the value of the land. Nevertheless, all interaction with the leaseholders will, I stress, be voluntary.

Schedule 6 to the bill transfers certain portions of State forests and Crown lands to Aboriginal ownership. These lands were identified by the Aboriginal communities as being important to them during negotiations. The New South Wales Aboriginal Land Council and the Department of Aboriginal Affairs are both represented on the Resource and Assessment Conservation Assessment Council [RACAC] and the New South Wales Aboriginal Land Council is represented on the Eden Regional Forest Forum [RFF]. Additionally, Aboriginal communities were consulted in depth during the Eden region assessments, participated in the negotiations and undertook a number of funded projects.

This schedule applies only to land in the Eden region. In the upper north-east [UNE] and lower north-east [LNE] separate Aboriginal management committees were formed. These

committees, comprising Aboriginal community representatives, were formed to address indigenous views and interests and facilitate Aboriginal comment on projects being undertaken for the UNE and LNE comprehensive regional assessments. The UNE and LNE regions are complex with respect to the number of Aboriginal communities and range of interests. Representation on the Aboriginal management committees needed to address inclusion on behalf of traditional owners, native title claimants and local Aboriginal land councils.

Both committees expressed concerns with the assessment process, stating difficulties of bringing representatives together, and access to relevant information prevented their participation on an equitable basis with other stakeholder groups. The Aboriginal communities did not present outcomes in terms of wood supply or reservation options, but identified issues important to Aboriginal people in these regions. A number of options are available to resolve these issues. These include consideration of adding some reserves to schedule 14 of the National Parks and Wildlife (Aboriginal Ownership) Act for formal ownership by Aboriginal communities, joint management, joint ventures and increased participation of Aboriginal community members on management committees.

The Government recognises and acknowledges the spiritual importance of land to the Aboriginal community and will examine areas which could be added to schedule 14 of the National Parks and Wildlife (Aboriginal Ownership) Act. The National Parks and Wildlife Service will conduct a preliminary assessment of all new areas with the intent of prioritising possible areas which could be added to schedule 14. The process and extent of this will be negotiated as part of an ongoing process. The Government recognises the importance and inseparability of natural and cultural heritage values.

Following the principle that Aboriginal people need to be acknowledged as custodians of their culture, State Forests of News South Wales and the National Parks and Wildlife Service will progressively negotiate with local Aboriginal communities on joint management arrangements. State Forests will examine forest areas that could be considered for joint management with the Aboriginal community. The nature and conduct of activities and responsibilities for each party involved in joint management could be explored through pilot projects. Suggested locations for these pilot projects are Macpherson State Forest and Way Way State Forest in the Lower north-east and Ewingar State Forests in the upper north-east.

The National Parks and Wildlife Service will progressively negotiate joint and co-operative management arrangements with local communities for national parks and reserves in the upper and lower north-east regions. Access to various reserve areas for traditional activities will be facilitated through an ongoing negotiation process. Access arrangements could include camping rights, fee exemptions and traditional ceremonial and hunting and gathering rights. This would be available for those Aboriginal people who have traditional cultural links to the particular park and only for access related to cultural purposes.

State Forests and the National Parks and Wildlife Service also support investigation of options for joint ventures involving Aboriginal committees. Ventures worthy of pursuing would be those with economic benefits, including additional employment opportunities. Possibilities may include ecotourism, publications, map production, and the production and sale of art and crafts. Potential sites for joint ventures with State Forests where existing infrastructure could be utilised, facilitated or adapted for new uses include Urbenville forestry office, Rosebury Park, Whian Whian, Ewingar and Washpool forestry camps, and Pikapene camping area in upper north-east region. There will be other initiatives, employment and co-operative projects developed by the Aboriginal people of the upper north-east and lower north-east.

