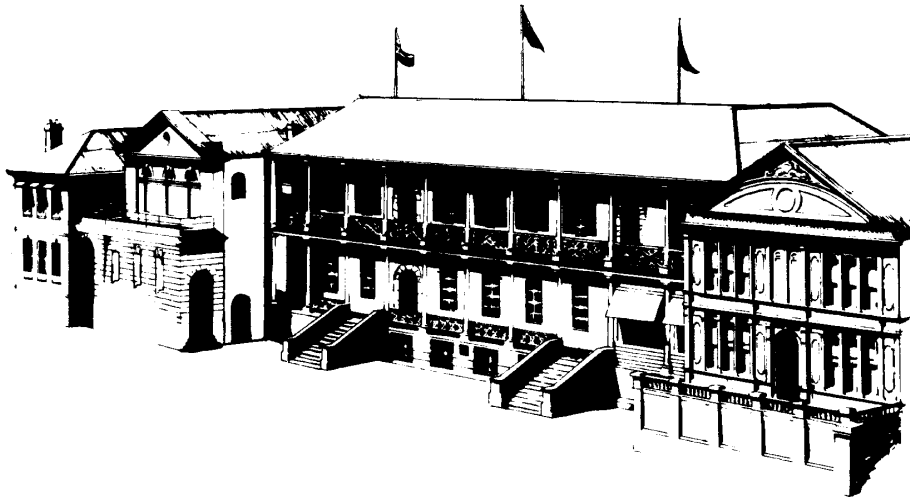




New South Wales



Legislative Council

PARLIAMENTARY DEBATES (HANSARD)

FIFTY-SECOND PARLIAMENT
FIRST SESSION

OFFICIAL HANSARD

TUESDAY 1 DECEMBER 1998

Authorised by the
Parliament of New South Wales

LEGISLATIVE COUNCIL

Tuesday, 1 December 1998

The President (The Hon. Virginia Chadwick) took the chair at 11.00 a.m.

The President offered the Prayers.

PETITION

Trap and Line Fishery

Petition praying that there be immediate consultation by the Trap and Line Management Advisory Committee and NSW Fisheries with trap and line fishers endorsed and under appeal, and that all management advisory committee decisions should result from a majority decision of all trap and line fishery participants, received from the **Hon. D. F. Moppett**.

COURTS LEGISLATION FURTHER AMENDMENT BILL

Bill introduced and read a first time.

Declaration of urgency agreed to.

Second Reading

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.07 a.m.]: I move:

That this bill be now read a second time.

The Government seeks to amend certain Acts relating to the courts and court procedures. These amendments are necessary to improve the operation of the courts of New South Wales. The first proposal, at schedule 1 to the bill, provides for amendment to the District Court Act 1973 to extend the District Court's jurisdiction so that it may hear matters where the cause of action arises entirely outside New South Wales. The District Court currently has jurisdiction to hear matters where a material part of the cause of action arose in New South Wales, where the defendant was resident in New South Wales at the date of service, and where the defendant is not within New South Wales but the whole of the cause of action arose within New South Wales. This causes inconvenience where a resident of New South Wales has a cause of action

arising interstate. It also creates problems in transferring cases from the Supreme Court to the District Court.

The reform proposal arises from recommendations of the Court of Appeal in the matter of *Falls Creek Ski Lifts Pty Ltd v Leonie Fay Yee*. The reform is not designed to open the District Court to matters where all parties are from, and the cause of action arises, outside New South Wales. Schedule 2 to the bill proposes amendments to the Fines Act 1996 to provide for penalty reminder notices to include annexures or enclosures if necessary. It also includes amendments to make it clear that once the State Debt Recovery Office has directed the Roads and Traffic Authority to suspend a licence, a fine defaulter is not entitled to have his or her driver's licence reinstated until such time as all unpaid amounts owing under a fine are paid or expiated.

This will prevent fine defaulters from arguing that they are entitled to have their licence reinstated where a time-to-pay arrangement has been entered into or where one fine has been paid but others remain outstanding. By schedule 3 to the bill the Industrial Relations Act 1996 is amended to allow interlocutory applications to be dealt with by the President of the Industrial Relations Commission or any other member nominated by the President. Currently, such matters may be dealt with only by a Full Bench or a delegate of the Full Bench. This can cause difficulties where members of the Full Bench are unavailable because of court commitments or one or more of the members are on leave. Schedule 4 to the bill provides for an amendment to the Judicial Officers Act 1986 to remove the age limit for appointed members of the Judicial Commission.

Schedule 5 makes a number of amendments to the Justices Act 1902, which provides the machinery for the commencement and conduct of actions in the Local Court. These include amendments to provide the Local Court with the power to issue a subpoena to give evidence or to produce documents. At present the Justices Act does not specifically enable the Local Court to issue a subpoena. Instead, sections 26 and 61 of the Act provide for the issue of a summons for a witness to attend where it appears to a justice that a witness will not

voluntarily attend a court hearing or produce documents required for a court hearing. Such power is currently restricted to matters commenced by information or complaint. In practice the Local Court deals with a wide variety of matters of both a criminal and non-criminal nature which are commenced in a number of ways, including an information, complaint, court attendance notice, charge, appeal or application.

Under the provisions of the bill, the Local Court will have similar powers to the Supreme Court and District Court, and the Local Courts in their civil jurisdiction to issue a subpoena. That power will be available to the range of Local Court matters. The Justices Act is also amended to provide that the definition of "public officer" includes employees of area health services and officers of the Commonwealth. This will enable summonses issued by those officers to be served by post rather than by the Police Service, in the same way as summonses issued by State government agencies are served. The recommendation for amendment has been made by an inter-departmental committee on the review of police functions.

Schedule 6 to the bill, amends the Land and Environment Court Act 1979 to provide for conciliation and technical assessors to be renamed "commissioners". The Local Courts Act 1982 is to be amended by schedule 7 to the bill to provide for a retirement age of 70 years to be included in the terms of appointment of acting magistrates. The general retirement age for magistrates is 65 years. The amendment will enable the appointment of experienced judicial officers during periods when there is a temporary shortage of permanently appointed judicial officers.

The Local Courts (Civil Claims) Act 1970 is amended at schedule 8 to provide for consequential amendments resulting from the establishment of subpoena powers in the Justices Act. Schedule 9 to the bill amends the Suitors' Fund Act 1951 to provide for the Suitors' Fund to be relocated in the Attorney General's Department account. This amendment has been approved by the Audit Office of New South Wales.

The final schedule to the bill, schedule 10, makes amendments to the Supreme Court Act 1970 as recommended by the Chief Justice, the Hon. Jim Spigelman. It will reduce the number of divisions of the Supreme Court from nine to two so as to achieve administrative efficiencies in the operation of the court. The two divisions of the court will be the Common Law Division and the Equity Division.

The Common Law Division will encompass matters previously assigned to the Common Law Division, the Administrative Law Division and the Criminal Division. The Equity Division will encompass matters previously assigned to the Equity Division, the Family Law Division, the Protective Division, the Probate Division and the Commercial Division. All of the amendments contained in the bill will improve the operation of courts of New South Wales. They are intended to be non-controversial and have been suggested to the Government by various courts and other relevant agencies. I hope and anticipate that they will find the support of the House. I commend the bill to the House.

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

FAIR TRADING TRIBUNAL BILL

CONSUMER CLAIMS BILL

In Committee

The CHAIRMAN: I propose to put the bills to the Committee by parts and to cite the clauses contained therein to enable members to debate them. Are there any objections?

The Hon. J. M. SAMIOS [11.17 a.m.]: I move:

That the bills be forwarded to General Purpose Standing Committee No. 3.

That should be done at the outset, prior to dealing with the bills in parts.

The Hon. J. W. Shaw: Point of order: The suggestion that the bills be referred to the Committee was debated and determined during the second reading stage—and the House declined to do that. The bills are now in Committee to be considered in detail. It is inappropriate and out of order to seek to have the matter adjourned and the bills sent to a committee at this late stage.

The CHAIRMAN: Order! I uphold the point of order. The bills are now in Committee and I cannot entertain a motion to refer them to a general purpose committee. The Committee will deal first with the Fair Trading Tribunal Bill.

I note that the Opposition's amendments were received late. I note also that this has happened with amendments from various parties on various bills. To assist in the smooth running of Committees I ask members to assist the Clerks by forwarding proposed amendments early.

Parts 1 to 6

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.19 a.m.], by leave: I move Government amendments Nos 1 to 11 in globo:

- No. 1 Page 7, clause 12, line 18. Omit "General". Insert instead "Consumer".
- No. 2 Page 19, clause 33. Insert after line 18:
- (2) In cases where an amount is claimed or disputed, representation by a legal practitioner is not allowed if the amount does not exceed \$10,000 (or such other amount as may be prescribed by the regulations) unless the Tribunal is of the opinion that the exceptional circumstances of the case warrant such representation.
- No. 3 Page 26, clause 46, line 20. Insert "a notice of the decision or" after "text of".
- No. 4 Page 26, clause 46, line 22. Insert "notice or" before "statement".
- No. 5 Page 26, clause 46, lines 24 and 25. Omit all words on those lines. Insert instead:
- (2) If the text of a notice or statement is so altered, the altered text is taken to be the notice of the Tribunal's decision or the statement of its reasons, as the case may be.
- No. 6 Page 26, clause 46, line 26. Insert "a notice of a decision or" after "text of".
- No. 7 Page 26, clause 46, line 29. Insert "notice or" before "statement".
- No. 8 Page 27, clause 48, lines 19-22. Omit all words on those lines. Insert instead:
- (2) In cases where an amount is claimed or disputed, costs are not to be awarded if the amount does not exceed \$10,000 (or such other amount as may be prescribed by the regulations) unless the Tribunal is of the opinion that the exceptional circumstances of the case warrant an award of costs.
- (3) Except as otherwise provided by the regulations or by any other Act or law, in cases where an amount is claimed or disputed in the Commercial Division or the Home Building Division, the Tribunal may award costs if:
- (a) the amount claimed or disputed exceeds \$10,000 (or such other amount as may be prescribed by the regulations), and
- (b) the parties were granted the right to legal representation.
- No. 9 Page 27, clause 48, line 30. Omit "The". Insert instead "If costs are to be awarded, the".

No. 10 Page 35, clause 63, line 36. Insert "the applicant may have suffered a substantial injustice because" after "that".

No. 11 Page 36, clause 63, line 4. Omit all words on that line. Insert instead:

- (c) evidence that is now available was not reasonably available at the time of the hearing.

I need to explain the Government amendments, which have arisen from negotiations with stakeholders and represent a series of amendments that will make the bill generally acceptable. Amendment No. 1 changes the name of the General Claims Division to the Consumer Claims Division. The name change emphasises the continuity of the Consumer Claims Tribunal's jurisdiction and operations. The tribunal has been an effective dispute resolution forum for consumers and small business people. The name change affirms the Government's commitment to this style of dispute resolution.

Government amendment No. 2 specifies that legal representation before the tribunal will be allowed only in exceptional circumstances when the matter involves the sum of \$10,000 or less. The amendment clarifies the Government's intentions with respect to representations before the Fair Trading Tribunal. Clause 33(1) specifies that a party to proceedings before the tribunal has the carriage of his or her case and is not entitled to be represented except to the extent ordered by the tribunal in accordance with the regulations. The regulations will provide guidance to the tribunal with respect to the exercise of its discretion to allow representation. The Fair Trading Tribunal will allow representation when, in its view, it is appropriate. Issues such as the value of the matter, its complexity, or the capacity of a party to present his or her case, will be specified in the regulations as factors to be considered by the tribunal in deciding whether representation should be allowed. These factors will operate to ensure that parties before the tribunal in relatively low value disputes will not be legally represented. The amendment reinforces this intention by providing that representation will be allowed only in exceptional circumstances when a dispute is of a value of \$10,000 or less.

I deal now with Government amendments Nos 3 to 7. Clause 46 codifies the slip rule, that is, it allows the tribunal to correct errors in the text of written reasons. These amendments clarify the position with respect to the correction of errors in a notice of decision by specifying that a notice of decision may be corrected. Government amendments Nos 8 and 9 specify that costs will be awarded by the tribunal only in exceptional circumstances when

the matter involves a sum of \$10,000 or less. Clause 48(1) specifies that parties to proceedings before the tribunal are to bear their own costs, except to the extent provided by the regulations and this clause. In line with the proposed changes to clause 33, with respect to representation, the amendment reflects the Government's intention in the bill that costs be awarded only in exceptional circumstances when a matter involves a sum of \$10,000 or less.

Government amendments Nos 10 and 11 clarify the operation of the rehearing provisions of the bill. Now the basis for granting a rehearing is that the applicant suffered a substantial injustice on specified grounds. It also clarifies the meaning of the "fresh evidence has become available" ground by substituting the ground "evidence that is now available was not reasonably available at the time of the hearing".

The clause is restructured to provide that an applicant may seek a rehearing on the basis that he or she suffered a substantial injustice because, first, the decision was not fair and equitable; second, the decision was against the weight of evidence; and, third, the evidence that is now available was not reasonably available at the time of the hearing. On the previous construction of the clause it was open to question as to how a decision could be found not to be fair and equitable yet not a substantial injustice.

The amendments clarify the position to make it clear that applicants must show that a substantial injustice has resulted from a tribunal decision on the grounds specified. With respect to those grounds the bill specifies that a party could apply for a rehearing on the basis that fresh evidence has become available. This ground has been changed to "evidence that was not reasonably available at the time of the hearing". This change will ensure that the parties before the tribunal do not have the expectation that they may seek to have another go in the tribunal in circumstances in which they should have brought evidence before the tribunal in the first instance. So, in short, as a result of extensive discussions, these amendments give effect to the philosophy of the bill but improve it in a number of respects.

The Hon. R. S. L. JONES [11.25 a.m.]: I support the Government's amendments. Norm Crothers, Executive of the Australian Consumers Association, and Greg Kirk, from the Public Interest Advocacy Centre, have discussed these amendments with the Government. They are now happy to support the proposed legislation as these amendments have been negotiated.

The Hon. J. M. SAMIOS [11.25 a.m.]: The Opposition does not oppose the Government's amendments.

Amendments agreed to.

The Hon. J. M. SAMIOS [11.25 a.m.]: I move Opposition amendment No. 1:

No. 1 Page 10, clause 18. Insert after line 9:

- (4) However, an assessor who the Tribunal is satisfied is appropriately qualified must be available to assist the Tribunal when it determines any proceedings that, in the Tribunal's opinion, affect:
 - (a) the real estate industry, or
 - (b) the building industry, or
 - (c) the motor vehicle industry.

The amendment speaks for itself. There is value in having an assessor with the necessary expertise to deal with these matters.

The Hon. R. S. L. JONES [11.26 a.m.]: The Australian Consumers Association does not support this amendment and nor does my office. I thank Jeni Emblem for working hard on this proposed legislation.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.27 a.m.]: The Government does not support this amendment. It would be undesirable if every matter dealing with specific instances of industry concern required the tribunal to prescribe a particular member since there is already provision for assessors to be utilised, depending on the nature of the matter before the tribunal. Industry experts will be recruited as part-time members and they will determine such matters. However, the nature of a dispute, even if about a particular problem such as building, may well be a contractual and not a technical dispute. Thus mandating the use of a qualified member may be a misdirection of resources. More effective case management is already ensured in the flexible structure and will ensure that tribunal membership is appropriate for a particular case. For those reasons the Government is unable to support the amendment.

Reverend the Hon. F. J. NILE [11.28 a.m.]: The Attorney General just said that disputes might well involve contractual matters. The wording of the amendment reflects the fact that an assessor should be available to assist the tribunal if a dispute is likely to affect the real estate, building or motor vehicle industries. If the tribunal thought that those

industries were likely to be affected an assessor would be appointed. However, no assessor would be appointed if there was no effect on those industries. The tribunal still has a degree of flexibility in making such a determination. At some point the tribunal might need a specialised assessor to assist it in making its decisions. The Christian Democratic Party supports this moderate amendment.

Amendment negated.

The Hon. J. M. SAMIOS [11.31 a.m.]: I move Opposition amendment No. 2:

No. 2 Page 27, clause 48. Insert after line 24:

- (a) in respect of expenses incurred in obtaining professional or expert services (other than legal services), if the amount ordered to be paid by the Tribunal exceeds the amount prescribed for the purposes of this paragraph, or

I understand that the Attorney is happy to accept this amendment.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.31 a.m.]: The substance of the amendment is to ensure that when cost orders are made costs incurred by a party using expert services may be claimed and awarded. The amendment specifically addresses the use of experts in the building and motor vehicle industries. It can sit comfortably with the Government's amendment preventing cost orders in matters below \$10,000, thus it will be possible to make cost orders only for matters over \$10,000 based on Government amendments Nos 8 and 9. In those circumstances the Government does not oppose the amendment.

Amendment agreed to.

Parts as amended agreed to.

Schedule 7

The Hon. J. M. SAMIOS [11.33 a.m.]: I move Opposition amendment No. 3:

No. 3 Page 67, schedule 5. Insert after line 16:

7 Transfer of jurisdiction to Administrative Decisions Tribunal

On and from the commencement of section 11 of the *Administrative Decisions Tribunal Act 1997*, the jurisdiction of the Tribunal is vested in the Administrative Decisions Tribunal.

The amendment speaks for itself.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.34 a.m.]: A substantial argument can be put in favour of this amendment. However, the Government has a difficulty in that the amendment has not been the subject of positive approval by the review process or, indeed, of consultation with interested parties. In principle there is an argument for the amendment but it has not been through the appropriate process and, therefore, the Government is compelled at this stage to oppose it.

Amendment agreed to.

Schedule as amended agreed to.

The CHAIRMAN: The Committee will now deal with the Consumer Claims Bill.

Part 2 and schedule 2

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.36 a.m.], by leave: I move Government amendments Nos 1 to 5 in globo:

- No. 1 Page 10, clause 13, line 32. Omit "section 30". Insert instead "section 8".
- No. 2 Page 11, clause 13, line 2. Omit "senior referee". Insert instead "Tribunal".
- No. 3 Page 21, schedule 2.4[4], line 9. Omit "consumer". Insert instead "building".
- No. 4 Page 21, schedule 2.4[4], line 15. Omit "consumer". Insert instead "building".
- No. 5 Page 22, schedule 2.4[4], line 2. Omit "consumer". Insert instead "building".

Government amendment No. 1 corrects a minor error in the bill by substituting a reference to "section 30" of the Consumer Claims Tribunals Act, which is repealed by this bill, with a reference to "section 8" of the Consumer Claims Act. Amendment No. 2 corrects a minor error in the bill by substituting a reference to "section 30" of the Consumer Claims Tribunals Act, which is replaced by this bill, with a reference to "section 8" of the Consumer Claims Act. Amendments Nos 3 to 5 correct minor errors in the bill by substituting references to a "consumer" claim in the amendments to the Home Building Act with references to a "building" claim.

Amendments agreed to.

Part and schedule as amended agreed to.

Bills reported from Committee with amendments and report adopted.

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

Third Reading

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.40 a.m.]: I move:

That these bills be now read a third time.

Amendment by the Hon. J. M. Samios negatived:

That the question be amended by omitting all words after "That" and inserting instead:

these bills be referred to General Purpose Standing Committee No. 3 for inquiry and report.

2. That the committee report on the first sitting day after Tuesday, 16 February 1999.

Motion agreed to.

Bills read a third time.

COMMISSION FOR CHILDREN AND YOUNG PEOPLE BILL (No 2)

In Committee

Consideration of the Legislative Assembly's message.

The CHAIRMAN: Order! Before the Committee considers the message from the Legislative Assembly, I draw the attention of honourable members to certain statements contained therein. The message, in part, states:

There has unfortunately been some confusion in the recording of the decision of the Legislative Council in relation to Amendment No. 32.

Further, the message states:

The Government rejected this amendment. The Opposition did not support the amendment.

Further, it states:

Both the Government and the Opposition are in agreement that the Council did not agree to the amendment. Hansard and the records of the Parliamentary Clerks however show that the Council agreed to the amendment.

While the Government and Opposition may now agree that they opposed Greens amendment No. 16, during the Committee consideration of this amendment it was not made clear to the Chair when the question was put. I have listened to the Hansard tape this morning. In a brief statement the Attorney General indicated that the Government opposed the amendment. No other member spoke to the amendment. When the question was put, voices were given for the ayes. No voices—not one—was given for the noes. On that basis, the call was given to the ayes and the amendment was carried. It is not the role of the Chair to second-guess the intention of the Committee. When a question is put, members must voice clearly their intention. In this instance, the vote of the Committee was clear, and the comments from the Legislative Assembly, whilst they may make its members feel better, are inaccurate.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.48 a.m.]: I move:

That the Committee does not insist on its amendment No. 32 disagreed to by the Legislative Assembly in the bill.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [11.49 p.m.]: The Opposition agrees with the Attorney General. We do not insist on the amendment and agree with the position taken in the Legislative Assembly.

The Hon. R. S. L. JONES [11.49 a.m.]: I disagree with the position put by the Attorney General and the Leader of the Opposition. I insist that the amendment remain.

Motion agreed to.

Legislative Council amendment not insisted upon.

Resolution reported from Committee and report adopted.

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

RESIDENTIAL TRIBUNAL BILL

Second Reading

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [11.52 a.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Residential Tribunal Bill restructures the Residential Tenancies Tribunal, renames it the Residential Tribunal and provides for improved procedures. Primarily the Residential Tribunal Bill updates the legislative framework for dispute resolution in the residential area. This update is required to keep pace with an expanding jurisdiction and high volume of applications and to maintain a quality service for the community. The Residential Tenancies Tribunal is established under the Residential Tenancies Act 1987 as the primary dispute resolution body for residential tenancies in New South Wales. Part 6 of the Act provides for the constitution, jurisdiction and functions of the tribunal.

In recent years the jurisdiction of the Residential Tenancies Tribunal has expanded from primarily dealing with residential tenancy matters to dealing with disputes between residents and retirement village management, and matters in relation to caravan parks and relocatable homes. In addition, members of the Residential Tenancies Tribunal sit as members of the Strata Schemes Board and Community Schemes Board. In the last financial year the Residential Tenancies Tribunal received more than 37,000 applications. This represents an increase of approximately 15 per cent on the number of applications received the previous year and continues a trend in recent years of annual increases of the order of 15 to 20 per cent.

The increase cannot be explained as the result of new allocations of jurisdiction but is largely the result of increased activity in the residential tenancy market. This increase in volume of applications has prompted a number of improvements to the operation of the Residential Tenancies Tribunal. The tribunal has over the past two years examined its registry structures and general procedures and sought regular client feedback. As a result of these initiatives and in an endeavour to improve overall services to clients the tribunal has made a number of operational changes.

These include the commencement of Saturday hearings and improved delivery of services to the regions with the establishment of Penrith, Newcastle and Port Kembla registries. The tribunal proposed also to make a number of procedural changes and institute an improved case management strategy. However, the tribunal has been hampered in making these improvements by the current legislative structure which does not allow it sufficient flexibility to institute the necessary changes. In addition to these changes which have been identified internally by the tribunal itself, there has also been an independent review of all tribunals in the fair trading portfolio: the Commercial Tribunal, Consumer Claims Tribunal, Building Disputes Tribunal, Motor Vehicle Repair Disputes Committee and Residential Tenancies Tribunal.

The review concluded that there were significant advantages to amalgamating all the tribunals into a new Fair Trading Tribunal, except for the Residential Tenancies Tribunal. The establishment of the Fair Trading Tribunal is the subject of a separate bill. The review recommended that the Residential Tenancies Tribunal not be amalgamated into the Fair Trading Tribunal but instead be restructured and renamed the Residential Tribunal. The review also recommended a number of procedural improvements be made to the operation of the tribunal, but did not find that the jurisdiction to deal with tenancy and residential accommodation disputes would be enhanced by the merger into the proposed Fair Trading Tribunal.

While it was found that there was significant stakeholder support for all the tribunals examined, there was particularly strong support for retention of the Residential Tenancies Tribunal as a separate tribunal to deal with residential tenancy issues and accommodation matters more generally. Disputes relating to housing and accommodation are viewed as particularly serious matters for the individuals involved and the community in general and consequently are best dealt with within a specialist tribunal. The Residential Tribunal Bill aims to incorporate the changes necessary for continued improvement, identified by both the review and the Residential Tenancies Tribunal itself.

This bill does not affect the nature or scope of the tribunal's jurisdiction. It renames the tribunal to more accurately reflect its jurisdiction, introduces certain features and improves the overall procedural flexibility to deal with its expanding and varied jurisdiction. The features and procedures of the Residential Tribunal are in line with those for the proposed Fair Trading Tribunal. The Residential Tenancies Tribunal is currently organised into specialist divisions. These divisions are the General (Residential Tenancy) Division, the Strata Division, the Caravan Parks and Retirement Village Division, the Community Housing Division and the Nuisance and Annoyance Division.

This organisational structure facilitates the general case management policies of the tribunal. However, the divisions are informal. There is no legislative basis for their structure; the divisions operate as purely administrative arrangements. The Residential Tribunal Bill overcomes this deficiency by providing that the tribunal may operate in specialist divisions. Within the divisions, there will be flexibility to conduct hearings before a single member or to constitute multimember panels depending on the degree of complexity or the nature of the matter in dispute.

The Residential Tribunal will have flexible procedures. It will have the discretion to adapt its procedures to fit the dispute before it. It will conduct proceedings with as little formality and technicality and with as much expedition as the requirements of the matter in question permit. The tribunal will not be bound by the rules of evidence, and will have the discretion to inform itself as it thinks fit. Alternative dispute resolution will be an important component of the Residential Tribunal's operations. At present the Residential Tenancies Tribunal's main mechanism to resolve matters prior to a formal hearing is by the use of conciliation. The Residential Tribunal's alternative dispute resolution tools will expand with the ability to use other mechanisms such as mediation or preliminary conferences.

A party to a dispute will have the carriage of his or her own case. The current ability of a landlord's agent to represent the landlord in a tenancy dispute will remain. With respect to other representation, the tribunal will have the discretion to allow representation where, in its view, it is appropriate. Factors such as the value of the matter in dispute, its complexity or the capacity of a party to present his or her case will be considered in determining whether representation should be allowed.

The Residential Tenancies Tribunal currently operates a number of stakeholder committees. These committees ensure that the tribunal gains valuable feedback from interested parties on a number of procedural issues such as the application forms used, listing arrangements, accommodation and associated registry functions. These committees will be retained by the Residential Tribunal to enable ongoing and effective community consultation. Appeal rights on questions

of law are available from the Residential Tenancies Tribunal and are to the Supreme Court. The Residential Tribunal Bill provides that appeals on questions of law remain but to the District Court. This change makes the appeal process less expensive and more accessible.

In addition, and as with the Fair Trading Tribunal, the Residential Tribunal will be able to conduct internal rehearings. Leave must be sought of the tribunal for a matter to be reheard. The grounds for a rehearing are identical to those for the Fair Trading Tribunal, namely, that the decision made was not fair and equitable, against the weight of evidence or that there is fresh evidence. In addition, in all instances a party must show that substantial injustice has resulted from the decision. Where leave to be reheard is granted, the matter is dealt with afresh, and may be heard before a panel of members. The normal procedures of the tribunal apply to the rehearing. I have outlined the major features of the Residential Tribunal Bill. I believe the new tribunal will provide an improved forum for the resolution of residential accommodation disputes for the people of New South Wales. I commend this bill to the House.

The Hon. J. M. SAMIOS [11.52 a.m.]: The Residential Tribunal Bill, which establishes a Residential Tribunal and provides for its powers and procedures, provides also for the abolition of the Residential Tenancies Tribunal constituted under the Residential Tenancies Act 1987, the functions of which will be exercised by the new tribunal. The bill provides also for the amendment of the Residential Tenancies Act 1987 so as to repeal the provisions of that Act that established the former tribunal and for the consequential amendment of other Acts.

As stated in the explanatory note, the bill provides also for the transfer to the Residential Tribunal of the powers and functions of the Community Schemes Board, which was constituted under part 5A of the Community Land Management Act 1989, and the Strata Schemes Board, which was constituted under part 3 of chapter 6 of the Strata Schemes Management Act 1996. Essentially, the bill was part of the review process carried out some three years ago that dealt with what might be termed the fair trading structures, such as the Consumer Claims Tribunal and the Motor Vehicle Repair Disputes Committee.

The recommendation of that review was that the Commercial Tribunal, the Consumer Claims Tribunal, the Building Disputes Tribunal, the Motor Vehicle Repair Disputes Committee and the Residential Tribunal be consolidated and streamlined to provide a more effective service to the community. The review was prompted by the Government's belief that the tribunals within the portfolio needed to operate fairly and efficiently, but it excluded the Residential Tribunal from the consolidation. In essence, the tribunal has initiatives which, in many ways, are similar to those provided in the new consolidated scheme for fair trading tribunals. The Opposition supports the bill.

Reverend the Hon. F. J. NILE [11.55 a.m.]: The Christian Democratic Party supports in principle the Residential Tribunal Bill as the Opposition has indicated it supports the bill and the Government is anxious that the bill be passed. However, we received two submissions containing disturbing statements that we have no reason to believe are incorrect. The Real Estate Institute of New South Wales, under the hand of its president, Stephen Francis, wrote on 26 November:

The Real Estate Institute of New South Wales is extremely disappointed that the State Government would take this action without adequate prior consultation with the Real Estate Institute . . .

The Institute believes any proposed regulatory reforms in relation to residential tenancies should be considered as part of the review of the Residential Tenancy legislation currently under-way by the State Government and not in a piecemeal manner under the *Residential Tribunal Bill 1998*.

The Institute is strongly opposed to proposed reform in relation to Clause 33 Representation of Parties. The proposed amendments state that "except as otherwise provided by the regulation, no person other than a legal practitioner is entitled to demand or receive any fee or reward for representing a party in proceedings before the Tribunal".

This would appear to be at odds with statements in Parliament that "the current ability of a landlord's agent to represent the landlord in a tenancy dispute will remain". Currently, estate agents are entitled to and receive a fee for representing the landlord in a tenancy dispute before the Tribunal. The fee is set out in the management agency agreement form agreed between the two parties.

The Institute notes that this issue has never been discussed in detail by the Residential Tenancies Consultative Committee. The Institute considers it inappropriate that these reforms be introduced without appropriate consultation.

This action is being taken at a time when the whole issue of residential tenancies is undergoing a very extensive and expensive review process.

The letter concluded:

The Institute calls on the Government to recall the amendments so that proper discussions with the Institute can occur once the results from the current Inquiry are known.

The Government will move a large number of amendments that may meet the particular concern about the ability of an estate agent to receive a fee for representing a landlord. Is that one of the matters that the Government has taken up in its amendments?

The Hon. J. W. Shaw: I will have to check. I do not know.

Reverend the Hon. F. J. NILE: A letter from the Property Industry Council of New South Wales, dated 23 November and signed by its chairman, Kevin Clay, stated:

My Council (nor to my knowledge any of its constituent members), which represents 90% of the industry, has once again not been given the opportunity of consultation with the Government regarding any concerns that it might have as to the ramifications of these Bills on our industry.

He is referring to both the Residential Tribunal Bill and the Fair Trading Tribunal Bill. He went on to say:

In the limited time we have had (less than 48 hours), we have identified concerns with both Bills.

1. In regard to the Residential Tribunal Bill there is no longer any mention as to a ceiling limit of moneys that can be awarded by the Tribunal. Previously a limit of \$10,000 was in place.

The Government may be able to indicate whether that limit is to be restored through amendment. The Property Industry Council also has concerns about the Fair Trading Tribunal Bill and has asked that the bill be deferred. I simply put the concerns of the council on the record. It now seems to be the practice of the Government to move a large number of amendments when proposed legislation reaches this House. I am not critical of that practice if the amendments will improve the bill and result from consultation with the various stakeholders who will be affected by the proposed legislation.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.01 p.m.], in reply: I was pleased to hear what Reverend the Hon. F. J. Nile has said. Governments should not be embarrassed about moving amendments if those amendments meet legitimate criticisms of the bill. I understand the Government amendments have been in circulation for some three weeks and I believe they achieve that purpose. The concept of the bill is to provide equity for tenants, agents and landlords by updating the Residential Tenancies Tribunal to reflect its changing role. During the past few years the tribunal has expanded its activities from dealing almost solely with residential tenancy matters to dealing with disputes encompassing retirement village management and manufactured home parks, among other matters.

The Government has had the benefit of input from members of the crossbench and a number of stakeholder groups. Indeed, the Government has liaised with the Opposition and has accepted some modifications of the original concept without diffidence. The bill is the result of a thorough review process which was administered through the Department of Fair Trading, as well as consultation after the introduction of the bill. When enacted the legislation will provide tenants and landlords in a

number of residential situations with access to a well-organised and flexible dispute resolution forum that makes good use of alternative dispute resolution processes and case management principles. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Parts 1 to 6 and schedule 4

The Hon. R. S. L. JONES [12.05 p.m.]: I move my amendment No. 1:

No. 1 Page 13, clause 25, lines 11-16. Omit all words on those lines. Insert instead:

- (2) The notice is to indicate the time and place at which the application will be dealt with by the Tribunal.

I had intended to move amendments in Committee which would insert into the bill the equivalent of sections 85, 87 and 88 of the Residential Tenancies Act, thus giving the Residential Tribunal power to make orders, to require it to notify parties of the time and place of proceedings and to clarify the parties to proceedings. The Government has, however, decided to address the tribunal's current lack of power to make orders via its circulated amendment.

Notwithstanding that, I will proceed with amendment No. 1 and, I hope, amendment No. 6, which would ensure the parties would be notified of the time and place of proceedings and allow legal personal representatives to bring or to defend proceedings before the tribunal as if in their own right. The tribunal should be responsible for informing parties of applications and hearings. Shifting this responsibility to the parties reduces the tribunal's responsibility to ensure natural justice.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.07 p.m.]: The Government does not accept the amendment; we say it has no effect. Any notice of proceedings must contain sufficient particulars for the parties to attend, but the amendment may unduly restrict the operations of the tribunal. The Residential Tenancies Act currently requires a notice to specify time and place.

The Government has been advised that this requirement limits the current Residential Tenancies Tribunal in using alternative approaches to the

conduct of proceedings such as teleconferencing and video conferencing. While clause 35 of the bill specifically allows for the use of new technology in proceedings, retention of the current provision for notice creates a potential and unnecessary conflict in the bill. It comes down to the question of place. If teleconferencing and video conferencing are being used it may be difficult to specify the place, although one assumes the time could be specified. In short, the Government regards the amendment as an unnecessary constraint on the use of new technology.

Amendment negated.

The Hon. R. S. L. JONES [12.09 p.m.]: I move my amendment No. 2:

No. 2 Page 14, clause 27, lines 30-34. Omit all words on those lines.

While clause 27(2) of the bill refers to the tribunal's procedures being subject to the rules of natural justice, clause 27(5)(d) allows the tribunal to limit the period available to present a case before the tribunal. Therefore, my amendment No. 2 will delete paragraph (d) of clause 27(5).

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.10 p.m.]: The Government does not accept the amendment. It does not regard the clause in question as being inconsistent with the laws of natural justice. It represents an overarching requirement for the operation of residential tribunals. The Government believes that the clause allows the tribunal to appropriately control cases before it, including situations in which parties are often unrepresented and may want to place extraneous material before it.

Amendment negated.

The Hon. R. S. L. JONES [12.10 p.m.]: I move my amendment No. 3:

No. 3 Page 15, clause 27, lines 6 and 7. Omit "or at the request of the applicant". Insert instead "(and must, at the applicant's request, allow the applicant to withdraw the application)".

This amendment will allow applications to be withdrawn at the request of the applicant rather than dismissed, as currently provided for under section 91 of the Residential Tenancies Act. The ability to withdraw an application will mean that further applications may be pursued at a later date with more time for preparation and advice.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.10 p.m.]: The Government accepts this amendment. Clause 27 relates to dismissing proceedings before the tribunal on application for want of prosecution when an applicant withdraws. The amendment seeks to change the concept of the tribunal dismissing the application at the request of an applicant to requiring it to allow the applicant to withdraw the application. That seems to be a sensible suggestion.

Amendment agreed to.

The Hon. R. S. L. JONES [12.11 p.m.]: I move my amendment No. 4:

No. 4 Page 16, clause 30, lines 33-37. Omit all words on those lines.

This amendment deletes paragraph (d) of clause 30(2) of the bill, which allows the tribunal to restrict or to prohibit the disclosure of evidence to some or all of the parties to proceedings. In effect, that means that some tenants will not be entitled to know the details of the case against them and, hence, will be denied the opportunity to answer fully the case against them. This is a serious denial of the principles of natural justice, which are supported elsewhere in the bill.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.12 p.m.]: The Government does not accept this amendment. It would limit the tribunal's capacity to respond appropriately to particular circumstances that may arise in special cases. I am not talking about standard disputes or even cases where a witness may feel uncomfortable about giving evidence. I am talking about the rare and unfortunate cases where a party may raise issues of a particularly sensitive nature. It is not unknown in the tribunal for a party to seek to tender a report from the Department of Community Services relating to a difficult family situation, for example, a report indicating that a child may be at risk and that any eviction from the home may exacerbate the difficulty the family is in.

It is appropriate that such an issue be raised with the tribunal for its consideration. At the same time, the party has a genuine interest in keeping such a personal matter private. Clause 39(2)(d) provides the tribunal with a discretion to keep such information private. It is entirely possible for the tribunal to order that evidence be kept confidential in special cases that do not relate to the nature or particulars of the dispute and will not affect other

parties in the preparation of their case. The exercise of discretion under this provision is at all times subject to the general requirements to follow the rules of natural justice as specified in clause 27(2) of the bill. That clause will ensure that natural justice is afforded in such cases.

Amendment negated.

The Hon. R. S. L. JONES [12.13 p.m.]: I move my amendment No. 5:

No. 5 Page 17, clause 31, lines 8-10. Omit all words on those lines.

Clause 31(1) relates to applications being dealt with on the papers where parties consent. That happens now in the strata title jurisdiction. However, clause 31(2) provides that regulations may prescribe classes of matters in which consent may be dispensed with. This amendment will ensure that residential tenancy matters will not be dealt with on the papers without the full consent of both parties.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.14 p.m.]: The Government does not accept this amendment. Clause 31(2) allows regulations to prescribe classes of matters that may be dealt with on the papers without the consent of the parties. During the development of the regulations conciliation will occur concerning what matters are to be prescribed. The aim of clause 31(2) is to allow relatively minor or interlocutory matters before the tribunal to be dealt with in the most efficient manner. The rules of natural justice, of course, apply.

Amendment negated.

The Hon. J. M. SAMIOS [12.14 p.m.]: I move Opposition amendment No. 1:

No. 1 Pages 17 and 18, clause 33, line 18 on page 17 to line 10 on page 18. Omit all words on those lines. Insert instead:

33 Presentation of cases

- (1) Each party to proceedings before the Tribunal has the carriage of the party's own case.
- (2) A party to proceedings before the Tribunal or a person who applies to be made a party to the proceedings is not entitled to be represented by any other person unless:
 - (a) the representation is approved by the Tribunal, or
 - (b) any other party is represented by the Tenancy Commissioner or by a barrister, solicitor or agent for the Commissioner.

- (3) The Tribunal is not entitled to approve of another person representing a party in proceedings before it unless it appears to the Tribunal:

- (a) that the representation should be permitted as a matter of necessity, or

- (b) that the party would otherwise be unfairly disadvantaged, or

- (c) in the case of a landlord - that the landlord's agent should be permitted to represent the landlord in the course of carrying out his or her usual functions as the landlord's agent,

and the Tribunal is of the opinion that any other party will not be unfairly disadvantaged by the representation.

- (4) This section does not prevent an officer of a corporation from representing the corporation.
- (5) Nothing in this section prevents the Tenancy Commissioner from taking or defending proceedings in accordance with this Act.
- (6) Contravention of any provision of this section does not invalidate any proceedings before the Tribunal in which the contravention occurs or any order made in the proceedings by the Tribunal.

The Opposition has moved this amendment on the basis that it provides for greater equity in the handling of cases before the tribunal.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.16 p.m.]: The Government does not support the amendment. The Opposition seeks to insert a provision in the bill allowing representation, as is the case before the Residential Tenancies Tribunal. In particular, it specifies that landlords' agents have a right to appear before the tribunal. The Government proposes to place such a provision in the regulations. That was foreshadowed in the second reading speech, in which it was stated that the current ability of a landlord's agent to represent a landlord in a tenancy dispute will remain. That undertaking is on the record. With respect to other representation, the regulations will provide a guide as to where it is appropriate to allow representation, and I undertake that the regulations will be subject to consultation. In those circumstances, the Government opposes the amendment.

Amendment negated.

The Hon. R. S. L. JONES [12.17 p.m.]: I move my amendment No. 6:

No. 6 Page 17, clause 33. Insert after line 33:

- (5) A legal personal representative may bring or defend proceedings before the Tribunal as if the representative were bringing or defending proceedings in the representative's own right.

I move this amendment for the reasons I have already given.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.17 p.m.]: The amendment is opposed for the reasons I have already given.

Amendment negated.

The Hon. R. S. L. JONES [12.18 p.m.], by leave: I move my amendments Nos 7, 8 and 9 in globo:

- No. 7 Page 18, clause 34, line 12. Insert ", or participating in any alternative dispute resolution procedure under Part 5," after "evidence".
- No. 8 Page 20, clause 38, line 13. Insert "and of the tender to the person served of an amount in respect of the reasonable expenses of complying with its requirements" after "summons".
- No. 9 Pages 22 and 23, clause 42, lines 32-34 on page 22 and lines 1 to 4 on page 23. Omit all words on those lines. Insert instead:
- (b) if the decision of a member is set out in writing and signed by the member:
- (i) by being delivered by a member of the Tribunal, or
- (ii) by being delivered by the Registrar, at a time and place of which the parties have been given reasonable notice, or
- (iii) by publication to the parties in a manner approved by the Chairperson.

Clause 34(1) of the bill appears to limit the use of interpreters to hearings and to parties giving evidence at hearings. Interpreters should be available whenever required, that is, for mediation and for parties not giving evidence. Amendment No. 7 provides for interpreters to be used in alternative dispute resolution procedures. Section 38 of the Act provides for witnesses to be apprehended even if they have not been paid reasonable expenses for complying with a summons. That is a problem for witnesses who cannot afford to comply. Amendment No. 8 will ensure that witnesses are paid reasonable expenses. Amendment No. 9 will provide that the registrar is not able to deliver oral reasons for a reserved decision of a member.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.20 p.m.]: The Government accepts the amendments for the reasons put by the Hon. R. S. L. Jones.

Amendments agreed to.

The Hon. R. S. L. JONES [12.20 p.m.]: I move my amendment No. 10:

- No. 10 Page 23, clause 44, lines 23 and 24. Omit "dismiss the application that is the subject of the proceedings". Insert instead "remit the matter to the parties for further negotiation".

Clause 44(2) allows the tribunal to dismiss an application if it is not satisfied that it would have the power to make a decision in the terms of the agreed settlement. Dismissing an application is inappropriate in those circumstances. Dismissal of a matter for lack of jurisdiction should be driven only by the substance of the application. My amendment would therefore replace that power with one that allows the tribunal to remit such matters for further negotiation.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.21 p.m.]: The Government opposes the amendment. The clause as drafted merely establishes a discretion for the tribunal to dismiss an application where it is unable to make orders reflecting an agreed settlement. That is an appropriate discretion for the Residential Tenancies Tribunal. It will be exercised only where there are no other avenues for the dispute to go to further negotiations or final hearing.

Amendment negated.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.22 p.m.], by leave: I move Government amendments Nos 1 to 5 and 8 to 12 in globo:

- No. 1 Page 24, clause 46, line 11. Insert "a notice of the decision or" after "text of".
- No. 2 Page 24, clause 46, line 13. Insert "notice or" before "statement".
- No. 3 Page 24, clause 46, lines 15 and 16. Omit all words on those lines. Insert instead:
- (2) If the text of a notice or statement is so altered, the altered text is taken to be the notice of the Tribunal's decision or the statement of its reasons, as the case may be.

- No. 4 Page 24, clause 46, line 17. Insert "a notice of a decision or" after "text of".
- No. 5 Page 24, clause 46, line 20. Insert "notice or" before "statement".
- No. 8 Page 33, clause 63, line 24.
Insert "the applicant may have suffered a substantial injustice because" after "that".
- No. 9 Page 33, clause 63, line 28. Omit all words on that line. Insert instead:
- (c) evidence that is now available was not reasonably available at the time of the hearing.
- No. 10 Page 34, clause 64, line 7. Insert "or Supreme Court" after "District Court".
- No. 11 Page 55, Schedule 4.5 [3], lines 3 and 4. Omit all words on those lines. Insert instead:
- Part 6 Powers of Tribunal and Tenancy Commissioner**
- No. 12 Page 55, Schedule 4.5, lines 5-8. Omit all words on those lines. Insert instead:
- [4] **Part 6, Division 1**
Omit the Division.
- [5] **Part 6, Division 2, heading**
Omit the heading. Insert instead:
- Division 2 Powers of Tribunal**
- [6] **Sections 83 and 84**
Omit the sections.
- [7] **Part 6, Division 3, heading**
Omit the heading. Insert instead:
- Division 3 Powers of Tenancy Commissioner**

I inform the Committee that I do not propose to move Government amendments Nos 6 and 7. In relation to Government amendments Nos 1 to 5, clause 46 codifies the slip rule; it allows the tribunal to correct errors in the text of written reasons. The amendments clarify the position with respect to the correction of errors in a notice of a decision by specifying that a notice of a decision may be corrected.

The effect of Government amendments Nos 8 and 9 is to clarify the operation of the rehearing provisions. The present basis for granting No. 8 and 9 is to clarify the operation of the rehearing provisions. The present basis for granting a rehearing is that the applicant suffered a substantial injustice on specified grounds. The amendments also clarify the meaning of the "fresh evidence has become available" ground by substituting in the ground "evidence that is now available was not reasonably available at the time of the hearing".

Those amendments clarify the operation of the rehearing provisions of the bill in a positive way. The clause is restructured to provide that an applicant may seek a rehearing on the basis that the applicant suffered a substantial injustice because the decision was not fair and equitable, the decision was against the weight of evidence or evidence that is now available was not reasonably available at the time of the hearing. On the previous construction of the clause it was open to question how a decision could be found to be not fair and equitable yet not a substantial injustice.

The amendments will clarify the position to make it clear that applicants must show that a substantial injustice has resulted from a tribunal decision on the grounds specified. With respect to those grounds, the bill specifies that a party could apply for a rehearing on the basis that fresh evidence has become available. This ground has been changed to "evidence that was not reasonably available at the time of the hearing". That change will ensure that parties before the tribunal do not have the expectation that they may seek to have another hearing in the tribunal in circumstances in which they should have brought evidence before the tribunal at first instance.

In relation to Government amendment No 10, clause 64 allows the District Court to stay an order of the tribunal pending an appeal. The amendment provides that the Supreme Court may have the same power. Clause 64 allows the District Court to stay an order following on from the amendments to clauses 61 and 62 to allow applications to the Supreme Court in some circumstances. The amendment provides that the Supreme Court may stay an order of the tribunal pending an appeal. Government amendments Nos 11 and 12 preserve section 85 of the Residential Tenancies Act, which establishes the monetary limits of the tribunal with respect to tenancy matters, whereas it was originally proposed to delete that section of the Act.

Section 85 deals with order-making powers of the tribunal with respect to tenancy matters. It also specifies that the monetary limit of orders may be prescribed by the regulations to the Residential Tenancies Act. The order-making powers of the tribunal are dealt with in other provisions of the Residential Tenancies Act but the regulation-making power to set the monetary limit for orders is only in this section. Accordingly, the Government has taken the view that it ought to be retained. I commend the Government's amendments to the Committee.

Amendments agreed to.

The CHAIRMAN: Order! Amendment No. 11 of the Hon. R. S. L. Jones conflicts with Government amendment No. 3. As Government amendment No. 3 has been carried, the Hon. R. S. L. Jones cannot move his amendment No. 11.

The Hon. J. M. SAMIOS [12.27 p.m.], by leave: I move Opposition amendments Nos 2 and 3 in globo:

No. 2 Page 25, clause 48. Insert after line 16:

- (a) in respect of expenses incurred by a party in being represented by an agent in accordance with section 33(3)(c), or

No. 3 Page 38. Insert after line 10:

74 Extensions of time

- (1) Despite any other provision of this Act, the Tribunal may, of its own motion or on application by any person, extend the period of time for the doing of anything under this Act.
- (2) Such an application may be made even though the relevant period of time has expired.

It is my understanding that the Attorney General, in a spirit of compromise, has decided to support these amendments. Several peak groups had concerns about this bill and expressed those concerns in writing to me and to other members of Parliament. Various amendments that have been proposed and agreed to make the bill much more viable than it would otherwise have been.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.32 p.m.]: The Government is of the opinion that these amendments are not strictly necessary, but if they are seen to be clarifying amendments then so be it. The Government does not oppose the amendments—it is a flexible, reasonable Government.

Amendments agreed to.

The Hon. R. S. L. JONES [12.33 p.m.], by leave: I move my amendments Nos 12 and 13 in globo:

No. 12 Page 28, clause 54, line 10. Omit "The". Insert instead "With the consent of the parties, the".

No. 13 Page 28, clause 54. Insert after line 14:

- (3) If at any stage of mediation or neutral evaluation the consent of a party is withdrawn, the matter is to be remitted to the Tribunal for determination.

In division 2, relating to mediation and neutral evaluation, the current requirement for consent has been removed. As true mediation is not possible without mutual consent, these amendments reinsert that requirement. They also provide for a party's consent to mediation to be withdrawn so that matters can be heard by the tribunal on the evidence and submissions of the parties.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.34 p.m.]: The Government opposes these amendments. The bill allows the parties to be directed to mediation without their consent. These amendments would require the consent of the parties before any referral to mediation or mutual evaluation. Amendment No. 13 specifies that a matter is to be remitted for determination if consent is withdrawn. Mediation is not mandatory for all matters before the tribunal. If the tribunal is of the view that the parties to a dispute would benefit from those processes, it may direct the parties to either process. Such an order would be made in consideration of the fact that unrepresented litigants may not understand the process or the advantages of alternative dispute resolution processes.

It is the responsibility of the tribunal to determine the more appropriate process for the resolution of a particular matter. It is therefore inappropriate for proceedings in the tribunal to require the consent of the parties in all cases before they can be directed to attempt mediation or mutual evaluation. There is a legitimate philosophical debate in the legal system as to whether alternative dispute resolution can or should be ordered by a court or tribunal. I favour the proposition that it ought to be capable of mandatory requirement, because often these matters can be settled more simply and less expensively by mediation than through the court process. Sometimes one party or the other does not appreciate that, whereas the tribunal may provide those advantages. I uphold the provisions in the bill and do not support the amendments.

Amendments negated.

The Hon. R. S. L. JONES [12.36 p.m.]: I move my amendment No. 14:

No. 14 Page 28, clause 56, line 30. Insert "if the Tribunal is satisfied that it would have the power to make a decision in terms of the agreement or arrangement or in terms that are consistent with the agreement or arrangement" after "session".

While clause 56 permits the tribunal to make orders giving effect to an agreement reached through

mediation or mutual evaluation, it does not require the orders to be within the jurisdiction and power of the tribunal. This amendment inserts a provision equivalent to that contained in clause 44(1)(b), which relates to powers when proceedings are settled.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.36 p.m.]: The Government accepts this amendment. Clause 44 requires the Residential Tenancies Tribunal to be satisfied that any terms of settlement are within terms of jurisdiction before making them into orders. This was intended to operate for all settlements, including mediated settlements. The inclusion of a similar provision in the mediation section clarifies the position.

Amendment agreed to.

The Hon. R. S. L. JONES [12.37 p.m.], by leave: I move my amendments Nos 15 to 30 in globo:

- No. 15 Page 31, clause 61, line 31. Omit "District Court".
Insert instead "Supreme Court".
- No. 16 Page 32, clause 61, line 3. Omit "District Court".
Insert instead "Supreme Court".
- No. 17 Page 32, clause 61, line 5. Omit "District Court".
Insert instead "Supreme Court".
- No. 18 Page 32, clause 61, line 7. Omit "District Court".
Insert instead "Supreme Court".
- No. 19 Page 32, clause 61, line 9. Omit "District Court".
Insert instead "Supreme Court".
- No. 20 Page 32, clause 61, line 13. Omit "District Court".
Insert instead "Supreme Court".
- No. 21 Page 32, clause 61, line 15. Omit "District Court".
Insert instead "Supreme Court".
- No. 22 Page 32, clause 62, line 24. Omit "District Court".
Insert instead "Supreme Court".
- No. 23 Page 32, clause 62, line 27. Omit "District Court".
Insert instead "Supreme Court".
- No. 24 Page 32, clause 62, line 30. Omit "District Court".
Insert instead "Supreme Court".
- No. 25 Page 33, clause 62, line 3. Omit "District Court".
Insert instead "Supreme Court".
- No. 26 Page 33, clause 62, line 5. Omit "District Court".
Insert instead "Supreme Court".
- No. 27 Page 33, clause 62, lines 6 and 7. Omit "District Court".
Insert instead "Supreme Court".
- No. 28 Page 33, clause 62, line 10. Omit "District Court".
Insert instead "Supreme Court".

No. 29 Page 33, clause 62, line 11. Omit "District Court".
Insert instead "Supreme Court".

No. 30 Page 33, clause 62, line 12. Omit "District Court".
Insert instead "Supreme Court".

These amendments restore the referral of matters of law as well as appeals to the Supreme Court in order to prevent multiplicity of appeals. I believe, as do many community welfare groups such as the Council of Social Service of New South Wales and the Tenants Union, that the right to appeal to the Supreme Court rather than to the District Court is very important. Appeals of tenancy matters are matters of law and generally involve implications that are broader than in individual cases. The Administrative Law Division of the Supreme Court deals effectively with matters such as those. The Supreme Court also records its decisions. That is important, because it means that they are accessible and can be used as precedents.

The District Court, on the other hand, predominantly handles trial matters and does not record decisions. The transfer of appeals cannot be justified on the basis that tenancy matters are similar to victims compensation matters, as such matters are generally about facts rather than interpretation of law and do not have implications broader than the individual case. The cost savings of transferring appeals to the District Court can be very modest, due to the fact that, while the cost of lodging an application to the District Court is cheaper than lodging an application to the Supreme Court, the cost of running a case from there on is similar.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.39 p.m.]: The Government will acquiesce in the proposition put forward by the Hon. R. S. L. Jones in these amendments. There is an argument with regard to cost and accessibility for having appeals from the tribunal dealt with by the District Court. In acquiescing to these amendments, I intend no reflection whatsoever on the judges of the District Court. I believe those judges to be capable of dealing with the legal questions that arise from time to time by way of appeals from the tribunal. Nevertheless, as the honourable member said, it is true that various interest groups have put an argument to the Government to retain the existing appeals to the Supreme Court and the Government, hopefully with grace, will accept that proposition and support the amendments.

The Hon. J. M. SAMIOS [12.39 p.m.]: The Opposition also supports the amendments. The words of the Attorney have been well chosen. Peak groups have made strong representations about this

important issue and it is pleasing to note that the Government has acquiesced and accepted the amendments.

Amendments agreed to.

Parts and schedule as amended agreed to.

Part 7

The Hon. R. S. L. JONES [12.41 p.m.]: I move my amendment No. 31:

Page 37, clause 71. Insert after line 16:

No. 31 (4) A reference in this section to the sending of a notice or document by post includes a reference to the sending of the notice or document by facsimile transmission.

Although clause 71 allows parties to leave notices at a residential or business address, it makes no reference to being able to serve documents by fax, as is currently the case. This amendment therefore inserts such a reference.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.42 p.m.]: The Government does not accept the amendment because it considers it unnecessary. The amendment seeks to specify in the bill itself that documents may be served by facsimile. Clause 71(4) allows for alternative means of notice to be prescribed by regulation. Service by facsimile, which is currently allowed by the Residential Tenancies Tribunal, will be prescribed in the regulations for the Residential Tribunal and specifying this in the bill itself is unnecessary. It is an argument about whether the matter ought to be in the delegated legislation or the Act. For drafting and tidiness reasons the Government would prefer to have the measure included in the regulation. There is no intention other than to allow the service of documents by facsimile.

Amendment negatived.

Part agreed to.

The Hon. R. S. L. JONES [12.43 p.m.]: I will not move my amendment No. 32.

Bill reported from Committee with amendments.

Adoption of Report

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [12.44 p.m.]: I move:

That the report be now adopted.

Amendment by the Hon. R. S. L. Jones agreed to:

That the question be amended by the omission of the words after "That" with a view to inserting instead "this bill be now recommitted with a view to the further consideration of clause 46."

Motion as amended agreed to.

In Committee (Recommittal)

Recommitted clause 46

Amendment by the Hon. R. S. L. Jones agreed to:

Page 24, clause 46(2), as amended in Committee. Insert at the end ", and notice of the alteration is to be given to the parties to the proceedings in such manner as the Chairperson may direct".

Recommitted clause as amended agreed to.

Bill reported from Committee secundo with a further amendment and passed through remaining stages.

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

RETAIL LEASES AMENDMENT BILL

Second Reading

The Hon. R. D. DYER (Minister for Public Works and Services), on behalf of the Hon. J. W. Shaw [12.49 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.

"There is a war going on in the shopping centres around Australia, between retail tenants and property owners and managers." This is the opening sentence from the retail tenancy chapter of the Reid report entitled "Finding a balance towards fair trading in Australia", May 1997. The Retail Leases Amendment Bill is further evidence of this Government's continuing commitment to small business and the retailing industry in the State, and its willingness to work

with the business community to address difficult problems and to develop workable solutions. This legislation reasserts the New South Wales Retail Leases Act as the national benchmark in retail tenancy legislation and has been proclaimed by the industry as the basis for implementation of harmonised retail tenancy legislation across Australia. It is the peace agreement that has been negotiated to end the "war".

The Retail Leases Amendment Bill is not about interfering in the cut and thrust of commercial dealings and negotiations. It is not about protecting retail tenants from trading difficulties. And it is not about diminishing the property rights of property owners. It is, however, aimed at changing the behaviour of both retailers and landlords in relation to retail leasing transactions. It provides greater certainty to both parties to a lease regarding their obligation to each other. It retains the current focus of the Act on small- and medium-size retail shops, addresses the inequities in leasing negotiations, and prohibits the application of unconscionable conduct by either party in retail leasing transactions. Retail tenancy legislation has been in place in New South Wales since 1994, in the form of the Retail Leases Act.

The legislation has provided a basis for good leasing practices in the retail industry in New South Wales, provided for a more equitable bargaining position between the parties to a lease and where disputes arise, provided for cost-effective and timely resolution. The success of the legislation is reflected in the fact that since its establishment in September 1994, the retail tenancy disputes unit has handled nearly 6,000 inquiries, resulting in nearly 900 successful informal mediations and over 260 formal mediations. Three-quarters of those formal mediations successfully resolved the areas of dispute. In July 1997 amendments to the Retail Leases Act were introduced, based on recommendations of the Retail Leases Advisory Committee. These amendments were primarily minor in nature.

The Ministerial Advisory Committee, the major industry stakeholders and the Registrar of Retail Tenancy Disputes have, however, identified further issues, especially in relation to end of lease situations, which are the cause of continuing and significant areas of dispute, and which need to be addressed. In 1997 I requested Sandra Nori, as Parliamentary Secretary for State Development, to work with the major industry bodies, the Retail Traders' Association in New South Wales and, initially the Property Council of Australia, but later the newly formed Shopping Centre Council of Australia, to facilitate discussions that would lead to the development of workable legislative changes which address these issues.

The Property Council of Australia represents approximately 30 to 40 per cent of retail property and 100 per cent of retail shopping centres, and the Retail Traders' Association of New South Wales, together with affiliated industry associations, represent in excess of 75 per cent of retailer tenants. In December 1997 the Parliamentary Secretary for State Development represented me at the Retail Tenancy Ministers Summit, convened in Canberra by the Commonwealth, where agreement was reached between the States and Territories to establish minimum standards for legislation in relation to retail shop leases. While this was an important step forward, New South Wales already met or surpassed the majority of those standards and it was viewed as only the first step towards consistent retail tenancy legislation across Australia.

At that meeting Ms Nori proposed that the States and Territories should work co-operatively with the industry stakeholders in their endeavours to establish harmonised retail tenancy legislation across Australia. This was in recognition of

the fact that a number of the industry players, including retail centre managers such as Westfield, Lend Lease and AMP, chain stores and a growing number of smaller retailers and franchised operations, operate in more than one State. In fact, there are currently more than 165 national chains operating across State borders, including approximately 35 franchises. These stores include such names as Katies, Portmans, Sussan, Rockmans, Copperart, Goldmart and Leonards Poultry. At the time there was little indication of support by other States and Territories for this approach, as they separately battled with the issues.

However, the Parliamentary Secretary continued, on behalf of the New South Wales Government and with the support of the Department of State and Regional Development, to facilitate discussions between the major industry stakeholders, aimed at establishing workable solutions and reducing disputation in the industry. While the consultations have primarily involved the Retail Traders' Association and the Shopping Centre Council, the views of other organisations, such as the Real Estate Institute of New South Wales and the Australian Property Institute have also been sought and taken into account in the drafting of the amendments to the Retail Leases Act. There are a number of significant initiatives in the bill. First, a recognition of the importance of full disclosure of relevant matters by both prospective lessors and lessees.

This will assist in their considerations prior to entering a lease for a retail shop. A substantial number of disputes arise because parties to a retail shop lease claim they were not aware of particular matters in relation to a lease or had relied upon particular information or representations which later proved not in fact to be complete or accurate. Clearer, more specific disclosure statements are designed to ensure that property owners and managers offering a lease, retail merchants taking up a lease and merchants taking over a lease on assignment, are much better informed about the terms and conditions of leases and the commercial obligations of the parties. Retail property owners and managers will continue to have to provide a disclosure statement to merchants setting out all available information on the lease and, in the case of shopping centres, information about the existing and proposed tenancy mix and any plans for redevelopment.

This will ensure that merchants taking up leases are fully aware of all the conditions that apply to the lease and the competitive environment of the shopping centre. There is a new requirement for retail merchants to make a disclosure statement to the lessor acknowledging that they have received the disclosure statement from the lessor. Merchants will also have to declare whether or not they have taken independent advice on the commercial terms of the lease and that they are able to meet all the conditions of the lease, including the ability to pay the rent specified and other outgoings. The intention of this disclosure statement is to ensure that retail merchants make sure they fully understand the terms of the lease before they sign it and that they have confidence in their business capability.

It has sometimes been the case that retail merchants—particularly those new to the highly competitive and professional business of retailing—have entered leasing arrangements without taking care to properly understand all of the obligations entailed in renting commercial property and ensuring that they have a realistic business plan to generate sufficient revenue to cover the rent and other business costs. There will also be a new disclosure requirement for lessees on assignment of a lease to another merchant. This often happens when a retailer sells a business to another retailer part way through a lease term. The assignor's disclosure statement will

require the merchant selling the business to declare to the incoming merchant all relevant information regarding the lease conditions and the trading performance of the shop.

There is now the opportunity for a small retailer selling his or her business to be released from the on-going responsibilities under the lease, provided the retailer gives a disclosure statement that does not contain false or misleading information and that is not incomplete. The intention of this disclosure statement is to ensure that merchants taking over a lease on assignment when they buy into a new business do so with their eyes open, fully aware of the obligations due under the commercial terms of the lease and any concessions and benefits which have been conferred by the retail property owner on the original lessee. The bill also recognises the impact of changing economic and commercial conditions and the need to void any provisions in a lease which limit or specify the amount by which a base rent in a lease can decrease in response to those changes.

The Act already prohibits ratchet clauses and this amendment further limits the ability of lessors to exploit lessees in this way. The amendments also establish a process for effectively dealing with the determination of "current market rent" where it applies to a retail shop, including the appointment of a "specialist retail valuer" where the parties fail to agree and the detailing of matters which should be considered in determination of current market rent. The bill places a limitation on a lessor's ability to pass on unrelated costs to a lessee, by prohibiting a lessor from requiring a lessee to pay amounts in respect of interest and other charges incurred by the lessor on amounts borrowed by the lessor or in respect of rent and other costs associated with unrelated land. A limitation is also placed on the amounts and use of sinking funds and a provision for the distribution of funds remaining in a sinking fund if the shopping centre or building if it is demolished or destroyed or ceases to operate.

Sinking funds are provided in relation to some shopping centres and buildings as a provision for repairs and maintenance to the premises. The bill extends to other retail shops the current provisions in the Act which apply to relocation of retail shops in retail shopping centres. This is aimed at providing all retail shops covered by the legislation, not just those in shopping centres, with provisions in relation to the amount of notice to be given and other entitlements if a retail shop is required to be relocated. In cases where the lessor requires the lessee to fit out a retail shop, the lessee is now entitled to reasonable compensation for the fit out, if the shop lease is terminated on the grounds of demolition, whether or not the demolition proceeds. The several amendments to the Act just outlined will strengthen the legislation and in some areas extend its coverage.

However, the greatest achievement of the bill is the draw down of the unconscionable conduct provisions of the Federal Trade Practices Act into the Retail Leases Act. This will provide affordable access, particularly for small business, to justice on matters of unconscionable conduct. The intention of this bill is to enable the protection afforded to both lessees and lessors against the misuse of power in their business relationships by section 51AC of the Federal Trade Practices Act to be available under New South Wales law. This is not so much about putting sanctions in place for those who act unconscionably in retail leasing transactions. It is primarily aimed at behaviour change. Establishing an acceptable framework within which leasing transactions can occur and changing the culture from one of confrontation and disputation to one of communication and commercially advantageous co-operation.

One of the most crucial issues, and the most difficult to deal with, raised during consultations with merchants and property owners was the situation at the end of a lease. On the one hand, the merchants felt vulnerable, having invested their time and money in their business and having no certainty that the lease would be renewed. They may have invested tens of thousands of dollars in fitting out the store. There may be no other suitable location in a town or city and their goodwill may be tied up with the location. On the other hand, the property owners wanted to be able to apply their property rights, and rightly so. If the property owner wanted to change the store mix of the centre to attract more customers; or if a merchant was performing poorly, which reflected on the centre and its other merchants; or if the property owner thought they could achieve a better return for the shop, which the current tenant was not prepared to meet, they wanted the ability to be able to respond.

The adoption of the unconscionable conduct provisions into the retail leases legislation provides a mechanism which will enable both merchants and landlords to pursue their commercial interests in respect to retail leasing, as long as they comply with the legislation and do not behave in an unconscionable manner in their dealings with one another. In proposing the incorporation into New South Wales law of the concept of unconscionable conduct, the Government has been mindful of the rights and responsibilities of property owners and managers in relation to the use of the property they own or manage on behalf of others. Nothing in this bill is intended to diminish the property rights of lessors. Under this section of the legislation failure to renew a lease or issue a new lease is not sufficient grounds for an unconscionable conduct claim and a person is not taken to have engaged in unconscionable conduct simply by instituting legal proceedings in relation to a retail lease or referring a leasing matter for arbitration.

If an unconscionable conduct claim is made by either a landlord or retail tenant and is not resolved through the alternative dispute resolution mechanisms established under the Act, the matter can be heard in the retail tenancy division of the Administrative Decisions Tribunal, established by this bill. The Government is confident that these improved rules governing the relationship between merchants and managers will go a long way towards reducing points of friction. However, where disputes do arise, the Government wants to ensure effective means are in place to settle disputes and see that justice is done. The bill extends the range of alternative dispute resolution mechanisms available to the registrar of retail tenancy disputes and, as indicated earlier, establishes a new retail leases division of the Administrative Decisions Tribunal to adjudicate on retail tenancy disputes.

The Tribunal will continue to provide a forum for dealing with retail tenancy claims and will also ensure that matters of commercial contract law dealt with under the unconscionable conduct provisions are heard in a jurisdiction with the appropriate degree of legal expertise. To this end, these amendments provide for unconscionable conduct matters to be heard in the retail leases division by a retired judge of the Supreme Court or the Federal Court, or a lawyer of equivalent experience and qualifications, who will be appointed by the Government after appropriate consultation with the retail and retail property industries. This judicial member will determine whether unconscionable conduct has been proven and will be assisted, in an advisory capacity only, by two other members of the division who will be appointed by the Government, after due consultation with industry, on the basis of their experience working for lessor and lessees respectively.

The amendments also provide for reference of unconscionable conduct matters to the Supreme Court. This can be done in the first instance on the application of a party to the proceedings to have the proceedings transferred to the Supreme Court. The Administrative Decisions Tribunal must transfer proceedings to the Supreme Court if it is satisfied that the claim can be more effectively and appropriately dealt with by the Supreme Court and the interests of justice do not require the matter to continue to be dealt with by the tribunal. In the second instance, there is a right of appeal against decisions of the tribunal. On matters dealing with unconscionable conduct, there will be an unfettered right of appeal to the Supreme Court on questions of law. There is also a right of appeal to the Supreme Court, by leave of the Court, for a review of the merits of a decision by the tribunal.

The appointment of a judicial member with Supreme Court or equivalent experience to determine unconscionable conduct matters combined with the right to have unconscionable conduct matters removed to the Supreme Court, either by reference or by appeal, will ensure that the important issues of legal judgement that are inherent in the concept of unconscionable conduct will be dealt with at an appropriate judicial level with proper regard for the rights of the parties to the case. It is recognised that as the unconscionable conduct provisions established through this bill are based on the Trade Practices Act their application is, to a certain extent, dependent on issues in relation to coverage within the ambit of the Commonwealth. On a further matter, the Retail Leases Act was scheduled for review during 1997-98 under the National Competition Policy [NCP] Agreement.

That review has commenced, with the terms of reference having been established. It is intended that the review will cover the revised legislation represented in this bill. I want to place on record the Government's appreciation of the co-operative and constructive approach undertaken by the industry associations in the development of this bill. In particular, I want to remark on the excellent working relationship that has developed between the Retailer Traders Association and the Shopping Centre Council whose representatives worked together on practical and sensible amendments to the leasing law in New South Wales that will go a long way towards resolving many of the differences that can arise in this commercial relationship.

The Government will work with the industry to tackle the next major task, that of developing programs aimed at raising the awareness of prospective lessors and lessees of the implications of the expanded provisions of the Retail Leases Act and improving their skills and behaviour in relation to retail leasing transactions. The Government hopes that the spirit of co-operation that has drawn these long negotiations to a successful conclusion will be reflected in more harmonious working relations between retail merchants and property owners in the central business district shopping precincts, suburban shopping centres and neighbourhood shopping strips throughout New South Wales. I commend the bill to the House.

The Hon. M. F. WILLIS [12.49 p.m.]: The Opposition does not oppose this bill, as Mr Chappell, leading for the Opposition in the other place stated. I should also say at this stage that the amendments which the Government proposes to move in Committee also have the support of the Opposition. This amending bill to the Retail Leases Act 1994 has been in the making for some time. I remember many years ago making a speech on the

subject of retail leases relevant to then burgeoning shopping centres. On that occasion I referred to my experience as a legal practitioner when dealing with such leases on behalf of retail tenant lessees. It is unfortunate that in the field of retail leases there has to be any Retail Leases Act at all, but it is a fact of life that both lessors and lessees look at the issues single-mindedly from a commercial advantage point of view.

Experience shows that there is not much goodwill, or give and take and, as a consequence, if there is the slightest possibility of commercial advantage or domination, either side will take advantage. Indeed, at times experience would show that the advantage is really quite unconscionable and, therefore, it became necessary by virtue of the 1994 Act for the Government to intervene to, in effect, lay down the ground rules by which parties would enter into this type of lease. By and large that Act has been successful, notwithstanding the fact that there was considerable angst from both sides of the equation when it was introduced and legislated in 1994. But experience has shown that it has made for a better and more level playing field, a more conscionable and fairer playing field when it comes to negotiation and the implementation of retail leases.

There is criticism from some quarters that this bill is designed primarily to deal with retail tenancies in our mega-style shopping centres. The problems to which I have just adverted, of course, show up the worst both from the lessors' and lessees' point of view in those kinds of highly commercialised hyped-up shopping centres. Indeed, that is where the origin of the legislation lay. I do not agree with the critics who say that this kind of legislation should not apply to non-shopping centre retail sites. My experience as a legal practitioner over many years was that the same factors, that is, of greed and the seeking of advantage, apply in negotiation and implementation of retail leases whether it is in a shopping centre or a corner grocery shop or milk bar not located in a shopping centre. It is just that in the latter it is more stark, more obvious and probably more frequent.

This bill is, in effect, a clean-up of problems that have emerged in the operation of the principal Act since 1994. It is the role of the Legislature and the Executive Government to amend legislation to make it better in the light of experience. From the Opposition's point of view, notwithstanding some concerns of the community about the provisions of this bill, it achieves that objective. There is opportunity to review it again during the next seven years for which the principal Act, as amended by

this bill, will continue to operate. The Opposition supports the bill.

[The Deputy-President (The Hon. Dr Marlene Goldsmith) left the chair at 12.55 p.m. The House resumed at 2.30 p.m.]

The Hon. B. H. VAUGHAN [2.30 p.m.]: In 1993, when I was shadow minister for small business, I introduced into this House the Retail Tenancies Review Bill, which was the progenitor of the Retail Leases Amendment Bill. The objects of my bill were:

- (a) to allow relief to be granted under the Contracts Review Act 1980 in relation to agreements involving retail tenancies, and for that purpose to invest the Commercial Tribunal of New South Wales with jurisdiction under that Act; and
- (b) to regulate certain matters in connection with those agreements in order to help preserve the goodwill of business and prevent unfair business practices; and
- (c) to confer certain rights on parties to those agreements.

I am happy today, even vindicated, to support the Retail Leases Amendment Bill, which was introduced by Ms Sandra Nori earlier this month in the other place. It was always going to take more than one or two attempts to introduce fair and just conditions for retail tenants, because only time would enable consideration of the practical consequences of this sort of legislation before a conscionable retail leasing structure could take root in New South Wales. The Retail Leases Amendment Bill clarifies the duties and obligations of parties to a leasing contract, particularly in relation to end-of-lease disputations; and I believe it will provide appropriate solutions to many of the problems that arise from the diverse interests of parties to a lease.

It has always been a truly Labor ideal to ensure that retailer tenants have good faith and a level playing field in their relationships with landlords such as Westfield, Lend Lease and AMP. Six or seven years ago it was the opinion of such landlords that retail lease legislation was unnecessary. In fact, I recall the arrival in my office in 1993 of such a landlord, a director of a large shopping centre operator in Australia then and now, and his requesting that I abandon my bill, which in his word was "junk". I received a submission dated 29 July 1993 from AMP Shopping Centres Pty Ltd that stated:

There is sufficient Legislation in place, without specific Retail Lease Legislation, such that no prudent or responsible landlord would misrepresent prospective tenants, or materially

disadvantaged sitting tenants, and if they did, there is ample case law to protect the tenant.

There has been a dramatic change in the level of the playing field over the past decade in favour of the tenant—

what balderdash—

who is now much better informed and in a stronger negotiating position.

A document entitled "Supplement to the Bulletin" by the Business Owners and Managers Association [BOMA] stated:

LEASING BOMBHELL!!

Proposed legislation being introduced by The Hon Bryan Vaughan MLC. An unprecedented threat to normal commercial leasing and business practice in NSW

With the ready assistance of the Hon. Gerry Peacocke, the honourable member for Dubbo, my bill led to the enactment in New South Wales of the coalition Government's Retail Leases Act Bill. Since 1994 and the legislative establishment of the Retail Tenancy Disputes Unit, 6,000 inquiries have been directed to that unit, and 900 informal mediations and 260 formal mediations have been successful. Those figures display the need for and the benefit of this legislation, as well as avenues for retail lease dispute resolution. Most importantly, I acknowledge that this bill is the result of consultation by the Government with key industry stakeholders including the Property Council of Australia, formerly BOMA, the Retail Traders Association of New South Wales and the Shopping Centre Council of Australia, all of whom met around a negotiating table. I can imagine with what reluctance they did that!

The bill is the result of those meetings and will comprehensively deal with disputations between parties to a lease and even former parties to a former lease. I commend the honourable member for Port Jackson, Sandra Nori, for her outstanding achievement in conducting those negotiations, particularly in light of the marked change in attitude on the part of the shopping centre owners from times gone by when such legislation was deemed to be "junk" and "an unprecedented threat to normal commercial leasing and business practice in New South Wales". I hit a stone wall in my attempt to negotiate similar meetings in 1991.

I thank my friend and colleague Ms Sandra Nori for her kind words in the other place on 10 November about my contribution to this legislation. I thank also the honourable member for Wagga Wagga, Mr Joe Schipp, for his acknowledgment of my involvement in this area, and the

acknowledgement of another friend and colleague, the member for The Entrance, Mr Grant McBride.

In 1997 the retail tenancy Ministers summit revealed that New South Wales already exceeded other States in minimum standards of legislation for retail tenancies. The bill should, therefore, be regarded as a benchmark by which the territories and States of Australia can assess best retail practice. There must be consolidation of State legislation: harmonisation of State laws is needed to ensure that chain store operators, franchisees and other retailers are subject to the same duties and obligations from one end of the country to the other.

To a certain extent this bill provides a harmonisation of Federal and State law. Parties to a lease will have access, where necessary, to the Federal Trade Practices Act. The unconscionability provisions are to be found in new section 72AA. Parties may have disputes determined by the retail leases division of the Administrative Appeals Tribunal, which was established under this Act—I think the Administrative Appeals Tribunal is also called the disputes tribunal—with an alternative avenue of hearing in the Supreme Court.

The bill ensures what we always hope is the case—that parties, prior to entering into a lease, fully understand its terms and conditions; it provides statements of disclosure under new sections 11 and 11A. This provision will ultimately reduce disputes based on misunderstandings that arise outside a lease, including, for example, confusion resulting from verbal statements made by the other party.

The bill entrenches the theme of disclosure which was at the heart of the principal Act. Such disclosure is crucial, particularly in relation to options for renewal and provisions for alternative accommodation during renovations. Most honourable members would be aware of the Warringah Mall-AMP disputation. Dr Macdonald, the honourable member for Manly in the other place, detailed this problem, which is not uncommon.

I fully support the provision in this bill for compensation to businesses that are disrupted during their lease by plans for redevelopment, whether or not the proposed redevelopment proceeds. Furthermore, this bill makes it a requirement that the lessor disclose information regarding the tenancy mix. Last year I received representations from a distressed cafe owner who was originally one of three cafe tenants in a medium-size shopping centre. He and the other two cafe tenants subsequently found themselves surrounded by a development that included a large food court. There was no warning

or consultation by the landlord that this was to happen—and the three cafes failed this year.

Such situations will be subject to the provisions of this bill, for example, new sections 11 and 11A, disclosure of tenant mix and proposed tenant mix; new section 62B, unconscionable conduct in retail shop transactions; and new section 19, reviews by a specialist valuer. Unconscionable conduct does not simply result from an inequitable bargaining position between small business tenants and large complex owners, but can be conducted by either party to a retail lease. This bill recognises that and ensures that the perpetrator of the conduct will act to his or her own detriment.

It is significant that this bill recognises that legal protection should not end with shopping centre leases, but should only begin there. This bill gives equal protection to retail leases in shopping precincts, for example, neighbourhood shopping strips and small suburban centres; in other words, to shopping malls—those shops often left struggling when large shopping complexes are introduced in an area.

New section 31 relates to the assessment of current market rent by a specialist valuer and prohibits the inclusion of any unrelated costs of the landlord into a rental figure under new sections 24A and 24B. These sections provide that no taxes on the turnover base for rentals can be included in rental calculations. Mr Geoff Mann, partner of revenue law in the firm Freehill Hollingdale and Page, expressed concerns about the retail tenancy legislation in what looks to be a future economic environment containing a goods and services tax [GST]. Mr Mann predicts a good deal of friction and political lobbying by retailers and shopping centre landlords, at least until all existing leases have expired and have been renegotiated. As quoted in the *Australian* of 29 October, he said:

The straightforward solution is for the Commonwealth to require that the GST can be included in calculations of turnover for shopping centre lease determinations, irrespective of what the legislation in some other States may say.

It seems as though the retail leases legislation will have significant challenges to meet in the years ahead. I will no longer be a member of this House when those challenges arise. I trust that honourable members will act in a way which will promote the objectives of the principal Act, and vote in a way which makes it more effective and workable for all concerned, in particular, for tenants.

I hold a solicitor's practising certificate, and I harken back to the words spoken earlier by my

colleague the Hon. M. F. Willis. I scarcely know a colleague in the profession who, when acting for a tenant in a major shopping centre, has not experienced the aggression and intransigence of major shopping centre owners, at least until recently, when dealing with their tenants.

I would be fascinated if some statistician were able to research the number of bankruptcies caused by major shopping centre owners, Westfield in particular. I guarantee that those remarks would not apply to lead tenants such as David Jones, Grace Brothers and the rest. It has only been the small tenants, the cafe owners, the takeaway shop owners, the pharmacists, people who in many instances—and about whom I have knowledge—have invested their life savings, their redundancy funds or have mortgaged their homes or their parents' homes, and that is a common occurrence, who have suffered from unconscionable terms and conditions in retail leases.

This bill is yet another step towards the achievement of my long-term goal to provide retail lease parties with a structure of good faith in which they are able to achieve security and prosperity in serving the needs of consumers in this State. When I am long forgotten it will be remembered that the Australian Labor Party was responsible for achieving those things.

The Hon. E. M. OBEID [2.48 p.m.]: New South Wales has been fortunate to have been at the forefront of reform on the matter of retail tenancies in the past decade. I pay special tribute to my colleague the Hon. B. H. Vaughan, who, along with Gerry Peacocke and Joe Schipp in the other place, was the founding father of the reform of retail tenancies. I am privileged to have had Joe Schipp as a member of the Joint Standing Committee upon Small Business. He has been a great asset in assisting the committee in determining this issue.

When the meeting of State and Territory Ministers and parliamentary secretaries considered the nationwide response to the Federal report "New Deal : Fair Deal" in December 1997, it was widely accepted that the legislative framework on retail tenancy law in New South Wales and Queensland was the most advanced. That meeting of Ministers was convened to establish a consistent response throughout Australia to the criticism so rightly brought to light by the report of the House of Representatives Standing Committee on Industry, Science and Technology, entitled "Finding a Balance."

The Federal report highlighted the severe imbalance in negotiating positions between landlords

and retail tenants, especially in major shopping centres, where tenants have no alternative location to consider if the terms offered by the landlord appear unreasonable. The report quoted several case studies that illustrated the economic and social impact of disputes between landlords and their tenants. These invariably resulted in extreme hardship for the weaker party.

In New South Wales the Joint Standing Committee upon Small Business, of which I am chairman, has been investigating this issue. I can confirm from submissions received by the committee and meetings with tenants that the problems expressed in the published reports are not exaggerated. There is a continuing need for reform, and this amending bill aims to continue the process of establishing a more equitable framework for business behaviour between landlords and lessees.

Three items covered by this amending legislation should be highlighted and applauded: first, the prohibition on lessors and lessees engaging in unconscionable conduct; second, the provision for compensation for fitout costs when a lease is terminated on the ground of proposed demolition; and, third, the conferring of jurisdiction on the Administrative Decisions Tribunal to deal more comprehensively with disputes and claims under the Act and this amending bill. These provisions will not only ensure that the legislation in New South Wales remains the most effective in the Commonwealth but also provide the basis for future refinement and improvement if the industry continues to experience the level of disputation and inequity that gave rise to the reforms.

The work already undertaken by the committee has identified several areas of further improvement. For example, the latest Victorian legislation prohibits lessors from passing the legal costs of lease preparation onto lessees. This commercial practice clearly demonstrates the historical power imbalance between two parties. The elimination of such a practice may see property owners become more interested in simplified plain English lease documentation.

The provision of compensation for fitout costs in the case of demolition is welcomed, but there are many other circumstances in which landlords benefit economically from the investment by tenants and retain those benefits when tenants relocate within a shopping centre or reach the end of the lease period. One of the most valuable support mechanisms for small business operators are the information and ideas that come from networking. This legislation is

silent on the right of tenants to form tenant associations and the right of such association members to be free from subsequent discrimination.

The legislation in its present form still leaves considerable power in the hands of landlords and only time will confirm if they choose to abuse these conditions. In the case of court-based dispute resolutions, landlords frequently have greater economic resources and may well pursue legal remedies in the hope that their tenants will be unable to sustain and fund the litigation. At the end of lease periods when specialty retailers have considerable investment in fittings and goodwill in a specific location there are occasions when lease renewal negotiations are based on new rental escalations which would be considered outrageous.

These circumstances require continued monitoring, and if the industry behaviour does not deliver an equitable outcome, future amendments may need to be considered. The amendments included in this bill are the result of extensive industry consultation with the representatives of peak bodies representing building owners and retailers. Industry and peak body representatives have both indicated their support for this new framework. In view of the goodwill and co-operation developed in this process this bill deserves to be enacted. It is anticipated that this proposed legislation will provide the basis for strong mutual business development in the retail sector. I commend the bill to the House.

The Hon. R. S. L. JONES [2.54 p.m.]: The Retail Traders Association is keen to have this bill passed. The bill results from extensive consultation and negotiation between the Retail Traders Association and the Shopping Centre Council of Australia, and addresses a number of issues that the association sought to have introduced in the original Act. The association believes that the current dispute resolution procedures are deficient as the tribunal lacks the power to hear many disputes. The bill will provide small retailers with quick and cost-effective resolution to disputes arising from retail shop leases.

However, the Real Estate Institute and the Law Society are not at all happy with this bill, and they have had very little consultation on the bill. I have received several communications from the Law Society and I shall put some of its concerns on the record. In a letter dated 9 November the Law Society referred to a lack of consultation by the Government, and stated that it had not had a chance to consider the bill through one of its specialised committees. At that time the Law Society stated—I have since received several letters from the Law

Society stating that it still wants this—that it wanted the bill to lie on the table until the next sitting of Parliament for proper consideration of it.

The two concerns raised by the Law Society in its letter are as follows. First, the bill is important because of the matters it does not address. About four years ago when the Act was commenced the Law Society made a submission detailing matters it then identified that merited clarification and remedy. Few, if any, of those matters have been addressed in either the Retail Leases Amendment Act 1997 or in this bill.

Second, the bill contains several matters of serious concern, including the proposed exclusion of leases assigned after the commencement of the Act that were not subject to the Act, having been entered into before commencement, the disclosure of statement and penalties, the rent decrease provision, the assignment provision, the unconscionable conduct provisions, and some aspects of the provisions relating to the jurisdiction of the Administrative Decisions Tribunal to deal with retail lease disputes with a monetary limit of \$300,000.

In a recent letter the Law Society stated that the amendments proposed by the Government are claimed to alleviate the Law Society's position. The Law Society states that that is not the case. It is of the view that the bill should still remain on the table for six months for proper consideration. In a letter of 17 November to me and to other crossbench members the Law Society details its difficulties with the bill. The briefing notes of the Law Society stated:

Difficulties fall into two categories:

1. problems with Retail Leases Act 1994 as enacted, and continuing:
 - conflict between section 8 of the Act and section 41 of the Real Property Act;
 - conflict between section 16 of the Act and section 53 of the Real Property Act;
 - jurisdictional difficulties with part 8 of Act—is the Court's jurisdiction ousted?
 - difficulties of construction—to the extent that the Retail Leases Act is inconsistent with prior statutes, does it override the statutes dealing with title to leasehold interest, jurisdiction of courts to hear lease disputes, particularly those involving Contracts Review Act and Fair Trading Act claims . . . and Trade Practices claims . . .
 - a number of drafting difficulties that will probably require to be clarified by expensive litigation and eventual judicial interpretation.