Schedule 7 is a technical section which deals with the land transfers and any ancillary or special provisions that are made in respect of those arrangements. Schedule 8 amends the Forestry Act 1916 to allow the Minister for Forestry to create special management zones that comply with the IUCN category for informal reserves. State Forests' forest management zoning [FMZ] system is a land classification which sets out, in map form, management intent across the entire State forest estate. FMZ is based on JANIS reserve criteria and clearly differentiates those areas of State forest which are set aside for conservation values and those areas which are available for timber harvesting and other activities.

Schedule 9 amends the Timber Industry (Interim Protection) Act 1992 and essentially allows logging operations to be carried out in areas which are not yet subject to a New South Wales forest agreement or integrated approval. It is also further amended to include the South Monaro management area. Schedule 10 amends the National Parks and Wildlife Act 1974 and, significantly, adds Biamanga National Park to schedule 14 of that Act—lands of significance to Aboriginals. Schedule 11 amends the Native Title Act to ensure that native title rights and interests are not extinguished or affected by the reservation or dedication of land under national parks or wilderness legislation, or by this Act or its 1996 counterpart. This will allow native title rights to be exercised in national parks and other reserved areas.

Schedule 12 contains the savings, transitional and other provisions and makes special provisions for the listing of Biamanga National Park in schedule 14 to the National Parks and Wildlife Act. There is also a special provision in schedule 12 for interim approval of forestry operations in certain compartments of State forests in Eden management area. Special provisions for State forests in Eden are to ensure that State Forests' operations can continue during the period in which an integrated approval and forest agreement are being developed. I commend the bill to the House.

The Hon. D. F. MOPPETT: [10.08 p.m.]: The Forestry and National Park Estate Bill has been introduced before its time. It is timed for elections, not for lasting solutions to the vexed question that has existed for almost two decades: on the one hand, where the balance lies between the conservation aspirations of one section of the community and, on the other hand, the extent to which the timber resources we enjoy in our forest reserves can be efficiently utilised. The bill extends a challenge to conservationists, who, I am sure—represented by the Hon. I. Cohen—will argue that it does not go far enough with respect to the State's timber reserves it sets aside as national parks.

The bill is challenging to the industry. After a long period of attrition the industry is being asked to accept a package to give it stability and, at the same time, accept the sequestration of another large section of the resource which it might legitimately have utilised as part of its resource base. The bill

will be challenging to honourable members of this House as they debate it in the days ahead. The support in the House will be divided, on the one hand for the conservation initiatives taken in the bill and, on the other hand, for those who wish to have the bill passed for the benefit of those segments which support and provide stability for the timber industry in New South Wales.

The bill will be challenging for the community in that people will find it difficult to understand the parameters in this bill. I am sure it is difficult for people in the public domain to understand what 400,000 hectares means. Most people in the pastoral industry are used to talking in thousands of acres. But this bill talks about hundreds of thousands of hectares being changed in one stroke of the pen from one public usage to another. The community will find it difficult to understand what is at stake in this bill.

The impact on certain electorates will be profound. The bill will be a challenge to the Commonwealth Government. I believe that parts of this bill fly in the face of the Commonwealth Government's well-established public policy established in conjunction with the States and regarded as the basis of a lasting truce between conservationists and the timber industry. However the balance is regarded by honourable members at this stage, I will be arguing strongly that the bill needs to be amended substantially to achieve its aims. The Opposition concurs with the aims of the bill, which are to balance conservation values with the needs of the industry. I am not talking simply from the point of view of people engaged in the industry—the sawmillers and their families, whom the Opposition thinks are very important. The Opposition has reservations about the bill.

The difficulty is that everyone wants to utilise timber. People want timber in their houses and their furniture and they want the products of the forest. However, when it comes to cutting down the tree to produce those products people suddenly cannot understand that timber is a renewable resource and, properly husbanded, is one of our more valuable resources that needs to be preserved. The Opposition believes that there should be a proper system of conservation reserves in this State and throughout the Commonwealth.