2. some problems with the present Amendment Bill include:

- the possibility that an assignment of lease may be utilised as a ploy to subvert operation of the Act altogether;
- some problems with disclosure statements and penalties (apart from the unrealistic practical considerations);
- drafting problems with the rent decrease provision;
- the proposed assignment provisions and their relationship with the existing Act;
- expansion of the jurisdiction and transfer of functions to the Administrative Decisions Tribunal and the extension of jurisdiction to enable the Tribunal to hear unconscionable conduct claims;
- the discretionary power of the ADT to refuse to consider matters relevant to unconscionable conduct claims that a court would be obliged to consider if they were pleaded as unjust contract claims under the Contracts Review Act 1980.

Those concerns of the Law Society have much validity. The Real Estate Institute has written to honourable members, including me, expressing strong concern that the bill will be the sledgehammer that is used to crack a very small nut. The institute stated that the proposed legislation will apply to large areas that should not be covered. In a letter dated 17 November the institute stated:

... much of the existing regulation is only appropriate for large shopping centres, and should be restricted to that market.

The letter further stated:

Regrettably, there has been no consultation other than a matter of hours to respond to the Bill, which largely ignores the Institute's concerns.

I am surprised that the Government would ignore the concerns of the Real Estate Institute of New South Wales. The letter continued:

Australian Bureau of Statistics data suggests there are almost 60,000 shop front retailing establishments in New South Wales. It would seem that approximately 50,000 of these are the subject of retail tenancies. It further appears that regional shopping centres, which most commentators accept as being the sector of the market in greatest need of reform, accounts for less than 10% of the total market. Government data shows that only 324 (0.4% of non-shopping centre leases) have required formal mediation in the almost four years' operation of this legislation.

The Institute does not believe that "shopping centre" regulation is appropriate for the remaining 90% of the retail leasing market ...

The Real Estate Institute urged the Legislative Council to refer the proposed legislation to an appropriate parliamentary committee to ensure

proper consultation and analysis. The bill is being rushed through before the major stakeholders, who have raised a number of concerns, have not been properly consulted. The bill is designed to cover retail leases in large shopping centres but also covers many other retail leases, 90 per cent of which should not come under this proposed legislation. Therefore, I move:

That the question be amended by omitting the word "now" and adding at the end the words "on the first sitting day in 1999."

The Hon. Dr A. CHESTERFIELD-EVANS [3.01 p.m.]: The Australian Democrats support the Retail Leases Amendment Bill although we have a number of concerns similar to those expressed by my colleague the Hon. R. S. L. Jones. The concerns of the Law Society of New South Wales were stated in a letter addressed to honourable members, and as the Hon. R. S. L. Jones has referred to them I shall not repeat them. Suffice it to say that it is concerned that there is conflict between the clauses of this bill and the provisions of the Real Property Act and extensive litigation may be required to determine which are dominant. Obviously, that is an undesirable situation.

The bill is designed to overcome inequity in the bargaining positions of shopping centre owners and tenants. Although that situation will continue, this important bill goes some way to redressing the imbalance. The Australian Democrats received a letter expressing unequivocal support for the bill from the Retail Traders Association of New South Wales [RTA], which was very much involved in the drafting of the bill. The Real Estate Institute of New South Wales, however, is not as content with the bill; it tends to have taken a position similar to that taken by the Law Society. It points out that shopping centre leases represent only about 15 per cent of all retail leases. Consequently, the bill may complicate the leases of retailers in shopping strips or other types of lease situations.

The bill is a curate's egg: good in parts. However, overall the bill is worth supporting. The Australian Democrats have sought more equity in landlord and tenant situations, particularly for retail shop leases and retail leases in shopping centres—which would probably be the major overhead of small business—and in situations in which small business is in opposition to or vulnerable to large business. My colleague Senator Andrew Murray, after researching this topic, wrote a booklet entitled *Leases, Landlords and Tenants*—he had intended to write more, but winning a seat in Parliament has ended his writing career for the time being—which I seek leave to table for the information of interested members.

Leave granted.

The amendments in the bill seem sensible. We recognise that tenants will always be at a disadvantage when dealing with large shopping centres. The Australian Democrats support the bill.

Reverend the Hon. F. J. NILE [3.04 p.m.]: The Christian Democratic Party supports the Retail Leases Amendment Bill, which will amend and improve the Retail Leases Act 1994 to provide a legislative environment that will lead to a change in behaviour and, in time, culture with regard to dealings between landlords and tenants in retail shop leases while not impinging on the property rights of the landlord. This will be achieved through the proposed legislation by addressing issues that continue to lead to disputation between retail landlords and tenants and by discouraging the application of unconscionable conduct in retail leasing transactions by establishing provisions that prohibit the application of such conduct.

The Hon. B. H. Vaughan and I were very active in the drafting of the Retail Leases Act. Although I was pleased with the Act as it was enacted, the amendments provided by this bill will improve the legislation. The Christian Democratic Party does not support the contention that the bill should be referred to a committee; that is just another way of seeking to bury or pigeonhole the bill. It should proceed through the House today. The amendments have been developed after extensive discussion with the major industry stakeholders: the Retail Traders Association of New South Wales and the Shopping Centre Council of Australia. I have received correspondence from them indicating their support.

Other stakeholders to have been consulted include the Property Institute of Australia and the Real Estate Institute of New South Wales and the Law Society of New South Wales. In a letter dated 10 November the RTA advised me that it was pleased to support the bill. It was concerned at the negative attitude of the Law Society and that the bill might be referred to a committee or not passed. The RTA stated:

We would see any delay in the passage of this legislation as an injustice to small retailers. The Association is happy with the Bill as it is and for your information I am attaching a copy of an article that appears in our monthly magazine which has been sent to our members . . .

In an article entitled "Retail Tenancy Laws Overhauled", which appeared in the November

edition of *Retail Trader*, the RTA gave support to the bill. In a letter the Real Estate Institute also indicated broad support for the bill. As to some of its concerns, it stated:

The Institute accepts there is a role for Government in encouraging appropriate standards of behaviour in retail leasing transactions. As with any regulation, however, the challenge is finding its right level of market intervention. In this regard the Institute believes that much of the existing regulation is only appropriate for large shopping centres, and should be restricted to that market.

I have had detailed discussions with a number of retailers in large shopping centres, among them pharmacists, about the stresses they have experienced over the years because of problems with leasing arrangements.

Australian Bureau of Statistics data suggests that of the almost 60,000 shopfront retail shops in New South Wales approximately 50,000 are the subject of retail tenancies. It appears further that regional shopping centres, which most commentators accept as being the market sector in greatest need of reform, account for less than 10 per cent of the total market. I do not believe traditional suburban shopping centres will have problems. Most problems occur in the large shopping centres such as Roselands, Miranda and Wahroonga. I do not suggest those centres in particular have problems, but I suggest that this proposed legislation will have a positive impact on them. In a letter dated 11 November the Property Council of Australia strongly supported the bill, not the views of the Law Society. It stated:

These amendments were developed in consultations between the Government, the Retail Traders' Association and the Shopping Centre Council. The Shopping Centre Council represents major retail owners and operates within the framework of the Property Council of Australia.

These amendments are the result of nearly 18 months consultation and are fully supported by ourselves and the Retail Traders Association.

For those reasons we support the bill. We acknowledge the concerns of the Law Society; however, those who will be directly affected by the bill support it. For that reason, and because the Parliament will soon be prorogued in the lead-up to the election, we do not support the amendment to have the bill referred to a general purpose standing committee. In any event, I doubt that any hearing before the general purpose committee would have any effect apart from stopping the passage of the bill through the House.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for

Fair Trading) [3.11 p.m.], in reply: I thank honourable members for their contributions. It was suggested that the Law Society and the Real Estate Institute claimed that they were not consulted about the development of the amendments to the Retail Leases Act. I find that surprising as both organisations are represented on the Retail Tenancy Advisory Committee of the Department of State and Regional Development along with representatives of the Retail Traders Association, the Property Council of Australia, the Property Institute and the Institute of Chartered Accountants.

Reverend the Hon. F. J. Nile: Correspondence we have indicates they were very happy that they shared in the negotiations.

The Hon. J. W. SHAW: Reverend the Hon. F. J. Nile indicates that they expressed happiness at being involved in the process. I understand that the Advisory Committee not only was kept informed of the progress of discussions between the Retail Traders Association and the Property Council but was advised as early as November 1997 that consideration was being given to the draw down, to use the somewhat uncongenial jargon, of the unconscionable conduct provisions of the Federal Trade Practices Act into New South Wales retail tenancy legislation.

On 10 July the Registrar of Retail Tenancy Disputes provided the advisory committee with a comprehensive briefing on amendments being considered and indicated that it was hoped that Parliament would consider the amendments during its final 1998 sitting. It was not until the meeting of 14 August this year that the Law Society representative, Mr Benjamin, indicated that his society's subcommittee might consider the proposals and submit amendments.

In response to that revelation, Ms Lexia Wilson and Mr Jeff Mueller, who respectively represent the Property Council and the Retail Traders Association on the advisory committee, and who by the way are members of the Law Society, offered to personally address or brief the Law Society subcommittee to assist its considerations. I understand that that offer was not taken up. Not only was the Real Estate Institute represented on the Retail Tenancy Advisory Committee, but also its president and deputy president met with Ms Sandra Nori, Parliamentary Secretary for State Development, and the Registrar of Retail Tenancy Disputes on 21 August this year. At that meeting they received an updated briefing on proposed amendments and were given the opportunity to express their views.

I am informed that the Real Estate Institute indicated three further amendments, two of which have been incorporated in the bill. I am surprised by the comment of Mr John Hill of the Real Estate Institute, who was reported in an article in the *Australian Financial Review* of 12 November as saying that statutory reform was needed in relation to some aspects of the retail tenancy market but that it should be restricted to shopping centres. My advisers indicate that this would not be the view of the 170 main street shopkeepers who registered disputes through the Retail Tenancy Disputes Unit over the past four years—that is 45 per cent of all disputes. It might surprise Mr Hill and others that approximately 65 per cent of retail tenancy matters determined in the Commercial Tribunal relate to disputes about main street shops. The development of the amendments contained in this bill did not take place overnight. The long and arduous process extended for more than 18 months. While the most significant contributors to and driving force behind this process have been the Retail Traders Association and the Property Council of Australia, the rest of the industry has been informed and given every opportunity to contribute. I commend the bill to the House.

Amendment negatived.

Motion agreed to.

Bill read a second time.

In Committee

Schedules 1 and 2

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [3.18 p.m.], by leave: I move Government amendments Nos 1 to 5 in globo:

No. 1 Page 31, schedule 1[56]. Insert after line 29:

- (6) If proceedings relate partly to a retail tenancy claim and partly to an unconscionable conduct claim, subsections (2)–(5) apply to those proceedings.

No. 2 Page 42, schedule 2.1[2], line 17. Insert "or otherwise by or under this Act" after "subclause (3)".

No. 3 Page 43, schedule 2.1[2], line 19. Insert "or, if the Divisional Head is not available, a judicial member," after "Head,".

No. 4 Page 43, schedule 2.1[2]. Insert after line 23:

- (2) If proceedings relate partly to an unconscionable conduct claim and partly to a retail tenancy claim, for the purposes of

hearing and determining those claims the Tribunal is to be constituted in accordance with clause 4.

No. 5 Page 43, schedule 2.1[2], line 27. Omit "by the".
Insert instead "by a".

These amendments address two issues raised by the President of the Administrative Decisions Tribunal, His Honour Judge Kevin O'Connor. The first relates to the administration of the retail tenancy division of the tribunal, which will be created by the bill. The second relates to how matters before the division that comprise an unconscionable conduct claim together with a retail tenancy claim are to be handled by the tribunal.

In relation to amendment No. 1, when proceedings involve both a retail tenancy claim and an unconscionable conduct claim the appeal rights available under an unconscionable conduct claim are to apply. Amendment No. 2 will enable the President of the Administrative Decisions Tribunal [ADT] to assign other members of the retail lease division by virtue of the operation of section 21(3) of the Administrative Decisions Tribunal Act. I understand that the proposal of the president of the tribunal is to appoint a judicial member who may be a member of one or more divisions and to enable more flexibility in the day-to-day administration of the tribunal.

However, the Parliamentary Counsel's Office has advised that the president will still be limited in the choice of persons who may constitute the tribunal for the purpose of a retail tenancy claim or an unconscionable conduct claim—this is because of the operation of section 22(4) of the Administrative Decisions Act and the amendments proposed by schedule 2.1[2], which together will limit the kinds of members who may deal with such matters.

Amendment No. 3 will provide the President of the Administrative Decisions Tribunal with the flexibility to appoint a judicial member to preside over hearings in relation to retail tenancy claims that do not have an unconscionable conduct component. Under the current wording of the bill, if for some reason the divisional head is unavailable no-one else can preside over such cases. Government amendment No. 4 provides that if a claim comprises both a retail tenancy claim and an unconscionable conduct claim, both components would be dealt with under the tribunal structure established to deal with unconscionable conduct matters.

The aim is to remove the possibility in double-headed claims of having to run two cases through the tribunal to consider both sets of claims. Finally,

amendment No. 5 recognises the fact that there may be more than one division member with the appropriate qualifications. I commend the amendments to the Committee.

The Hon. M. F. WILLIS [3.22 p.m.]: The Opposition supports the amendments, which are the result of quite extensive consultation. The Opposition is aware of the comments of the Law Society of New South Wales and of the Real Estate Institute of New South Wales, but is sufficiently satisfied that the amendments and the bill should proceed. Undoubtedly, over the next seven years, which will be the life of this proposed legislation, other matters will come to light that will require attention by amending legislation, but so be it. The Opposition supports the amendments.

Amendments agreed to.

Schedules 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.

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) BILL

CHILDREN AND YOUNG PERSONS LEGISLATION (REPEAL AND AMENDMENT) BILL

Second Reading

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [3.25 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

I am proud to propose these bills which contain vital and fundamental reforms to child protection within this State. These bills continue to demonstrate the commitment of this Government to the safety and wellbeing of children of this State. These bills have arisen from four years of intensive, and extensive, consultation. Individual members of our society and a myriad of groups have all contributed to, or been consulted in, the preparation of the report which laid the foundation for these bills. That report was released in March of this year and at the time I expressed my thanks to Associate Professor

Parkinson and the members of the review team who worked so hard in producing it.

As Professor Parkinson recommended, further work is still taking place on matters surrounding child employment. That is an area which is not just limited to questions of child abuse but raises significant issues of microeconomic reform, industrial practice, educational and training concerns and occupational health and safety. All of these areas will now be considered together and a cross-government approach made to improve conditions affecting our children. Likewise, recommendations in the review concerning licensed children's services, which includes preschools and other child care services, are receiving further consideration by the new Office of Child Care, recently established by this Government. This office will work with all providers of children's services to ensure a uniformly high standard of care for our children. These standards will only be set after consultation with the sectors concerned.

I am proud to propose bills that make the most vital and fundamental reforms of the child protection system within this State. These bills make the needs of children, young people and their families the central focus of the legislation. These bills are about them and they are for them. They also emphasise a whole-of-government approach to child protection. Although my department will continue to have major responsibility for ensuring the safety, welfare and wellbeing of children, young people and their families, it will need to do so in co-operation not only with other government departments but also with community agencies. This is an important feature of the bills. Our children, our young people and our families need the support of us all. The principal bill contains statements of objects and principles to apply to the entire bill. The lack of such statements in the Children (Care and Protection) Act 1987 was consistently raised in consultations as a major concern. A statement of objects and principles will guide actions taken, and services provided, under the Act. The objects and principles will also assist the understanding of the legislation by the diverse range of people who work with, or are directly affected by it. These include, but are not limited to, the children and young people and their families who may be supported or assisted under the legislation, district officers and other government workers, the broad range of community organisations providing support and assistance under the provisions of the legislation, the Administrative Decisions Tribunal and persons working in the Children's Court. They provide vision and purpose for both workers and clients in the child protection arena.

Part 2 of chapter 2 contains some very important provisions relating to Aboriginal and Torres Strait Islander children, young people and their families. Clauses 11 and 12 articulate some fundamental principles relating to Aboriginal and Torres Strait participation in decision making and self-determination. The application of the Aboriginal and Torres Strait child placement principle has been extended and now includes voluntary placements of Aboriginal and Torres Strait Islander children, and placement pending final orders, although there is an exception for emergency placements made to protect a child or young person from the serious risk of immediate harm, and other placements required for less than two weeks. Principles are also established for the placement of children and young people with parents from different Aboriginal and Torres Strait Islander communities, and for those with one Aboriginal or Torres Strait Islander parent and one non-Aboriginal or Torres Strait Islander parent.

Clause 32 of the bill requires prompt action by the department to determine if a child or young person who is the subject of a

report is Aboriginal or Torres Strait Islander. Other provisions relate to self-identification and the wishes of an Aboriginal or Torres Strait Islander child or young person, and the keeping of records. Clause 21 of the bill states in very simple form that either a parent or child may seek the assistance of the department and the department must do what it can to support and assist the family to obtain the services which will enable the child or young person to remain in, or return to, family care. This is a small but simple reform. So often the first time that the department becomes aware of a family in crisis is when there is a report, and if they ask for help, it has often in the past been treated as if it were a notification of abuse and neglect.

We want to encourage parents to come forward and seek assistance in the knowledge that they will not be treated as abusive parents but will be treated with respect as parents who need external support to assist them in their difficult parenting tasks. This will not be taken as a sign of failure, but instead is a realistic assessment of where help is needed to assist them and strengthen their ability to care for their family. The aim of these reforms is to allow my department to work co-operatively with parents and reach agreements with them on plans for the care of the children. Even where it is necessary for a child to be taken into out-of-home care, the bill makes provision for parents to continue to have some parental responsibility for the wellbeing of their children. The child is of paramount importance and these provisions do not focus on any alleged criminal activity but solely on the needs of the child or young person.

The majority of the problems coming to the attention of the department will still no doubt occur through reporting by members of the community. The bill sets out five grounds on which a child may be deemed to be at risk of harm and requires all professionals who are working with children in specified services to report reasonable suspicions that the child is at risk of harm. The bill only requires people to report where there is presently a risk of harm to the child. There have been concerns in the past that counsellors and others involved with children and families were legally obliged to report past abuse even though there was no present risk to the child. This bill makes it clear that this is not the case and the child must presently be at risk of harm as the result of abuse or other circumstances. Intervention by my department will not be required in these cases unless there is a risk of harm.

The bill makes clear what my department's responsibility will be when it receives a report or when it assesses that a child is at risk of harm. It must make whatever investigation and assessment the director-general considers necessary. The bill also requires the department to give priority to those cases where the child is at greatest risk of harm. Where the child's safety is adequately assured by other means or the department's assessment is that there is no risk of harm, the department need take no further action beyond noting the details of the matter. Reporting to the department does not mean necessarily that the department needs to intervene. However, reporting will be a means by which the department is made aware that concerns exist. Just as there are changes to the ways in which children, young people and their families can receive assistance and support, so there are major changes proposed to the work of the Children's Court.

In making these changes the Government is committed to resolving the many concerns identified by the review report about the conduct and management of care applications and proceedings in the Children's Court. The proposed improvements will have a significant impact on the experiences of children and their families when required to

attend the Children's Court. They will spend less time waiting around the court, list days will be abolished, there will less often be a need for a hearing, there will be less delay until a hearing can take place and the hearings themselves will be more clearly focused on outstanding issues. The reforms should also promote more meaningful involvement of children, young people and their families in a way which will be more beneficial for the children.

It is fundamental to these reforms that an application to the Children's Court for a care order is a step of last resort and my department will have to justify why that step has been taken rather than another less severe intervention and must show what options they have attempted or were considered not appropriate to the circumstances. The bill states some fundamental principles for the way in which all those working in the child protection system are expected to go about their tasks. One of these principles stresses the importance of child participation in decision making. The bill recognises the rights of children and young people to participate in decision making and imposes some specific obligations on the department to give practical effect to this principle.

I turn now to some specific sections of the bill. Chapter 3 introduces the term "reports" to refer to information given to the department that a child or young person is at risk of harm. There will be no requirement in law to investigate all reports as may exist under the current Act. The information received may be sufficient for the department to conduct an assessment and if the report does not disclose any grounds for believing that the child is at risk of harm the department may choose to take no further action beyond recording that the report was made. Alternatively, clause 35 of the bill provides that even where the director-general considers the child or young person to be at risk of harm, she may decide to take no further action if the director-general considers that proper arrangements are being made for the child or young person. These decisions will therefore be openly made and will be transparent.

The basis for persons making reports generally and for mandated reporters is now the same, that is, they must have reasonable grounds to suspect that the child or young person is at risk of harm. There is a provision for reporting before the birth of a child that the child may be at risk of harm after his or her birth. This has been introduced in order to provide assistance and support for the mother. It does not give rise to any right for the department to intervene in the life of the pregnant woman or to interfere with her rights in any way, nor does it put any onus on the woman to accept the assistance and support offered by the department. This provision is designed to minimise the likelihood that the child, when born, will need to be placed in out-of-home care. It is a preventative measure to prevent abuse and to try to keep children with their parents.

Consistent with the recommendations of the police royal commission, this bill significantly expands the range of professionals required to report circumstances where a child is at risk of harm. These will now include all those who in the course of their professional work or other paid employment deliver health care, welfare, education, children's services, residential or law enforcement services to children. The requirement also includes managers and supervisors in these areas. The proposed reforms reflected in clause 27 will have the benefit of providing much greater clarity to the law on mandatory reporting. This reform will allow for a consistent approach and also make a clear statement to the community about the high expectations placed on those who are in the privileged position of working with children and young people.

The effect of this reform is to require mandatory reporters to notify all circumstances in which a child or young person is at risk of harm. From a child or young person's perspective, there is no logical reason to differentiate between the forms of harm for reporting purposes. Each has the potential to cause significant physical and/or emotional harm to the child or young person and protective intervention should be readily available in all circumstances. The Government has not acted on the review recommendation that mandatory reporting should be extended to include young people aged 16 to 18 years. There were significant differences of opinion in submissions and the consultations about whether mandatory reporting should apply to all those under 18 years and we are of the view that mandatory reporting of 16 to 18-year-olds is not appropriate. However, the services of the department will, of course, be available to any young person who wishes to access appropriate support and assistance.

Honourable members would be well aware of the tragic consequences which can flow when members of the community fail to report to the department circumstances when children, particularly very young children, are at risk of serious harm. The unfortunate reality is that for many people, concern that they may be identified as the reporter is a strong impediment to their reporting such children. Clause 29 of this bill significantly extends the protections offered to people making reports. People who notify someone who has the responsibility to make a report will receive protection as if they had made the report themselves. Thus, for example, a teacher who reports his or her concerns to the principal who then makes a report to the department, will enjoy the same protections under the law as the principal who made the report. A court or other body will be restricted in disclosing the identity of the reporter to those circumstances where it is satisfied that the evidence is of critical importance to the proceedings. Where the court does disclose details of the reporter it must state the reasons why and take steps to let the reporter know.

A report will be an exempt document under the Freedom of Information Act. However, the various protections offered will only apply where a report has been made in good faith. A person who knowingly makes a false report with the intent of causing injury or harm to the reputation of another person will not be protected from legal liability for defamation or other legal actions. The proposals in chapter 4 of the bill provide a framework for the department to provide support services, to work co-operatively with parents in developing care plans to meet the needs of the child or young person, and, if necessary, to seek orders from the court. It establishes principles of intervention that specify the department's responsibilities to take action and when it need not take any action. These principles give paramount consideration to ensuring the immediate safety, welfare and wellbeing of the child or young person in his or her usual residential setting and provide that removal may only occur where it is necessary to protect the child or young person from the risk of serious harm. While the provisions provide greater flexibility to the director-general they are balanced by provisions for greater accountability to the Children's Court.

The director-general, in considering what action should be taken, must have regard to whether an application for an apprehended violence order to remove an alleged offender from the home would be likely to secure the safety of the child or young person. The director-general may also have regard to a number of other factors including what action another agency might already be taking or proposing to take. Once again the child becomes central to decision making and if it is in the best interests of the child to remain in the home

and others be removed, the bill will require this. Chapter 5 of this bill proposes major reforms to the conduct of care proceedings in the Children's Court. Procedures under the current Act often operate to force parents into defensive positions arising from the lack of a clear indication of what evidence the department has in the case and what orders the department may be seeking. This gives rise to long delays, as often parents, quite understandably, resist proposals because they are unsure of the possible outcomes and often assume the worst. This bill proposes that where a child or young person has been removed the matter must be immediately brought before the court, that is, no later than the next sitting day. The court will then be able to make a range of interim orders which will allow for a full assessment of the circumstances. It will allow the department to gather reports and evidence, and allow the department to decide if a care application is needed and what final orders will be sought. During this time the department, working with the family, may be able to put in place a plan for the care of the child which does not require a care application to proceed. Alternatively, if the department does decide to file for a care application, the parties will be aware of all the evidence and the final orders sought.

The bill provides for new grounds for bringing an application for the care and protection of a child or young person. A real distinction is made between the circumstances in which a child or young person may be reported as being at risk of harm, and the circumstances in which an application may be made to the Children's Court because the child or young person is in need of care and protection. The powers of the Children's Court to order intervention in the lives of families and, in some cases to order the removal of a child or young person from his or her parents should only be invoked where absolutely necessary. The grounds for care proceedings have been drafted in such a way that the circumstances in which the court's powers may be exercised are clearly stated and are no wider than is necessary to protect a child from serious harm.

In line with the reforms to the Family Law Act this bill will do away with the terms custody, access, residence, guardianship and wardship. Instead, it will refer to contact, residence and parental responsibility. Thus the concept of wardship will be abolished and will be replaced by reference to a child or young person for whom the Minister has parental responsibility, and access will be referred to as contact. The effect of a wardship order is to operate like a temporary adoption order. The Government does not believe this is appropriate in modern child protection work where it is expected that most children will eventually return to their parents. We want to ensure as much ongoing parental contact with the child as is reasonable in the circumstances, in order to increase the potential eventual restoration with parents. Included in the broader and more flexible range of final orders are orders for contact and the provision of services with the consent of the service provider. This will provide for a much greater level of certainty about the specific services which will be provided to the child or family.

Clause 86 allows the court to make contact orders. This provision is not in any way intended to be an alternative to family court action. An important prerequisite to the Children's Court making a contact order is that the child or young person must be the subject of care and protection proceedings before the court that can only be initiated by the director-general. The ability of the court to vary or rescind orders it has made in response to changed circumstances is an important feature of the court's work. However, this does have the potential to greatly expand the work of the court. A criticism of the current Act was that regardless of the merits of the case or changed circumstances, there was no limit on the number of

applications a party could file for rescission or variation. This generated significant work for the court and for the department and was often very unsettling for the child or young person. Clause 90 of this bill now provides that an application for rescission or variation of an order may only be made with leave of the court.

Many parents of children who come into care have not been malicious to their children or have not intended to cause them serious harm. Often they are suffering problems in their own lives whether they be with drugs, alcohol, or a mental illness and are simply unable for the time being to care for their own children. We do not think the law should deprive such parents of all parental responsibilities and involvement in these children's lives. In many cases, although primary responsibility for the care of the child must necessarily rest with the Minister and the foster care system, parents will still have some involvement in the lives of their children. For example, the right to be involved in decision making about their education and training, attend parent teacher meetings, make medical treatment decisions not of an urgent nature and the right of contact as long as it is in the best interests of the child.

When the department applies to the Children's Court for orders which involve the Minister having parental responsibility, the department must provide a care plan which, as far as is possible, will have been developed with the agreement of the parents. A care plan for the reallocation of parental responsibility is more than simply draft orders of the court. It is a detailed plan of how it is proposed the child should be cared for while in out-of-home care. The department may be asked to specify the kind of placement which it is proposed to be sought for the child. Clause 82 of the bill contains safeguards for this by providing that a magistrate can require a written report on the placement within six months and if not satisfied that proper arrangements have been made may review the existing orders. This bill also contains provisions relating to the important area of restoration of children to their families. The requirements for restoration plans contained in clauses 83 to 85 recognise the reality that most children who come into care do not stay for a long time.

Of course there will be some children for whom there is no realistic possibility of restoration in the immediate future given the extent of the abuse they have suffered or because of the parents' incapacity to care for the child. For these children it is important that there be planning for long-term care from the beginning to minimise the disruption and uncertainty in the child's life. However there will be many others where there is a realistic possibility of restoration if the parents can resolve some of the problems in their own lives or make changes which will make it safe once again for the child to return to their care. For these children there will be a restoration plan which will set out not only the minimum outcomes the parents need to achieve but the services which will be provided to assist them to achieve these outcomes. Necessarily, such active restoration planning must have time limits. Children can not live in uncertainty and lack of permanency merely in the hope that they will, sooner or later, be reunited with their families.

Another important provision is that for an order to attend a therapeutic or treatment program. There are, unfortunately, a small number of children who sexually offend against other children. However, many parents and others fail to appreciate the potentially serious consequences if these behaviours are not addressed. Under this bill, the court will be able to make an order requiring a child under 14 years of age to attend a therapeutic program. Beyond 14 years it is appropriate that the offending behaviours be addressed in the criminal courts. This bill will allow for the behaviours of children between the ages

of 10 and 14 to be addressed in either the care and protection context or the criminal court. The administration of this provision will require the development of detailed protocols between all the relevant agencies to ensure that a child receives a comprehensive assessment to determine the nature of his or her behaviours and to identify the forum in which they can be most appropriately addressed.

Another major reform of this bill is to introduce less adversarial processes into the Children's Court. This will be achieved through a range of provisions which will have the effect of doing away with list days in the Children's Court. These days can only be described as humiliating, overcrowded, uncomfortable and emotion-charged. It is not the practice in the specialist children's courts to indicate a time at which the matter will be heard. On an average list day there may be up to 35 matters listed. Parties are expected to be in attendance from 10.00 a.m., even though the court may not sit at that time, and then wait for their matter to be called. Children, young people, families and support workers may wait up to five or six hours.

I am pleased to announce a raft of proposals is included in this bill to address the issues and considerably improve the way we treat children, young people and their families who are involved with Children's Court matters. Collectively these proposals will do away with list days and provide for a more supportive environment which will promote the resolution of matters by consent or where that cannot be achieved, by speedy progress toward a hearing before specialist Children's Court magistrates. This bill makes it very clear that Children's Court care proceedings are not to be conducted in an adversarial manner; that proceedings are to be conducted with minimal formality and legal technicality; and that the court is not bound by the rules of evidence.

In determining matters in the Children's Court the best interests of the child are of paramount importance. It is proper that the court should inform itself on any matter in whatever way it considers appropriate to ensure that it has all the relevant information before it on which to base a decision. This can include applying the rules of evidence where appropriate. It is appropriate that the court be permitted to take a proactive approach and the bill makes it clear that the court has the power to manage hearings and to examine and cross-examine a witness. Specialist children's registrars will facilitate preliminary conferences, held on an appointment basis, which will identify areas of agreement between parties, identify issues in dispute, refer cases to alternative dispute resolution where appropriate, and refer matters to hearing where no agreement can be reached. These facilities will be available in rural as well as metropolitan areas—unlike the situation in the Commonwealth Family Law Courts.

The bill promotes the use of alternative dispute resolution mechanisms as an early intervention strategy, as an alternative to a care application or during the course of a care application. It is anticipated that through the use of these processes children, young people, parents and other family members may feel more able to participate in a more informal process. They will also have an opportunity to develop creative solutions to difficulties, have more control over the outcome and are more likely to be committed to a solution that they have contributed to. It is anticipated the use of alternative dispute resolution will also result in cost savings if care concerns can be resolved without the need for court hearings. Alternative dispute resolution will not be appropriate or useful where there is a dispute about whether the child or young person has been abused or is for some other reason in need of protection. The purpose of conferencing or mediation is to

develop plans for the care of the child once it is recognised that some form of intervention is needed.

Alternative dispute resolution is most likely to work where people are clear about the concerns for the child and are focused on finding practical solutions that are in the best interests of the child. An advantage of alternative dispute resolution is that it allows families to acknowledge the concerns about their child and the possible need for alteration to parental responsibilities without having to resort to a court hearing. The bill also recognises that there is no one model of alternative dispute resolution which can or should be universally applied. Communities vary in many ways and the provisions of the bill will allow for different models to be developed to meet the unique requirements of each community. In the more serious cases where the department has made an application under chapter 5, it will be important that there is a recognised level of impartiality in the alternative dispute resolution process and funding will be made available to allow for facilitation by persons who are not employed within the department.

The use of authorised magistrates will be phased out and all cases throughout the State will be heard by specially appointed Children's Court magistrates. Along with this, the Senior Children's Magistrate will be the head of the Children's Court jurisdiction, with the same status as a Deputy Chief Magistrate. A Children's Court Advisory Committee chaired by the Senior Children's Magistrate will be established. A Children's Court clinic will be established to provide the court with high quality clinical psychological assessment reports, prepared by recognised and independent professionals. This will be of considerable assistance in rural areas where the means of obtaining such reports has often proved difficult and has been a cause of many delays in dealing with particular issues. Chapter 7 of the bill deals with the very difficult area of conflict between older children and young people and their families. The bill makes a very clear statement that parents should have responsibility for a child unless it is not in the best interests of the child. This is the principle to be applied in the administration of this part of the bill.

A number of measures are proposed which will facilitate early intervention in situations of serious conflict between adolescents and their parents where, as a result of these conflicts, the wellbeing of the child or young person is in jeopardy. Currently, the ability of the Children's Court to assist in cases of serious conflict is very limited. This bill proposes a more active role which will allow the court to assist in resolving the matter through the development of alternative parenting plans. These plans may not work in all situations, for adolescence is a difficult time for many young people and their families. However, we will now have a system to assist in resolving issues in an orderly, co-operative and supportive approach which will allow for the practical things to be done if the child or young person is insistent that they are not going to live at home.

Under clause 120 the director-general may provide a range of services to a child whose homelessness has been reported to her. If it is appropriate that accommodation be provided, this may occur. However, in many cases some other form of assistance, such as transport assistance to allow the child to return to his or her family, may be more appropriate. The consultation process revealed a great deal of confusion among those caring for children and young people in out-of-home care about when it is lawful to restrain a child or young person from doing serious harm to themselves, others or property. Clause 158 of the bill will provide clarity in the law so that those with parental responsibility or the care of

children and young people under this Act are clear about when restraint of a child or a young person is lawful. Such clarity is essential in dangerous situations such as where a young person has a knife and is threatening to attack a worker or another child, or where a young person is behaving in such a way that, unless reasonable restraint is used, he or she may be seriously injured.

Clause 158(2) makes it clear that where a person has parental responsibility or the care of a child or young person under this Act the person cannot restrain a child or young person, except on a temporary basis, and to the extent necessary to prevent the child or young person from causing serious harm to his himself or herself, others or property. Restraint can only occur for as long as is necessary to deal with the immediate crisis situation and the force used can be no more than is reasonable in the circumstances. The bill also makes it clear that where restraint of this kind is carried out in the circumstances described in the bill, there is immunity from any civil or criminal liability that arises as a consequence.

It is an unfortunate reality that there are within our communities, a small number of children and young people who are a serious danger to themselves but who do not fall within the definitions of a mentally ill person. These children and young people invariably display complex and extremely difficult behaviours which mean that no one service or government agency can adequately meet their needs. Typically these children and young people have a long history of abuse and disrupted placements, and complex emotional, social, and mental health needs including suicidal tendencies. For these children and young people, the review report recommended that the Children's Court should be able to make orders for protective supervision. This recommendation was made to provide powers to protect a child or young person from suicide or other serious self-injury. The order would provide round-the-clock supervision for limited periods with further review by the Children's Court built in. The need which has been identified by these recommendations is accepted as a real need for those who deal with a small subset of children and young persons who require intensive supervision.

The recommendations made in the review have not been accepted in full due to a concern that the order could encourage the creation of new centralised care units. This Government has played a vital and reforming role in removing the blight of institutions for young people and it is not about to reverse this process. Under part 3 of chapter 7 it is proposed that the need identified by the review should be dealt with by permitting the Children's Court to make compulsory assistance orders for children or young persons. These orders will only be made upon the personal application of the Director-General of the Department of Community Services, and where the court is satisfied that it is required as a last resort and as a life-saving measure or to prevent serious harm to the child or young person. Because of the serious implications of these orders, a number of prerequisites are to be met before the court can make an order. These prerequisites offer safeguards against abuse of this program and include a comprehensive mental health assessment prior to admission, the preparation of a therapeutic program designed for the individual child or young person, the identification of a service provider able to deliver the program in an appropriate environment, and the allocation of resources necessary for the program.

A compulsory assistance order will not have effect for longer than three months without a further order of the court. Because of the importance of continuous therapeutic support, the making of a compulsory assistance order will allow the

child or young person who leaves the premises specified in the order to be returned to the specified premises. The order will permit the specified providers of assistance to act in accordance with the approved service plan and where they or their staff did so in good faith no personal liability would be incurred. The above prerequisites and oversight by both the Children's Court and the Children's Guardian will mitigate against inappropriate use or overuse of this program.

Chapter 8 of the bill provides for the much-needed reform of the out-of-home care system. Outdated terms such as substitute, alternative and residential care are no longer used. The bill introduces the concepts of designated agencies which will have supervisory responsibility for children and young people placed in out-of-home care with authorised carers. This is a much simplified approach under which care responsibility can be allocated to the authorised carers to allow them to make the decisions required in the day-to-day care of issues such as consenting to school excursions or medical and dental treatment not involving surgery. It also allows authorised carers to correct and manage the behaviour of a child or young person subject to the regulations. Designated agencies will have supervisory responsibility for the authorised carers which will include the power to place a child or young person with, and give directions to, an authorised carer. Some powers relating to the child or young person will remain with the Children's Guardian and these will include the power to apply for a passport or to consent to the marriage of a young person.

Designated agencies, be they the Department of Community Services, another government department or a community-based organisation, will all account to the Children's Guardian, will all have the same responsibilities and will all be required to meet the same standards for accreditation. I am very pleased to refer to clauses 155 and 156, which are detailed provisions relating to the monitoring and review of children in voluntary out-of-home care. The origins of these provisions lie in the concerns for the needs of children with disabilities who are not living with their families. These provisions will ensure that even when children are voluntarily placed in care, they will still have adequate safeguards for their welfare and planning for their care.

Unfortunately it does sometimes occur that parents of children with an intellectual disability place the child in long-term care and lose active involvement in their children's lives. The goal of these provisions is to ensure proper care planning and if necessary, a care application when it appears appropriate that parental responsibility for the child or young person should be reallocated. The bill also contains important provisions for authorised carers to have access to relevant information, and for the maintenance of, and access to personal information by children and young people when they leave care. Clause 173 of the bill clarifies what was considered by some to be an unclear provision in the current Act relating to medical examinations of children.

Where there are concerns that a child may be in need of protection a medical practitioner may be requested to conduct a medical examination. For some children, especially the very young, it is vitally important that this examination be as thorough as the medical practitioner considers appropriate to determine if the child has been subject to injury or abuse. Some significant changes have been made to the provisions relating to special medical treatment. The first has been to amend the definition of special medical treatment to exclude from the definition a medical treatment where sterilisation is an unwanted consequence of a treatment intended to achieve another essential goal. Under the current Act, section 20B applies to any treatment that is, *inter alia*, "reasonably likely to

have the effect of rendering permanently infertile the person on whom it is carried out". Some treatments for cancer, and possibly other life-threatening conditions, have the effect of rendering the child on whom they are carried out permanently infertile. This is the unfortunate price of saving the child's life.

The current Act requires that the child, the parents and the treating doctor go through the ordeal of a Supreme Court hearing in order to obtain a valid consent for such treatment. We believe that such action is unnecessary where sterilisation is an unwanted consequence of a treatment intended to achieve another essential goal and clause 175(5)(a) reflects this position. Clause 175(2)(b) provides that consent to the carrying out of some forms of special medical treatment on a child will be determined by the Guardianship Board and that the child is entitled to have legal representation during such proceedings. Under the current Act a person shall not carry out a sterilising operation on a child under 16 years of age without the consent of the Supreme Court. Applications of this kind are seldom made, and where they are they are usually made in relation to a person with an intellectual disability.

Supreme Court judges have no particular expertise in this matter and whilst they are clearly skilled in assessing evidence and analysing the law, these are not issues in which those skills are required to the degree available to the Supreme Court. We are of the view that the sterilisation of children or young people who lack capacity to decide for themselves is a matter more appropriately placed within the jurisdiction of the Guardianship Tribunal. The tribunal currently deals with 10 or more applications for sterilising treatment for adults each year. Its members have expertise in the medical and practical issues raised by this matter as well as expertise in the relevant statutory and case law. Chapter 10 of the bill contains an important initiative—the establishment of the position of the Children's Guardian.

The Children's Guardian will play a vital role in exercising the parental responsibilities of the Minister for a child or young person; in promoting the best interests of all children and young people in out-of-home care; in ensuring that the rights of children and young people in out of home care are safeguarded and protected; in reviewing case plans for such children and young people; and in accrediting designated agencies and monitoring their responsibilities under this Act. It is important that I emphasise at this point that the Children's Guardian is not a watchdog and does not have investigatory, complaints handling or general advocacy functions. Rather, it is the ultimate safeguard to ensure that children and young people are not lost in the system, that regular review occurs and that they are cared for in accordance with agreed guidelines and standards. It is anticipated that the Children's Guardian will be supported by approximately 30 specialist workers and an annual budget in excess of \$2 million.

Clause 216 in chapter 10, children's services, is an important provision which will allow the director-general to issue an exclusion notice on a person whose continuing presence at a children's service would, in the opinion of the director-general, constitute an unacceptable risk to the safety, welfare or wellbeing of children at the service. This provision is necessary to allow for the removal of such persons during the 28-day period which the licensee has to respond to a notice that it is intended to impose a condition on the licence or to revoke the licence. Chapter 15 contains provisions that enable the removal of children and young people under the authority of a search warrant. There are also provisions which allow for the entry and inspection of premises, either under the authority granted by a specific provision or a search warrant. Under

clause 233 a search warrant will not necessarily have to specify a particular premises.

One of the difficulties for the director-general in exercising her responsibilities to investigate reports and responding to concerns that a child or young person is in immediate risk of serious harm is knowing precisely where the child or young person is at any point in time. In such circumstances those responsible for a child will often be on the move and this provision will allow the director-general greater flexibility to enter premises when searching for a child or young person and also to remove a child or young person.

Finally, I would like to acknowledge the work of Associate Professor Patrick Parkinson and Dr Judy Cashmore and the members of the advisory reference group and thank them for their invaluable contributions to these bills. My thanks also go to the many organisations, agencies and individuals that have contributed to the extensive review process. I would also like to acknowledge the work of the officers of the Department of Community Services who have managed the legislation unit, Mr Gary Rogers, Ms Kerry Lannoy and Ms Maggie Smythe, as well as their staff, for their vital contributions. These bills are deserving of bipartisan support, and the Government trusts that they will receive it. I commend these bills to the House.

The Hon. PATRICIA FORSYTHE

[3.26 p.m.]: The Children and Young Persons (Care and Protection) Bill and the Children and Young Persons Legislation (Repeal and Amendment) Bill represent important legislation in terms of the interests, safety and wellbeing of children and young persons in New South Wales. The effect of the bills will be to replace the existing children care and protection legislation as well as to amend the Children's Court Act 1987. The Opposition is satisfied that the process of consultation undertaken by the Government in the preparation of this proposed legislation was, to use the words the Minister used in her second reading speech in the other place, both intensive and extensive.

For this reason the Opposition does not oppose the bills. Indeed, other Ministers should consider the same depth of consultation when drafting other bills. When proposed legislation has been subject to the degree of consultation that has been undertaken on this occasion governments have a right to expect some support from the Parliament. The extensive process that has led to the introduction of these bills has set a benchmark for future governments.

The proposed legislation fundamentally underpins the work of the Department of Community Services in its care and protection of children. The process was originally commenced by the coalition when in government. As the responsible Minister the Hon. Jim Longley appointed Associate Professor Patrick Parkinson of the law faculty of the University of Sydney to undertake a review of the legislation. Professor Parkinson, later assisted by Dr Judy Cashmore, undertook what

could be described as four years of extensive consultation and review around the State, and issued a number of volumes of discussion papers. This led to the presentation to the Minister in February of a document entitled "A Review of the Children (Care and Protection) Act 1987: Recommendations for Law Reform". That 250-page document formed the basis for the proposed legislation we are debating today.

The Government has consulted extensively on this proposed legislation, and it has received wide support. That is not to say it is perfect. No doubt problems will arise during its implementation and further consultation will be required. The Minister noted in relation to child employment, child care and children's services that further work is being carried out by the review committee. Although the Government does not adopt every one of Professor Parkinson's recommendations, the main bill has been the subject of review and has the general support of all the children's welfare agencies. I will do everything I can to facilitate its enactment.

Some weeks ago I told the Government that it was not my intention to amend the principal bill, although certain aspects will require further refining. Although the children's welfare agencies have supported some suggested amendments which may enhance it, it is more important that the bill is passed and that consultation continue during its operation. The Opposition supports the bill.

The Hon. Dr B. P. V. Pezzutti: And will be happy to implement it in government.

The Hon. PATRICIA FORSYTHE: We certainly will be happy to implement it when we are in government. One of the reasons I did not seek to dissect it is that it could be six months before Parliament resumes. If I had my choice, Parliament would resume in February but, knowing this Government, that will not happen. It will be well into April before the form of the next Government is known, and with a change of government the next parliamentary session will probably commence in June. If this legislation is not passed now, six months will be wasted.

The title of the principal bill refers to children and young persons, and that is an important step forward. That implies that emphasis will be put on support for young people. Some of the strongest complaints that I receive as shadow minister are from parents seeking support in relation to young people with whom they have difficulties—such as young people seeking to leave home, or drifting onto the streets—but for whom they receive little support

from the Department of Community Services or the Police Service. It is assumed that 16-year-olds can care for themselves and that they are not in danger, but many parents believe differently. This bill has as one of its objectives the care and support of young people, and that principle has led me to support it.

The objects of the principal bill are contained in clause 8, which introduces some important principles that I believe are worthy of support by the House and the community. I look forward to the Department of Community Services changing its culture, changing its priorities.

The Hon. Dr B. P. V. Pezzutti: Leading the change.

The Hon. PATRICIA FORSYTHE: It will need to change its fundamental thinking and the culture that underpins it. Clause 8 of the bill asks, "What are the objects of this Act?" Subclause(a) states:

that children and young persons receive such care and protection as is necessary for their safety, welfare and well-being, taking into account the rights, powers and duties of their parents or other persons responsible for them . . .

That clear statement was not contained in earlier legislation. For that reason it is imperative that the bill be passed in this session of Parliament. Clause 8(c) states:

that appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment.

One of the objectives of the bill is to oblige the department and the Government to provide appropriate assistance to parents and others responsible for children and young persons. This is particularly important in relation to young persons. No-one wants to know them; it is difficult to find foster families for them; and limited residential care facilities are available. Governments in general do not treat this difficult issue as a high-priority issue in terms of resources, but I would place a very high priority on it. I am delighted that the Government has acknowledged that it has a role in providing assistance.

The bill makes provisions in regard to support of families and keeping families together. Parents should be able to approach the department for support when they are having difficulties caring for their children and young people without fearing that they will be taken from them. This is an important step forward for this department. Currently if

allegations are made against families or if families admit that they are having difficulty caring for their children and young people, the first reaction is to break up the families. The department's primary responsibility should be to hold families together. That principle is fundamental to the bill. The Minister for Community Services noted that clause 21 of the main bill is most important. She said in her second reading speech:

... in very simple form that either a parent or a child may seek the assistance of the department and the department must do what it can. . . .

The department must do what it can to support and assist families to obtain services. Neither the proposed legislation nor the Minister's second reading speech contains a commitment to the resources necessary for the proper implementation of the bill. There is no doubt that if legislation stipulates that the department must do what it can, that has fundamental resource implications for the Government. In principle the Government strongly supports this proposed legislation. In reality I have yet to hear a statement about its resources or an assurance that in implementing the legislation it has the resources to support and assist families that seek assistance. However, on principle alone I am keen to see the proposed legislation passed.

The Minister said she wanted to encourage parents to come forward and seek assistance in the knowledge that they would not be treated as abusive parents. That fundamental point must be highlighted. If we are to change the way young people in this State are protected we must have better prevention services and early intervention. Prevention measures must be implemented to ensure that young families in particular, but parents in general, who are not coping well with new-born babies, toddlers or a number of young children, and who do not have the basic parenting skills or the fundamental economic and social resources such as extended families, will be able to come forward and seek assistance.

Patrick Parkinson and Judy Cashmore are committed to that fundamental part of child protection. I am delighted that the Government has addressed that in the proposed legislation. That implies that additional resources will be made available in the community and in family support organisations such as Family Support Services and others that work in early intervention and prevention. That work cannot be done by government alone. It needs a network of support across the community. When families approach the department for help the Government should not have the onerous responsibility to provide services, but resources should be available in the community to

refer them to other agencies. The Family Support Services Association was particularly disappointed at not receiving the additional \$3 million it sought from the last budget for community resources.

Where a child is taken out of home it does not mean that the family is to be broken up, causing difficulty in re-establishing the child-parent bond. Rather, a fundamental shift from the existing legislation is that parents will continue to have parental responsibility for their children even when the child is taken out of home. The child will remain of paramount importance and bonding between parents and children should not be disturbed. The majority of young people taken into foster care are taken in as babies or toddlers, at a time when their parents find it most difficult to cope. In such case or in cases involving drug taking the parents may still have an interaction with the child so that later the families can be restored and prosper. The community supports the philosophy of maintaining and supporting families. The bill distinguishes between families that need support and that can adjust to the care of their children and those in which there is a long-term risk of harm.

I particularly analysed the aspect of the bill setting out the department's responsibilities following a report to it. This is fundamental to the workings of the Department of Community Services. Cases have built up because the department has not been able to analyse and prioritise them. Chapter 3 of the principal bill contains a hierarchy of action in relation to requests for assistance and reports. It sets out clearly what is to be done in relation to the child or young person at risk of harm, and what follows from each step in relation to the assessment. This will make clear the responsibilities of the department. However, I hope it is not an excuse for cases simple to be dismissed. Children who are presently at harm should be given priority. It may reduce the number of notifications. If there is a scarcity of resources priority must be given to children who are at present at risk of harm.

The department at the moment has a policy about children under the age of one. The difficulty I have with the department's interpretation of the policy is that it has been to the exclusion of children over the age of one. While babies are the most vulnerable and fragile, children of two and three are not much less vulnerable. It may make for better case management if all the circumstances of children at risk of harm are considered rather than concentrating only on children under one. The bill requires the department to give priority to children at greatest risk of harm; it does not refer only to children under one.

The Minister highlighted that the department does not need to intervene following every report to it. In some areas the department has overreacted and in some it has not responded adequately to a telephone report. In the last couple of years children and babies have tragically died because of a lack of resources, inability, and professional assessments. The cases have not been adequately followed up. The community might better work with the department to give children better protection if the community understands that notifying the department about a child being at risk will not mean that the family will be broken up. It might be a better basis for the community and the department working together.

I support the bill because it contains this fundamental principle. The changes to the Children's Court are welcomed by the Opposition as they accord with the Opposition's view of how Children's Courts should proceed. But as with other aspects of the bill there is no indication yet that additional resources will be provided. The bill will not succeed without additional resources. For example, the Children's Court will have a role in conciliation, mediation and preventive measures. All of these will require additional resources which are not provided in the bill.

The Hon. J. W. Shaw: It would not be normal to do so, would it?

The Hon. PATRICIA FORSYTHE: My copy of the Minister's second reading speech is 25 pages. It may not be necessary to refer to what resources the Government will provide but there should be an acceptance by the Government of the need for additional resources to underpin the wider role of the Children's Court. That would reassure the groups that have strongly supported the Government's aims that the Government is serious about the implementation of the reforms. The bill proposes that there will be no list days: where a child or young person has been removed from home the matter must be brought immediately before the court no later than the next sitting day. That has obvious resource implications for the court.

If a plan for the care of a child is to be put in place, there will be implications for the court and some of the other roles of the court, in particular providing for additional therapy and support where a young person has particular issues that need to be resolved. The Government could have made a general statement acknowledging the need for extra resources. Opposition support for the bill in many ways is conditional on necessary resources being provided. The Opposition supports the fundamental

principles. The Government should accept its responsibility for adequate resourcing of the courts and the department in the shift from their existing roles. Neither the Opposition nor the House would expect that in speaking to these bills I should not note the need for additional resources and indicate that the Opposition assumes that the Government has a commitment to the provision of extra resources.

It would be appropriate for the Minister in response to acknowledge that additional resources will be required for the implementation of this legislation. The Opposition supports the shift in the concept of wardship. Wardship is to be a concept of the past; young people are to be put under the care of the Minister. The State Network of Young People in Care, an organisation that supports young people who have been in care, expresses its belief that there is a stigma attached to wardship and welcomes the change in that concept. The establishment of the office of Children's Guardian is one of the most important aspects of this proposed legislation and is fundamental in the separation of the department's investigative role and its responsibility for the long-term care and support of young people.

I have long been concerned that there is a potential for conflict in the department having the legal responsibility for young people who come into its care as wards. The appointment of a Children's Guardian dissipates the potential for the conflict of interest. This issue was discussed widely in all consultations undertaken by Professor Parkinson. The House should support that initiative as one that will assist in abolishing the stigma surrounding young people who have been taken into care. The initiative will provide the basis for the better care, protection and long-term support of young people who for one reason or another are taken out of their home.

The provision for alternative dispute resolution in the Children's Court is an important step forward. It is time that we recognised that young people who come before the courts, and their families, are often in desperate need of help. The nature in which many cases have been conducted in the past has led to an unsettling emotional experience for all involved. The direction followed by these bills has the support of many people, including the Senior Children's Magistrate, and is particularly welcome. Children's care and protection legislation has traditionally enjoyed bipartisan support. It is certainly my intention to maintain that tradition with these bills.

I support these bills mindful of the fact that review of the legislation was initially proposed by

the coalition, which recognised that many of the concepts contained in current legislation are out of date, do not meet reality and do not provide for appropriate response from the Department of Community Services. These bills clarify the role of the department. I look forward to a long-term commitment from the Government to the provision of resources. The Department of Community Services will be required to rethink the way in which it deals with families, young people and children. This proposed legislation will provide the basis for much-improved interaction between the department and the community. I commend these bills to the House.

The Hon. FRANCA ARENA [3.54 p.m.]: I support the bills. Between 1994 and 1998 a review of children's care and protection legislation has taken place. This important and thorough review was chaired by Associate Professor Patrick Parkinson of the University of Sydney, who has excellent credentials in the field of child protection. Other members of the review committee included representatives from groups with similarly good credentials—such as the Council of Social Service of New South Wales, the Child Protection Council, the Association of Child Welfare Agencies, and the Disability Council—a children's magistrate and a specialist children's lawyer. The review committee undertook comprehensive consultation with community groups and interested individuals. These important bills are the result of the review.

The bills provide more flexibility for the Department of Community Services in its work with families to strengthen their ability to care for their children. In modern society, which unfortunately has many dysfunctional families, it is very important that the ability to care for children be given to the family. The bills recognise that the responsibility to care and protect children goes beyond the role of a single government department. They recognise the importance of government agencies working with the community sector in the care and protection of children and young people.

The new provisions make it clear that the Department of Community Services has a role to play in prevention and early intervention. Most urgent cases of child abuse and neglect will be given priority and more professionals who work with children will be required by law to report concerns about children. One would think that there was no need for a review to establish the importance of child protection. I would always have expected urgent cases of child abuse and neglect to be accorded priority. Instances of toddlers being abused and maimed or killed, without anybody seeming to

care, are not acceptable. It is my sincere hope that any urgent case of child abuse or neglect will be given top priority.

Care plans to meet the needs of children and young people will be developed in consultation with parents. I am very pleased with that development. Often it seems that parents are left out of the equation when it comes to provisions such as these, and we all know how important the family structure is. It is extremely important that parents are consulted and work with their children so that the family structure is kept as strong as possible. A care register will be established and the system of court list days will be abolished in favour of individual court appointments. The office of Children's Guardian will be established. As the Hon. Patricia Forsythe has said, that is a most important initiative.

The Children's Guardian will ensure that all children in out-of-home care have a regularly reviewed care plan. Authorised carers will have the responsibility of making decisions about the daily care and control of a child. Parents will be encouraged to maintain links with their children and to exercise some parental responsibility. It is most important that parents and children be kept as close as possible. Some parents, perhaps young parents, have not been taught parental responsibility. It is important that parents be taught about their responsibilities and how to exercise them. The bills require that when possible the views of children and young people are sought and taken into account.

I am pleased that Aboriginal and Torres Strait Islander families and communities are to have greater involvement in decisions about the care and protection of their children and young people. We have all read of many unfortunate cases of very young Aboriginal children and adolescents being out of control because they are not cared for properly. It is therefore most important that their communities and families be consulted to develop greater care and protection for them. The bills provide that young people under 16 years of age should live at home with their parents and should be supported to remain at home unless that is not in their best interests—which I suppose would be in cases of abuse.

In many other countries young people live at home until they have finished school or university. When young people aged about 18 years are asked whether they still live at home they are horrified at the suggestion, but that is the best place for them to live. It is a sad indictment of our society that children who become young adults feel they must leave home and that they cannot be friends with

their parents. It is wonderful for parents to witness their children grow up into young men and women and to be able to discuss political and other matters of interest with them as friends. I support any measure that will keep families together and children close to their parents. I commend the Government for the bills, which I support. I look forward to their being enacted and will certainly monitor the legislation very carefully.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

MINISTER FOR THE ENVIRONMENT ALLEGED CORRUPT CONDUCT

The Hon. D. J. GAY: My question without notice is directed to the Acting Leader of the Government. Does the Minister accept that if a senior planning Minister provided written support on ministerial letterhead for a development application to extend a restaurant development application currently before a New South Wales council because that Minister "enjoyed both the food and the hospitality" of the applicant that Minister would be guilty of corrupt conduct under the Independent Commission Against Corruption Act?

The Hon. R. D. DYER: I will give the Hon. D. J. Gay 10 out of 10 for presentation but zero out of 10 for content. The Hon. D. J. Gay did not give any detail in his question. He posed the question in a hypothetical form and I am not disposed to answer hypothetical questions or to give legal opinions as to whether something might or might not constitute corrupt conduct within the terms of the Independent Commission Against Corruption Act.

The Hon. D. J. GAY: I ask a supplementary question. In light of the Minister's answer, given that the Minister for the Environment did in fact write such a letter, and given that the development application is recommended for refusal by council officers as it breaches the Environmental Planning and Assessment Act in six areas, including that it is likely to have a detrimental effect on the environment, what action will he take against this Minister? When will the Premier, as a matter of urgency, refer this Minister to the Independent Commission Against Corruption and will the Carr Labor Government ensure that this Minister stands down immediately?

The Hon. R. D. DYER: The question is still shrouded in a degree of mystery and lack of particularity in that we still do not know which local government authority is in the mind of the Hon. D. J. Gay. I am not sure why he is being so mysterious and obscure about the matter. It is not my role to take action against any Minister. However, I will refer the matter to the appropriate Minister to see whether there is any scintilla of substance to the question that has been asked.

FITNESS CENTRES CODE OF PRACTICE

The Hon. JAN BURNSWOODS: I ask the Minister for Fair Trading a question without notice. Will the Minister inform the House about the adoption by the fitness industry of the code of practice for fitness centres?

The Hon. J. W. SHAW: In July I officially launched the voluntary code of practice for fitness centres to set minimum standards of service, safety and fair trading within the fitness centre industry. The code of practice was developed in response to numerous fitness centre closures, which left many consumers out of pocket, particularly those who had paid large up-front membership fees. The code was jointly introduced by the Department of Fair Trading and the Department of Sport and Recreation. In addition to the code, my colleague the Minister for Sport and Recreation, the Hon. Gabrielle Harrison, established FitnessNSW to help overcome these types of problems, to contribute to the quality and long-term viability of the fitness centre industry, and to instil consumer confidence. Fitness centres must adhere to the code when they become members of FitnessNSW.

Among other things the code requires FitnessNSW members to ensure that they comply with fair trading legislation, including the false and misleading advertising provisions; provide prospective members with sufficient information to make an informed decision about joining the fitness centre; ensure that they do not encourage unrealistic expectations by the prospective members about the outcomes attainable by the fitness and exercise services, or the facilities and equipment provided; offer a monthly payment option that will compare reasonably with the longer term memberships while restricting losses to members should the fitness centre close its doors; restrict memberships to a maximum of 12 months; provide a cooling-off period for membership periods of more than three months to allow members to carefully consider their

actions; maintain a high level of cleanliness; and provide mechanically safe equipment and qualified staff to run fitness programs.

The code also establishes processes for resolving consumer complaints against fitness centres. In New South Wales 53 fitness centres are now signatories to this code. This is a good start to the program but, with 400 fitness centres in this State, there is still a way to go. I commend the businesses which have joined the program and urge others who have not joined to do so. The code of practice is in place to protect and assist consumers. I strongly encourage people to join only those fitness centres that subscribe to the code and display the current certificate of accreditation. Department of Fair Trading centres throughout New South Wales can provide the public with information about the code and its benefits.

PRISONER REID SENTENCE REDETERMINATION

The Hon. J. P. HANNAFORD: My question without notice is directed to the Attorney General. Is it a fact that Robin Reid, a former army corporal, was convicted in 1982 of the murder of Peter Aston, whom he tortured and then buried alive? Is it also a fact that Justice Bruce James redetermined his sentence to a minimum of 24 years, thus rendering him eligible for parole in May 2006? Given that the original crime was described by the trial judge as one of the most brutal and callous seen in New South Wales, will the Attorney call for the file of this matter to be reviewed with a view to an appeal being lodged against the redetermination of the sentence?

The Hon. J. W. SHAW: I am concerned about this case. It was certainly a dreadful crime and one might be somewhat surprised by the decision of Justice Bruce James, who held that this case was not in the most serious category of murders. I will certainly examine the matter. I have already initiated contact with the Director of Public Prosecutions to ascertain whether some further step might appropriately be undertaken in relation to this matter.

REGISTRY OF BIRTHS, DEATHS AND MARRIAGES BUSINESS INITIATIVES

The Hon. J. R. JOHNSON: My question without notice is directed to the Attorney General. Will the Attorney advise the House of new business initiatives at the Registry of Births, Deaths and Marriages?

The Hon. J. W. SHAW: The Registry of Births, Deaths and Marriages operates as a government trading enterprise [GTE] within my department. In 1997-98 the registry relinquished the government community service obligation funding it previously received for the registration function. The registry now covers all its costs from revenue generated from the sale of its products and services. The registry also returns a significant dividend to government from its activities. The dividend payment for the 1997-98 financial year was \$2,100,000. Customer service benchmarks are also improving.

The average time to register a birth has been reduced from some 10 days in 1993-94 to 5.3 days in 1997-98. Client satisfaction with registry services is measured via an annual client survey. The results of the 1998 survey are presently being compiled. This success is being achieved through a combination of increasing productivity, staff training, use of technology and development of innovative products and services.

Such innovation is reflected in the agreement recently signed by the registry with the Royal Australian Mint. The agreement will result in the registry promoting the mint's baby coin set product to clients when providing them with their commemorative birth certificates. Both products are of interest to the same client base, and the registry will receive commission on each baby coin set sold through the promotion. The registry is conscious of the privacy of its clients. The mint will receive client information only if the client chooses to order the product and send the order to the mint for processing. The registry's management is conscious of achieving such product synergies with related organisations. At the registry's popular Royal Easter Show stand products of the Australian Bureau of Statistics, the largest user of the registry's statistical data, were offered for sale by the registry on a commission basis. That agency relationship is continuing.

The registry's commemorative birth certificate series continues to show strong growth with approximately 50 per cent of parents requesting the package at the time that they register the birth of a new child and a further 25 per cent requesting standard certificates. The registry is presently investigating the introduction of a complementary commemorative marriage certificate range in 1999. Such discretionary products represent an important area of future business growth for the registry. The registry's pilot program of electronic lodgment of death registration information has proved successful.

Registration turnaround times of 24 hours are being achieved. Participating funeral directors are able to order certificates on-line and pay for their certificates on bulk invoice following registration. The program has been supported by the involvement of members of the Australian Funeral Directors Association.

More funeral directors are being invited to join the scheme and the registry hopes to have approximately 25 per cent of all death registrations being lodged electronically in the first half of 1999. The registry is also looking to tailor specific services to other important client groups. Solicitors are significant users of the registry's certificates and the possible introduction of a wills register, as operating in British Columbia, will be examined in 1999. The registry already operates several services for genealogists. They include CD-ROM indexes of historic records, transcription and number checking services.

Experienced registry staff also attend many fairs and expos organised by family historical societies. Planned future initiatives include on-line ordering of unrestricted certificates via the Internet. As I have mentioned to honourable members on a previous occasion, the registry has established a working party to make recommendations for the establishment of a one-stop call centre where clients will be able to apply for their certificates by telephone. Such new business initiatives serve to keep an organisation established in 1856 relevant and responsive as we move towards a new century. They also guarantee a continuing financial return for the people of New South Wales.

AGRICULTURAL CHEMICAL FRENOCK

The Hon. R. T. M. BULL: I address my question to the Minister for Public Works and Services, representing the Minister for Agriculture, and Minister for Land and Water Conservation. Is the Minister aware of the continuing frustration of farmers in the Monaro and southern tablelands regions about the withdrawal from sale of the chemical Frenock by Crop Care Australasia Pty Ltd and the serious blow that has created to the containment of the extremely serious noxious weed serrated tussock? What has the Government achieved in either finding a replacement for Frenock or finding an alternative supplier? This is a red hot issue about which the Minister's law advisers ought to have information.

The Hon. R. D. DYER: I shall obtain a response to the question from my colleague the

Minister for Agriculture, and Minister for Land and Water Conservation and convey the response to the Deputy Leader of the Opposition.

FREE SPIRIT ASSOCIATION

The Hon. FRANCA ARENA: My question is to the Minister representing the Deputy Premier, Minister for Health, and Minister for Aboriginal Affairs. Is the Minister aware that an organisation known as the Free Spirit Association, which claims that it is attempting to establish the first drug detoxification and rehabilitation centre in Sydney, is having a fund-raising night at the Nikko Hotel on 6 December? Is the Minister aware that those invited to attend this function are asked to respond to the applied scholastics organisation? Is the Free Spirit Association a registered charity?

Is the applied scholastics association in any way linked to the Church of Scientology? If it is, is the Minister concerned that the stated aim of the Free Spirit Association to help get Aboriginal kids "off drugs and educated" may not be its true intention and that its true intention is to set up a front organisation for the recruitment of Aboriginal and other children into the Scientology organisation? If this is concealed recruitment activity what, if anything, can be done by the Minister?

The Hon. R. D. DYER: I will refer the question of the Hon. Franca Arena to the Deputy Premier, Minister for Health, and Minister for Aboriginal Affairs and obtain a response for her.

FARM COVE SANDSTONE SEAWALL

The Hon. J. KALDIS: My question is directed to the Minister for Public Works and Services. Will the Minister advise of upcoming works along the sandstone seawall at Farm Cove?

The Hon. R. D. DYER: I thank the Hon. J. Kaldis for his question and for the importance he attaches to the stonework program. I know many honourable members opposite have been suffering withdrawal symptoms as a result of not hearing from me regarding some aspects of the stonework program. Honourable members would be aware of the historic sandstone seawall stretching along Farm Cove just across the Domain from Parliament House. The seawall is constructed of large sandstone blocks and is bordered by a pedestrian walkway, the Royal Botanic Gardens and the Domain parklands.

Since its original construction more than a century ago the seawall has undergone a series of

repairs and reconstruction to overcome the effects of wave and tidal action and salt spray. Variations in harbour conditions over time have also occasioned reconstruction work along the seawall below water level to deal with increased wave action close to shore following the gradual removal of mud along the inside of the cove.

Further repairs to the south and east sides of the Farm Cove seawall are currently being planned to ensure the long-term stability of the popular historical location. The most significant section will be repairs to 170 metres of sandstone wall and adjacent walkway from the Yurong gates to the north of Fleet Steps. Works will be project managed by my department on behalf of the Department of the Environment and the Royal Botanic Gardens and Domain Trust, and consist largely of replacing the seawall footing to prevent erosion of the sandstone base. The seawall extends to about one foot below sea level, and it is that section that is most at risk from erosion and slippage as the rock beneath the sandstone decays. Reconstruction work will be undertaken to provide a solid stone footing for the sandstone base, all of which will be underwater and will involve no visual alteration to the seawall.

In addition to that major work, further more minor repairs are being undertaken along another 185 metres at the centre of the cove, halfway between the Man O'War Steps and Mrs Macquarie's Chair. This work consists of minor roadwork repairs to maintain a smooth surface, and sandstone preservation work. A conservation management plan for the wall has been prepared and submitted to the Royal Botanic Gardens and Domain Trust for endorsement. The wall is of great cultural significance and runs alongside one of Sydney's prime tourist locations and, therefore, every effort is being taken to ensure that the works have minimum visual impact on its surrounds.

The original sandstone seawall was taken from the first Government House in 1848 but construction work was delayed following a lack of manpower during the gold rush of 1851. The entire seawall project lasted for more than 30 years and was repeatedly delayed due to inadequate foundation works and problems obtaining high-quality sandstone. I point out that similar problems obtaining sandstone exist today and remain an impediment to most modern repair works for Sydney's sandstone buildings.

The section of seawall currently to be repaired is comprised partly of sandstone taken from the original walls of the Hyde Park Barracks and the

Treasury building and represents some of the oldest stonework in the Sydney region. Present seawall design consists of a stone dyke about six feet wide constructed to just below sea level and topped with the sandstone wall. The workmanship in this early seawall is extremely impressive and represents something of an engineering success story for the then colonial Government. I stress that the existing stone is being retained in the repair work, which is non-intrusive and designed to ensure the survival of this historic wall for the future. I commend the project to honourable members as an example of the importance that the Government attaches to preserving heritage stonework in Sydney.

NORTH SYDNEY LOCAL COURT

The Hon. PATRICIA FORSYTHE: My question without notice is to the Attorney General. Notwithstanding the coalition's support for the establishment of additional Children's Courts, will the Attorney give a guarantee that the North Sydney Local Court, which supports the domestic violence court assistance scheme, will not be converted into a Children's Court? Is the Attorney aware that if the court is converted to a Children's Court women will be required to travel to Hornsby, Manly or the city to gain court protection?

The Hon. J. W. SHAW: I believe that the North Sydney Local Court will be used, at least temporarily, for a Children's Court, but that appropriate arrangements will be made for women and other clients of the courts to obtain reasonable access to those courts. In line with the policy that the Government has pursued over the past three or four years, accessibility will be ensured. I will take an active part in ensuring that people have appropriate access to the courts. However, there is a problem about the Children's Court at the moment. Frankly, for many years the Children's Court facilities have been inadequate, as members who have investigated the matter will know. Use of the North Sydney Local Court as a Children's Court, at least as a temporary measure, will be an appropriate step forward.

CABINET OFFICE DIRECTOR-GENERAL Mr ROGER WILKINS

The Hon. R. S. L. JONES: I ask the Acting Leader of the House, representing the Premier, a question without notice. I respectfully ask the Minister not to answer the question himself, but to refer it to the Premier for an answer. Is the Premier vaguely aware of the seething resentment and anger of senior Labor figures at the way in which Roger

Wilkins has taken over the running of this State and the way he has overridden decisions of Ministers? Why is the Premier allowing this man to run his own arch-conservative agenda and make policy decisions without referring them to Ministers?

Should the Premier himself not take control and consult with his Ministers and allow them to run their portfolios rather than having decisions made without their knowledge and without consultation? Is the Premier at all aware that some of the decisions made by Roger Wilkins have jeopardised his chances of re-election? Is it a fact that the Premier is bailing out shortly after the next election, whether he wins or loses, and that Roger Wilkins will be replaced soon after that?

The Hon. R. D. DYER: I have a slight impression that the Hon. R. S. L. Jones does not like Roger Wilkins. I recall that the honourable member asked a question last week also dealing with Roger Wilkins and I referred that question to the Premier for a response. I will do the same on this occasion.

REGIONAL CULTURAL DEVELOPMENT

The Hon. JANELLE SAFFIN: My question without notice is to the Acting Leader of the Government. What is the Government doing to support cultural development in regional New South Wales?

The Hon. R. D. DYER: I acknowledge the interest that the Hon. Janelle Saffin shows in cultural matters, particularly as they affect rural and regional areas. A country tour of *Romeo and Juliet* by the Bell Shakespeare Company, support to the Henry Parkes Pioneer Park Museum and a big boost to the popular writers' centres are highlights of the 1999 cultural grants program. This year a whopping 61 per cent of the \$14.2 million in grants is going directly to rural and regional communities or to city-based groups serving them. In 1995 the Carr Government agreed that people living outside metropolitan Sydney were entitled to the same access to the arts as their city counterparts.

For too long governments of all persuasions have failed to listen to the concerns of people in regional and rural New South Wales; these grants go some way to redressing that. During the past three years more country-based organisations have received the funding they deserve. The 1999 cultural grants program will boost museums, dance, theatre, music, visual arts and crafts, literature and history in regional New South Wales; assist commission cultural development; and provide capital assistance for regional cultural centres.

For instance, there is funding for a series of rock music clinics in Walgett, a town with a growing reputation as a training ground for young musicians, and funding to help fit out the Gosford Regional Gallery. Rural technology collected in the Riverina will be properly preserved to provide a social and historical account of agricultural life in the area. The Sydney Symphony Orchestra, the Australian Chamber Orchestra, and the Gai Bryant jazz quartet will be among the number of top-level music ensembles to tour regional New South Wales. The budget for touring performing arts groups is now more than three times the amount set aside by the previous Government. This means that the new Railway Street Theatre can spend four weeks taking three plays to isolated audiences in 28 towns, including Jerilderie, Goondiwindi, Moree, Gunnedah and Temora.

Regional writers' centres have also received a considerable funding boost in recognition of the excellent service and support they provide for writers, particularly in rural centres such as Lismore, Orange and Armidale. The Government is proud that New South Wales is the only State in Australia to have writers' centres outside capital cities. Grants for capital assistance include funding to refurbish the Parkes Music Drama Theatre and assistance towards the construction of the Narrabri Cultural Centre.

[Interruption]

Sometimes I think we need a cultural centre in this House. Supporting the State's cultural sector makes good economic sense. It is an industry that is growing each year and creates good jobs in regional and rural New South Wales.

COMMUNITY SERVICE ORDERS SENTENCING OPTION

The Hon. J. M. SAMIOS: I ask the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading: Is it a fact that in the Tweed Heads Local Court a man who was charged with committing an offence in New South Wales was unable to be given a community service order as a penalty as the offender lived on the Gold Coast? Is it also a fact that Tweed court magistrate Kim Pogson has criticised this cross-border anomaly which prevents Queensland residents from serving community service orders in New South Wales despite the fact that the offence was committed in this State? What action will the Attorney take to provide a greater flexible sentencing option for matters such as these? Will the Attorney raise this matter with his counterpart, the Queensland Attorney General?

The Hon. J. W. SHAW: I am pleased that the Hon. J. M. Samios has implicitly supported community service orders [CSOs]. I am not surprised by that because I believe he supports the idea of CSOs as a sentencing option. I am not aware of the magistrate's decision to which he refers. I am somewhat surprised at the apparent difficulty which might arise under the principles of private international law in respect of serving a CSO in New South Wales because, as I understand what the honourable member has said, the person was resident on the Gold Coast. I would be happy to take up the suggestion of the honourable member and raise this matter with my counterpart, the Queensland Attorney General, Mr Matt Foley, to ascertain whether matters can be facilitated and to determine whether, despite the place of residence, community service orders can be served in New South Wales.

WILDERNESS SOCIETY POSTERS

Reverend the Hon. F. J. NILE: I ask the Attorney General, in his own capacity as the representative of the Minister for the Environment, a question without notice. Has the green movement polluted the environment with a large number of posters stating "South Coast Forest—Carr Deliver Your Promises" and other slogans? Has the Wilderness Society printed and placed these posters all over Sydney on public buildings, roads and bridges? What action is the Government taking against the Wilderness Society and other green groups for polluting the environment, as the posters contain the name and phone number of the authorising organisation? Will the green groups be fined for pollution and be forced to remove these posters?

The Hon. J. W. SHAW: I would not necessarily agree that posters constitute pollution. It may be that posters, whether political or otherwise, can legitimately be put up in the streets of Sydney and may not be regarded as contrary to any environmental laws. After all, political candidates put up these posters regularly.

The Hon. J. F. Ryan: That is what you will do yourself in Swansea.

The Hon. J. W. SHAW: I assure the Hon. J. F. Ryan that I will not be putting up any posters. I am happy to take on board the honourable member's question and raise it with the Minister for the Environment to ascertain whether, as is suggested in the question, any breach of the environmental laws has been demonstrated. I indicate that the mere publication of posters might not result in a breach of such laws.

HUNTER REGION CONSUMER SERVICES FOR SENIOR CITIZENS

The Hon. A. B. MANSON: My question without notice is directed to the Minister for Fair Trading. Will the Minister inform me and the House what his department is doing to assist older people in the Hunter region?

[Interruption]

The Hon. J. W. SHAW: The Government is interested in young people in the Hunter region, but it is interested particularly in helping older people in the Hunter region. Members of the Opposition are vigorously suggesting that I should be a candidate for the electorate of Swansea. That makes me a little sceptical about whether that is the correct course for me to take. The Department of Fair Trading has a strong commitment to protecting older consumers. All honourable members would acknowledge that these people are often easy targets for unscrupulous traders. I think all honourable members would agree that few consumer rip-offs are more despicable than those aimed specifically at older people.

Fair Trading staff are trained to assist older people with consumer problems, but it is more important that this group not have these problems in the first place. As for all consumers, it is vital that older people have a knowledge of their consumer rights. While most older people can get access to fair trading services, the frail and the homebound are less able to do so.

The Hon. Dr B. P. V. Pezzutti: What about the ones in the Hunter?

The Hon. J. W. SHAW: I will deal specifically with people in the Hunter region. I have just discussed the needs of older consumers generally. The Hunter region has a high proportion of older residents. Some 23 per cent of the Hunter population is over 55 years of age. Fair trading centres in the Hunter region are working closely with the Home and Community Care Forum to ensure that information about door-to-door sales, the use of licensed building contractors and many other issues that affect the lives of older people actually reaches those people. Recently in the Hunter an 86-year-old woman was charged several thousands of dollars for painting work that she did not ask to be done. The tradesperson who did that work drove her to the bank and insisted that she immediately withdraw the money to pay him. Unscrupulous door-to-door salespeople also appear from time to time using high-pressure sales techniques and often overcharging for their products.

In the Hunter region consumer seminars are being run for community support workers and many volunteers who have regular contact with older people. Fourteen seminars have been run so far with over 300 workers and volunteers receiving information. That has established a pool of people that can provide a large number of the frail or aged with consumer protection information. Recently, at one seminar on the central coast, a group of 60 volunteers assisting older people and the disabled were provided with fair trading information. Those volunteers have regular contact with almost 1,000 clients. That strategy is proving to be successful, as the numbers turning up to the seminars indicate. Similar approaches to services targeting the aged are currently being considered in other parts of New South Wales.

Another target for consumer awareness education is older people from non-English speaking backgrounds. In the Hunter region a close working relationship with the Migrant Resource Centre has provided the opportunity to hold information sessions in a number of languages other than English. It is planned to enhance relationships with the diverse community groups in the Hunter region next year to increase consumer awareness of fair trading issues. Other examples of fair trading assistance to the elderly include displays and staff providing information during Seniors Week; a regular monthly radio segment targeting older people in Gosford and surrounding areas; and media articles provided to seniors newspapers and columns in local newspapers.

The Department of Fair Trading allocated \$118,800 to the Combined Pensioners and Superannuants Association to provide tenancy and housing information and \$229,000 was allocated to the Aged Care Rights Service. That service provides advice and information to older people living in supported accommodation such as retirement villages, hostels, boarding houses and nursing homes. Not only people in the electorate of Swansea would be interested in that information. I am sure that the electors of Swansea, amongst other electorates, would be interested in these positive initiatives by the Carr Labor Government. I am sure that they would give support to any Labor candidate who might stand in those electorates.

YAMBA POLICE LAUNCH

The Hon. M. J. GALLACHER: My question without notice is directed to the Attorney General, representing the Minister for Police. Does Yamba police station have a \$60,000 police launch for use in rivers and also for sea rescues? At present is only

one police officer certified to operate this launch? Have applications for additional police to be trained been unsuccessful and have police been told that they must wait until February 1999? Given that at various times the only qualified police officer may be away, how will the police be able to safeguard people in the area, especially during the forthcoming holiday season? Given that the needed training is only a two-day course, what steps will the Minister take to ensure that police can use this launch to safeguard the lives of people at Yamba?

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

ILLAWARRA ESCARPMENT PRESERVATION

The Hon. I. COHEN: Does the Attorney General, representing the Minister for the Environment, accept that the scenic water catchment flood mitigation and bushland values of the Illawarra escarpment are worthy of preservation? Will the Minister also acknowledge the indigenous values of this escarpment area and move to protect the important corridor between the Royal National Park and the Morton National Park from this unsustainable development? Will the Minister inform the House what action is being taken to protect the Illawarra escarpment?

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

DEPARTMENTAL ENERGY MANAGEMENT POLICY

The Hon. A. B. KELLY: My question without notice is addressed to the Minister for Public Works and Services. What will be the environmental benefits of the new energy management policy for government departments?

The Hon. D. J. Gay: Is the Minister using Green power in his department?

The Hon. R. D. DYER: Yes, and I will address that in my response. I commend the Hon. A. B. Kelly for the interest he displays in environment protection. The House would be aware of the recently announced greenhouse strategy released last week by my colleague the Minister for Energy. As part of that greenhouse strategy the Carr Government has committed itself to a new internal energy management policy to be co-ordinated by the Department of Public Works and Services, the

Department of Energy and the Sustainable Energy Development Authority. The goals of the Government energy management policy are to promote sustainable green energy use, reduce overall energy costs and reduce dependency on energy sources that create greenhouse gases.

The Hon. D. J. Gay: Will the Minister use it?

The Hon. R. D. DYER: The Hon. D. J. Gay seems to be emitting a few gases at the moment; I suggest that he restrain himself. State government bodies presently use approximately \$480 million worth of energy a year, producing more than 4 million tonnes of greenhouse gas emissions. It is my aim and that of my department and others to set in place an energy policy that provides a permanent improvement in this greenhouse gas record through more efficient energy use and green energy consumption.

The energy management policy forecasts a realistic reduction in the order of 500,000 tonnes annually with a cost saving in the realm of \$50 million each year. The new policy encompasses all facets of government operations, including buildings and infrastructure, transport, motor vehicles, and goods and services. As the principal purchaser and supplier for government, the Department of Public Works and Services has a key role in this process and in encouraging other government agencies to adopt better energy management practices. Under the new policy chief executives of government agencies will be accountable for their organisation's performance and will be required to nominate an in-house energy manager to monitor operations.

All agencies will have to submit a set of goals and report to government on their performance. The policy incorporates a number of existing strategies that include initiatives to provide a whole-of-government approach. It also includes a requirement that all inner-government agencies have a starting point of at least 6 per cent green energy use, with higher targets to be set for the future. Several government agencies have already well exceeded that target. I am advised that my Department of Public Works and Services currently purchases 15 per cent green energy and is aiming for a higher total next year. I am further advised that the Olympic Co-ordination Authority has attained a 25 per cent green energy consumption rate, and I commend it for its efforts in this regard.

Included in the policy is operation of the Government's energy smart business program run by the Sustainable Energy Development Authority to regulate power use in government buildings. Another initiative of my department is energy performance

contracting, whereby contractors are encouraged to adopt sustainable energy practices in their operations. A whole-of-government energy policy also provides savings through energy purchases using centralised bargaining power. The policy provides a framework for all government agencies to meet specified targets for greenhouse gas reduction and energy efficiency, and encourages improved energy management and environmental protection by government. The policy is a model for other States and Territories, and I commend it as an example of the Carr Government's commitment to sustainable development and the efficient use of public money.

HEALTH SERVICES INFORMATION

The Hon. JENNIFER GARDINER: My question is addressed to the Minister for Public Works and Services, representing the Minister for Health. Further to my recent question about the conduct of annual general meetings of area health service boards and the need for interested citizens to be able to ask questions about the finances and management of their health services, is the Minister aware that at the recent annual general meeting of the Greater Murray Area Health Service, interested members of the public and community leaders were told at the outset that questions relating to specific community health and hospital services would not be allowed?

When will the Government take community leaders into its confidence by giving them proper opportunities to gain information about the current and proposed status of hospital services? Will we see still more community protests about health services and lack of information about them, such as the protest held in Narrandera last night involving 600 people?

The Hon. R. D. DYER: I am not aware of what happened at the annual general meeting of the Greater Murray Area Health Service. However, I will refer the honourable member's question to my colleague the Minister for Health.

The Hon. Dr B. P. V. Pezzutti: You'll get no answer from him.

The Hon. R. D. DYER: Unlike other members opposite, the Hon. Jennifer Gardiner is capable of asking an intelligent question. I will certainly obtain a response and convey it to her.

ENERGY INDUSTRY CONSUMER COMPLAINTS

The Hon. Dr A. CHESTERFIELD-EVANS: My question is directed to the Minister for Public Works and Services, representing the Minister for

Energy. Is the Minister aware that the New South Wales Energy Industry Ombudsman received 1,200 complaints in the first six months of this year, that half the complaints related to billing, that 82 per cent were from domestic users and that there were some irregularities in billing in the northern beaches area? If the Minister does not think that that is a satisfactory number of complaints, what does he intend to do about it?

The Hon. R. D. DYER: I will be delighted to approach my colleague the Minister for Energy to obtain the information and furnish it to the honourable member as quickly as possible.

REGIONAL CINEMAS

The Hon. P. T. PRIMROSE: My question without notice is addressed to the Acting Leader of the Government. What is the Government doing to assist the promotion of cinemas in regional New South Wales?

The Hon. R. D. DYER: I am grateful to the Hon. P. T. Primrose for the interest he is clearly showing in cinemas in country and regional areas of this State. The Premier, and Minister for the Arts, the Hon. Bob Carr, has announced that the Government will fund a conference to help re-establish cinemas in regional New South Wales. About 50 per cent of New South Wales towns with populations of less than 15,000 do not have cinemas. The Government wants to change that. The regional cinema conference will give country councils a blueprint on how to revive cinemas in existing venues or to establish new ones.

More than 50 councils have already indicated their interest in attending the conference, which will look at community cinemas in Tumut and Glen Innes operated by volunteers, how to identify existing community resources that could be called into action and State Government support under various programs, such as the country lifestyles program, the main street program and the Regional Infrastructure Fund.

The Hon. Dr B. P. V. Pezzutti: What about the picture theatre at Bonalbo?

The Hon. R. D. DYER: I wish the Hon. Dr B. P. V. Pezzutti would go and watch a movie or two in Bonalbo and relieve us of his interjections. In Tumut the Montreal Theatre is using converted second-hand sound, lighting and projection equipment, and volunteers trained by a retired projectionist. That is the sort of community

operation the conference will try to foster. Members opposite who profess to represent country areas of the State should be interested in whether country residents can go to the movies. Their reaction would indicate that they simply do not care whether country residents are able to see a movie locally.