We strongly support the 1992 National Forest Policy Statement, and the processes of establishing on a scientific basis the necessary comprehensive and representative reserve systems. The Opposition believes that that policy should be upheld. After mapping these comprehensive and representative reserve systems we could move on to regional forest agreements, upon which people could rely, and secure investments could be made in the industry. The Opposition strongly believes that compensation should be provided to those who have been deprived of what was once a legitimate and proud livelihood in this country. Both individuals and communities have been dispossessed of assets which have been extraordinarily expropriated over the past 25 years.

The Opposition believes that it is highly desirable to provide a much more substantial package of compensation for communities such as Bombala. That is only one community that springs to mind. I could refer to many places on the north coast of New South Wales where sawmilling was not only the major industry but the only industry. When the resource was removed and the mills finally closed basically there was no reason for the towns to exist. People without jobs moved from the regional centres to look for employment in places such as Grafton, where employment was already difficult to find. The employment problem in the regions has been exacerbated by this Government's activities. One example is the loss of jobs at Northpower.

But we are not talking about that tonight; we are talking about forestry and how we can save forest industries while not losing sight of the conservation values that we all hold dear. I shall remind honourable members of how long and intractable this debate has been in the community. The debate started in the mid-1970s. Honourable members will remember the famous battles of Chaelundi and Wild Cattle Creek. They ring in the ears of those who were involved in the sawmills in those areas. Strangely enough, it looks as if they may be revisited over the coming days. Any comparison of the forest blockades, which were the beginning of this long campaign, with the green bans for instance is totally erroneous.

The green ban campaign to save some of our architectural heritage was a worthy campaign, and those who were perhaps vilified as being radical and extreme in their views are now looked on in a much more mellow light. We must recognise that at the same time they were able to isolate certain designated buildings and areas for preservation. For instance, the life of the city was able to continue while massive development took place in other areas. The long-running battle with conservationists over the years has gone from compartment to compartment in an almost insatiable demand to lock up more of the forest areas to the exclusion of usage by timber interests to the point at which the timber industry in New South Wales is on the brink of extinction.

This bill is no Gettysburg. It is not the end of a bigger war between the conservationists and timber people with a statesmanlike solution devised by the Government. This bill is expedient and the Opposition intends to amend it to ensure that it evens the score and gives the timber interests some security. The Government is saying—I believe cynically—that it will trade for the support of conservationists in the community whose passions have expired over the years. Perhaps they value the standing tree more than they value the timber which they utilise in their houses, without understanding the natural capacity of trees to regenerate.

The offers by the Government to garner the support of the conservation movement at the next election involve the 20-year agreements with the timber millers for wood supplies. The difficulty is that the agreements are not worth the paper they are printed on. The shadow minister in another place came up with some memorable quotes. Madam President, you know how much I admire some of our forebears and the wonderful ways they encapsulated ideas. Don Page quoted Sam Goldwyn of Hollywood saying, "I will give you a definite maybe." That is what the Government is offering the timber industry. The Government's contract on this occasion, again in the words of Sam Goldwyn, "ain't worth the paper it's written on" unless the Opposition amendments are accepted in Committee.

The bill will include the dedication of 420,000 hectares of former forest reserves as national parks and other reserve systems. If this were a stand-alone figure one might argue that that is little enough. But that area is added to existing national parks, wilderness areas and flora reserves. This has been done not as a result of a comprehensive scientific assessment of the conservation values which we cherish, along with the Government and, I would hope, every right-minded person; it has simply been a stab at a figure that might achieve the political ends of the Government as it approaches the election.

The bill goes a long way beyond the appropriate process which was set out by the Commonwealth and agreed to by this State. Indeed, it puts at risk the arrangements with the Commonwealth. I was delighted to hear that in another place the coalition has given an undertaking that if it is elected in March of next year the whole matter will be revisited. We will certainly follow the comprehensive, adequate and representative [CAR] process, and the regional forest agreements that will be established under a coalition government will be agreements in which both sides can have confidence. They will be the basis for the future relationship between the timber industry, the Government and the community in relation to public lands set aside for nature reserves.