The Hon. Dr B. P. V. Pezzutti: We don't have cinemas in the country; we have picture theatres.

The Hon. J. P. Hannaford: We are more interested in health, education and roads.

The Hon. R. D. DYER: Opposition members are a bunch of philistines; they are not interested in cultural matters. Australia has a proud tradition of producing some of the world's best directors, cinematographers and actors. I would like to think that a revival of the spirit of the Savoy, the Odeon and the Lyceum will ignite a spark and inspire the next George Miller, Gillian Armstrong or Peter Weir. The seed for the Regional Cinema Conference was research undertaken by the Local Government and Shires Association in 1996. The research revealed that the majority of regional councils wanted a cinema in their town above any other cultural activity. Last year the Government assembled a team to examine ways that regional councils could return cinemas to their towns.

The Hon. Dr B. P. V. Pezzutti: Picture theatres.

The Hon. R. D. DYER: For the benefit of the intellectually challenged, I will say cinemas, otherwise known as picture theatres. The Hon. Dr B. P. V. Pezzutti now knows what I am talking about. The conference, to be held in Sydney tomorrow, is the result of the team's work. Historians of the future will use movies in the same way that today's researchers use books and newspapers to discern the past. As entertainment, as propaganda and as educational tools, movies have played a major part in moulding the societies in which we live.

From the works of W. D. Griffiths through to blockbuster movies of the past few years, cinemas have given generations of children and adults alike a window to new worlds. Movies can inspire us and sometimes disgust us. They can uplift or depress us. When they are at their best, they can change our views. Every citizen of New South Wales should be able to walk through the doors of a local cinema, otherwise known as a picture theatre. This Government is working to make sure that is possible.

TUROSS AND WALLAGA LAKE FISHERIES CLOSURE

The Hon. D. F. MOPPETT: I direct a question without notice to the Minister for Public Works and Services, representing the Minister for Fisheries. Is the Minister aware that management advisory committees [MACs] were set up expressly for the purpose of consultation with fishermen before management decisions were implemented in the commercial fisheries of New South Wales? Is the Minister aware that a meeting of the estuary general MAC held on 26 November unanimously rejected the decision of the Minister to close the fisheries at Tuross and Wallaga Lake? Will this opinion of the MAC be taken into account and the closure of the fisheries reviewed and withdrawn?

The Hon. R. D. DYER: One of the purposes of question time is to fish for information. That being the case, I will seek a response from my colleague the Minister for Fisheries and convey it to the honourable member.

NATIONAL PARK FUNDING

The Hon. I. COHEN: I ask the Attorney General, representing the Minister for the Environment, a question. Will the Minister inform the House what funds have been made available to proceed with the Government's commitment to the 85 new national parks? How much money is available for the purchase of land for the new parks? What funds, in a regional and district breakdown, are available to manage these parks? What staffing increases will be made to manage these parks? When will plans of managements for these parks be available for public comment? Have there been any cuts in funding to the National Parks and Wildlife Service?

The Hon. J. W. SHAW: Because the question is technical and requires a detailed answer, I will refer it to the Minister for the Environment and obtain a response.

COMMUNITY SERVICE AWARDS

The Hon. B. H. VAUGHAN: I address my question without notice to the Acting Leader of the Government. Will the Minister inform the House of the presentation of the New South Wales Community Service Awards?

The Hon. R. D. DYER: I ask the House to acknowledge some exemplary New South Wales citizens. Last week 20 members of the public were honoured for outstanding community service. They

went above and beyond the call of duty to help police and emergency service workers in saving lives and assisting in rescue and disaster situations. New South Wales police and emergency service workers do a fantastic job in protecting and helping us all in emergencies. However, members of the public also perform acts of outstanding community service, and their brave acts merit special recognition.

Nominations for Community Service Awards are made by members of the Police Service or by emergency services personnel for consideration by the Ministerial Community Service Awards Review Committee. Two of my colleagues, the Minister for Emergency Services, the Hon. Bob Debus, and the Minister for Police, the Hon. Paul Whelan, attended last week's presentation ceremony. Both were honoured to meet the award recipients, who have performed acts such as pulling others from burning homes and motor vehicles, apprehending offenders committing crimes or performing lifesaving cardiopulmonary resuscitation. It is hard not to be overwhelmed and humbled by the selfless acts of these outstanding people.

The recipients of the Community Services Awards are: Ross Delayney, Eastern Creek; Graeme Selleck, Northmead; John Rowe, Clovelly; Max Cameron, Spring Plains; David Curry, Petersham; Brett Reynish, Narellan; Barry O'Malley, Artarmon; Lance Churchill, Molong; Owen Miners, Yass; Brien Underwood, Ambarvale; Gregory Sainsbury, Cambridge Park; Kylie Watkins, Albion Park; Collin Selby-Adams, Bankstown; Robert Khoo, Kingsgrove; Stephen Swain, Ashfield; Peter West, Crossmaglen; Darren Jepson, Springdale, Victoria; Graeme Watson, Orange; Allan Brien, Ambarvale; and Neil Bowerman, Coffs Harbour. I am sure all honourable members will join me in congratulating and thanking these New South Wales community heroes.

DOMAIN TEMPORARY FENCING

The Hon. Dr MARLENE GOLDSMITH: My question without notice is addressed to the Attorney General, representing the Minister for the Environment. Is the Minister aware that concrete-anchored fencing is being erected to block public access to the Domain because of a forthcoming event? Is it a fact that the relevant Act and regulations do not permit the blocking of this public space or its renting to private entrepreneurs? What does the Minister intend to do about this violation of the law? Furthermore, is the Minister aware that the fencing is being erected between parking spaces and parking meters, thereby completely blocking access

to the meters? Does this mean that parking will be free in this area for motorists confronted by the impossibility of complying with the law, or will the fence be a defence?

The Hon. J. W. SHAW: I will refer the question to the Minister for the Environment.

GRAFTON TO LONG BAY PRISONER TRANSFER

The Hon. Dr B. P. V. PEZZUTTI: My question is to the Minister for Public Works and Services, representing the Minister for Health. Last Friday in question time, as a supplementary inquiry to a question about corrections health service psychiatric reports, I asked:

Will the Minister advise me when a patient was last transferred from Grafton gaol to Long Bay by overnight transport, or perhaps an overnight stay at Cessnock?

In response, the Minister said that he would obtain the information. Does the Minister have that information?

The Hon. R. D. DYER: It is always important, when asked a question by the Hon. Dr B. P. V. Pezzutti, to have *Hansard* available the next sitting day to check the response that was given. I well recall the question last Friday, and the honourable member has not relayed my answer in a correct fashion. In response to the supplementary question I said:

Clearly no Minister answering questions in Parliament would know the answer to a query of that sort. If the Hon. Dr B. P. V. Pezzutti really wants to know, and I doubt it, I will obtain the information for him.

That is the end of the quotation.

The Hon. Dr B. P. V. Pezzutti: I do want to know.

The Hon. R. D. DYER: The honourable member assures me that he wants to know. That being the case, I am sure that in due course the answer will be provided.

NATIONAL ELECTRICITY MARKET

The Hon. J. H. JOBLING: My question without notice is to the Attorney General, Minister for Industrial Relations, and Minister for Fair Trading, representing the Minister for Energy. Will the Minister confirm that the national electricity market will commence on 13 December despite the fact that a 14-day trial of the system failed to

completely satisfy market players of the efficiency of the computer-monitored billing system?

The Hon. J. W. SHAW: I am sure all honourable members would support the national electricity grid and hope it commences as soon as practicable. As presently advised I do not know whether the precise starting date specified in the honourable member's question is correct. I will refer the matter to the Minister for Energy and obtain a response for the honourable member.

The Hon. R. D. DYER: If honourable members have further questions I suggest they place them on notice.

FAIRFIELD POKER MACHINE TAVERNS

The Hon. R. D. DYER: On 27 October the Deputy Leader of the Opposition asked me a question concerning Fairfield poker machine taverns. The Minister for Gaming and Racing has provided the following response:

I refer the honourable member to the Liquor and Registered Clubs Amendment (Gaming) Bill, which is currently before the Legislative Council.

SYDNEY WATER SUPPLY CONTAMINATION

The Hon. R. D. DYER: On 27 October the Hon. Dr A. Chesterfield-Evans asked me a question concerning Sydney's water supply contamination. The Deputy Premier, and Minister for Health has provided the following response:

The McClellan inquiry commissioned studies to identify the species and genotype of the cryptosporidium found in Sydney's water supply. The species of some of the oocysts was confirmed as cryptosporidium parvum. There have been media reports that samples of cryptosporidium from the Sydney water supply were to be genetically typed. An attempt was made to prepare the cryptosporidium found in Sydney's water supply for genotyping. However, many of the cryptosporidium oocysts were found to be dead and it was not possible to obtain sufficient genetic material to perform the analysis.

STATE FOREST RESOURCES

The Hon. R. D. DYER: On 29 October the Hon. I. Cohen asked me a question concerning State Forests resources. The Minister for Forestry has provided the following response:

Under regional forest assessments for the upper north-east and lower north-east, a major forest resource inventory program occurred. A strategic timber availability model called Forest Resource and Management Evaluation System [FRAMES] was developed by the resource and conservation division in the Department of Urban Affairs and Planning and State Forests. FRAMES was oversighted by a CRA-RFA technical

committee comprising representatives from industry, union, conservation, government agency, and Commonwealth stakeholders. It was subject to technical committee review during its development as well as an external independent review formally commissioned by the committee.

This review found FRAMES "is well capable of meeting the demands of RFA negotiations and for assessing Ecologically Sustainable Forest Management considerations". The FRAMES project provides the best available strategic inventory for forests in the upper north-east and lower north-east for long-term land use decision making. It was developed specifically for forest agreement negotiations involving key industry and environmental groups. It specifically addresses strategic issues, a 20-year agreement and longer, but was not designed as an operational or tactical inventory.

FRAMES provides strategic level estimates of annual supply levels of quota sawlogs, and other smaller and lower quality products. It was neither designed nor intended to provide accurate estimates at compartment level. To estimate timber at a compartment level, a different approach to that used by FRAMES is required. Estimates of timber volumes provided to the North East Harvesting Advisory Board [NEHAB] considered individual compartments were not part of the FRAMES process and were estimates based on a number of factors, including current economic thresholds for viability.

The NEHAB information also considered only part of the UNE area, that is, Casino, Urbenville and Murwillumbah management areas, and not the complete opportunities for supply that have been built into the Government's decisions. Because FRAMES works on sampling strata across UNE using average unit volumes, use of FRAMES for comparison with NEHAB compartment specific data is inappropriate and is inconsistent with the design intent. In addition, comparisons made by parties other than State Forests have not mimicked the harvesting environment that would be applicable in Casino, Urbenville and Murwillumbah management areas.

Under the Government's decision for UNE and LNE a package of initiatives has been adopted. This package includes establishing over 380,000 hectares of new reserves; reducing industry supplies to term agreement and wood supply agreement levels, to about 50 per cent of the 1995 allocation levels; extending current quota sawlog agreement contracts to 20 years, subject to an inventory review after the current agreement period; changing traditional supply arrangements so that, for example, supply to mills in the region comes from other areas as well as Casino, Urbenville and Murwillumbah management areas; providing haulage assistance to facilitate these new supply arrangements; and sourcing timber from private property.

These arrangements provide for strategic decision making which enables more than 380,000 hectares of new reserves as well as security for a viable value-adding and sustainable timber industry within the UNE and LNE areas. A further review of timber resources before supply contracts are signed is not required.

TEACHER REGISTRATION

The Hon. J. W. SHAW: On 27 October Reverend the Hon. F. J. Nile asked me a question concerning the teaching standards board. The Minister for Education and Training, and Minister

Assisting the Premier on Youth Affairs has provided the following response:

These matters are currently being addressed during the course of the parliamentary debate on the Teaching Standards Bill.

Questions without notice concluded.

ASSENT TO BILLS

Assent to the following bills reported:

Crimes Legislation Amendment (Child Sexual Offences) Bill
Motor Accidents Amendment Bill
Privacy and Personal Information Protection Bill
Victims Compensation Amendment Bill
Appropriation (1997-98 Budget Variations) Bill (No 2)
Public Finance and Audit Amendment (State Accounts) Bill

PERIODIC DETENTION OF PRISONERS FURTHER AMENDMENT BILL

Second Reading

The Hon. R. D. DYER (Minister for Public Works and Services), on behalf of the Hon. J. W. Shaw [5.02 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.

This bill is straightforward. It will ensure that reforms to the periodic detention scheme which Parliament approved in the budget session will be fully incorporated into the Periodic Detention of Prisoners Act 1981. Honourable members may recall that in the previous session I introduced the Periodic Detention of Prisoners Amendment Bill. Central to that bill, which the Parliament passed, were amendments to transfer from the courts the function of cancelling periodic detention orders and to place that function with the Parole Board. The explicit purpose of those amendments was to speed up the process by which a periodic detention order may be cancelled when a periodic detainee fails to meet his or her obligations under the periodic detention scheme.

I said at that time that the Department of Corrective Services anticipated that the Parole Board would take about 10 days from the date of a routine application to cancel a periodic detention order, and that the Board would have the capacity to process particular applications more quickly. Following the passing of the legislation the Department of Corrective Services developed several minor amendments to the Periodic Detention of Prisoners Regulation 1995, which was designed to facilitate the operation of the new cancellation process. In the process of settling this necessary regulatory framework, legal advice was received indicating that the Periodic Detention of Prisoners Amendment Act, while it shifted the cancellation function from the courts to the Parole Board as intended, left some undesirable legislative ambiguity as to the procedures to be followed by the Parole Board when cancelling a periodic detention order.

The board has its own procedures which it follows, for example, in the case of the revocation of a parole order or of a home detention order. The Act, because it did not explicitly set out the procedures which the board must follow, may by implication have required the board to adopt court procedures. The procedures of the board are simpler and more expeditious than those of a court. The bill which I am introducing today will insert sections 25AA, 25AB and 25AC into the Periodic Detention of Prisoners Act 1981. These new sections set out normal Parole Board procedures and apply those procedures to the cancellation of periodic detention orders. These new sections will, therefore, complete the reforms which Parliament had, in my view, assumed were contained in the bill passed in the previous session.

The current bill will make one further change. The previous amending Act contained a savings and transitional clause which would have meant that only those offenders entering the periodic detention scheme after the commencement of the reforms would be subject to the new cancellation procedures. Existing detainees would still have been dealt with by the courts, rather than by the Parole Board, resulting in a dual system which would have continued for several years. It is clearly in the interests of the fair administration of the periodic detention scheme that the new cancellation process should operate fully from the commencement of the amending Act, except that any cancellation application actually part-heard by the courts should remain a matter for the courts.

The bill seeks to omit existing clause 25 of schedule 2 to the Act and insert a new clause 25 and additional clauses 25A, 25B and 25C. The effect of these amendments will be that, unless the hearing of a cancellation application has already commenced in the courts, the application will be dealt with by the Parole Board. Finally, I wish to assure the House that the current bill is fair to periodic detainees. The bill will mean that a periodic detainee whose periodic detention order is to be cancelled will be in the same position as a parolee or a home detainee whose parole order or home detention order is to be revoked. I commend the bill to the House.

The Hon. C. J. S. LYNN [5.02 p.m.]: I lead for the Opposition on the Periodic Detention of Prisoners Further Amendment Bill. I understand from the shadow minister in the other place that during the past 12 months approximately 600 to 800 periodic detainees have failed to turn up to meet their obligations. When the person is eventually contacted, it takes six to eight months before the problem is corrected. One of the main problems I experienced with the legal system before entering Parliament, and still experience, is the time that courts take to settle criminal matters.

The delays, often the result of deliberate tactics of defence lawyers, place unnecessary stress on the victims of crime. Although the Minister rejected the assertions of the honourable member for Coffs Harbour about the reasons for the introduction of this bill, I firmly believe that the Shane Mangan case shamed the Government into correcting defective legislation it had introduced in May. This Government has a strong history of introducing defective legislation, realising that it impacts on the

community and then introducing amending legislation to try to fix the problem.

If the Government had been more diligent in the first instance and prepared its legislation properly, the problems that occurred with the Mangan case may not have happened. The Shane Mangan case received media prominence in October when the *Sydney Morning Herald* ran a story under the headline "Killer driver on run after 2 days' custody". Shane Mangan had been sentenced to periodic detention but had attended only two days in 12 months. Due to court delays, action could not be taken until August even though the Department of Corrective Services began court proceedings in February to revoke Mangan's weekend detention order.

This situation is totally unacceptable. The public has a right to expect that the Government is doing everything in its power to ensure that those sentenced for committing crime serve their sentence and at no point place the public in danger. If criminals sentenced to periodic detention fail to honour the obligations they made to the people of New South Wales, they deserve to be appropriately dealt with. The public has a right to know, and the Government has an obligation to ensure, that the process to deal with criminals who breach their obligations and responsibilities is brought into effect as soon as possible and that those people are not out on the streets basically thumbing their noses at the authorities.

It is important for Parliament to send a clear message to the public that this kind of flagrant breach of obligation will not be tolerated. The Minister asserted in the other place that Mangan's case had nothing to do with the Government finally taking some action because the bill was introduced only in May and court proceedings to revoke Mangan's periodic detention were commenced in February. It appears that the Minister asserts that in this particular case it did not matter that the bill was defective because Mangan absconded before it was introduced.

While the Minister may be correct in suggesting that, if the Mangan case had not highlighted the inadequacies of the current system I am sure we would not be debating this bill now. It is more than likely that the bill would still be sitting somewhere waiting for the Government to get its act together. We are just around the corner from an election and that may have provided additional stimulation for the Government to introduce the bill. The Government always trots out the statement that it is tough on crime when in reality it is not.

The Government's decision to have the Parole Board deal with revocation of periodic detention orders is sensible and welcome. The Opposition supports totally the concept of periodic detention because it provides an opportunity for those who commit crimes to continue to provide for their families and themselves by serving their punishment on weekends. It is also economic for taxpayers because governments are not required to maintain and build as many institutions. By the same token, the message should be strong that people cannot decide to turn up to serve their periodic detention sentence when they want to. The community must observe that periodic detention sentences are served appropriately.

The periodic detention order system is fair and provides plenty of opportunity for those within it. I believe the system could be toughened up because presently it does not attract the respect it should. Only on the third occasion that a detainee does not report is action taken, but then the matter faces court delay. In May the Minister gave the assurance that the Government would deal with the issue and introduce tough measures to ensure that those serving periodic sentences would be severely dealt with if they absconded. However, the bill was not introduced until 28 October.

For almost half a year the Government virtually rested on its laurels. Public statements were made assuring everyone that the Government was doing something; as is its style, this Government felt that would be enough to divert the public's attention from the issue. I support entirely the comments of the honourable member for Coffs Harbour about the reasons the Government finally introduced the bill. The bill is now before the House and the Opposition is happy to support it. It contains many sensible measures that should have a substantial impact on the ability of some who blatantly breach their obligations and responsibilities when serving a sentence of periodic detention.

The bill provides that the procedures to cancel or revoke an order for periodic detention can be done through the Parole Board, as opposed to the current situation with the matter being dealt with only by a court. By going through the Parole Board the matter can be brought on much earlier than the court system would allow, thereby ensuring that offenders have less time at liberty before a warrant is issued for their arrest. This measure will simply bring the procedures for periodic detention into line with those procedures for home detention and parole orders.

New clauses 25, 25A, 25B and 25C are sensible amendments that should have been included in the previous amending Act. That Act provided

that those who were serving sentences at the time the bill was introduced would still be dealt with by the courts and only those sentenced after the legislation was passed would be dealt with by the Parole Board. The new clauses provide that only those proceedings to revoke a periodic detention order already being dealt with by a court will continue to be dealt with by the court. Other new proceedings to revoke periodic detention orders will be dealt with by the Parole Board. The Opposition is happy to support these sensible provisions and believes the legislation should be introduced as quickly as possible. I commend this bill to the House.

The Hon. I. COHEN [5.10 p.m.]: The Greens have some concerns with the Periodic Detention of Prisoners Further Amendment Bill. My office has received a letter from the New South Wales Council for Civil Liberties succinctly expressing that council's concerns as follows:

The Council of Civil Liberties is opposed to the Amendment of the Periodic Detention of Prisoners Further Amendment Bill, 1998. Under the new Amendment, the Parole Board will have the power to set a minimum term of imprisonment on the cancelled periodic detention order. This has not been a function of the Board previously—only a Court can sentence someone to imprisonment. This Amendment will give a non Court the power to decide how long a person spends in custody? What precedents will be used to determine what is an appropriate sentence? What expertise will the Parole Board bring to the sentencing process. The issue of political interference is also of major concern. The 1981 Act allowed the Commissioner of Corrective Services the right to make application to the Court determining parole where periodic detention had been cancelled.

The further amendment as proposed by the Government reiterates that power, but changes the authority from that of a court to that of the Parole Board. The Board will be in the position of having a legislative duty to consider the applications of the Commissioner, as it is now required to do in parole cases coming before it. It is the Council's experience that there have been several attempts by government representatives to influence the integrity of non or quasi-judicial bodies such as the Parole Board and the Serious Offenders Review Council, when media worthy prisoners have come before them. The cases of recent parole applications of Schneidas, McCafferty, Lewthwaite and Johnson, indicated a disturbing trend towards political interference of a sort that would not be tolerated by the courts.

The government's introduction of the proposed amendment clearly shows that it is the government's intention that this amendment be used to prevent certain prisoners from having parole orders made in their favour, pending the outcome of a periodic detention cancellation order. If this amendment succeeds, one can not assume other than the government will seek to use its influence to unduly interfere with the quasi-judicial functions of the Parole Board. This can not be permitted. The original amendment also allowed for prisoners the opportunity to have appeals bail or parole while the decision to revoke their parole is being determined. The practical effect of this further amendment is to keep those people in custody awaiting the Parole Boards decision for the

Board does not have the power to grant bail. People will therefore have to come before the courts for bail at some stage.

The Council for Civil Liberties raised significant concerns in terms of due process. I have heard it said in many debates that it is appropriate for the courts to have the decision-making role, not the Legislature, and that the process should be free of perceived political interference. The Greens oppose this legislation and have certain concerns as mirrored by the Council for Civil Liberties about the direction of this bill.

The Hon. Dr A. CHESTERFIELD-EVANS [5.13 p.m.]: The Australian Democrats note the concerns of the Council for Civil Liberties which has also consulted with us about this bill. We note, however, that concern was raised by honourable members in the other place during their contributions to the second reading debate that the length of time taken to respond to a breach of parole can place the public at risk. While we believe it is advantageous that the bill will allow the Parole Board to act more speedily so far as the public is concerned, we are concerned that the civil liberties of prisoners not be undermined by these procedures. The reform speeds up the cancellation process when parole conditions have been breached.

At present lengthy delays can occur before a matter is listed for hearing. The gap left by the original Act virtually required two systems; one for those who had home detention cancelled and one for those who had periodic detention cancelled. This legislation closes that loophole. The Australian Democrats are concerned that court delays are leading to changes—in fact, we are concerned that there is such a long delay before matters are heard that when there is some action, such as a parole, the courts are really not able to respond. We hope this is a satisfactory solution and as such we support it. Obviously we will keep a watching brief as to whether it is actually working.

Reverend the Hon. F. J. NILE [5.15 p.m.]: The Christian Democratic Party supports the Periodic Detention of Prisoners Further Amendment Bill. We understand that this bill is required because the earlier bill sought to shift the function of cancelling a periodic detention order from the courts to the Parole Board, which is already responsible for revoking parole orders and home detention orders. The purpose of that bill was to speed up the cancellation process, however, as the bill did not spell out the procedures that the board should follow, the board considered that it was legally bound to follow court procedures.

The intention of the Government to speed up the whole system of listing and hearing would not be achieved and would oblige the board to run two concurrent systems; one for cancellation of home detention and one for cancellation of periodic detention. There are a number of other minor changes in the bill. We note too that the Government has given notice of a major amendment on page 6 of the bill to the effect that minimum and additional terms of imprisonment may be set for existing periodic detainees whose orders for periodic detention are cancelled by the Parole Board.

We would support those changes in principle as the amendment ensures that certain prisoners whose periodic detention order is cancelled would not be eligible for parole. Honourable members will recall a recent similar debate about revisiting sentences when the Opposition introduced a bill which would have upheld the original sentence imposed by the judge that Kevin Crump was never to be released. I was very disappointed, even angry, that when the *Daily Telegraph* printed a front-page story with Kevin Crump's photograph, it gave the impression that the whole House was in agreement with his early release. Other newspapers carried similar stories.

As honourable members know, the Liberal Party and National Party did all they could to ensure that he was not released, and the Christian Democratic Party strongly supported the Opposition in that endeavour. It was through the efforts of the Labor Government and the other crossbench members that the bill was defeated. Unfortunately the media gave the impression that the House was almost unanimous in its view and anxious to release Kevin Crump. The Christian Democratic Party does not want to see that happen. We support this bill and hope the media will be more accurate in their reporting of the bills debated in this House.

The Hon. R. S. L. JONES [5.18 p.m.]: I wish to support the comments of the Hon. I. Cohen and the Council for Civil Liberties, who are concerned about the Parole Board having the power to set a minimum term of imprisonment. They feel that it is extraordinary that a non-court can do this sort of thing. With regard to the comments by Reverend the Hon. F. J. Nile about Kevin Crump, I do not believe any member of this Chamber wanted to see Kevin Crump released from prison early. We did not wish to interfere with the judicial process; we did not consider it was our right to do so.

The Hon. R. D. DYER (Minister for Public Works and Services) [5.19 p.m.], in reply: I thank

honourable members who have spoken in support of this measure and, indeed, all honourable members who have spoken in the course of the debate. In particular, I thank the Hon. C. J. S. Lynn for his support for the bill. I take this opportunity to congratulate the Hon. C. J. S. Lynn on his party's decision to re-endorse him as a candidate for membership of this House. That proves that the honourable member was wise to accept my offer to lobby the preselecting body. One can see how effective my efforts were. With those few words I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Schedule 1

The Hon. R. D. DYER (Minister for Public Works and Services) [5.21 p.m.]: I move:

Page 6, schedule 1, lines 11-22. Omit all words on those lines. Insert instead:

25C Minimum and additional terms of imprisonment may be set for existing periodic detainees whose orders for periodic detention are cancelled by Parole Board

- (1) This clause applies to a sentence of imprisonment that is being served by way of periodic detention where the sentence was imposed before the commencement of this clause.
- (2) If the Parole Board cancels an order for periodic detention with respect to a sentence of imprisonment to which this clause applies, the Parole Board, in its discretion, may:
 - (a) direct that any unexpired portion of the sentence to which the order applied (within the meaning of section 27) is taken to consist of a minimum term and an additional term set under Part 2 of the *Sentencing Act 1989*, and
 - (b) make a parole order in accordance with section 24 of the *Sentencing Act 1989*,

or, on the application of the Commissioner, may make such other orders as the Parole Board considers appropriate.
- (3) Any such minimum and additional term and parole order have the same effect as if they had been respectively set and made under the *Sentencing Act 1989*.
- (4) The functions of the Parole Board under this clause are to be exercised:

- (a) at a meeting convened in accordance with section 25AB (1) to reconsider the cancellation of the order, or
 - (b) if the Secretary of the Parole Board is not notified that the periodic detainee intends to make representations to the Parole Board in connection with the cancellation of the order, at a meeting convened on, or as soon as practicable after, the date fixed for the purposes of section 25AA (2) (a).
- (5) On setting a minimum term and an additional term for a sentence of imprisonment, the Parole Board is to issue a new warrant under section 26 (1A), being a warrant that specifies the minimum and additional terms so set, to replace the warrant issued under that subsection when the relevant order for periodic detention was cancelled.

This amendment is a transitional provision. It has been included to ensure that certain prisoners who have had a periodic detention order cancelled will not be eligible for parole. Currently, courts determine proceedings for cancellation of periodic detention orders. After cancelling a periodic detention order the court must consider whether or not to impose a minimum and additional term of imprisonment. If this is not done the prisoner is to serve a fixed term of imprisonment. Under the new scheme set out in the bill and the Periodic Detention of Prisoners Amendment Act the Parole Board and not the court will cancel periodic detention orders.

The court will still be required to consider setting a minimum term however, this will occur at the time it imposes the periodic detention order and not at the time of cancellation of the order. Transitional provisions need to be established with respect to those orders for periodic detention which are imposed before the commencement of the bill but cancelled after its commencement. This is because the court will not have had the opportunity to consider setting minimum terms for these orders at the time they are imposed. Under the original transitional provision the prisoner is deemed to be serving an additional term of imprisonment upon cancellation of the periodic detention order. The prisoner is therefore eligible for parole.

Under this amendment the Parole Board may direct that a minimum term of imprisonment be imposed. This is to ensure that in the appropriate case the prisoner is required to spend a minimum time imprisoned under the cancelled periodic detention order. It is important that this amendment be made, for two reasons: firstly, it will minimise any retrospective impact that the new scheme has on sentences of periodic detention; secondly, it will ensure that in an appropriate case the prisoner will

serve a minimum term of imprisonment. During the length of the minimum term of imprisonment the prisoner is not eligible for parole.

This amendment applies only to periodic detention orders imposed before the commencement of the bill. After the commencement of the bill a minimum term will be imposed at the time the periodic detention order is made. The amendment replicates as far as possible the existing provisions for setting minimum terms upon cancellation of periodic detention orders. This is to minimise any retrospective impact of the new scheme for cancelling periodic detention orders. The major difference from the existing scheme is that the Parole Board and not the court will consider setting the minimum and additional terms. This is consistent with the new role of the Parole Board in cancelling all periodic detention orders. The prisoner will always be given the opportunity to appear before the Parole Board in relation to the decision whether or not to set a minimum term.

Amendment agreed to.

Schedule as amended agreed to.

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

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

CRIMES LEGISLATION FURTHER AMENDMENT BILL

Second Reading

The Hon. R. D. DYER (Minister for Public Works and Services), on behalf of the Hon. J. W. Shaw [5.27 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 pleased to introduce the Crimes Legislation Further Amendment Bill. The bill contains a number of reforms intended to add to the consistency and efficiency of the criminal justice system in New South Wales. The bill is a product of the Government's commitment to the continual monitoring of the criminal justice system in order to identify those areas where improvements can be made and anomalies done away with. That process would be difficult, if not impossible, without the valuable suggestions and observations

of those who work closely with the administration of justice in this State.

In particular, amendments in this bill have been prompted by members of the judiciary and senior courts administrators, the Director of Public Prosecutions and the Youth Justice Advisory Committee. I take this opportunity to thank them for their contributions. The bill contains a number of procedural and substantive changes to the law. Worthy of particular note is the change to the Crimes Act to allow the arrest of persons found to be in possession of what police suspect is child pornography before that material is classified by the Office of Film and Literature Classification.

It is appropriate that law enforcement authorities are not unduly hampered in stopping the insidious and repulsive trade in child pornography. The proposed amendment removes a perceived technical difficulty with police powers to arrest in these circumstances. However, it is important that courts not become de facto censors. That is why it remains the case that the material must be appropriately classified prior to a court dealing with the matter. Another important change is to the Criminal Appeal Act to ensure that all persons who have been convicted of offences, but are on bail awaiting the outcome of an appeal, do not have that time included in their sentence. Such is the case currently in relation to appeals to the Court of Criminal Appeal.

It is not clear that it is also the case in relation to an appeal to the High Court. The situation of an appellant in both cases should be, as far as possible, the same. These amendments make that the case. The bill also introduces a change to allow the close family of deceased victims to attend the hearing of an alleged offence that led to the death of their relative, where the defendant is a juvenile. Currently there is no guarantee that such family members can be present at the hearing. The bill ensures that they can be. The Government is committed to ensuring the sensitivity of the criminal justice system to the needs of victims of crimes. The Charter of Victims Rights was an important initiative of this Government, and this amendment is in accordance with the principles it contains.

I now turn to a detailed consideration of the provisions of the bill. Schedule 1 to the bill contains a number of amendments to the Crimes Act. I will address each of them in turn. Item [1] of this schedule amends section 428G(1) of the Crimes Act. At present, section 428G(1) stipulates that when a person deliberately becomes intoxicated, and an offence is thereafter committed by that person, "evidence that the intoxication was self-induced" cannot be taken into account when considering whether the actions of the accused were voluntary. The rationale behind this particular section of the Crimes Act is to ensure that persons who deliberately become intoxicated, and then commit a crime, should not be able to claim that they committed the crime involuntarily as a result of their intoxication.

For abundant clarity, the section is amended by the bill. It will be clearer for the section to say that "evidence of self-induced intoxication" cannot be taken into account rather than "evidence that the intoxication was self-induced". Items [2] and [3] of the schedule deal with an administrative aspect to do with interim apprehended violence orders. Magistrates and senior administrative staff of the Local Court have recommended that registrars of the Local Court be empowered to continue interim apprehended violence orders by consent. A working party, convened by my department, also recommended such a course. At present, prior to granting an apprehended violence order, a magistrate of the Local Court may grant a interim apprehended violence order.

The purpose of the interim order is to protect the person seeking the order in the period leading up to the hearing of his or her application by the court. At present the interim order may only be extended by the court. This excludes the possibility of the order being extended by the clerk of the Local Court. It sometimes occurs that applications are not heard on the first occasion the matter is listed at court, and an adjournment is appropriate. Often this involves the parties waiting a long period in the court for the matter to be adjourned and the order extended to the next date by a magistrate. It would be much more efficient, and convenient to the parties, if the clerk of the court could stand the matter over to the future date and continue the order to that date, if the parties consent to that course.

This amendment achieves that goal. Of course, these measures only cover a situation where the variation is wholly consented to by both parties. Items [4] and [5] of schedule 1 amend section 578 of the Crimes Act. At present, the section allows a judge presiding at a trial for certain sexual assault offences to make an order forbidding publication of the evidence in the trial. As section 578 refers only to evidence, an argument can be made that material which may identify the trial, or the parties involved, could be published despite the trial judge making such an order. This is the case as the indictment, the Crown or defence opening, final addresses of counsel and the summing up of the trial judge up are not, strictly speaking, evidence.

Any non-publication order made by a trial judge is therefore capable of being circumvented if the material referred to in the order also appears in those parts of the material at the trial that are not evidence. Section 578 of the Act is amended to allow for the prohibition of the publication of any material before the court, by way of an order of the trial judge. Item 7 of the schedule amends current subsection (3) of section 578. This subsection ensures that it is clear that the section does not override other provisions whereby non-publication orders are automatic and there is no requirement for the judge to make any order.

Item [6] of schedule 1 amends the Crimes Act to ensure that police have the power to arrest persons they believe to be in possession of child pornography. By way of explanation, in 1995 the Government amended the Crimes Act by enacting the Crimes (Child Pornography) Amendment Act. That Act created the offence of possession of child pornography. It prohibited the possession of films, computer games and publications which contained child pornography. In 1997, the penalty for the offence was increased to a fine of \$11,000 or two years imprisonment, or both. The offence complements other provisions in the Crimes Act which make it an offence to employ, or procure a child to be employed, for pornographic purposes.

As I explained earlier in this speech, it is worth while to have a system whereby courts are not turned into censors. However, care must be taken to ensure that no procedural impediment is placed in the way of effective arrest, prosecution and conviction of those who publish child pornography. Accordingly, section 578B of the Crimes Act is amended to clarify the meaning of the term "commencement of proceedings". The amendment will ensure that persons may be charged with the offence of possession and publication of child pornography prior to classification of apparently pornographic material.

Item [7] of schedule 1 abolishes the common law rule that a husband and wife cannot be found guilty of conspiracy together. The Government recently abolished the ancient

common law rule that a wife could not be convicted of being an accessory after the fact to a felony committed by her husband. This amendment is the other side of the same coin. The Queensland Court of Appeal recently analysed the meaning of conspiracy, as between a husband and wife, with respect to a de facto couple. In the course of the decision, it became apparent that the ancient common law prohibition still exists. The court said that a husband and wife cannot at common law be found guilty of conspiracy together, because they are considered to be one person, possessed of the one will.

In this day and age, it cannot be asserted that a husband and wife together either constitute one person or have one will for the purposes of a criminal offence such as conspiracy. By way of example, it would be a travesty of justice if two married persons who conspire to commit the offence of murder are unable to be prosecuted due to the existence of an outdated common law prohibition, based upon notions of the nature of marriage which no longer reflect community attitudes. Accordingly, the bill will ensure that the common law prohibition against a husband and wife being convicted of conspiracy together is abolished. It should be noted that the defence of duress, which is available when a person is forced to commit a crime by another person, will continue to be available to both husbands and wives, as well as all other citizens of this State, without distinction as to marital status.

Items [8] to [11] of schedule 1 amend the second schedule to the Crimes Act to ensure that, if an offence requires a particular procedural provision in order that it be dealt with appropriately, then that procedural provision is available whether the matter is dealt with in a Local Court or by a judge and jury in the District Court. Section 3(1) of the Crimes Act provides that the procedural sections listed in the second schedule to the Act apply, as far as they can, to all courts dealing with offences. At present, there are a number of valuable procedural provisions contained in the Crimes Act which are available in the superior courts, but not in the Local Court. This is because these provisions are not listed in the second schedule to that Act.

Procedures such as these between the various jurisdictions should be, as far as possible, uniform. Magistrates are able to deal with a large range of criminal offences, many of which may, in certain circumstances, also be dealt with in the District Court. It is appropriate that they have available to them the same procedural provisions when dealing with those matters as would be available to a judge and jury. Schedule 2.1 amends the Children (Criminal Proceedings) Act. At present that Act provides that all persons not directly interested in the criminal proceedings before a court to which a child is a party are to be excluded from the hearing, unless the court orders otherwise.

An exception is created in the Act for members of the media, who may be present unless the court orders their exclusion. In cases where the court proceedings are to do with an offence which resulted in the death of a person, the Government believes that the close relatives of the deceased have a right to be present at the hearing. It may be that a case could be made, as the law currently stands, for their being present in court as persons directly interested in the proceedings. However, to remove any doubt about this, and to provide those family members with an unarguable right to be present, section 10 of the Children (Criminal Proceedings) Act is amended to insert an express provision that members of the immediate family of a deceased victim are entitled to be present during criminal proceedings.

Schedule 2.2 amends the Coroners Act to bring its provisions into line with those that seek to achieve a similar aim in the

Justices Act I note that this amendment arose from a suggestion by the State Coroner and has the support of the Director of Public Prosecutions, the Police Association and the New South Wales Law Society. At present, section 19 of the Coroners Act 1980 provides that if, at any time during the course of an inquest or inquiry, the coroner is of the opinion that the evidence establishes a prima facie case against a known person for an indictable offence, the coroner must terminate the inquiry. The coroner's papers are then referred to the Director of Public Prosecutions. The director then determines whether criminal charges should be brought against the person concerned.

In contrast, sections 41(2) and 41(6) of the Justices Act provide that, after all of the evidence in committal proceedings has been adduced, a magistrate is required to have regard to two things prior to committing the person for trial. The first is whether the evidence is capable of satisfying a jury that the person committed an indictable offence. The second is whether there are reasonable prospects that the jury would convict the person of the indictable offence. There appears to be little value in the coroner referring matters to the Director of Public Prosecutions in circumstances where there is no real likelihood of a jury convicting on the available evidence, even though a prima facie case may be established.

It is in the interests of justice that the considerations outlined in the Justices Act be taken into account by the coroner. The result is that the matter should be referred to the Director of Public Prosecutions if, at any time during the course of an inquest or inquiry, a coroner is satisfied of two things: firstly, that there is sufficient evidence against a known person capable of satisfying a jury beyond reasonable doubt that the person has committed an indictable offence; secondly, that there is a reasonable prospect that a jury would convict the person of an offence. This brings the standard to which a coroner must be satisfied about the evidence, prior to referring a matter to the Director of Public Prosecutions, into line with that of a committing magistrate.

This change will increase the efficiency of Coroner's Courts, in that inquests and inquiries will not be needlessly held up while matters which are unlikely to be prosecuted are referred to the Director of Public Prosecutions. Further, the efficiency of the office of the Director of Public Prosecutions will be enhanced, in that its resources will not be fruitlessly spent on considering matters where the evidence is not sufficiently cogent to satisfy the proposed test. Schedule 2.3 amends the Criminal Appeal Act. I note that these amendments are based on a suggestions made by the Director of Public Prosecutions.

Item [1] of this schedule amends the Criminal Appeal Act to clarify an important area of sentencing law. It is sometimes the case that offenders offer to assist the authorities using the knowledge they have regarding criminal activity. Such offenders are often given a discount on any sentence a court imposes on them for the assistance they have given or have undertaken to give in the future. This is to encourage them, and others in the same position, to give this valuable information to the authorities. If an offender is sentenced on the basis of information he or she has undertaken to give in the future and he or she does not give it, the Crown has a right to appeal the sentence to the Court of Criminal Appeal for that court to reassess the sentence.

This right is contained in section 5DA of the Criminal Appeal Act. It is of course just that persons who get lighter sentences through promises to give information, have that sentence reassessed if they do not in fact give the assistance promised to authorities. A doubt has arisen as to whether the Crown

retains the right of appeal in these circumstances if, in the time between the original sentence and the appeal, there has been an intervening appeal to the Court of Criminal Appeal regarding the sentence, and that court has resented the offender. I propose to amend section 5DA to make it clear that the Crown retains its right to appeal to the Court of Criminal Appeal when an offender fails to abide by his or her undertaking, whatever court sentenced him or her.

Item [2] of schedule 2.3 deals with an issue relating to appeals from the Court of Criminal Appeal to the High Court of Australia. Currently, the Court of Criminal Appeal has power under the Bail Act to grant bail to an accused person who appeals from a decision of that court to the High Court. It is clear from section 18(2) of the Criminal Appeal Act that the time during which an appellant is at liberty on bail to prosecute his or her appeal from the District Court or the Supreme Court to the Court of Criminal Appeal does not count as part of the original term of imprisonment of the appellant. It is not clear that a grant of bail for an appeal from the Court of Criminal Appeal to the High Court has the same effect.

This is a clear anomaly, and could lead to the unjust result that an appellant's sentence continues to run when he or she is at liberty. I note that section 77U of the Commonwealth Judiciary Act may well provide power to the Court of Criminal Appeal to make an order staying the sentence in the circumstances of an appeal to the High Court. In the Government's view, it is appropriate that the laws of this State ensure that such a stay is an automatic consequence of an appellant being released on bail. The proposed amendment will achieve this end. Schedule 2.4 amends the Criminal Assets Recovery Act. At present, section 32(3) of that Act provides that assets which are confiscated and put into the confiscated proceeds account may be used to fund such programs as law enforcement, drug rehabilitation and drug education.

The section does not provide that funding from that account may be allocated to crime prevention programs. Section 32(3) is amended to allow for the allocation of funds to crime prevention programs and for programs supporting safer communities. Schedule 2.5 contains a number of amendments to the Criminal Procedure Act relating to the summary disposal of certain offences. Items [4] and [11] may conveniently be dealt with together. The New South Wales Director of Public Prosecutions has suggested that provision should be made for offences under the Liens on Crops and Wool and Stock Mortgages Act to be dealt with in the Local Court. Currently there is no provision for this to occur, and offences under this Act must be dealt with on indictment, by a judge and jury.

For instance, that section 20 of the Act contains an offence with respect to unauthorised dealings in stock, crops and wool which place at risk the lenders of moneys secured by liens and mortgages on such stock, crops and wool. This encompasses offences of a very broad range of seriousness, from relatively minor to matters of serious fraudulent behaviour. The offence is described as an indictable fraud and misdemeanour, and is therefore not able to be dealt with summarily whatever the level of seriousness. It is entirely anomalous that minor offences under this section must be dealt with before a judge and jury, when many other more serious indictable offences may be dealt with summarily pursuant to table 1 and table 2 of the Criminal Procedure Act.

Whilst the offences under this Act may not be frequently prosecuted, it is always important to ensure the efficient

administration of justice. The Government therefore agrees that appropriate offences contained in the Liens on Crops and Wool and Stock Mortgages Act should be included in part 9A of the Criminal Procedure Act, in order that they be brought within the table 1 and table 2 regime. This, of course, leaves open the possibility for the prosecution to elect to have the matter dealt with on indictment in the more serious cases.

Item [8] merely corrects a typographical error present in the current clause 30 of part 9A table 1 in the Criminal Procedure Act. The other items in this section are directed towards amending the Criminal Procedure Act to ensure that conspiring and inciting others to commit an offence that may be dealt with summarily by a Local Court, may also be dealt with in the same jurisdiction. In order to understand the proposed amendment, it is first necessary to understand readily the jurisdictional disposition of criminal offences in New South Wales. At one end of the spectrum of criminal offences are those offences so minor that they must be dealt with before a magistrate, and cannot be dealt with by trial by jury. These offences may be called wholly summary offences.

At the other end of the spectrum are those offences that are so serious that they cannot be dealt with by a magistrate, and must be dealt with by judge and jury. These offences may be called wholly indictable offences. Between these two extremes lie those indictable offences that may, in certain circumstances, be dealt with summarily, that is, before a magistrate. Those offences are divided into two categories. The first category contains those indictable offences that must be dealt with summarily, unless the prosecutor elects to have them dealt with on indictment. Most of these offences are contained within table 2 to part 9A of the Criminal Procedure Act.

The second more serious category are those offences that must be dealt with summarily, unless either the prosecutor or the defendant elects to have them dealt with on indictment. These offences are contained in table 1 to part 9A of the same Act. The offence of conspiracy is committed when two or more people agree to do an unlawful act, or a lawful act by unlawful means. The offence of inciting is committed when one person incites, or solicits, another person to commit, or attempt to commit, a crime. The common law misdemeanours of conspiring to commit an offence, or inciting the commission of an offence, when the principal offences fall within either table 1 or table 2 of the Criminal Procedure Act are not, at present, able to be dealt with pursuant to table 1 and table 2. Such common law offences must be dealt with on indictment.

An example of the current law in action will demonstrate the anomaly which the bill corrects. If two persons stole a car, that offence would be capable of being dealt with summarily, pursuant to table 2. However, if the same two persons agreed to steal a car, or incited a third person to steal a car, those offences would not be able to be dealt with summarily, and would proceed by way of jury trial. That would be the case even if, in either circumstance, the car did not end up being stolen. The anomaly is apparent. As the offences of conspiring and inciting are common law misdemeanours, a person convicted of either offence is liable to a fine and a term of imprisonment at the discretion of the court. There is no fixed limit on the term of imprisonment. However, it would be quite unusual for a court to impose a sentence, for either conspiracy or inciting an offence, that was longer than the maximum penalty applicable to the principal offence.

In short, the Criminal Procedure Act will be amended by the bill to ensure that offences of conspiring to commit, or inciting the commission of, a table 1 or table 2 offence, are capable of

being dealt with pursuant to table 1 or table 2. Savings to the community, in terms of cost and efficiency, will be considerable. The penalties for the offences will be the same as for the substantive table 1 and table 2 offences in question. It should be understood that the maximum penalty for conspiracy or inciting an offence, dealt with on indictment, will not be affected by the proposed amendment. Again, in each and every case, the prosecution has an unfettered power to have the offences dealt with on indictment, if they are of appropriate gravity.

The amendments contained in Schedule 2.7 make the regime for summary disposal of certain drug offences contained in the Drug Misuse and Trafficking Act consistent with the one outlined above for other offences. This ensures that the so-called ancillary offences of conspiring, soliciting and inciting of offences which may be dealt with summarily may also be dealt with summarily. The reasoning is the same as that which I discussed in relation to the amendments to the Criminal Procedure Act. Item [1] of schedule 2.7 extends the operation of sections 20 and 28 of the Act so that they encompass the offences of soliciting and inciting. This is to ensure their consistency with the other sections in the Act that create ancillary offences.

As a consequence it is clarified that it is an offence in New South Wales to conspire, aid, abet, counsel, procure, solicit or incite activity which would be an offence under the Drug Misuse and Trafficking Act, whether or not the principal offence is or will be committed in New South Wales. This clarification is in line with the Government's commitment to the battle against the insidious evil of the drug trade, and to providing law enforcement bodies in New South Wales with the best possible weapons to conduct that battle. Schedule 2.6 amends the Director of Public Prosecutions Act so that it clearly gives the Director power to appear for complainants in all court proceedings related to Apprehended Violence Orders.

Section 20A of the Director of Public Prosecutions Act 1986 provides that the Director of Public Prosecutions may appear for a complainant in relation to proceedings for apprehended violence orders pursuant to Part 15A of the Crimes Act 1900. Section 20A(2) stipulates that the Director of Public Prosecutions may conduct appeals, on behalf of a complainant as respondent. The New South Wales Director of Public Prosecutions has suggested that there may be some doubt regarding the director's power to appear on behalf of a complainant where the complainant is not a respondent. For example, if a complainant wished to appeal the refusal of a magistrate to impose an apprehended violence order, the complainant would be an appellant.

It is also currently unclear as to whether the Director of Public Prosecutions can appear for a complainant on an appeal when the Director of Public Prosecutions has not appeared in the Local Court. Further, section 20A does not explicitly confer the power on the Director of Public Prosecutions to initiate proceedings such as stated cases or applications for judicial review. Once again, this potential ambiguity is due to the precise terms of section 20A(2), in which the complainant is referred to as a "respondent". The Government is of the view that the Director of Public Prosecutions should have the power to initiate proceedings in the Supreme Court or the Court of Criminal Appeal. This is in accordance with other provisions conferring such a power.

The Government also considers that section 20A should be amended to reflect the position that a complainant in proceedings relating to apprehended violence orders should

have the benefit of representation, by the Director of Public Prosecutions, when appropriate. Schedule 2.9 amends the Justices Act 1902 to make explicit the proposition that a magistrate, when considering whether to commit a person for trial, should not exclude the consideration of evidence of a confession, which may be excluded at the trial, under the provisions of section 90 of the Evidence Act 1995.

Section 41(8A) of the Justices Act 1902 currently stipulates that certain discretionary matters relating to the admissibility of evidence, which may be considered by a trial judge, may not be considered by a magistrate during committal proceedings. By way of that section, a magistrate cannot exclude any evidence, in committal proceedings, on any of the grounds set out in part 3.11 of the Evidence Act 1995. Such matters include unfair prejudice, misleading or confusing evidence, or evidence improperly obtained. These are matters for the trial judge. The Evidence Act 1995 contains a further discretion, with respect to confessions, in section 90.

That section falls outside part 3.11, and is therefore not explicitly excluded in section 41(8A) of the *Justices Act* 1902. The common law would almost certainly preclude a magistrate from considering the discretionary exclusion of a confession. However, for abundant caution, the discretion in section 90 of the Evidence Act 1995 is added to those discretionary matters, listed in section 41(8A) of the Justices Act 1902, which a magistrate may not rely upon to exclude evidence in committal proceedings. Schedules 2.8, 2.10 and 2.11 may be conveniently discussed together.

Concern has been expressed that the Prohibited Weapons Act 1989 and the Firearms Act 1996 do not explicitly confer upon the Children's Court the power to order the forfeiture, return or other disposal of weapons upon a conviction. The Prohibited Weapons Act 1989 confers the power to order forfeiture of weapons upon a Local Court, but does not include a specific reference to the Children's Court. The Firearms Act 1996 is in the same terms. Clearly, the Children's Court should have such a power. Although the power to order the forfeiture of weapons may be implied, it is my view that such a power should be conferred explicitly upon the Children's Court.

Schedule 2.12 amends the Young Offenders Act 1997. The Act established a scheme which provides for alternatives to formal court proceedings for children alleged to have committed certain criminal offences. In particular, it provides for the establishment and conduct of youth justice conferences. Police officers who issue a warning to a young person under the Act currently do not record the name of the young person in their notebook. The Act provides that an investigating officer must make a record of any warning given, but must not record the name of the child or certain information that might identify the child.

Originally, the rationale for not recording the young person's name was that, because of the informal nature of a warning, young people would not have the opportunity to make formal admissions in relation to the material contained in the officer's notation. It would therefore not be appropriate to record such a matter against them. The Committee overseeing the legislation has recommended that the ability to record the name of a young person is a necessary measure to ensure that an officer has taken sufficient details relating to the warning given, should this information be required in the future.

The Government agrees. An example might be a young person who was able to prove that an allegation made against him was false by using information recorded in an apprehending officer's notebook. As an officer's notebook is used as an

operational recording system, I propose that the name of a young person who has been issued with a warning under the Act, will be able to be recorded in the apprehending officer's notebook. It should be noted that, notwithstanding the recording of the young person's name, these warnings will not be recorded for the purposes of a criminal history. This concludes my detailed discussion of the provisions of the bill.

The bill contains a large number of important changes that are necessary for the better functioning of the criminal justice system in New South Wales. This bill is indicative of the Government's ongoing commitment to the constant review and improvement of all aspects of the administration of justice in this State. This stands in sharp contrast to the incoherent and haphazard approach, too often adopted by the Opposition with regard to these matters. I am sure that Honourable Members will agree that the bill contains a large number of important and constructive reforms to the criminal justice system, all of which will assist in the efficient administration of justice in New South Wales. I commend the bill to the House.

The Hon. J. H. JOBLING [5.27 p.m.]: The Opposition does not oppose the Crimes Legislation Further Amendment Bill. The bill makes a number of reasonable miscellaneous amendments to statutes dealing with criminal law and procedure. The amendments are generally of what might be described as a practical and procedural nature and recognise anomalies that have been identified in the system. The amendments have been suggested by a number of sources including the judiciary, the Director of Public Prosecutions and many other advisory committees.

The bill amends the provisions of the Crimes Act concerning self-induced intoxication to ensure that with regard to the issue of voluntariness in criminal matters self-induced intoxication may not be taken into account. This is a highly desirable improvement. The bill also amends the Crimes Act to ensure that all procedural provisions that apply to indictable crimes extend to those offences when they are being dealt with summarily. As I understand it, the only exception should be a provision relating to mandatory giving of alibi notice by the defendant.

The bill amends the part of the Crimes Act dealing with interim apprehended violence orders so that registrars, as opposed to magistrates, can continue the interim apprehended violence orders by consent. It amends section 5DA of the Criminal Appeal Act to ensure that the Crown consistently retains its right of appeal. It abolishes what appears to be an antiquated common law prohibition against a husband and wife being convicted of conspiracy to commit an offence. The most important amendment of all is the amendment to section 10 of the Children's (Criminal Proceedings) Act so that immediate families and specific relatives of a deceased victim are entitled, as of right, to be present in a court during proceedings. This is an

important provision, particularly if the defendant is a juvenile. The Opposition supports the legislation.

Reverend the Hon. F. J. NILE [5.30 p.m.]: The Christian Democratic Party supports the Crimes Legislation Further Amendment Bill 1998, which amends the Crimes Act 1900 and certain other Acts, to clarify the provisions relating to evidence of self-induced intoxication. This bill reflects society's strong objection not only to dangerous driving but to a person putting himself and other road users—drivers, passengers or pedestrians—at greater risk of injury by his actions.

We also support the introduction of two offences involving assaults on police officers within the scope of part 9A of the Criminal Procedure Act 1986 so that the offences may be dealt with summarily by a Local Court in certain cases. Members of the police force carry out difficult and often dangerous duties. The bill will ensure that police officers have the same rights and protections as other members of the community. Section 60(1) of the Crimes Act created the offences of assaulting, stalking, harassing and intimidating a police officer while in the execution of the officer's duty where no actual bodily harm is occasioned to the officer. In the Bankstown area there has been, in relation to the murder of young Edward Lee, intimidation of police officers over the police radio network. When the persons responsible are apprehended they should face the full weight of the law.

The Hon. J. P. HANNAFORD (Leader of the Opposition) [5.33 p.m.]: The Hon. J. H. Jobling has adequately outlined the Opposition's support for the bill. However, I wish to make two points. First, I commend my colleague Peter Blackmore for the measure in schedule 2.1 relating to the Children (Criminal Proceedings) Act. He very loudly supported the Lojarczyk and Cameron families following the death of their children in an accident in the Maitland area. The parents of the victims wanted to be present in the Children's Court but had difficulty in getting access to the court. Peter Blackmore strongly called for a change to the legislation that is now embodied in the bill. He has been a strong advocate of reform in this area.

I welcome the fact that this aspect of his calls have been recognised in the bill. However, I point out to the Government that the definition of "a member of the immediate family" is less than adequate: it does not include grandparents or in-laws. In cases of death such people often want to be present at hearings. The bill should allow any relative, in the first or second degree, the right automatically to be present in the court.

I acknowledge that the bill is at least a start. It states that while a court is hearing criminal proceedings in which a child is a party, any family victim is entitled to enter or remain in the court where the proceedings are being heard. The definition is not inclusive enough and should be broadened. The right of family members of victims should be absolutely enshrined, rather than left to the discretion of the court. This should be the case not just in proceedings where there has been a death but generally in relation to all children's proceedings. I wanted the House to know that the amendment arises out of the work of Peter Blackmore, and he is to be commended for it.

The Hon. R. S. L. JONES [5.37 p.m.]: I support the Crimes Legislation Further Amendment Bill. I am advised that there are only two issues of interest. One is the recording of names of young persons who are informally warned by a police officer. I understand that the Youth Justice Advisory Committee recommended this procedure so that the record would provide evidence of the caution, and so it could not be exaggerated for use in a further complaint. The second issue is allowing the family of victims to be present in the Children's Court. It may have been more appropriate to give magistrates the discretion in this regard, so that members of a strong extended family network may also attend, rather than rigidly classify the persons who are eligible to attend.

The Hon. R. D. DYER (Minister for Public Works and Services) [5.40 p.m.], in reply: I thank all honourable members who have spoken in support of this bill, and I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMINAL PROCEDURE AMENDMENT (SENTENCING GUIDELINES) BILL

Second Reading

The Hon. R. D. DYER (Minister for Public Works and Services), on behalf of the Hon. J. W. Shaw [5.40 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Criminal Procedure Amendment (Sentencing Guidelines) Bill 1998. This bill permits the Attorney General, as first law officer of the State, to request that the Court of Criminal Appeal consider providing sentencing guidelines with respect to an offence or category of offences. In such "referred" matters, there will be no proceedings before the court with respect to a particular offender. This bill takes a critical step towards addressing the need for consistency in sentencing. It does this in the interests of justice and community confidence in the criminal justice system.

This bill is a worthy addition to the criminal justice system in that it achieves this aim without unduly fettering judicial discretion. The Government has introduced this bill in light of the recent decision of the Court of Criminal Appeal of New South Wales in *Regina v Jurisic*. That decision broke new ground in the law of sentencing in this State. It formalises and extends the longstanding practice of the Court of Criminal Appeal to provide guidance to lower courts on sentencing.

In the *Jurisic* case the court adopted the English practice of issuing formal sentencing guidelines. Sentencing guidelines go beyond the specific point raised in the particular case to formulate general principles in relation to sentencing. Sentencing guidelines achieve two main objectives. First, they set a sentencing range for a particular offence or category of offences. Second, they differentiate and analyse the aggravating and mitigating factors which may be relevant to the particular offence or category of offence. Sentencing guidelines are not meant to be applied rigidly to every case. They act as an indicator to structure sentencing discretion.

In this way, sentencing guidelines promote greater consistency in sentencing, without inappropriately fettering judicial discretion. That is important. Public confidence in the administration of criminal justice requires both consistency in sentencing decisions and flexibility to ensure that the sentence meets the particular circumstances of each case. Whilst the Court of Criminal Appeal in *Regina v Jurisic* has indicated a willingness to provide further sentencing guidelines, there are limits on its ability to do so effectively. Under the existing appeal structure, the Court of Criminal Appeal is only able to issue a sentencing guideline as a result of a particular matter when that matter is brought before the court.

A matter may only be brought before the court by the Crown in certain limited circumstances. The Crown may only appeal in relation to a particular case. It does not have the ability to bring general issues to the attention of the court. In particular, if there is inconsistency in sentences for a particular offence, that cannot be addressed unless, and until, an appeal regarding an example of the offence in question is brought before the court. Accordingly, there may be a significant delay, of months or even years, between the recognition of the need for a particular sentencing guideline and the ability of the court to issue the guideline.

To overcome this deficiency, this bill proposes that the Attorney General may request the Court of Criminal Appeal to consider formulating a sentencing guideline with respect to a particular offence or kind of offence. For example, the Attorney General may request a sentencing guideline with respect to robberies in circumstances of aggravation. It should be emphasised that the Attorney General will not be able to request the issue of a sentencing guideline in relation to a particular case or matter before the court. There are three particular matters of note in relation to the proposal.

First, a "referred" sentencing guide from the Attorney General will not be possible in proceedings before the court relating to

a particular offender. This is a new concept for the criminal justice system in New South Wales. It is based, in part, on similar legislation recently enacted in England. This English legislation empowers the court to receive applications for guideline judgments, even when there is no case before the court. It should be emphasised that the Government bill departs from the English model in so far as it does not allow the request for a sentencing guideline to be linked to a specific matter before the court.

Second, in conformity with the English legislation, the Attorney General will only have the power to request the Court of Criminal Appeal to consider the provision of a sentencing guideline. The Attorney General will not have the power to order the court to issue a sentencing guideline. This distinction is crucial in ensuring that the fundamental principle of judicial independence from the Executive is retained. Third, the provisions in this bill are in addition to the power of the Court of Criminal Appeal to issue sentencing guidelines as set out in the case of *Regina v Jurisic*. In other words, the court will still be able to issue guideline judgments when appeals come before it in the usual way.

I turn now to the specific provisions of the bill. Schedule 1 of the bill inserts a new part 8 in the Criminal Procedure Act 1986. This part provides for sentencing guidelines on the application of the Attorney General. New section 26(2) states that an application may be made to the Court of Criminal Appeal for sentencing guidelines with respect to the sentencing of persons found guilty of a particular offence or category of offence. Only indictable offences may be included in a guideline judgment. That is because the Court of Criminal Appeal does not deal with appeals from courts exercising summary jurisdiction.

Under new section 26(3), an application for sentencing guidelines may be made whether or not there are any pending proceedings before the court. I flag that amendments will be moved in Committee by the Government to clarify that an application is not to be made in any proceedings before the court with respect to a particular offender. This is the key provision in the proposed legislation. It enables the court to redress any perceived inconsistency in sentencing principles, without the need to await the arrival of a specific case. Under new section 26(6), the Senior Public Defender, or his or her nominee, may appear in the proceedings and make submissions in relation to the proposed guidelines, including submissions opposing the application.

This section makes it abundantly clear that the Senior Public Defender is not responsible to the Attorney General when appearing in these proceedings. This provision ensures that there can be no doubt that the Senior Public Defender exercises his or her functions in these proceedings independently of the Attorney General. Under new section 26(4), the powers and jurisdiction of the court in relation to applications by the Attorney General will be the same as the powers and jurisdiction of the court to give guideline judgments apart from this bill. That means that the principles enunciated in the *Jurisic* case will apply to applications for sentencing guidelines by the Attorney General.

By new section 26(5), a guideline judgment may be given separately, or in any judgment the court considers appropriate. Whichever course the court adopts, the guideline judgment will have the same effect as an ordinary judgment of the court. In this regard, it will be no different from the judgment of the Court of Criminal Appeal in the *Jurisic* case. In other words, judgments under this bill will be just as binding as other judgments of the Court of Criminal Appeal.

Under new section 27, a guideline judgment may be reviewed, varied or revoked. New section 28 confirms the power of the court to issue guideline judgments apart from the provisions in this bill. This means that the court may issue sentencing guidelines in an ordinary case which comes before it, even if the Attorney General has not requested that a guideline judgment be given. New section 28 also confirms that the court is not required to provide a guideline judgment upon the request of the Attorney General. This is a very important provision. It provides the court with the opportunity to decline to issue a sentencing guideline if it is not appropriate to do so for a particular offence, or a particular category of offence.

Finally, new section 29 provides that rules of the court may be made with respect to the conduct of these proceedings. In short, the promulgation of sentencing guidelines is an important step forward. Sentencing guidelines promote consistency in sentencing by clearly communicating to sentencing courts, legal practitioners and the community generally the appropriate penalty range for a particular offence. This improved consistency in sentencing will have the added benefit of bolstering public confidence in the ability of the courts to deliver appropriate and just sentences in all cases that come before the courts. In order to maximise the benefit of sentencing guidelines, it is important that the Attorney General have the ability to seek sentencing guidelines from the Court of Criminal Appeal, outside of the context of a particular case before the court. This bill achieves that worthy aim. I commend the bill to the House.

The Hon. J. M. SAMIOS [5.41 p.m.]: This bill follows the recent Court of Criminal Appeal decision in *Regina v Jurisic*, which adopted the practice of the English Court of Appeal of giving a guideline judgment in the context of a particular case. This bill will not be opposed by Opposition members, who note with satisfaction that the Government is at last beginning to implement coalition policy. The Government has been in office for more than 3½ years, yet it has only now decided to take a stronger stand on law and order. All the Government's law and order initiatives have been announced in the past six months, just prior to the election.

While this bill is a start, it does not go far enough. In the early days of its administration the Government announced that it would introduce appropriate legislation providing for minimum sentencing. However, due to factional problems—which are always current in the Labor Party—that did not occur. The Government has put its toe in the water and has now introduced legislation that will enable the Court of Criminal Appeal to establish guideline judgments in the context of a particular case. The bill amends the Criminal Procedure Act to enable the Attorney General to apply to the Court of Criminal Appeal at any time—rather than in the context of a particular case—to ask it to exercise its power and jurisdiction to give a guideline judgment in respect of a specified offence or category of offences. It is important that this does not relate to the seeking of advice on a particular case.

The matrix-type scheme proposed by the Opposition is not provided for in the bill. A coalition government would introduce group sentencing with specific sentences for representative offences, and that would be more appropriate than the regime provided in this bill. It is important to remember the need for balance between the needs of the community and the citizen. Law and order is an important issue in social cohesion. Its importance, particularly in a multicultural society that has more than 200 ethnic groups, can be seen in the failure, at times, of the Government to provide the necessary answers to breakdown in law and order affecting our multicultural society.

The Parliament cannot duck behind the cover of the judiciary and say that it is for the courts to decide what sentences should be imposed. The courts do that, within a discretion imposed by the Parliament. Parliament cannot absolve itself of that responsibility. I call on the Government to show its true colours in a responsible course of action. As I have said, with this bill the Government has put its toe in the water. The coalition will not oppose this initiative, but it hopes that the Government will bathe in the waters of responsibility and give the community the justice and benefit it deserves.

The Hon. R. S. L. JONES [5.45 p.m.]: I am concerned about this bill and I oppose it on the grounds that the Attorney General may request a judgment without a particular case being before the Court of Criminal Appeal. As was asked on radio the other day, exactly which facts in which cases will be used when the Attorney General asks for a determination of appropriate sentencing? Will someone go back through the most recent 5,000 cases and review them all? The Attorney General must point to a set of facts that may be used in a particular case. Justice Spigelman handed down his recent guideline on the basis of a certain set of facts.

This bill is, of course, preferable to the Opposition's proposal for grid or mandatory sentencing, which would severely restrict judicial discretion. The coalition has indicated that it will introduce those harsh measures if it succeeds at the March election, as it may well do. If such measures are introduced, I shall oppose them—hopefully with the support of the majority of crossbench members. The grid sentencing system in the United States has not worked. Grid sentencing imposes a severe restriction on the judiciary, and the judiciary does not appreciate that imposition.

The law and order push by both major political parties extends into sentencing in so far as politicians desire to win community support by

ensuring that offenders receive lengthy sentences for their crimes. The community as a whole wishes people to be gaoled for appropriate periods or to receive other sentences appropriate to their crimes. Sentences should be determined by the judiciary within the broad parameters set by Parliament, and we should not restrict or fetter the judiciary with restrictions as to what sentences should or should not be delivered.

Judges consider each case on the facts before them when determining sentences. Governments have little power to influence the final outcome. The general approach is to increase in legislation the maximum gaol term that a judge may hand down for a particular offence. However, politicians and the community have been frustrated that the substantial increase in penalties has not been reflected in a sharp upward movement in penalties applied. The reason for that is that judges have made their judgments, and they have judged that longer gaol terms are simply not appropriate.

I have received a library briefing paper that describes guideline judgments as decisions handed down by courts of criminal appeal setting out general principles of sentencing and the range of penalties that may be applied to a given offence. They go beyond the facts of the particular case before the court to deal with variations of the offence, identifying aggravating and mitigating factors and suggesting appropriate types or levels of sentence. They are not binding on trial judges and, if initiated by the criminal court, are generally free from political interference.

Associate Professor George Zdenkowski from the University of New South Wales, and former sentencing commissioner at the Australian Law Reform Commission, noted in the *Sydney Morning Herald* of 15 October that sentencing guidelines attempt to improve consistency without imposing unnecessary constraints on judicial discretion. He stated:

They are more flexible than some grid systems and all for incremental development of the law by the courts. But it is important not to confuse consistency and severity levels. It is possible to be consistently draconian, consistently lenient or consistently moderate . . . Guideline judgments are a useful vehicle for structuring sentencing discretion but do not logically involve an escalation of severity. The appropriate severity levels should be the subject of ongoing debate and refinement.

There is no history of sentencing guidelines in New South Wales. However, the Crimes Amendment (Mandatory Life Sentences) Act 1996 provided mandatory life sentences for murder and certain offences involving the trafficking of commercial

quantities of drugs. Western Australia and the Northern Territory have introduced the United States style "three strikes and you're out" laws, the aim of which is to ensure that repeat property offenders receive a significant term of imprisonment and not a non-custodial sentence. The laws are not aimed at the long-term incapacitation of repeat serious offenders. Those laws have been abused in the Northern Territory, where people convicted of trivial offences such as stealing a can of coca-cola have been gaoled when clearly a gaol sentence was not appropriate. It is the poor, the disadvantaged, those on the lowest rung of the socioeconomic ladder, who are gaoled.

In October Chief Justice Spigelman, sitting in the Court of Criminal Appeal, handed down the first guideline judgment in *Regina v Jurisic*. This case involved a conviction for the offence of dangerous driving causing death or grievous bodily harm. The judgment stated that it appeared that the sentences imposed by trial judges for this offence did not reflect the seriousness with which the community regarded such offences. Justice Spigelman noted that the number of instances in which judges have not applied the higher penalties was sufficient to warrant a guideline judgment.

Chief Justice Spigelman subsequently laid down two guidelines: first, sentences that do not involve imprisonment should be exceptional and ordinarily confined to cases in which there has been a momentary inattention or misjudgment by the driver; and, second, in cases where the abuse of alcohol or drugs, excessive speed or the manner of driving indicated that the offender has abandoned responsibility for his or her conduct, imprisonment should usually commence from two years for grievous bodily harm and three years for an offence occasioning death.

The court further identified a list of aggravating factors that would justify higher sentences, such as the degree of speed, the degree of intoxication or substance abuse, erratic driving, competitive driving or showing off, length of journey in which others were exposed to risk, ignoring warnings and escaping police pursuit. In handing down the judgment Chief Justice Spigelman noted:

In my opinion, guideline judgments should now be recognised in New South Wales as having a useful role to play in ensuring that an appropriate balance exists between the broad discretion that must be retained to ensure that justice is done to each individual case, on the one hand, and the desirability of consistency in sentencing and the maintenance of public confidence in the sentences actually imposed . . . on the other.

He further stated:

Such guidelines are intended to be indicative only. They are not intended to be applied to every case as if they were rules binding precedents . . . Guideline judgments are a mechanism for structuring discretion, rather than restricting discretion.

The move was supported by many in the legal fraternity and the Council for Civil Liberties issued a press release stating that it supported the judgment on two grounds: first, it asserted the independence of the judiciary in the face of repeated attempts by politicians to interfere in sentencing and, second, judges are attempting to regularise sentencing in the face of criticism that sentencing has been arbitrary or lenient.

Since then the Government has introduced this bill, which allows the Attorney General to request such a guideline irrespective of whether there is a particular case before the court. It is the ability of the Attorney to request a guideline without reference to a particular case that has caused concern in legal and civil liberty circles. The Redfern Legal Centre has concerns about the bill. It argues that Parliament already has the capacity to indicate minimum and maximum sentencing guidelines in legal statutes and that a Minister's second reading speech explains the purpose of a bill. Timothy Moore from the Redfern Legal Centre states:

The judge's job in addition to the administration of correct judicial procedure is to judge the seriousness of the offence after consideration of all the mitigating and extenuating circumstances.

The excesses of the judiciary are controlled by the existing mechanism of appeal.

The Redfern Legal Centre argues that despite calls to the contrary in the Minister's second reading speech, the very nature of the bill limits judicial discretion. Further, the context of the bill is antithetic to other legislation before Parliament, such as the Drug Court Bill, which seeks to increase, not decrease, the sentencing options available to the judiciary. The Council for Civil Liberties has serious doubts about the constitutionality of proposals to give the Attorney General power to refer a category of crime, as opposed to a specific case, for a guideline judgment. It considers that referrals of categories of crime to the Court of Criminal Appeal would blur the lines between the Executive and the judiciary.

In a joint media release on 9 November the New South Wales Bar Association and the Law Society of New South Wales said that the legislation created the danger of political pressure being placed on the State's highest criminal court. They argued that politicians are trying to sideline the independent appeals process and appoint themselves as judges to

decide whether sentences are right. Furthermore, on 23 November the Bar Association noted:

We object to the notion that the Attorney General (and no-one else) might approach the Court of Criminal Appeal, in a factual vacuum, to discuss how long people should spend in gaol . . . The bill provides for a system quite different from the Jurisic case. There the person directly affected was represented by counsel and the Court heard his side of the argument. The decision was made in a factual context. Here there will be no opponent with any direct interest in the outcome and no particular facts. And all else aside, why is the right to apply given to the Attorney General? Why not the Director of Public Prosecutions, who is independent of government?

The Law Society noted in a letter to the Attorney General that the legislation does not sit well with the way in which the chief justice foreshadowed the guidelines. In particular, the chief justice noted the advantage of having a range of factual circumstances presented to the court when formulating a guideline judgment and requested the Director of Public Prosecutions to draw attention to similarities among cases so that consideration could be given to their being heard together.

Although the Director of Public Prosecutions, Nicholas Cowdery, has been evaluating criminal cases ranging from child sexual abuse to cannabis use as potential test cases, he has also attacked the proposed legislation. He said that "it is inappropriate and it may be impractical to refer a prescribed offence or category of offences in the abstract for, in effect, an advisory judgment divorced from any immediate factual context". With those few words, I do not support the bill.

The Hon. I. COHEN [5.56 p.m.]: The Greens oppose the Criminal Procedure Amendment (Sentencing Guidelines) Bill, primarily because we see it as the first step towards interfering with judicial discretion in sentencing. We are concerned that the next step, particularly if the coalition wins government next year—and as evidenced by the spirited contribution of the Hon. J. M. Samios—will be the introduction of grid sentencing. The Greens oppose grid sentencing and are concerned that the bill may be a precursor to a law and order bidding war on sentencing in the lead-up to the State election. The bill stems in part from the recent Court of Criminal Appeal decision in *Regina v Jurisic*, in which the court set out guidelines for sentencing offenders convicted of dangerous driving causing death or grievous bodily harm. Chief Justice Spigelman described the purpose and reasons for judgment as follows:

A formal system of labelling particular judgments as "guideline judgments" will ensure that the profession and trial judges are aware of what has been suggested. At times, and

with respect to particular offences, it will be appropriate for this Court to lay down guidelines so as to reinforce public confidence in the integrity of the process of sentencing . . . In my opinion, guideline judgments should now be recognised in New South Wales as having a useful role to play in ensuring that an appropriate balance exists between the broad discretion that must be retained to ensure that justice is done in each individual case, on the one hand, and the desirability of consistency in sentencing and the maintenance of public confidence in sentences actually imposed, and in the judiciary as a whole, on the other.

Such guidelines are intended to be indicative only. They are not intended to be applied to every case as if they were rules binding on sentencing judges. Decisions of appellate courts are not to be treated as binding precedents . . . Guideline judgements are a mechanism for structuring discretion, rather than restricting discretion.

The Greens support the kind of guideline judgments proposed by the Chief Justice. Quite clearly they are a far cry from grid sentencing, which I shall discuss later. This bill will allow the Attorney General to request the Court of Criminal Appeal to consider issuing a guideline judgment for a particular indictable offence or category of indictable offences even when there is no particular case pending before the court. The bill permits the Senior Public Defender to be represented in the proceedings.

Importantly, the discretion of the court is preserved. The bill specifically states that the court is not required to give any guideline judgments requested by the Attorney General if it considers it inappropriate to do so. This is the saving grace of the bill as without it the legislation would encroach on judicial independence far more than it does at the moment. There has been some discussion in the media regarding guideline judgments. One question that has been raised is whether the legislation is constitutional.

The proposal has attracted criticism from the Director of Public Prosecutions [DPP], Nicholas Cowdery, QC, according to George Zdenkowski in the *Sydney Morning Herald* on 15 October in an article entitled "Judging the Judgments". According to the DPP it would involve the court in an exercise of quasi-judicial powers. The DPP has been quoted as saying:

. . .there has been a longstanding tradition in our courts that they deal only with specific cases. If the courts are required to give advice and through that advice direct the way in which other courts are to work, then the courts take on something of the character of the executive.

However, Associate Professor Zdenkowski disagrees. He argues that a law authorising the Attorney General to make application for guideline judgments for an offence without a specific case is constitutionally unimpeachable. He adds:

. . . the court already has advisory powers to clarify criminal law at the behest of the Attorney General, admittedly in relation to a particular case. And a court could decline an application, as the WA Supreme Court recently did. The power of referral will merely complement ad hoc guideline judgements.

It is debatable whether allowing the courts to issue guidelines when they are not set out in a judgment would infringe on the independence of the judiciary. On the one hand there is no suggestion that the Executive or the Legislature would be influencing the content of the guidelines or could require guidelines to be issued. On the other hand there is the possibility that the courts may be engaging in a non-judicial activity by promulgating general guidelines other than in a judicial decision. If so, the decision in *Kable v Director of Public Prosecutions* may arise in regard to the proposed scheme. In a letter to the Attorney General on 28 October the Law Society stated:

The proposed legislation that will empower the Court of Criminal Appeal to apply guidelines to a whole range of criminal offences without the need to establish them through specific cases is not supported by the Society's Criminal Law Committee . . .

The Chief Justice highlighted the advantage of having a range of factual circumstances presented to the Court when formulating a guideline judgment . . . Legislation permitting you to request the Court of Criminal Appeal to issue a guideline judgment precludes the fundamental necessity of our criminal justice system that parties are competently represented before the Court and that the Court has the opportunity to consider all the circumstances of a case, both objective and subjective. Criminal justice requires that the offender is sentenced as an individual within the range of penalties set by Parliament, having regard to the principles established by the judiciary for sentencing offenders for the offence charged.

The Criminal Law Committee is concerned that implementation of the proposed legislation will present difficulties for the Court of Criminal Appeal in asking it to establish guidelines for sentencing in isolation from specific cases. The Committee also fears that guidelines formulated in this way may become meaningless when applied to the specific circumstances of cases brought before the lower Courts.

The Council for Civil Liberties opposes the bill in total. In a briefing note dated 18 November 1998, which was sent to my office, the council stated:

. . . the CCL does not support the Bill which would allow the Attorney General to apply to the Court of Criminal Appeal at any time, not in the context of a particular case, to ask the Court to give a guideline judgment in respect of a specific category of crime.

CCL wishes to assert the independence of the judiciary in the face of repeated attempts by politicians to interfere in sentencing. Referrals by the Attorney General to the CCA of categories of crimes would blur the lines between the Executive and the Judiciary.

Grid sentencing has been the raised in debate in this House and by the media. If elected, the Opposition proposes to move down the path of grid sentencing, the most widely known model being that implemented in Minnesota, in the United States of America. Sentencing grids may be voluntary or mandatory, may or may not abolish discretionary release on parole, and may use different formulae for determining criminal history scores. The type of offence to which the grid applies varies across the jurisdictions of the United States of America. The grids produced in the various States enshrine different objectives and philosophies of punishment. The model of grid sentencing proposed by the Opposition is based in part on the Minnesota model. The Law Reform Commission discussion paper on sentencing when referring to the Minnesota system stated:

The basic features of the grid are as follows. The vertical axis of the grid displays the severity levels of the various offences in descending order. Along the horizontal axis, the possible "criminal history scores" are displayed, which refers to the number of the offender's previous convictions. These two features were selected after preliminary research indicated that the two most important influences upon sentencing were the seriousness of the instant offence and the extent of the offender's criminal record.

It is interesting to note that both the Australian Law Reform Commission and the Victorian Sentencing Committee rejected the introduction of sentencing grids along the lines of the Minnesota model. According to the Law Reform Commission the main advantage of a grid system is consistency and certainty of outcomes. That may be beneficial when the guidelines result in less disparity between offenders on the basis of race and social class. However, the Greens consider that the disadvantages outlined in the discussion paper far outweigh the advantages, and for those reasons grid sentencing should be opposed. The disadvantages, according to the discussion paper, are as follows:

The improved consistency brought by the grid system is a somewhat artificial advantage. Two elements of sentence information—offence seriousness and criminal record—become the privileged features of the sentencing regime.

It appears that other mitigating circumstances play a small role in grid sentencing. Take for example a case involving a homeless person or a drug user who may commit a break, enter and steal so that he or she has money to buy food or drugs. In such a case extreme poverty or drug dependence would hardly be able to be taken into account during sentencing. Instead, the crime and the person's criminal record is given prominence in deciding the sentence. The discussion paper continues:

It has been noted that the offender's criminal record has played a role of greater importance than originally intended for the system. Consistency may be increased at the expense of dispassionate consideration of a range of other factors which might be relevant when deciding upon the appropriate punishment.

The Greens agree. The Greens are concerned that grid sentencing will mean that the court will be unable to take into consideration important psychosocial or health factors that might be impacting upon an individual who commits crimes. Also, grid sentencing impacts upon the ability of courts to place different emphasis on the different rationales for sentencing, such as retribution, deterrence and rehabilitation. For instance, if a particular judge considers that any drug-related offence should be assessed using the rehabilitation approach, he or she may consider that a prison sentence is totally inappropriate for those who commit drug-related crimes.

However, mandatory grid sentencing will not allow the judge to not send an individual to gaol if the individual fits certain criteria in the matrix. In an article entitled "Do the maths of sentencing grids", which appeared in the *Sydney Morning Herald* of 15 June 1998, Associate Professor George Zdenkowski discussed grid sentencing. He said that in all Australian States and Territories the hallmark of the sentencing system is judicial discretion. Parliament fixes the maximum penalty for a given offence but, with minor exceptions, such as minimum or mandatory penalties, the court has a broad discretion to select the type of penalty.

Appeal courts also impose some limits as the judges of the Lower Courts know that if they impose too lenient or too excessive sentences an appeal may be likely. The Minnesota model takes no account of prison capacity. The Greens consider that grid sentencing will lead to more individuals in our already overcrowded prisons. In an article entitled "Crowded Jails Blamed For Murders, Suicide", which appeared in the *Sydney Morning Herald* on 19 November, Luis Garcia reported that prisoners are being forced to lie on floors or portable beds because of severe overcrowding in New South Wales, resulting in growing violence among inmates and a high rate of suicides.

The figures of the Department of Corrective Services show that there have been 21 deaths in State prisons so far this year, including 10 suicides and at least six murders. The daily average prison population in New South Wales has risen from just over 6,100 in 1992-93 to more than 6,800 in 1998. The number is expected to increase to at least 7,000 over the Christmas-New Year period. That means

the occupancy rate in secure prisons, holding medium- and maximum-security prisoners is about 104 per cent, well above the internationally accepted benchmark of between 85 per cent and 90 per cent.

Ms Violet Roumeliotis, a spokeswoman for Justice Reform, claims that there are more prisoners in the Metropolitan Remand and Reception Centre than there are beds, with prisoners having to sleep in corridors and on portable beds. A spokesman for the Indigenous Social Justice Association, Mr Ray Jackson, said his group estimated there were as many as 1,200 indigenous prisoners in New South Wales, well over 10 per cent of the prison population—a totally unacceptable state of affairs. The Greens are appalled that successive governments have failed to decrease the number of indigenous people in custody since the publication of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Finally, the Council for Civil Liberties also opposes grid sentencing. Its briefing note dated 18 November stated:

The worst option would be the NSW Opposition's proposal to attempt to set grid sentencing rules, where a rigid formula would lead to gross injustices in many individual cases and limit the sentencing discretion of judges.

The Greens oppose the bill.

The Hon. Dr A. CHESTERFIELD-EVANS [6.10 p.m.]: The Australian Democrats are most concerned about this bill, which seems to be part of the game of catch-up that is being played by the Government in the lead-up to the election next year. In the recent case of *R v Jurisic* the Court of Criminal Appeal adopted a practice of the English Court of Appeal in giving a guideline judgment in the context of a particular case. The guideline judgment is intended to be indicative only and is not intended to be applied in every case. However, there is a danger of the implementation of mandatory minimum sentencing by stealth. This bill has been introduced by the Government with one eye on the election.

The Hon. D. J. Gay: Do you have any eyes on the election?

The Hon. Dr A. CHESTERFIELD-EVANS: The Australian Democrats have eyes on the election, but they will not run a Dutch auction about getting tougher on criminals. I do not believe that the bill is the Attorney General's initiative. Nonetheless, it is before us for consideration. Parliament should not interfere with the independence of the judiciary. The Democrats are concerned about the comments of the Chief Justice, who was reported in the *Sydney Morning Herald* as saying that he believed that

some sentences were out of step with community thinking. I suggest we are venturing into very dangerous country.

What does the Chief Justice mean by "community thinking"? Does he mean that which is espoused on talk-back radio, which tends to be very populist? I sympathise with the Chief Justice and the fact that often criticism is levelled at the judiciary for being out of touch with community thinking. However, judges working in the criminal jurisdiction come into contact with the seamy side of life far more than the average person does and, therefore, their judgments should be trusted.

The Chief Judge's comment appears to be partly a political public relations exercise and partly his desire to impose his will on his fellow judges. The bill is an attempt to steal back the agenda from the new Chief Justice. Judges, being a fairly single-minded group, would not want their discretion curtailed by either the Chief Justice or the Attorney General. The Council for Civil Liberties has clearly stated its position as, firstly, opposing all minimum sentences and, secondly, opposing attempts by the Court of Criminal Appeal and the Parliament to restrict the discretion of sentencing judges. The council's position could not be clearer or simpler than that.

It is an attractive and simplistic solution to seemingly inconsistent sentencing to have guidelines, but no two cases that come before the courts are the same. There must be flexibility, but the bill will reduce that flexibility by introducing mandatory minimum sentences by the back door. Many factors are taken into account in a sentencing hearing, including the number of prior convictions, the severity of the offence, the nature of the accused, et cetera. How will a sentencing guideline take all those factors into account? Will the guideline take account of whether the person is an intractable recidivist, a first-timer, a 20-year-old, a 70-year-old or is a man or a woman, or whether the person has children?

Even if there were a profile of the most likely offender for a particular offence, not everyone would fit that profile. The only fair way to introduce this proposed system is with a minimum guideline. Mandatory minimums do not work. They are unfair and do not fit the profile of the offender, because that profile is different in every case. It is well-known that the court system is basically a lottery, and that lottery depends on a number of factors. It depends on which judge is assigned to hear the case and whether the judge likes the offender, and it depends on the type of representation the offender receives—obviously some lawyers are better than others.