To put the issue in proper perspective I remind honourable members of the genesis of the National Forest Policy Statement. It goes back to the battles for the Tasmanian forests. Ad hoc decisions went across the jurisdictions of State parliaments. The Hawke Government unilaterally, with its export powers, overrode the wishes of the Tasmanian Parliament. That is the most undesirable way of coming to a decision about the scientific and cultural values of forests. At that time the Commonwealth Government realised that it could not go on making ad hoc decisions. The eastern States—they are mainly the ones involved in the major timber reserves—had to work comprehensively so that a nature reserve, national park or wilderness area was not established in, say, Victoria which replicated an adequate area in New South Wales, or vice versa.

In conjunction with the Commonwealth it had to be scientifically established which representative ecosystems should be preserved across the length and breadth of the Great Dividing Range and in Tasmania. Having decided that, within each region a decision could be made about what areas were needed to constitute the CAR reserve system and what area was necessary to maintain industries which traditionally had supported regional communities. Part of that vision put forward by the Commonwealth Government and agreed to by the States was a proper socioeconomic impact study in relation to the withdrawal of timber resources. But the New South Wales Government seems to be totally ignorant of that, or wishes to distance itself from it in relation to making such decisions.

It is an absolute disgrace that people such as the Hon. E. M. Obeid will cop it sweet from their Government. He is supposed to be interested in small business. In country areas small business depends on the local resources which have been utilised for many years—so judiciously that in many areas they are in pristine condition. If the Government expropriates the resources from people in regional areas without support it will be held to account in seats such as Clarence. I hope the Minister for Public Works and Services, who is at the table, will bear in mind that warning. Later the Opposition will give the Government a let-out by moving amendments which might make the bill practical.

In the past I have strongly expressed my views about the need to maintain a balance between the sawmilling industry and conservation values. I have

quoted a study undertaken by the University of New England which showed that the biodiversity in areas that had been logged and were in active forest production was greater than in wilderness or national park areas. There is no exclusive virtue in locking up timbered areas as national parks or wilderness areas. A formula can be found so that the two aspirations can live side by side. There can be an adequate reserve system, keeping the conservation and recreational values of native timber stands unmolested by human exploitation.

The Opposition believes in the concept of wilderness areas but it does not believe in the management practices that the Government invokes for them. One of the groups that I have not spoken about are the people who travel by horseback or motor vehicle to enjoy the recreational values of forested areas. They are often cut out of the equation. In the minds of certain conservationists and the Premier of New South Wales preservation should exclude human enjoyment or appreciation. That is to be deplored.

Debate adjourned on motion by the Hon. D. F. Moppett.

ADJOURNMENT

The Hon. R. D. DYER (Minister for Public Works and Services) [10.30 p.m.]: I move:

That this House do now adjourn.

[*Interruption from gallery*]

The PRESIDENT: Order! There will be silence in the public gallery. That outburst was completely disorderly. Earlier today a member was distracted by interruptions and interjections from the public gallery. Visitors in the gallery are welcome but I ask those who remain this evening and those who return tomorrow to remain silent.

GREENWICH BUSHLAND HYGROCYBE CONSERVATION

EASTERN DISTRIBUTOR

The Hon. I. COHEN [10.31 p.m.]: Last week I spoke about the opportunity to conserve a remarkable community of endangered hygrocybe. I seek leave to table a report, which is a collection of community submissions to the State Government.

Leave granted.

I have spoken before in this Chamber about the failure of the environmental impact assessment [EIA] process for the Eastern Distributor to adequately model air quality impacts and the inescapable conclusion that this private toll road through eastern Sydney will be an air pollution disaster with devastating health consequences. I raise yet another matter of grave concern. There is a mounting body of evidence that the very cornerstone of the environmental impact assessment process, the traffic forecasts, are fatally flawed. These forecasts contain errors that are so obvious, so glaring and so self-evident that it is difficult to avoid the conclusion that the department, the Minister and the Government are aware that the traffic volume forecasts are a tissue of lies.