I know the Attorney will say that the bill will alleviate some of this uncertainty. The problem is, however, that the system will produce a lottery, but a different type of lottery. People who deserve to get a lesser sentence than that set by the guidelines will be in danger. Several years ago, when I was a student, I came home one evening to find all the lights off in the house I shared with fellow students. The front door was wide open. As I turned on a light a fellow came running down the front stairs carrying my flatmate's stereo. I was surprised and less than pleased to see him—and he me, I am sure. We faced each other in the narrow hall of my terrace house. I wondered whether I should hit him; I am not very good at that sort of thing.

I am sure he wondered what he should do with me. In the end he threw the stereo at me and I caught it, falling backwards. He raced past me, out the door and jumped into a car, which I tried to stop because it was full of gear from my house. As the car drove off into the sunset I got its number. I rang the police, who responded very promptly. They took all the particulars, but we did not hear from them for some weeks. My flatmate could not wait any longer so she rang the police complaints section and requested that some action be taken.

The police came to see us, again very promptly, and said that we had made a lot of paperwork for them. They said they had been working on this case and that they knew exactly who this fellow was because of his *modus operandi*. Apparently, when this person had a row with his wife, who complained about getting nowhere fast and that he does not have enough money to pay the bills, he stole record players and other goods from students in the area, which he sold at the pub so he could take some money home to his wife, saying, "Are you happy, dear?" The police said that they had caught him with half of our stuff, which they could return to us, but that if we wanted the offender to pay for the remainder we would have to wait a few weeks.

We made a deal the effect of which was that the thief would not go to gaol if he came up with the money within a specified time. To confirm the arrangement the police asked us if we would like to identify the suspect. I looked at some photographs and identified the man in question. In that case the police had a discretion. I confess I do not know to this day what authority they had, but when I was given the choice of having the thief charged and put away or getting some money for my stolen goods I said, "Thank you very much, I'll take the money."

That was an enlightened approach by those police, and I am in favour of enlightened approaches

that produce better results. It was a better result for the thief and a better result for me. The discretion that is inherent in the system should not be maintained. I realise that quite often I complain that anecdotes such as that which I have just related to you rather than the clinical approach are used to make legislation. However, ideally members should speak about the successes and failures of the prison system rather than punishment.

I ask: What is the best way of making our society a better society? To what extent should gaols and prisons be used as punishment? Would education and non-custodial sentences give us a better result if resources were redeployed to keep society safe and law-abiding? It is depressing that those questions are canvassed so rarely in this Chamber, or in any of the law and order bills we are considering at this pre-election time. The American experience of minimum sentencing has been referred to in debate. On 9 November the *Boston Globe*, in an article on mandatory sentencing, reported:

A prime weapon on the war on drugs since the mid-1980s has been mandatory minimum sentences that give judges no leeway in determining how many years an offender should spend behind bars.

Politicians love the mandatory minimum law because it conveys a "tough on crime" aura. Prosecutors love it because it gives them more power, since they are the ones who decide whether to push for the mandatory sentence.

But not everybody loves the law. Its critics have always asserted that the mandatory minimums, designed for big-time drug dealers, are being unfairly applied to users having their first run-in with the law. But in Massachusetts, no one knew exactly how often—until now. Figures obtained by the *Globe* show more than 84 percent of those serving mandatory sentences on drug charges in Massachusetts are first-time offenders in the State.

For the most part, these are drug users who are at the bottom of the supply chain. They are also overwhelmingly Hispanic and black.

Meanwhile the big-time dealers are avoiding the lengthy sentences that come with mandatory minimums because they have information to trade with prosecutors, or money that is forfeited upon their arrest—which makes law enforcement look upon them more kindly.

The federal system—which operates under its own mandatory minimum sentence law that took effect 12 years ago—is similarly filled with small-time offenders. A 1992 analysis, the most recent available, found that 55 percent of all drug offenders were classified as "low level" either street dealers or mules, and only 11 percent were high-level dealers.

Eric Sterling, a former congressional lawyer who wrote the federal mandatory minimum sentencing laws in 1986, says he made a big mistake.

"Of all the things I was involved in during my nine years on the House Judiciary Committee, my role in the creation of

mandatory minimums was absolutely the worst, the most counterproductive, the most unjust" says Sterling, now president of the Criminal Justice Policy Foundation, a nonpartisan think tank . . .

Supporters of the law—

that is, the mandatory minimum sentencing law—

point to the fact that overall crime rates are dropping and suggest that the threat of a long mandatory minimum sentence is one of the reasons. But that drop may well have more to do with community policing and demographics than with locking up drug users and dealers. After all, drugs are still plentiful and cheap despite a massive prison building boom around the country.

A cottage industry of advocacy groups and think-tanks has sprung up to fight mandatory minimums, including Families Against Mandatory Minimums, which was founded in 1991. FAMM does not advocate releasing people from gaol, but rather wants to return to judges the ability to look at a person's background and consider extenuating circumstances before sentencing . . .

Even Chief Justice William Rehnquist has said that mandatory minimums are "a good example of the law of unintended consequences" because they "impose unduly harsh punishment for first-time offenders, particularly for mules who played only a minor role in a drug distribution scheme."

And it was an issue that Justice Stephen Breyer worried about when he was an appellant judge in Boston. "What happens if we keep increasing mandatory terms through the legislature?" he warned. "We will have tens of thousands of men 20 years from now in their 50s, 60s, and 70s, and the expense of warehousing these old men will be enormous".

It is already staggering. In Massachusetts the cost is an average of \$30,000 per prisoner per year. In the federal system, that cost is \$23,000.

And the number of inmates serving time on drug charges keeps growing. Consider that in 1983 one in 10 federal inmates was in prison for a drug offence. Today it is one out of two.

An increasing number of people in Australia are being charged with drug offences. On a visit to Port Arthur prior to the dreadful shootings about which all honourable members would be familiar I was told by prison authorities that many of the elderly inmates who had received life sentences were now being looked after as if they were in nursing homes; they were being looked after in their old age by the State. This bill could result in what I regard as an extremely unjust law. I oppose the bill and I suggest other honourable members should also oppose it.

[The President left the chair at 6.24 p.m. The House resumed at 8.00 p.m.]

Reverend the Hon. F. J. NILE [8.00 p.m.]: The Christian Democratic Party is pleased to support the Criminal Procedure Amendment (Sentencing

Guidelines) Bill, which will amend the Criminal Procedure Act 1986 to provide for the Attorney General to make applications for sentencing guidelines. The bill arises from the Court of Criminal Appeal decision recently handed down in *R v Jurisic*, which provided sentencing guidelines for certain culpable driving offences. Sentencing guidelines provide an indication of the appropriate penalty range for a particular offence or category of offence, and are beneficial as they promote consistency in sentencing without inappropriately fettering judicial discretion.

The Court of Criminal Appeal can issue guideline judgments with respect to an offence only when a case involving that offence is brought before it. There may be a significant delay between recognising the need for a guideline judgment for a particular offence and the court having the ability to issue one. This bill will rectify that deficiency. An article by Richard Ackland in the *Sydney Morning Herald* of 13 November contained some interesting but controversial statements about this bill. The Hon. R. S. L. Jones and others who oppose this bill have quoted from the same article, which stated:

What the Sentencing Guidelines Bill actually provides is nothing terribly radical at all. The court may give a sentencing guideline judgment on application by the Attorney-General. It may also decline to do so, at its discretion. The court cannot be ordered to do anything by the Attorney.

The guidelines would be similar to that recently given by the Court of Criminal Appeal in the *Jurisic* dangerous driving case.

The article further stated:

The sentencing guidelines do not fetter the discretion of trial judges, who still have to take into account the circumstances in each case. What the guidelines seek to do is to provide a range that the Court of Criminal Appeal would find acceptable in promoting consistency in sentencing policy. Similar legislation takes effect in the UK next year—

Obviously the Blair Labour Government supports such legislation—

although applications for sentencing guidelines are to be made by a Sentencing Advisory Panel.

Some criticism of the bill seems to be coming from professional lawyer groups. The article further stated:

It is difficult to see how all of this amounts to an assault on the rule of law, the destruction of judicial independence and a nail in the coffin of democratic society. Flourishing hyperbole comes easily to the lips of the professional lawyer bodies when faced with any proposal that trespasses on the traditional patch.

The same hyperbole seems to be coming from the lips of honourable members who have contributed to the debate. Briefing Paper No. 18/98 entitled "Mandatory and Guideline Sentencing: Recent Developments", released by the Parliamentary Library Research Service, makes it clear that Chief Justice Spigelman and others involved with the Court of Criminal Appeal have no great concerns about this bill. At page 25 of the briefing papers the Chief Justice is reported as saying:

Such guidelines are intended to be indicative only. They are not intended to be applied to every case as if they were rules binding on sentencing judges. Decisions of appellate courts are not to be treated as binding precedents . . . Guideline judgments are a mechanism for structuring discretion, rather than restricting discretion.

For those reasons the Christian Democratic Party supports the bill. Honourable members have referred to a Dutch auction taking place between the Labor Government and the Liberal-National coalition; they are trying to outdo each other in the law and order area. I think I now understand why Mr Carr needs six media officers. Mr Kennett has only one media officer and the Prime Minister has three.

The Hon. J. R. Johnson: That's rubbish!

Reverend the Hon. F. J. NILE: It has not been refuted. Indeed, there are two Dutch auctions taking place: one is between the Labor Party and the coalition as to which can be the toughest, and the other is between the Greens and the Australian Democrats as to which can be the softest. They are trying to outdo each other.

The Hon. Dr B. P. V. Pezzutti: What about the Hon. R. S. L. Jones?

Reverend the Hon. F. J. NILE: The Hon. R. S. L. Jones is not up for re-election so he is in limbo. It seems that the Labor Party and the coalition are competing with each other to see which can be the softest. They are competing for 2 per cent or 3 per cent of the vote, so we will see which is the softest in the long run. I would rather be with the firm parties than the soft parties.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.09 p.m.], in reply: This bill should be supported by members of this House and, having regard to the contributions to the second reading debate, I believe it will be. This sensible bill preserves the principle of judicial autonomy. It does not mean that politicians will set sentences or that sentences will be determined in an arbitrary way on some arithmetic grid. The bill preserves proper

discretion by judges and the doctrine of the separation of powers. Judges will determine the guidelines appropriate to setting sentences in a particular case. Under the provisions of the bill if the Court of Criminal Appeal is not persuaded that it ought to set guidelines in a particular case it can decline to do so. With all of the Government's amendments the legislation will allow general sociological, criminological and medical evidence to be put before the Court of Criminal Appeal, which will enable judges to sensibly, objectively and rationally determine sentencing guidelines.

The Hon. R. S. L. Jones: What set of facts will be used?

The Hon. J. W. SHAW: The Court of Criminal Appeal will be informed by general evidence and will be able to objectively, scientifically and rationally determine what should be the sentencing guidelines. The promulgation of sentencing guidelines is a beneficial reform. Sentencing guidelines promote consistency in sentencing by clearly communicating to a sentencing court, legal practitioners and the community generally the appropriate penalty range for a particular offence. If sentences are disparate or inconsistent, that detracts from the perceived legitimacy of the judicial system.

Some people think that they are not getting a fair go in the criminal justice system. Consistency is an important virtue, which ought to be affirmed. However, politicians should not determine sentences; they do not have the capacity, qualification or disinterestedness to determine sentencing guidelines. I would leave it to the judges, as this bill does. It is constitutionally appropriate and consistent with the separation of powers. I do not see any serious argument against it.

The Hon. D. J. Gay: It has always been left to the judges.

The Hon. J. W. SHAW: That is correct. However, the Opposition is putting forward some kind of Minnesota grid system that would let politicians sit down and work it out on an arithmetic basis. The role of Parliament is to set a maximum sentence and to allow judges to weigh up the combinations and permutations of a particular case and set a sentence in the context of that case. What the Hon. Dr A. Chesterfield-Evans said as a critique of the American grid system was persuasive. I have spoken to American judges of the most conservative hue and they say that system is shocking, that it leads to arbitrary justice and injustice.

Such a system leads to some sentences being too lenient. A judge looks at a grid and works out the sentence on a graph. Sometimes the offender under that system gets less than he or she would have got if it had been determined on a more discretionary basis. Sometimes it leads to sentences that are too harsh. This Government has got it right. We have built on an evolutionary basis on the judgment of the Court of Criminal Appeal in the matter of Jurisic.

The Hon. D. J. Gay: This is a Tink-led government.

The Hon. J. W. SHAW: We have totally refuted the Tink thesis. I know there is an old dictum, "I t'ink, therefore I exist." The Government has assuaged that thesis. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Schedule 1

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.16 p.m.], by leave: I move Government amendments Nos 1 to 7 in globo:

No. 1 Page 3, schedule 1, line 5. Omit "**Applications for sentencing**". Insert instead "**Sentencing**".

No. 2 Page 3, schedule 1. Insert after line 5:

Division 1 Interpretation

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

Division 2 Applications for sentencing guidelines

No. 4 Page 3, schedule 1, proposed section 26(2), line 17. Insert "and may include submissions with respect to the framing of the guidelines" after "offences".

No. 5 Page 3, schedule 1, proposed section 26(3), lines 18-21. Omit all words on those lines. Insert instead:

(3) An application is not to be made in any proceedings before the Court with respect to a particular offender.

No. 6 Pages 3 and 4, schedule 1, proposed section 26(6), line 30 on page 3 to line 4 on page 4. Omit all words on those lines. Insert instead:

(6) The Senior Public Defender, or a nominee of the Senior Public Defender who is a legal practitioner, may appear in proceedings under this section.

(7) The Senior Public Defender or his or her nominee may do any one or more of the following:

(a) oppose or support the giving of the guideline judgment by the Court,

(b) make submissions with respect to the framing of the guidelines,

(c) assist the Court by advising it on any matter relevant to the application.

(8) Nothing in the *Public Defenders Act 1995* or any other Act or law prevents, or in any way limits, the exercise of any function conferred on the Senior Public Defender or any nominee of the Senior Public Defender who is a Public Defender under this section.

(9) Without limiting subsection (8), in exercising any function conferred on the Senior Public Defender under this section, the Senior Public Defender is not, despite section 4(3) of the *Public Defenders Act 1995*, responsible to the Attorney General.

No. 7 Page 4, schedule 1. Insert after line 21:

Division 3 Miscellaneous

29A Use of evidence in giving guideline judgments

(1) Nothing in section 12 of the *Criminal Appeal Act 1912* limits the evidence or other matters that the Court may take into consideration in giving a guideline judgment (whether or not on application under section 26) and the Court may inform itself as it sees fit.

(2) The Court must not increase a sentence in any appeal by reason of, or in consideration of, any evidence that is used by the Court in giving a guideline judgment in the appeal and that was not given at the trial.

Amendments Nos 1, 2 and 3 have been included for abundant caution. They restructure the bill to make it perfectly clear that applications for sentencing guidelines by the Attorney General under this division must not be made with respect to a particular offender. Amendment No. 4 has also been included for abundant caution. It clarifies the position that it is within the power of the Attorney General to make submissions with respect to the framing of the guidelines. The power needs to be read in conjunction with clause 28, which specifically preserves the discretion of the court. In particular, under clause 28 the court is not required to give a guideline judgment if it considers it inappropriate to do so.

Amendment No. 5 makes it abundantly clear that the power of the Attorney General to request a sentencing guideline from the Court of Criminal

Appeal cannot be made in the context of proceedings in relation to a particular offender. Rather, the request is to be in the abstract. Such referred matters stand in contrast to court-generated sentencing guidelines which will always be given in the context of a particular matter on appeal. Amendment No. 6 has been included to clarify the role of the Senior Public Defender in sentencing guideline matters referred by the Attorney General.

Given the uniqueness and novelty of the idea, in consultation with the Senior Public Defender this was thought to be a wise course of action. As to amendment No. 7, in a recent case following the decision by the Court of Criminal Appeal to introduce sentencing guidelines where appropriate, Chief Justice Spigelman expressed the view that the ability to make sentencing guidelines may be restricted by section 12 of the Criminal Appeal Act 1912. This provision gives the court certain powers, including the power to receive evidence. Such powers are, however, subject to the following proviso: that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Clause 29(1) makes it clear that section 12 does not limit the matters which the court may take into consideration, and also clarifies that the court has the power to inform itself, as it sees fit, in giving guideline judgment. This is to be the case in relation to applications for guideline judgments referred by the Attorney General where there is no defendant and sentencing guidelines established on appeal. However, in relation to sentencing guidelines given in the context of an appeal, clause 29A(2) provides that evidence allowed in relation to such sentencing guidelines cannot be used against the person the subject of the appeal. These amendments have been the subject of consultation and they improve the bill. I commend the amendments to the Committee.

The Hon. J. M. SAMIOS [8.19 p.m.]: The Opposition does not oppose the bill, or indeed the amendments. However, the amendments demonstrate the coalition's difficulty with regard to the scope of the bill. I refer in particular to the matrix guidelines proposed by the Opposition. The Opposition has made it clear that a coalition government would introduce group sentencing or a matrix-type scheme. In fact, the comments of the Director of Public Prosecutions to which other speakers have referred also reflect the particular difficulty with the bill.

The Opposition agrees with the Government that amendments Nos 1 to 3 clearly define the role of the Public Defender. Amendment No. 4, which

deals with the independence of the court, is reasonable; it clearly follows a tradition of the courts. Amendment No. 5 deals with the request in abstract and is consequential. Amendment No. 6 clearly defines the role of the Public Defender in the changing circumstances proposed by the amendments to the bill. Although the bill does not go the full distance the Opposition does not oppose it.

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.

DRUG MISUSE AND TRAFFICKING AMENDMENT (CONTROLLED OPERATIONS AND INTEGRITY TESTING PROGRAMS) BILL

Second Reading

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [8.24 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Drug Misuse and Trafficking Amendment (Controlled Operations and Integrity Testing Programs) Bill. Broadly speaking, the bill aims to give explicit authority to police officers to obtain prohibited drugs for use in controlled operations and integrity testing. The Law Enforcement (Controlled Operations) Act 1997, which commenced on 1 March 1998, stipulates that the possession and supply of prohibited drugs by participants in an authorised operation is not unlawful. Such conduct does not, therefore, constitute an offence or corrupt conduct.

Notwithstanding this, there is no specific provision in that Act, or in the Drug Misuse and Trafficking Act 1985, which explicitly authorises police to procure prohibited drugs for use in integrity testing or controlled operations. The rationale behind the Law Enforcement (Controlled Operations) Act 1997 is to allow police officers to engage in otherwise unlawful activity for the purposes of investigation. The Government always intended that prohibited drugs and plants could be obtained by police for the purposes of controlled operations.

An important component of such investigations is integrity testing within the Police Service itself. Integrity testing allows the Police Service to investigate corruption and bad practice, and to take appropriate action, such as prosecution. The former Crown Advocate recently advised the Police Service that the absence of any express authority may arguably affect the admissibility of evidence regarding the integrity test or controlled operation in any future proceedings. The Ombudsman, who released her annual report regarding the operation of the Law Enforcement (Controlled Operations) Act 1997 today, also identified the difficulty. She stated that she would support legislative reform to allow for express authority.

In short, the problem that exists is that whilst police are able to use prohibited drugs in integrity testing and controlled operations, there is no express mechanism which enables them to obtain the drugs. The Government has formulated, and seeks to implement, a speedy response to the potential problem. This bill will remove any doubt that police may obtain prohibited drugs or plants. The Government is committed to supporting any reasonable measure which may assist in discovering and eradicating corruption within the New South Wales Police Service.

For these reasons, the bill will amend the Drug Misuse and Trafficking Act 1985 by inserting a provision granting express authority for the acquisition of prohibited drugs and plants for use in integrity testing and controlled operations. I turn now to the specific features of the bill. Items [1] to [8] of schedule 1 amend various sections of the Drug Misuse and Trafficking Act 1985. The amendments will facilitate the operation of proposed section 39RA.

Proposed section 39RA(1) entitles the Commissioner of Police to direct in writing that a prohibited drug or plant which has been seized by a police officer may be retained for the purpose of either a controlled operation or an integrity test. Proposed section 39RA(2) provides that a direction may be given by the Commissioner of Police for the immediate use of the prohibited plant or drug, or for use at some later time. That section also provides that a police officer or some other person may use the prohibited drug or plant. Other investigatory agencies, such as the New South Wales Crime Commission and the Independent Commission Against Corruption, would of course fall within the category of other persons.

A degree of flexibility in the direction which is able to be made by the Commissioner of Police is provided for by proposed section 39RA(3). Further, as set out in proposed section 39RA(4), the direction need not identify a particular controlled operation or integrity test. The Commissioner of Police may also delegate his authority to direct that a prohibited drug or plant may be retained for use in a controlled operation or integrity test to a Deputy Commissioner of Police. Honourable members will note that this delegation is equivalent to that contained in the Law Enforcement (Controlled Operations) Act 1997. Put simply, the proposed amendment will make it abundantly clear that police not only have the power to possess prohibited drugs in certain circumstances, but also have the power to procure those drugs. I commend the bill to the House.

The Hon. M. J. GALLACHER [8.25 p.m.]: The Attorney General will be pleased to know that the Opposition supports the Drug Misuse and Trafficking Amendment (Controlled Operations and Integrity Programs) Bill, as it supported the

Residential Parks Bill. This important bill is being debated in the dying days of this Parliament. It is worth noting that as a new member of this Chamber in 1996 one of the first questions I asked the Attorney General concerned integrity testing. The Attorney General told this House, "We do not need to provide legislation in relation to integrity testing in New South Wales; the legislation is already there." He did not think such legislation was needed.

It is good that the Attorney General listened to the Opposition claims about integrity testing and is now behind us 100 per cent. It is encouraging to know that I have the support of the Attorney General as, once again, I lead the way in the New South Wales Parliament on a major reform. In a nutshell, this bill will simply give police the necessary powers and protection to buy and/or sell drugs as part of an undercover drug operation or integrity testing work.

This important legislation has been required for some time. It is worth noting also that in 1995 I was a member of the Police Service committee that pleaded with this Government for integrity testing to be introduced. But that plea fell on deaf ears. Finally, the Opposition has succeeded in getting the Government to introduce this bill, which it is pleased to support. This bill will provide police not only with the necessary framework and legislative protection to go after major drug dealers but also with the opportunity to go after corrupt police in relation to drug matters in this State.

That is an important tool for the New South Wales Police Service. However, it is unfortunate that in providing the protection and necessary legislative framework under this bill the Government has not toughened penalties for those who traffic in drugs in this State. However, we will fight that issue on another day. The bill provides police with the necessary framework to get on with the job. As I said earlier, the Opposition is pleased to support what is in essence an Opposition proposal.

The Hon. R. S. L. JONES [8.28 p.m.]: I do not support the Drug Misuse and Trafficking Amendment (Controlled Operations and Integrity Testing Programs) Bill. This bill explicitly legalises the possession and supply of prohibited drugs for use in connection with controlled operations and integrity testing of other police officers. It permits police officers to retain a prohibited plant or drug that has been seized for use in connection with a controlled operation or integrity testing program. The Law Enforcement (Controlled Operations) Act 1997 allows police to engage in criminal activities to aid investigations and catch criminals. The

provisions arose because of difficulties presenting evidence in court obtained through controlled operations.

Evidence presented in Ridgeway's case in the High Court revealed that the Australian Federal Police acted illegally in a sting operation which involved an informant passing on heroin to a police officer. The prosecution subsequently lost the case. The provisions in this bill stem from the fact that the Law Enforcement (Controlled Operations) Act does not state explicitly that prohibited drugs may be obtained by a police officer for use in a controlled operation or integrity testing program.

Of the controlled operations that have been approved by the Commissioner of Police since the introduction of the Act, 34 out of 35 have involved criminal conduct in some way related to drugs—for example, the supply of prohibited drugs, conspiracy to import and supply prohibited drugs, the supply and cultivation of prohibited drugs. The ability of police to retain drugs for an unspecified time and for an unspecified operation flies directly in the face of the final report of the Wood royal commission, which outlined police corruption across a wide spectrum. The report noted that retaining drugs became an aid to corruption.

This bill inserts proposed section 39RA into the Drug Misuse and Trafficking Act 1985, which authorises the Commissioner of Police to direct that any prohibited plant or drug seized by an officer may be retained for use in a controlled operation or integrity testing program. It circumvents section 39I, which provides that prohibited drugs must be destroyed within seven days from the date that they were ordered to be destroyed. This bill allows police to be the custodians of seized prohibited plants or drugs for use in a controlled operation or integrity testing program.

The bill also provides that a person acting in accordance with proposed section 39RA is not guilty of an offence under proposed section 10, possession of prohibited drugs; proposed section 23, offences with respect to prohibited plants; and proposed section 25, supply of prohibited drugs. The specific inclusion of integrity testing programs stems from the Ombudsman's report entitled "Annual Report: Law Enforcement (Controlled Operations) Act 1997" dated June 1998. The Ombudsman identified potential problems with the legislation, one of which was a concern that the Act precluded controlled operations for integrity testing of police involving drugs. The Ombudsman noted in her report:

It would seem clear that the legislation was always intended to be available for this purpose. I am aware that there are a number of these matters in respect of which the Police Internal

Affairs officers are ready to proceed, but believe themselves to be prevented by the legislation in its current form. Indeed some of these matters have been referred to Internal Affairs by this Office with the recommendation that integrity testing take place.

Clearly integrity testing is a critical issue for the Police Service, particularly as internal affairs was recently reported in the media as wanting 24 officers to undergo drug tests immediately because they may be involved in major narcotic deals. The 24 officers are suspected of either regularly using illegal drugs or mixing with criminals who have recently been charged or are under active surveillance. The Council for Civil Liberties considers that the amendment takes the right of police too far because there is no requirement that particular operations be identified in the granting of an authority. In fact, proposed section 39RA provides that there is no need for an integrity testing program to even be contemplated before a direction is given under the direction. The council stated in its letter:

It would seem only right and fair to the people of NSW and in the limiting of abuse of police powers that lies at the heart of integrity testing operations that the permission to utilise possession and sale of illicit drugs be designated for specific operations as is currently required for such matters as phone taping or other invasive surveillance techniques.

The carte blanche approach to permitting police to carry out illegal activity under the Drugs Misuse and Trafficking Act may further complicate the role of the commissioner and the activities of police. This amendment may also undermine community confidence in the police and the operations of police in this area. This open ended power of the commissioner to grant a direction for an operation to occur for which there is no specific operation outlined is a depletion of the liberty of the people of NSW at the cost of increased police powers and discretions.

The Council for Civil Liberties cannot support this bill in its current form. Furthermore the Council urges that the bill be amended to bring its directives in line with other rules of police operations and evidence. Specifically the council urges that the bill be amended such that the commissioner be required to specify the particular controlled operation or integrity testing exercise for the bill to take effect.

The royal commission revealed that corrupt practices extended across a wide spectrum of activities. The final report noted that the police admitted to direct involvement in the supply of cocaine, heroin and cannabis. At page 133 the report noted:

Quite apart from the impossible and totally indefensible position in which police were placed when crossing the line into active participation in the drug trade, the practice of retaining drugs became an aid to process corruption.

On the extent of drug trafficking by police officers, the report noted:

Although a number of detectives attached to Kings Cross admitted to the recycling of seized drugs among informants

and their use in loading up suspects, members of the North West Region Crime Squad admitted to this kind of conduct in a manner and to an extent that carried it into an entirely new dimension. These deals were, on their account, so regular that little is served by descent into detail.

The final report of the Royal Commission into the New South Wales Police Service under "Part 11, Drug Trafficking" illustrated some transactions that stand out in extraordinary detail. At page 133 the report noted:

The following transactions described by detectives from this Squad, however, stand out:

- \$12,000 was provided by a heroin dealer to police to finance a buy-bust. The drugs (two ounces of heroin) were obtained, but the money was lost in the operation. The drugs were then cut and a portion given to the dealer to cover his loss. This was not the only occasion where known criminals were described as having financed this type of operation by police, either to set up a competitor or to steal his drugs and money;
- 10 pounds of cannabis were stolen in a job set up by criminal informants and then re-sold by them, the proceeds being shared between the police involved in the operation and the criminal intermediaries;
- Some heroin found by a detective in a map drawer of the Drug Unit was broken by him into smaller deals. Some he gave to an informer; the balance he sold to a known drug dealer in the Granville area. Other police confirmed the use of this drawer as a stash for heroin.
- A detective purchased drugs from one associate for the purpose of re-sale to another associate who was having difficulty in obtaining the stocks he needed for his 'business' at a competitive price from his usual supplier. In something of a twist to this, the usual supplier gave evidence of supplying the end buyer for a time through yet another detective, his purpose being to hide his role as he feared that the buyer was a police informant. The last-mentioned detective collected a commission on these sales, further evidencing the entrepreneurial spirit of the detectives working in this area. A third detective admitted that he, too, had arrangements with the end buyer for the supply of drugs to him which included, on one occasion, their joint financing of a quantity of heroin for re-sale; and
- A dealer gave police information in order to close down a competitor in return for a half share of the heroin that the police might find. The competitor was raided and one pound of heroin was found. This was taken back to the Drug Unit office where it was cut with glucose. A small quantity of the cut drug was given to the informant who was advised of the amount which police had located. The remainder was sold by the police to a major heroin dealer who subsequently handed the first-mentioned detective \$80,000 in payment. According to that detective, this was shared with some of the other police associated with the raid. Other officers, who were not aware of the amount of heroin seized, were given smaller amounts of cash.

The Hon. D. J. Gay: Where does this come from?

The Hon. R. S. L. JONES: All of this amazing stuff is reported in the royal commission report. In effect the provisions in the bill make legal a process that Commissioner Wood clearly identified as one that assists police corruption. Further evidence that police misconduct has not abated since the royal commission is evidenced by the Ombudsman's 1997-98 annual report. In the last year more than 100 police officers have been charged with serious criminal offences, including indecent assault, fraud, unauthorised use of computer information and drink driving. Another 1,200 officers have been formally counselled as a result of complaints relating to their performance or misconduct while on duty.

The report showed that the number of formal or written complaints lodged against police by members of the public has increased from 3,611 in 1995-96 to 4,266 in 1997-98. In the past financial year an additional 768 complaints were lodged by other police officers. In an article on 25 November in the *Sydney Morning Herald* the Ombudsman, Ms Moss, was reported as saying that while there were early signs of a cultural change among police largely as a result of the royal commission recommendations there will always be corruption in the Police Service. One dealer was heard to say, "A corrupt police force is a guarantee of liberty."

The Ombudsman's report on the first six months operation of the Law Enforcement (Controlled Operations) Act provides further evidence of why this bill causes concern. It appears that law enforcement agencies are not fully complying with the accountability measures embedded in the Law Enforcement (Controlled Operations) Act 1997. Under section 21 of that Act the chief executive officer must notify the Ombudsman of the granting of a controlled operation in accordance with the Act. Clause 12 of the Law Enforcement (Controlled Operations) Regulation outlines which details must be provided to the Ombudsman in her capacity of monitoring controlled operations.

These details include the nature of the controlled activities that were engaged in for the purposes of the operation, the number of the participants in the operation, including how many participants were law enforcement participants, and how many were civilian participants. Further, clause 12(g) of the regulations states that the Ombudsman must be provided with a statement as to whether any unlawful conduct was engaged in by any participant in the operation and, if so, whether the unlawful conduct was the subject of a retrospective

authorisation and whether such retrospective authority was granted.

This is an extremely important clause because it gives some measure of protection against police officers overstepping the mark during the course of a controlled operation or an integrity testing program. Page 11 of the Ombudsman's report notes that notifications by the New South Wales Police Service were deficient in that they failed to fully address clause 12 of the regulations, that is, whether any unlawful conduct was engaged in during the controlled operation. Other agencies, such as the Independent Commission Against Corruption, the New South Wales Crime Commission and the Police Integrity Commission also made deficient notifications in relation to this clause.

I am concerned about proposed section 39RA, and I have expressed my concern to the Minister. Nothing in the proposed section states that drugs should be kept securely before they are used in an operation. I foreshadow that at the Committee stage I will move an amendment—I understand it will be accepted by the Government—that will ensure that drugs must be kept securely until used in an operation.

The Minister's office has sent me the finalised service guidelines relating to the handling of drug exhibits which were released today. Similar guidelines, which presumably will mirror some of the provisions contained in these guidelines, will be prepared for integrity testing and controlled operations. I shall put parts of these guidelines on the record. Page 17 of the Police Service handbook refers to the opening of the PAB 24, which is a type of drug security bag. The guidelines state in part:

Never open bags when only one person is there.

...

Record on the bag and in the exhibit book, the time, date and reason for opening. Everyone present must sign on the bag and in the *exhibit book*. If the bag is opened at the Division of Analytical Laboratories, the analyst cuts the bag below the original seal (and places it in the bag for audit reference). In front of escorting police, the analyst then selects a sample and reseals the bag.

The handbook refers to the opening of PAB 24s in court. It says that the seal that is cut off should not be disposed of but placed inside the drug bag for audit reference and then the bag should be resealed by stapling. The handbook states:

Record on the bag the time, date and reason for opening, your name and signature, and the name and signature of the court officer.

When you return to the station with the exhibit, tell the exhibit officer why the bag was opened.

The handbook states that the exhibit officer must:

Check the exhibit and signatures on the bag in front of the returning officer. Ensure the stapling has been covered with clear adhesive.

Record in the *exhibit book* the reason why the bag was opened.

The handbook then describes the station procedures. It states:

When necessary, weigh and/or count the exhibit in front of the case exhibits officer and, where possible, the alleged offender.

In many cases the amounts tendered in court have been far less than the amount originally seized. As a result, in many cases the offenders received lighter sentences. In such cases the police would have recycled the drugs and made a fair amount of money. The drugs should be weighed in front of the alleged offender, but the alleged offender does not mind if the weight of the drugs is less because he knows he will receive a lesser sentence. The handbook further states:

Weigh drugs as they are eg: in foil, capsule or other container to minimise handling. The exhibit officer estimates the weight of the container and assesses the net weight of the drug. Also weigh the empty drug bag and take its weight into account.

The handbook goes on to say:

Record a detailed description of the exhibit, including weight, last signed seal number and bag serial number in the *exhibit book*.

Therefore, a number of good security measures have been put in place. In relation to security cabinets it states:

One key to the dual locking system is held by the officer performing station duty or the exhibit officer.

The second key is held by the local area commander or delegate. Both officers must be present when the cabinet is opened.

The key to the night chute is kept with the exhibit room key.

The duplicate keys are secured in the region commander's safe.

When the Hon. Ted Pickering was Minister for Police he told me privately of his intense frustration because the drug room at the police headquarters was like a supermarket. He asked the commissioner to secure the drug room—I think it was the only room in the building that was not secure. He finally managed to do it, but it took some time. Police

could switch off the security camera, go into the room, do what they wanted, come out and switch the camera on again. They were very strange times. The Hon. Ted Pickering was frustrated because it took him so long to secure that room. The Police Service handbook refers to officers removing drugs from the exhibit room. In the days to which I just referred they were removed without anyone apparently being in control of them. The handbook states:

When a drug is removed from the exhibit room, check it and record the reason and the last signed seal number (for PAB 18 bags only) in the *exhibit book*.

On return, check it in front of the returning officer and record the time, date and last signed seal number (PAB 18 bags only) in the *exhibit book* and sign the entry, if satisfied. Have the returning officer countersign your signature and include their registered number.

The handbook contains many strict procedures. There seems to be a foolproof system now for destroying drugs. Page 23 of the Police Service handbook refers to the people who should be present when drugs are destroyed as follows:

Destroy the exhibit in front of an officer of or above inspector rank or a duty officer, an independent witness and an officer who can identify the exhibit. The witness should be a JP from the Local Courts Administration.

If a justice is not available, use any of the following:

- member of the Salvation Army
- minister of religion
- agronomist
- bank manager
- council or shire health officer
- weed inspector
- government analyst
- legal practitioner
- postmaster
- pharmacist
- reputable citizen with permanent residential status in the area.

It does not include politicians, apparently. We can be sure that drugs seized would be destroyed unless they have been reduced in quantity before they get to the point of being destroyed. The handbook also talks about precautions for handling cannabis plants and leaf when they are destroyed. It tells police officers to stay upwind when plants are being burnt—some officers have not been doing that: they

have been standing downwind and enjoying the proceeds. Under the heading "Commercial and trafficable quantities of prohibited drugs" the handbook refers to transporting the drugs, which is one of my concerns. The handbook states:

If you are travelling to Sydney from the country and stop overnight on route store the exhibit at the nearest station in the appropriate exhibit safe. Make an entry on the general station pad, fully describing the drugs and the drug bag number/s. Have the entry signed by the receiving officer. When retrieved acknowledge receipt on the general station pad and get a photocopy of the entry to file at your station.

I hope that these good guidelines are adhered to. My amendment will demand that prohibited plants and drugs are kept securely. Guidelines will be issued along these lines and I hope that the officers will keep the drugs securely before they use them in conjunction with a controlled operation or integrity testing.

The Hon. I. COHEN [8.47 p.m.]: I oppose the Drug Misuse and Trafficking (Controlled Operations and Integrity Testing Program) Bill. I listened with great interest to the information put forward by the Hon. R. S. L. Jones. It is with a certain degree of concern that I realise that power is being given to the police to possess drugs for various purposes. I commend the amendment that will be moved by the Hon. R. S. L. Jones to tighten up the procedure for keeping prohibited drugs in a secure place. As the Hon. R. S. L. Jones stated, there are many anecdotal stories about the police keeping, using and selling illicit drugs, and about the problems with the Drug Squad in the past. Such incidents were well chronicled by the Wood royal commission.

I am concerned that the continued use of drugs in sting operations and integrity testing may get out of hand. It may not happen next month or next year, but it could happen in the future if the bill is set in train. The Council for Civil Liberties has stated that the bill goes too far—and I agree. No-one objects to drug testing. We have missed the point as to why there are so many problems with illegal drugs in our community. In 1992 nearly 19,000 people died from the legal drug tobacco and 6,500 people died from alcohol-related illnesses—and just over 800 people died from illicit drug use. Legal drugs are the ones that are killing the greatest percentage of people yet a great deal of police time, effort and finance is going into a war against drugs that is constantly failing. We should look at the big picture. The Government and the Opposition are trying to outbid each other as the next election approaches.

Senior internal affairs officers who had anticipated being prolific users of the provisions of

the legislation did not take advantage of their increased powers as they had obtained legal advice which suggested that they were unable to use the legislation without amendment. The bill provides the amendment but the use of the powers in integrity testing is going in the wrong direction. It is fraught with problems and opportunities for abuse. The New South Wales police force has been one of the most corrupt police forces in the world, or at least in the nation. It has not had a good reputation. Pursuit of the law and order path should not allow the old problems to reappear. The present approach is not working and the Greens do not support the bill.

Reverend the Hon. F. J. NILE [8.52 p.m.]: The Christian Democratic Party supports the Drug Misuse and Trafficking Amendment (Controlled Operations and Integrity Testing Programs) Bill, which we believe is very important. I was pleased with the speech of the Hon. R. S. L. Jones and, to a degree, the speech of the Hon. I. Cohen because both gave great arguments in favour of the bill, particularly the integrity testing part. The whole purpose of the bill is to counteract what has been revealed by the Wood royal commission: that there have been corrupt dealings in drugs. The bill will allow the police force to locate the corrupt police officers. Suspect police officers will be asked to take part in phoney controlled operations. They will be set-ups and the officers will be given plenty of opportunity to steal the drugs. They will not know that it is an integrity test.

The royal commission identified many corrupt police. Corrupt police who had turned informants worked with the royal commission. A miniature video camera in a car showed an informant paying money to Inspector Fowler. The bill should be given a chance so that such methods can be used to identify corrupt police officers. In the long run the bill will help to eliminate the sorts of cases mentioned by the Hon. R. S. L. Jones. Human nature being what it is, a group of individuals cannot be perfect, whether in the Parliament or in the police force, so corruption will never be completely eradicated. I took exception to the Hon. I. Cohen stating that New South Wales had the most corrupt police force in the world. I would like evidence of that.

The Hon. I. Cohen: I did not say that it was the most corrupt; I said it was one of the most corrupt.

Reverend the Hon. F. J. NILE: It sounded as though the Hon. I. Cohen was implying that it was the worst in the world. That is an insult to the thousands of New South Wales police officers. He should apologise to the police.

The Hon. Dr A. CHESTERFIELD-EVANS [8.55 p.m.]: The Australian Democrats are concerned that this is another bill that is in the wrong frame of reference. Basically, the bill will allow police to give away heroin in uncontrolled doses, to be sold or trafficked illegally in a law enforcement model. The same Parliament that proposes to allow this will not allow doctors to prescribe heroin or methadone in controlled doses in a way that would do people some good. It will not allow controlled doses in a medical model that aims to help people. Members bay like hounds at the idea of the police, with their little satchels, handing drugs around in sting operations—not only criminals but involving police as well.

The Wood royal commission brought police corruption out into the open. On Monday of last week a newspaper report claimed that many of the handed-in guns had gone missing. Previously they were in the hands of relatively law-abiding shooters and now they are in the hands of relatively non law abiding shooters. Some police are not doing the right thing. Members claim that they will catch the crooked police in sting operations; they will make the "white hats" beat the "black hats". It is a dangerous game. While we play this dangerous game we are not willing to let doctors operate a medical model to help people and solve problems. There is a police mentality.

Members say that it is not really a criminal model that they are after—slavering at the mouth waiting for the election—and it is not lowest common denominator legislation; in this case we are helping the white hats to beat the black hats so it is all okay. It is claimed that this totally wrong model offers a ray of hope—in this case it is okay to ratchet law and order up one more notch. Each bill ratchets it up one more notch. Someone said that I was going to be the softest member in this House and would get only 3 per cent of the vote. Far be it from me to say that the person accusing me of going after 3 per cent changed the name of his party to the Christian Democrats to try to get the word "Democrats" in.

Was he concerned that my grip on the 3 per cent was too strong? Did he want a bit of that sort of grip? When we are accused of being "soft on drugs" I wonder where in the *Bible* Jesus Christ said, "Let us not have forgiveness, let us not have rehabilitation; punishment is what we are after." I do not know what testament the man is reading but I would have thought that the New Testament was fairly much on the side of forgiveness and rehabilitation and less on the side of punishment. I would be interested in hearing in the House a few biblical quotes rather than crime statistics to justify the changes. They do not seem to have any justification in fact.

Reverend the Hon. F. J. Nile: Jesus would not give heroin to people.

The Hon. Dr A. CHESTERFIELD-EVANS: I would like a reference for that: chapter, verse and gospel. The bill facilitates the use of prohibited plants and drugs in controlled operations and for integrity testing. It is supposed to overcome the problem highlighted in the case of *Bunning v Cross* about the inadmissibility of evidence improperly obtained. It will legitimise the use of drugs by police in undercover or controlled operations and in integrity testing, in which drugs are used to test the integrity of fellow police officers. The honourable member for Gordon in the other place repeated a quote he had heard from a member of the Federal Bureau of Investigation: 10 per cent of people are totally honest, 10 per cent are totally dishonest and 80 per cent do whatever they can get away with. Honourable members can work out for themselves which camp they fall into.

I may be naive but I would have thought that the figure of 10 per cent for honest people was a little low. In every walk of life, be it the Parliament, the legal profession or the Police Service, there is a percentage of people who are not on the up and up: because of the availability of money, drugs and stolen goods, the temptations are great and the opportunities many. The Wood royal commission and the recent Ombudsman's report are testament to the fact that we must be ever vigilant and root out corruption. Having the correct controls in place will lessen the percentage of police officers who do the wrong thing, although corruption will never be totally eradicated. The idea behind the bill is that it will prevent people from stepping over the line through a fear of being caught.

However, the bill remains a worry. As a small token of control on the operations outlined this bill an amendment will be moved in Committee that will ensure the security of the drugs used in those operations. I hope it will be supported. It should be noted that recently it was discovered that drugs and money kept as evidence by the Australian Federal Police had disappeared, and no-one seems to know where it went. That should be a salutary lesson to the proponents of this bill. The price of democracy is eternal vigilance. I believe that the whole framework of the punitive approach to drugs will not work.