Traffic forecasts are the centrepiece of the EIA process. They determine the air pollution emission levels, noise impacts, revenue collection, traffic impacts on the road network and the ratio of putative benefits to costs. Without reliable and self-consistent forecasts there can be no confidence in the conclusions of the process. The Minister's approval of the Eastern Distributor was, at best, an act of cavalier ignorance. On 17 September 1997 I asked the Minister for Urban Affairs and Planning if he accepted full ministerial responsibility for the traffic forecasts in the environmental impact statement [EIS] and the EIA for the Eastern Distributor. The Minister's response was pure equivocation and he clumsily avoided responsibility for these forecasts.

Consequently, the people of Sydney are left with a $750 million motorway cut through the heart of their city based on traffic and environmental impacts derived from forecasts for which the Minister refuses to accept responsibility. In a report entitled "An Examination of Traffic Forecasts and Tolled Motorways: The Case of the Eastern Distributor", dated October 1997 John Kaye and Mary Willis exposed three major flaws in the traffic forecasts: capacity constraints being violated at a number of locations, responses to toll increases not obeying common laws of economics, and the mysterious case of disappearing traffic.

The capacity of a section of motorway is the maximum traffic volume it can carry. The environmental impact assessment is based on forecasts of average daily traffic volumes for the year 2011 that are more than 4.2 per cent greater than capacity for at least four segments of the Eastern Distributor. Such a concentration of vehicles simply will not fit on the motorway. An egregious error has been made. Motorists on the Eastern Distributor will experience regular massive traffic congestion. On these occasions traffic will burst out of the motorway and pour onto suburban streets,

destroying residential amenity, spreading air and noise pollution, and reducing pedestrian and cyclist safety.

Further, traffic volume forecasts downstream of these points are simply nonsense and any conclusions based on them are pure fiction. Perhaps part of the Government's enthusiasm for the cross-city tunnel project is a mistaken belief that the additional capacity will alleviate some of this congestion. This would make it a very expensive device for burying traffic forecast errors. Traffic volumes at many points on the motorway for 2011, which were forecast by the same consulting company using the same software, are actually greater at the higher toll. Northbound traffic volumes in one location will actually increase by as much as 85 per cent with the increased toll. In other locations the figure varies between 29 per cent and 55 per cent.

The Minister for Urban Affairs and Planning based his approval on a set of traffic forecasts that suggest "charge more, and more motorists will want to use it". The most obvious explanation is that higher traffic volumes result from a work-back process. Were the EIS consultants and their traffic engineers confronted with the challenge? An increase in toll would certainly have resulted in increased diversion, that is, more vehicles would leave the motorway before they reach the toll booths. To maintain the semblance of profitability, the traffic to be tolled had to be kept at 60,000 vehicles per day. To achieve this under the increased diversion rates, northbound traffic south of the main tunnel would have needed to be increased.

These forecasts also violate the laws of physics. In fact, the EIS shows that in 2011 at least 6,000 vehicles per day are expected to disappear from the northbound motorway at the Link Road on-ramp. In a judgment delivered on 8 April in the Federal Court of Australia Justice Foster referred to a confidential affidavit by Dr Kaye, an expert witness in the case, and quoted the following chapter headings: "Capacity Constraints not adequately modelled", "Inaccuracies introduced by treatment of 'section M' capacity constraint" and "Absence of Sensitivity and Risk Analyses". In a Federal Court hearing on the same day, Mr Sackar, QC, for Macquarie said:

> Dr Kaye has reviewed documents produced, that is from Sinclair Knight and others. He has produced an analysis and he has then looked at the Macquarie infrastructure documents. He then deals with what he says are **excessive expansion factors**.

While the confidentiality order surrounding this case obscures the exact nature of these allegations, it is clear that serious doubt has been cast on the validity of these forecasts. [*Time expired.*]

Motion agreed to.

House adjourned at 10.36 p.m. until Tuesday, 24 November 1998, at 11.00 a.m.