I am concerned about the direction of that approach. If one accepts that controlled operations should be used to chase criminals and that good cops should be pitted against bad cops in the Police Service, one could justify the bill. However, if one

considers the broader issue of a model for the use of drugs in society, the bill is a failure. The Australian Democrats believe there is no chance of changing that model in the short term, but I am not sure that means we should support a bill such as this.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [9.03 p.m.], in reply: I thank honourable members for their contributions to the debate. The Government intended by this bill to clear up any doubts concerning police powers to obtain prohibited drugs for use in criminal investigations and integrity testing. The ability of the police to conduct undercover operations is a useful weapon in the battle to stem the drug trade in this State. Integral to that is the need for police to have access to prohibited drugs for use in those operations.

The bill amends the Drug Misuse and Trafficking Act to enable police to retain prohibited drugs confiscated under that Act for future use in controlled operations. The amendment also allows the use of those retained drugs in police integrity operations conducted under the Police Service Act 1990. In light of the material that was before the Royal Commission into the New South Wales Police Service it seems clearly desirable that there be no unnecessary hindrance placed in the way of the Police Service monitoring the integrity of its officers.

The Police Service has recently released the revised Police Service handbook, which will replace the commissioner's instructions. The handbook includes extensive rules and operating procedures for the handling and storage of drug exhibits. Those rules and operating procedures are designed to ensure that the integrity of evidence is maintained and to prevent corrupt tampering with, or theft of, drugs held as exhibits. Concern has been expressed about the accountability measures that will need to be put in place when this amendment is passed. Additional security measures and standard operating procedures will, of course, be required by the Police Service.

Drug exhibits will be used in operations. That is the purpose of the bill. I am advised that extensive work has already been undertaken within the Police Service to prepare an appropriate operational environment for the measures that the bill introduces. Standard operating and security procedures have already been prepared in draft form. They are very thorough and substantial. Central to those procedures is absolute accountability at every step. It is essential that the integrity of operations

and officers is maintained and is auditable at every step. The procedures to be put in place will ensure that there is no ambiguity.

Every step taken in the conduct of the controlled operation or integrity test by the Police Service using drugs will have to be specifically authorised by an appropriately senior officer. The Government understands the legitimate concerns about the use of drug exhibits in these operations. It offers its assurance that the most rigorous system of accountability will be put in place. In short, this bill clarifies police powers in the area of prohibited drug investigations. It is essential that the powers that the police have in the fight against the drug trade are sufficiently clear, transparent and robust. The amendment achieves that goal in an extremely important area of those powers and I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Schedule 1

The Hon. R. S. L. JONES [9.08 p.m.]: I move the amendment circulated in my name:

Page 5, schedule 1[8], line 3. Insert "and is subject to a further condition to the effect that the prohibited plant or prohibited drug to which the direction relates is to be kept securely until it is used in connection with a controlled operation or integrity testing program" after "appropriate".

The amendment is designed to ensure that police officers are aware that when drugs are not being used in an operation they must be kept secure. I spelt out at some length in my contribution to the second reading debate some of the measures already in place for other operations. I understand there will be a similar set of guidelines put in place for controlled operations and integrity testing. I am pleased that the Government will accept this important amendment, because I want to be certain that these drugs are not freely available and are not used for illicit purposes other than approved illicit purposes.

The Hon. J. W. SHAW (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [9.10 p.m.]: The Government does not oppose the amendment. It will ensure that prohibited drugs to be used in controlled operations and integrity testing are to be kept in a secure environment until they are to be used in connection with such operations. The amendment is consistent

with the spirit of the legislation. It replicates the practices and procedures which are currently in place to ensure the safekeeping of drug exhibits. No doubt from the honourable member's point of view, the amendment enshrines those practices in legislation. That is undoubtedly the purpose of the amendment. The Government does not oppose the amendment.

The Hon. M. J. GALLACHER [9.10 p.m.]: Likewise, the Opposition does not oppose the amendment. However, it is important to acknowledge that specifically limiting the security provisions to drugs used in controlled operations and integrity testing will place those drugs in a different position to those seized under the Drug Misuse and Trafficking Act, which has no such provision in place. The amendment replicates police practice and procedures, which are audited not only by the Ombudsman but by the Police Integrity Commission. I understand that the State Crime Commission can also examine the matter if there is a problem. As I said it is a replication, but the Hon. R. S. L. Jones believes the bill should be amended to further enhance the integrity of the Police Service, which unfortunately continues to be a whipping post for some honourable members in this Chamber. The day has now come when we have to accept that there are good police out in the community who are doing the best they can.

Amendment agreed to.

Schedule as amended agreed to.

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

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

SYDNEY WATER CATCHMENT MANAGEMENT BILL

Second Reading

The Hon. R. D. DYER (Minister for Public Works and Services), on behalf of the Hon. M. R. Egan [9.14 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Sydney Water Catchment Management Bill, when combined with the Water Legislation Amendment (Drinking Water and Corporate Structure) Bill and other non-legislative measures, provides the underpinning for the future management of Sydney's drinking water supply. In turn, these two bills are in accordance with the recommendations contained in the McClellan inquiry's second and third reports. The two pieces of legislation will have the effect of transforming the Sydney Water Corporation. In many ways, the corporate governance model used to corporatise Sydney Water in 1994, that is, a company State-owned corporation, [SOC], can be argued to have failed. By removing the responsibility for the management of the inner catchments from Sydney Water and reincorporating the remaining entity as a statutory State-owned corporation, we are bringing the management and control of our water supply and waste water systems closer to government.

We have commenced the process of re-establishing links between the water utility and government that, as a result of the particular model of corporatisation, had in my view been stretched and in some instances broken. Having said that, I want to formally record my appreciation for the men and women of Sydney Water who worked tirelessly and under enormous pressure to rectify the problems associated with the recent water contamination incidents. Despite the obvious negative impact that the incidents have had on Sydney Water, it contains good and dedicated people who do not deserve to share in the odium that has been levelled at the organisation. The message these bills deliver to those people, the good and dedicated workers, is that the Government wants to bring the organisation and its people back closer to the core functions of Government than the company SOC model allowed. In his third report Mr McClellan concluded that there were a number of significant problems in the catchment and that, for a variety of historic reasons, the catchment is seriously compromised.

Mr McClellan recommended a strong and effective response to the problems of the catchment, recognising that protecting the catchment provides the best long-term security for Sydney's drinking water. Mr McClellan recorded in his third report that the essential elements of effective catchment management include clear and enforceable water quality objectives for the catchment; strong planning controls over the outer catchments; a catchment manager with a concurrence power in relation to development; independent auditing of catchment health with the auditor reporting to Parliament; effective partnerships between local government and the catchment manager; and adequate resourcing to provide effective management of catchment lands and a capacity to enforce breaches of relevant statutes or regulations. This bill responds to Mr McClellan's recommendations.

Further, in order to accelerate changes to the management of our catchments the Government has also embraced Mr McClellan's recommendations to, as a first step, create a State Environmental Planning Policy [SEPP] to control relevant development in the catchment. I can advise the House that the preparation of the SEPP has already commenced in accordance with the provisions of the Environmental Planning and Assessment Act. The SEPP will provide for a concurrence role for the proposed Sydney Catchment Authority and the parameters for permissible development. At the same time, the Government will shortly begin to prepare a regional environmental plan [REP] which will build upon the work of the Healthy Rivers Commission, and will incorporate clear development controls and water quality targets.

The REP aim is to give priority to drinking water quality and a binding action plan for all the regulatory bodies at the State

and local level. However, as all members would be aware, the statutory requirements and time frames for the preparation of the REP necessitate the implementation of the SEPP as an interim measure to ensure a rapid response. Once the REP is in place, it is intended that the SEPP will become redundant, as its provisions will be incorporated within the regional plan. Therefore, the combination of the SEPP as an interim measure, the regional plan and this legislation provide a comprehensive response to Mr McClellan's recommendations regarding the catchment. In simple terms, Mr McClellan's recommendations require the establishment of an organisation that will be responsible for our drinking water catchments.

At present, as noted in the McClellan report, there are nine government agencies, at least eight local government authorities, and any number of ancillary regulatory organisations, community interest groups and private interests, each with a stake in the management of our drinking water catchments, but as a consequence there are fragmented responsibilities, potential overlaps and gaps. No one body is responsible for ensuring the catchment is managed to minimise contamination of the available waters. Historic attempts to establish a more co-ordinated catchment management system or, as is proposed in this bill, a single catchment authority, have failed, usually because of the partisan and entrenched interests of many of the stakeholders. There have been any number of reviews, inquiries, and reports for more than a decade: the Paterson review; the Government Pricing Tribunal review; the Parliamentary inquiry; and the Healthy Rivers Commission inquiries, to name but a few.

Given the intransigence of stakeholders over the years, the Minister can only concur with Mr McClellan's conclusion that it has only been by the goodwill of agencies that has made the system work to the extent that it has. Whilst Mr McClellan endorses recent Government initiatives including new legislation such as the Protection of the Environment Operations Act, the joint plans of management for the catchment areas, the sewerage management regulations and the Government's waterways package, there is clearly a need to do more. The establishment of a single catchment management authority empowered to oversee the "health" and "well-being" of our catchments represents a paradigm shift in governance. Ironically, it is a shift that would be unlikely to be achieved if it had not been for the recent water contamination incident. Nonetheless, it is a shift that all objective commentators have strongly endorsed.

I turn now to the detail of the bill. Part 1 of the bill provides for the Sydney Water Catchment Management Act 1998, its commencement and definitions. Part 2 of the bill constitutes the Sydney Catchment Authority as a statutory body representing the Crown. It provides for a chief executive and a board to determine the policies of the authority. It also provides that the authority is subject to the control and direction of the Minister. The authority must comply with any direction given to it by the Minister. By contrast with Sydney Water, which is currently a company State-owned corporation subject to minimal Ministerial supervision, the authority will be closely supervised by the Minister. It will be clearly part of the government.

Part 3 of the bill sets out the role, objectives and functions of the authority. They include managing and protecting the catchment area and catchment infrastructure works; ensuring that water supplied by the Authority complies with appropriate standards of quality; ensuring the catchment areas are managed to optimise water quality, protect the environment and minimise risk to public health; and supplying water to the Sydney Water Corporation and other water supply authorities.

In addition, part 3 enables the authority to exercise a concurrence power over development in the catchment. This concurrence will be initially provided in a State environmental planning policy and then a more detailed regional environmental plan.

Part 3 of the bill also provides in proposed sections 18 and 19 that the authority may exercise concurrence and other roles in connection with the grant of licences under other legislation which affect the catchment areas, and exercise an inspection or enforcement role under other legislation in relation to activities carried out in the catchment area, if such a role is conferred on the Authority by regulations. These proposed sections allow regulations to be passed under the Act that empower the authority to enforce regulations made under other Acts, if that is necessary to protect the catchment areas. These powers are in accordance with McClellan's findings and recommendations that the catchment authority should have power to ensure compliance with existing laws and regulations. The bill provides in proposed division 4 of part 3 that the authority will enter into arrangements with Sydney Water for the supply of water by the authority to Sydney Water Corporation. Proposed section 24 provides that the Independent Pricing and Regulatory Tribunal is given an oversight role in relation to these arrangements and must report to the Minister concerning the arrangements.

Part 4 of the bill is about control and accountability of the authority. Proposed division 1 within part 4 provides that the Sydney Catchment Authority will have an operating licence and division 2 of part 4 provides that the licence regulator will be responsible for undertaking regular audits to monitor the compliance by the Authority with the requirements of its operating licence. Division 2 of part 4 also provides for the licence regulator to report on the operations of the authority and the activities of other regulators with respect to the proposed regional environmental plan. This will ensure that the objectives and strategies outlined in the regional environmental plan are complied with to protect water quality as recommended by Mr McClellan in his third report.

In his third report, Mr McClellan advised that he would comment further in his final report in relation to general regulation and the role of the licence regulator, in particular. Accordingly, division 2 of part 4 also provides for regulations that confer other functions on the licence regulator, including monitoring and reporting on the activities of agencies in and in relation to the catchment areas. Proposed division 4 of part 4 will ensure that the authority enters into memoranda of understanding with the Department of Health, the Water Administration Ministerial Corporation and the Environmental Protection Authority within six months of the authority being granted an operating licence. This division also enables the Minister to direct the authority to enter into memoranda of understanding with other regulatory agencies if required. Proposed division 5 of part 4 ensures that the authority furnish reports to the Minister for presentation to Parliament on subjects and times outlined in the operating licence. This provision will ensure that the authority independently reports to Parliament on the health of the catchment as recommended by Mr McClellan in his third report.

Part 5 of the bill is concerned with identifying the catchment areas. Proposed section 40 within part 5 provides that the Governor may declare that an area of land is part of the inner or outer catchment area of the authority. Part 6 of the bill is concerned with works. An important provision within part 6 is proposed section 58. The proposed section allows the Minister to approve the carrying out of works in the area of operations of the authority if they are required for the protection of water

quality, and in the interests of public health safety and required urgently. If such an approval is given then the Environmental Planning and Assessment Act 1979 and the Local Government Act 1993 do not apply in respect of the works that have been approved. Proposed section 58 will allow improvements to the infrastructure that is under the control of the authority quickly, if those improvements are required urgently to protect water quality and to protect the interests of public health. I commend the bill to the House.

The Hon. I. COHEN [9.15 p.m.]: The Greens have great concerns about the Sydney Water Catchment Management Bill and cannot support it as drafted. The bill is riddled with mistakes: it amends itself, it has drafting errors and generally it reflects the urgency and tortured nature of its inception. It is not a cohesive well-structured response to the clear outcomes argued for in the third McClellan report. It is a hurried, superficial effort to deliver the minimum the Government can get away with and still look like it is doing something in the lead-up to the next election. It is in the same position as many other bills that have gone through this House, and I refer particularly to the forestry bill, which has been a great disappointment to the Greens.

This bill represents a lost opportunity to the people of New South Wales, particularly the people of Sydney, who had to endure the gross inconvenience and great fear of the recent water crisis. The bill affects something that takes pride of place in Australia, that is, the ability to drink water from the tap with a degree of confidence. It is disappointing that the Government has failed to grasp the real issues that have been put forward so well by experts such as Mr McClellan, who was employed to look into the matter. It is certainly surprising that he has not advised Parliament on the legislation which purports to implement his recommendations. Will the Minister advise how much money has been spent on the McClellan inquiry to date? Has Peter McClellan been asked for his advice on the final bill? If so, what was his response? I would like to read it.

I have great faith in Mr McClellan, who has investigated the matter in a thoroughly professional manner in a short time frame. At one stage I spoke with Mr McClellan, and I knew that he was taking his responsibility gravely. However, I do not see any response from him to that final phase of the matter, which is of integral importance both to environmentalists and to the people in Sydney, who are concerned about a total catchment response to a major problem facing Sydney not only in the lead-up to the next election but in the lead-up to the Olympic Games, which will take place in a relatively short time.

I call on the Minister's representatives to table the documents to allow full debate on the legislation. The bill needs to be rewritten in more rational terms. One hopes that both parties will realise the importance of an organisation such as the Sydney Catchment Authority and will perhaps allow the authority to draft new legislation which will allow it to deliver on its core function: the improvement of water quality and quantity within the catchment areas for which it is responsible. The Greens commend the individuals in the environment movement for the enormous amount of time and effort they have dedicated to trying to improve the bill.

The amendments have been drafted with the assistance of longstanding water campaigners such as Dr Judy Messer, a board member of Sydney Water; John Connor from the Nature Conservation Council, a peak body in the environment movement; Keith Muir from the Colong Foundation; Graham Douglas and Noel Plumb from the National Parks Association; and Michael Mobbs, the only person in Sydney who can credibly argue for a more sustainable existence in that he lives in Sydney's only sustainable house. Many people should follow Mr Mobbs' example. I have not yet visited his house but I have heard a great deal about it. His home reflects the attempts being made in non-urban areas to achieve sustainability and no run-off of pollutants from living areas. Michael Mobbs has certainly achieved that.

I also commend Kathryn Ridge from the Greens' office, who has worked long and hard on preparing the necessary material. She has done an excellent job. Both the ministerial representatives and the Opposition acknowledge that this bill was the product of extreme deadlines. I have received copies of correspondence from Dr Judy Messer, who has been a director of Sydney Water for almost 10 years. She indicated her concerns about this bill directly to the Premier. She stated:

I wish to express my strong concern that, in terms of its powers, functions and scope as outlined in the Bill the Sydney Catchment Authority will not achieve the admirable outcomes that you wish to see eventuate.

The Greens share the deep concerns expressed by those who have had a long history of involvement with this issue. For example, John Connor from the Nature Conservation Council sent a letter to the Premier expressing similar concerns to those of Judy Messer. Mr McClellan spoke on a number of occasions about the need for any legislation to establish a completion date for a regional environmental plan [REP], which is a prescriptive instrument that controls the actions and decisions of

State agencies and local government authorities; the incorporation of water quality objectives set by the Environment Protection Authority or the Healthy Rivers Commission; consent authorities not approving a development application unless it has a neutral or positive impact on water quality; and the development of amelioration or action plans to address existing developments which are causing pollution.

An REP which incorporates these elements will be groundbreaking, but there is no confidence that this vision will take shape if it is not clearly outlined in the bill. Such articulation is crucial to ensure that the Sydney Catchment Authority [SCA] has no role in setting the catchment water quality and environmental flow objectives for its operations. Such a conflict is untenable and must be addressed in the bill. Later I will give my recommendations for addressing the regulator-operator conflict that is inherent in the SCA. That conflict relates to the setting of objectives, the financial framework, the role of the board and the contract of engagement for the chief executive officer.

In relation to ending the ad hoc political decision making in relation to Sydney's catchments—and certainly that is an issue of ministerial discretion—the Minister for the Environment should be the Minister responsible for Sydney Water, because the SCA is to have primary responsibility for protecting the catchment and catchment water quality. As Dr Judy Messer so aptly put it, there is not only considerable conflict of interest but also an inordinate amount of ministerial authority. She said, "This allows virtually unfettered powers to the Minister without imposing adequately defined duties and responsibilities". The ministerial discretion powers must be subject to the operating licence, which needs to be mandated and created following a period of public exhibition within a specified time frame.

There should be a requirement that the operating licence can be amended or renewed only following a review and a report being tabled in Parliament, as currently exists for Sydney Water. The expertise required for the board should be more detailed in relation to the objectives, and the board should advertise any review of the operating licence. The board, as provided for in the bill, plays a very small role in the operation and direction of the authority; it is limited to one function, that is, determining the policies of the authority.

The board should be responsible for the development of the financial framework and its success should be ensured by measurement against

performance indicators that relate to the SCA's objectives and then reported against by the licensed regulator. Disputes in memorandums of understanding and other instruments between agencies should be resolved by the Premier, not the Minister. It is not appropriate that the Minister for Urban Affairs and Planning could override the Minister for Health on a catchment issue, as has already occurred with Sydney Water. In future those issues should be referred directly to the Premier.

The objectives need tightening to ensure that the SCA's primary role, subject to the principles of ecologically sustainable development—something that the Greens have insisted on and successfully inserted in legislation—is the protection of water quality throughout the catchment. It must also be a function of the SCA to provide environmental flows to the Hawkesbury, Nepean and Shoalhaven rivers. In addition, the SCA should have a clear directions power, such as that contained in section 12 of the Protection of the Environment Administration Act, to ensure its primacy over other agencies in protecting the catchment. It is totally unacceptable that the operating licence is not the primary instrument or that it is capable of amendment without public comment and parliamentary review.

The same provisions for amendment as are contained in Sydney Water's operating licence should prevail. The curious amendment in schedule 5 which proposes the deletion of subsections (2) to (5) of section 25 and the insertion of new subsections should be deleted. It is extremely unusual for a bill to amend itself. It is unclear why the Government needs to amend the bill in that manner. Section 25, when read without subsections (2) to (5), gives extremely broad powers to the Governor in relation to the operating licence.

The operating licence will need to reinforce the role of the SCA in protecting catchment water quality and, as such, will need to include legislative provisions that, as a minimum, transfer the current requirements under Sydney Water's operating licence; require the provision of enhanced environmental flows, not only the supply of drinking water; require the operation of the duty not to allow any development, private or public, which will have a negative impact on catchment water quality; require development of environmental indicators of water quality across the whole catchment; and require the implementation of an action plan. There is also no process by which the Governor amends the operating licence. That needs to be in accordance with the Sydney Water operating licence, which can only be amended by a transparent process involving adequate public participation.

In relation to the transfer and management of lands within the hydrological catchment, the joint plan of management agreed to between Sydney Water and the National Parks and Wildlife Service, which has been endorsed by Mr McClellan for immediate action, should be gazetted. In addition, it will be critical that land-holders are given assistance to comply with the special duty of care that applies to managing lands within the catchment of drinking water for four million people. A special trust should be established to allow for proper management and incentives. That trust should operate in a similar way to an environmental education trust and should be able to give financial incentives and assistance to land-holders, including local government, within its area of operations for projects which would enable the authority to meet its primary role and objectives.

Regarding public confidence and transparency, a number of crucial documents are to be prepared with no commitment to public transparency or involvement in their creation. Exhibition and access provisions need to be stipulated for the operating licence, changes to areas of operation, activities outside areas of operation, arrangements with Sydney Water and a statement of financial framework. Of great concern to the Greens is dam building as a last resort. Given the disappointing nature of the draft bill, it is necessary to make explicit amendments that ensure that there can be no enhancement or construction of dams within Sydney's hydrological catchment. Thus, any future dam work will require an Act of Parliament.

Certainly the Greens would be concerned if augmentation of existing dams and the construction of others occurred without due public process. The Greens believe there needs to be an explicit direction within this bill and that this clause does not cover the building of dams or extension to existing dam infrastructure. These should only be able to occur after a further Act of Parliament. In addition, the Greens do not believe that clause 58, which provides exemptions from normal planning powers, is necessary. Emergency powers are available under the Public Health Act 1991 and the State Emergency and Rescue Management Act 1989. James Johnson of the Environmental Defender's Office stated:

In our view, clause 58 appears to be superfluous and adds very little to existing law in New South Wales.

The Greens believe that the clause and its equivalent in schedule 4 should be deleted. Mr McClellan also called for the appointment of a chief executive officer [CEO] who "begins and ends each day with the sole task of ensuring that catchment protection

prevails over often compelling commercial or broader development interests". That requirement, and performance measures relating to the improvement of catchment water quality, must be included in the contract of engagement of the CEO and can be set out in schedule 2 to the bill. The bill constrains the role of the licence regulator in reporting on the role of other public authorities. That should be obligatory.

Peter McClellan, in his third report, called for the licence regulator to be "restructured and provided with the statutory powers and resources necessary" and he called for the licence regulator to be given a clear set of operating objectives. He also called for the licence regulator to undertake an independent audit of the operations of the authority and the activities of primary regulators such as the Environment Protection Authority and the Department of Land and Water Conservation. Quite obviously, the bill does not address the changes which need to occur with the licence regulator or the Minister under which the licence regulator should operate. This Government now has a unique opportunity. A short but thorough investigation was funded to solve the issue of the contamination of Sydney's drinking water supply. It is sheer madness not to adopt the recommendations of that inquiry.

This bill, in its present form, simply hives off a section of Sydney Water, gives it a new name, pats it on the head, tells it to do whatever the Minister wants it to do, and then gives it fewer powers to manage the catchment than the powers held by Sydney Water before the crisis. This bill, which is disappointing, does not address the grave difficulties being experienced by Sydney Water. I dealt with these issues before becoming a member of Parliament and I have dealt with them subsequently. We have not been able to break through Sydney Water's cultural obstructionism. We require public participation and transparency of process if we are to solve these problems. This crisis has been extremely frustrating for me as a green and for many other members of the environment movement. Michael Mobbs, in correspondence to my office, stated:

The Bill has major defects and should not be made in its current form without major amendments. The Bill creates a dam building authority freed of the existing accountability mechanisms and Parliamentary supervision, not a catchment management authority. The Authority has less powers, and fewer duties, than Sydney Water has to improve Sydney Catchments.

Michael Mobbs went on to detail some of the problems contained in the bill. He said:

The bill does not give the Authority power to control the existing runoff, sedimentation and pollution coming from existing public sector projects such as roads, rail lines, or other public authority lands.

It denies the Authority power to effect the use of water from the streams by existing water irrigation licences, power stations etc and provides no power or obligation to offer compensation for actions affecting water extraction entitlements.

It does not give the Authority power to implement financial incentives to encourage and reward landowners who revegetate or otherwise manage their lands to reduce catchment pollution.

Michael Mobbs, who has had many years of experience in this area, went on to state:

It is generally agreed that it is poor management practice to manage part of one catchment and ignore the other part of it. Thus, Craig Knowles MP, when a member of the Parliament's Regulation Review Committee raised the issue of the Hawkesbury Nepean Catchment Management Trust only having power over the catchment below the Warragamba dam, and asked a witness:

In terms of institutional arrangements, is it not a reasonable assumption for us as lay people to make that a total catchment approach? Is that not the logical way to proceed rather than having a below-Warragamba trust and a couple of upstream catchment committees, all having to co-ordinate and other layers of bureaucracy and linkages and those sorts of things.

That quote is to be found at page 8 of report No. 20 of the Regulation Review Committee. I agree with Michael Mobbs' acute observation. I have serious misgivings about the passage of a bill which does not implement all the recommendations of the McClellan inquiry. It does not give us an assurance that we will have one authority focused on the delivery of clean water to Sydney. It does not do a range of things that were raised by McClellan and agreed to by the conservation movement, including one board member of Sydney Water, public interest organisations such as the Public Interest Advocacy Centre, and consumer groups such as the Australian Consumers Association. That is why I intend to move so many amendments in Committee. I would have been more comfortable with a process that allowed Peter McClellan, with his expertise in this area, to review this bill and to report to Parliament on what needed to be included in it.

I have no option other than to move my proposed amendments in Committee. I cannot support this bill in its current form. I am disappointed as we are still not dealing adequately with the water catchment crisis or examining proper water catchment management. We are stumbling along with a sense of inadequacy, unable to deal with these problems. I had hoped that government instrumentalities and the Government would have

been able to deal with this crisis professionally and identify long-term proper solutions to these problems. The Government has reacted to this crisis with one eye on the next election. It should rather be determining how to provide potable water for Sydney now and in the future.

The Hon. J. F. RYAN [9.36 p.m.]: This bill is designed to react to Sydney's water contamination crisis. The Government appears to be addressing all the issues raised and reported on by Mr Peter McClellan, QC, in his Sydney water inquiry. The problem that the Opposition has is not greatly different from the problems outlined by the Greens and other members on the crossbenches. Given the haste with which this bill has been introduced in this Parliament, we are not sure whether it necessarily implements everything that Mr Peter McClellan intended, particularly in his third report. It is interesting to read this bill in conjunction with that third report which is entitled "Assessment of the contamination events and future directions for management of the catchment", which was released in October 1998.

In the Opposition's view, some of the clauses in the bill do not appear to be strong enough. We would have preferred it if Mr Peter McClellan had looked at this bill and provided a report to Parliament as to whether it adequately addresses the issues into which he inquired. Peter McClellan is knowledgeable on environmental and water management issues. He has had a chance to look at documents which members of this Parliament have not yet seen. He is independent and he has been accepted by all sides as having an independent knowledge of these issues. I understand that ultimately it was his job to investigate, and to find solutions to, the water contamination crisis so that it would not occur again, if that was at all possible.

This bill was introduced as a partial response to the third report of Mr Peter McClellan. He recommended that an independent testing laboratory be established; that water quality should be the primary consideration in its decision-making; and that the Healthy Rivers Commission undertake an expedited inquiry to identify water quality objectives and the formulation of a regional environmental plan for inner and outer catchments. He recommended also the establishment of a Catchment Commission to conduct a full assessment of the present state of the catchment with a statutorily defined set of objectives to protect drinking water quality and to manage the health of the catchment.

He further suggested that that Catchment Commission should oversee the implementation of

new, strong and strategic environmental regional environmental plans for the whole catchment; exercise concurrence powers over development in the whole catchment where local government is the consent authority; and be consulted on proposed development where the Minister is the consent authority. He said that the Catchment Commission should independently report to Parliament on a regular basis on its assessment on the health of the catchment; that it should be responsible for the inner catchment with enhanced regulatory and enforcement powers in both inner and outer catchments; and that it should own and maintain relevant infrastructure.

Mr McClellan also recommended the establishment of the position of an independent auditor to critically review and report on the performance of all parties in meeting water quality objectives and strategies contained in the proposed regional environmental plan. He also recommended that the process of resourcing and funding the commission and of identifying the costs and pricing structure should be referred to the Independent Pricing and Regulatory Tribunal [IPART] for inquiry. It is clear that the legislation meets some of these objectives, but a number of points need to be made.

It may be more appropriate to consider legislative implementation of future changes to the structure of Sydney Water when Mr McClellan's final report is brought down. The Government is anxious to finalise this parliamentary session and wants this bill passed before that occurs. The Opposition would prefer to have the bill deferred until the final report is brought down but recognises that the Government will attempt to play cheap politics if we decide to hold out for a more final result. This bill fails to implement many of Mr McClellan's recommendations. For example, there is no provision in the bill for requiring the Catchment Commission to report regularly to Parliament on the state of the catchment area. On page 130 of the report Mr McClellan stated:

I recommend that the Catchment Commission be required to report regularly to the Parliament on its assessment of the health of the catchment and especially on the achievement of water quality objectives in the REP. This should be in the form of a "State of the Catchment" report.

The Opposition will be moving amendments in Committee for that to occur. The bill fails to establish an independent audit body to review critically and report on the performance of all the parties operating in the catchment. It does not provide for an Independent Pricing and Regulatory Tribunal inquiry into the funding, the resourcing and

the cost and pricing structure of the commission. There is some reference to IPART in the bill but it is largely defined as dealing only with the catchment's pricing policies; IPART will not necessarily reach much further back than the transfer price of water from the Catchment Commission to Sydney Water unless it chooses to do so.

The Minister has not given any indication as to how the matters raised in the McClellan report, might be addressed further at a later time. The Opposition understands that Mr McClellan did not have a copy of this bill before it was introduced into Parliament. That is a matter of some concern to the Opposition. We would like to know whether the Government has now given the bill to Mr McClellan and whether he has been asked to comment on it. His comments might endorse the actions taken by the Government in this bill. Obviously, Mr McClellan is knowledgeable on the environmental and management issues dealt with in this bill.

Mr McClellan is a Queen's Counsel and he may have had the expertise to draft this bill. At least he could comment on whether the provisions meet his requirements as indicated in his report. The Opposition believes that the least the community could have expected from the Government was for it to give the bill to Mr McClellan, who could have provided Parliament with an additional assurance that the bill implemented what he wanted. The House has asked for confidential material from Sydney Water but it has not yet been provided. Peter McClellan made a very telling comment about the Water Board when he said:

My investigations have raised questions about the internal reporting processes and the exchange of information within Sydney Water, between the engineers and the environmental scientists . . .

In this case Mr McClellan was concerned about cryptosporidium and giardia. I found that to be the case when I chaired the committee inquiring into the northside storage tunnel. I have participated in at least two major water inquiries conducted by Parliament, and I have been disappointed at Sydney Water's level of frankness in terms of its handling of information. By and large, Sydney Water has been somewhat mendicant in the way it dishes out information to inquiries. Information is forthcoming only at the rate the water board believes it to be relevant to an inquiry and in the form the water board believes gives the best possible glow to its existing policies. Sydney Water provides information that might lead to a different conclusion only when it is finally chased down an alley and confronted with the fact that some of its comments may conflict with others.

I am not surprised that Peter McClellan has found the same atmosphere of cover-up and mendicant treatment of information from Sydney Water. Parliament has asked for information to be tabled so that honourable members can judge for themselves whether Sydney Water has been frank in terms of the passage of information to Mr McClellan. Mr McClellan said that he has enough information, but in some instances one wonders, given the speed with which he has had to conduct his inquiry, whether the last piece of information fell into place only at the last minute, and in some instances just before his report was ready to be tabled. That has been my experience with Sydney Water.

The Opposition and the public are concerned about that. The Government could have addressed that concern by giving this bill to Peter McClellan and asking for his comment, which could be tabled in Parliament. The Opposition is further concerned that the bill does not address another major recommendation of Mr McClellan, that is, that water quality standards should be defined by statute. I accept that there is some argument about whether there is an appropriate mechanism to ensure that water quality standards are publicly known because testing systems vary and technology changes.

The Opposition supports the concept that the people of New South Wales should have at least a statutory minimum standard of water quality. Indeed, on a previous occasion the Opposition introduced a private member's bill to ensure that that was so. The Opposition is concerned also that the Minister and the bill are silent about the implications of the proposed restructure of TransWater. TransWater, which is a subsidiary of Sydney Water Corporation, owns and maintains 18 dams and storage reservoirs, and their associated catchments. The Opposition has no idea what will happen to TransWater as a consequence of this bill, which will establish a bureaucratic mechanism, the Catchment Commission, and a board to administer TransWater. However, it does not refer to the future of TransWater.

TransWater holds all the dams and storage reservoirs in the catchment, and it has a responsibility to supply bulk water to Sydney Water for retail to its customers. The Opposition is concerned that the Catchment Commission having responsibility for managing both catchment lands and TransWater will create a conflict of interest between the commercial operation of TransWater and the environmental safeguards required to produce a pristine and environmentally appropriate catchment. The Opposition does not believe that it is

appropriate for the Catchment Commission to be the operator of the dams and the protector of the catchment.

The authority should not be both regulator and operator. The bill establishes a mechanism to run the catchment but it contains no provision for statutory water quality standards. It does not attempt to achieve a guaranteed standard of clean water. That comment has been made to Opposition members—and, I believe, it has been made to others—by Mr Michael Mobbs. On occasions the Opposition has had reason to question some of the statements made by Mr Mobbs. However, I believe that he expressed the issue eloquently when he said:

The Authority has less powers, and fewer duties, than Sydney Water has to improve Sydney's catchments. The Bill does not require the Authority to deliver clean water to Sydney Water, and it protects the Authority from civil litigation if it fails to deliver clean water . . .

Indeed, a more important agenda item may be to protect the hide of Sydney Water from litigation. At present Sydney Water is a State-owned corporation subject to Corporations Law, but I understand that the commission will not be subject to Corporations Law. Therefore, if Sydney Water can blame the Catchment Commission for poor water quality, which would appear to be possible, I imagine that it will then remove all the legal responsibilities it attracts under the State-owned Corporations Act. The bill does not require the authority to clean up catchment lands and water. No statutory duty is imposed on the authority to do so, although that may be its intent.

The Opposition is concerned about the confused relationship between the Catchment Commission, the various catchment management committees [CMCs] and the Hawkesbury-Nepean Catchment Management Trust. We have been advised that this bill is designed to manage the catchment up to the dam and that the trust will operate the lands below the dam. Accordingly, it is said that the two can co-exist and the dam provides the dividing line. The setting up of the Hawkesbury-Nepean Catchment Management Trust was a valuable initiative of the previous coalition Government. The trust has attempted to address the enormous number of issues affecting the Hawkesbury-Nepean catchment.

It is appropriate at this stage to pay tribute to the honourable member for Hawkesbury in another place, who not only was the driving force behind the establishment of the Hawkesbury-Nepean Catchment Management Trust but has continued to take an active interest in its welfare and activities.

Additionally, nine other CMCs will continue to operate. However, how they relate to the Catchment Commission after this bill is passed is unclear. The Opposition believes that when the bill is passed the functions of the committees will be largely superfluous because the Sydney Catchment Authority will have the resources, the statutory base and the ministerial support to look after the whole of the catchment.

I am told that four catchment management committees—Wollondilly, upper Nepean, Blue Mountains and Cocks River—currently operate in the same catchment management area for which the authority will have responsibility. Nine CMCs operate in the whole hydrological catchment of the Hawkesbury-Nepean area. Again the Opposition asks: How do these CMCs interact with the catchment committee? Will they have anything to do after the catchment committee does its work? The Opposition has an enormous number of concerns about this bill. However, we accept that the Government has the responsibility to address the concerns raised by Mr McClellan.

We are certainly not going to be dragged into a political trap by delaying this bill. We believe the responsible thing for us to do today is to point out the problems with the bill. We investigated the possibility of not having the bill passed and providing a mechanism whereby Mr McClellan could have reported to the Parliament. Ultimately, we decided against that because the standing orders of the House do not allow us to delay the Committee stage of the bill after the bill has been read a second time. It was for that reason we lost some interest in that proposal.

However, we are concerned that Mr McClellan has not had a chance to look at the proposed legislation. Although we might follow that course when the bill comes before the House tomorrow, at the moment we are not inclined to do so. At the Committee stage the Opposition will be moving amendments which we believe will address some of the concerns I have outlined. I have been informed that the Government will agree to many of our amendments. To that extent we are grateful for the goodwill of the Government. I look forward to the contributions of other honourable members and to dealing with the amendments at the Committee stage.

The Hon. I. COHEN: I seek leave to move an amendment to the motion for the second reading of the bill. I should have moved the amendment at the conclusion of my contribution to the debate on the second reading. However, I was under the

misapprehension that I should move it at the end of all contributions to the debate.

Leave granted.

The Hon. I. COHEN [9.53 p.m.]: I move:

- (1) That the question be amended by omitting all words after "That" and inserting instead:

this House notes the resources which have been spent on the Sydney Water Inquiry and in particular the third report entitled "Assessment of the contamination events and future directions for the management of the catchment" dated October 1998.

- (2) That this House requests Mr Peter McClellan, QC:

- (a) to consider the Sydney Water Catchment Authority Bill 1998, and in particular whether the bill includes provisions which implement the recommendations in chapter 7 of his third report "Catchment management regulations and structures";
- (b) to consider amendments drafted by the Opposition and the Greens and make recommendations as to the suitability of those amendments;
- (c) to make any further recommendations for amendments to the bill which may be necessary to implement the recommendations of the third report.

- (3) That this bill be read a second time on Thursday, 3 December 1998, or after the report of Mr Peter McClellan, QC, required by this resolution, has been tabled in the House, whichever is the later.

Debate adjourned on motion by the Hon. Dorothy Isaksen.

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) BILL

**CHILDREN AND YOUNG PERSONS
LEGISLATION (REPEAL AND AMENDMENT)
BILL**

Second Reading

Debate resumed from an earlier hour.

Reverend the Hon. F. J. NILE [9.55 p.m.]: The Christian Democratic Party supports the bills before the House. The Children and Young Persons (Care and Protection) Bill is the result of a great deal of consultation and consideration by many government departments. We believe that it is a positive step forward. As with other bills that deal with the sensitive area of family and children, this detailed bill needs to be constantly monitored so that it will be of service to the community and does not in any way place a burden upon it. I note that the bills have had a change in title from similar bills of

the past which refer to the Children (Care and Protection) Act 1987 and the Community Welfare Act 1987. These bills have included an innovation, the addition of the words "young persons".

In contemporary terms, persons in the 15- to 16-year-old age group are often described as young persons. Under the laws of this State their legal definition is "children". Even though the title of the bill has been modified and focuses on young people, we must note that they are still defined as children under the law. In the recent court case of Mr Philip Bell, the main argument on which the defence based its case was the definition of "child" and "young person". The case revolved around the age of consent and whether Mr Bell seduced and sexually abused boys. The defence lawyer argued that the complainants were not children or boys; that they were young people. Mr Bell said that in other countries his acts would have been acceptable and that no-one would have raised an eyebrow. I do not agree with the laws of other countries. We need to look at our country's laws.

That case emphasises the importance of age-of-consent legislation. The age of consent for males must remain at age 18. If we want to argue equality, we should raise the age of consent for females to 18. In this proposed legislation we must keep the focus upon the family as the centrepiece. In other words, the family is the main carer for children: the family cannot be replaced by a government child welfare program. The Government has to strengthen and support families so that they can provide the best child care, ideally mother care.

Other speakers have spoken about children being encouraged at school to leave home when they turn 16 years of age. For many years children have been receiving that information. I remember that one of our sons came home from high school and told us that his class had discussed when a child was of sufficient age to leave home to do what he or she liked. He was deeply troubled and said he did not want to leave home, and asked did we expect him to leave home. I said, "No, you don't have to leave home. You can stay as long as you like." When he turned 34 years of age I thought it was time he should leave home! He stayed at home until he was 34 years old. He was happy to lead his own life and have his own friends. We were happy with that arrangement, which continued to the day he got married.

Perhaps teachers are sincere when discussing the rights of teenagers, but they must be careful when they express opinions that might put pressure on children to leave home. It is a tragedy that many

youths leave behind their comfortable bedrooms and other family facilities and sometimes end up on the street with nothing. These young people become vulnerable to drugs and exploitation by adults who prey on young girls and young boys and involve them in prostitution.

The Christian Democratic Party was keen to have the second reading of the Family Impact Commission Bill passed. We were pleased that the bill was read a second time and referred to the Standing Committee on Law and Justice. However, the majority of members seemed to support amendments to delete the definition of "family", and I was not prepared to allow the bill to be gutted. That would have made the bill pointless. I hope that after the next election both major parties will reconsider their position and, as a priority, support my definition of "family". That would not mean that single mothers and other people in similar situations would not receive care. It simply means that the Government would give priority to strengthening the traditional family, and thus reduce a lot of social problems in society.

Not many governments have done that, and it would be good for the New South Wales Government to try the approach of working with, and supporting, the family so that the family can provide the best child care and protection available, which was God the creator's intention. The family is not a creation of society or an academic; it came from the heart and mind of God. We all understand that when we see the birth of a fragile and vulnerable baby. The whole point is that the mother and father provide the love, care and protection for the child; and that that care and protection should continue throughout the child's life.

I would prefer to see more emphasis in legislation on encouraging children up to the age of 18 years, not 16 years, as at present, to respect their parents' authority. Children can leave home at an earlier age, but only after discussion with and the agreement of their parents. It may be necessary, particularly with country families, for a child to attend a distant school or move to a city to gain an apprenticeship. But again, that should happen only after the family has discussed the matter and given the young person their full support. That approach would reverse the present emphasis in society on children leaving home and battling on their own.

The Christian Democratic Party is concerned about how some of the measures in the bill might be interpreted. For example, clause 47 gives complete power to the Children's Court to entirely remove a parent from the role of guardian of the child.

Obviously, that should be done only as a last possible resort. In the recent debate on stolen children we heard how the State removed thousands of children from their parents. I know some Aboriginal people who are now aged in their seventies who were removed from their families when they were three years of age.

One such person is Herb Simms, a fine Aboriginal leader, who shared this part of his life with a special gathering on the weekend. He asked, "How would you feel growing up, not having your mother, father, family or clan group around you but being brought up in institutions until you turned 18?" He was taken from his mother and family at La Perouse and sent to Bomaderry, near Nowra. At nine years of age he was transferred to another institution at Kempsey. He and his brother were perfectly behaved; there was no question of them being bad or immoral. The State simply decided it was best that they be placed in institutions.

That kind of authority by governments to remove children from their families must only ever be used reluctantly. Of course, if a parent were abusing a child to an extreme, and certainly if incest were involved, the State would have to reluctantly act in the best interests, care and welfare of the child and remove him or her from that environment—but only as the last step. Clause 157(4) is also open to abuse, and it must be carefully monitored by the Government, the Minister and the director-general of the department. Its wording is strange. It says:

An authorised carer:

- (a) may provide a child or young person with whatever religious instruction (if any) the authorised carer considers to be appropriate, and
- (b) may allow the child or young person to participate in religious activities.

I should have thought that the emphasis would be on the State ensuring that the child receive instruction in the religious faith of his or her family. A child from a Christian family should receive Christian teaching. Similarly, it would not be right to indoctrinate a Muslim child with Catholic teaching. If it is necessary for a child to be removed, there must be some respect for the religious views of the family. Yet the clause provides that the child can receive whatever religious instruction is considered appropriate. It does not require that the child receive instruction in the faith followed by the child's family.

That clause will provide the opportunity for abuse of the family's religious beliefs. It certainly

would cause great anger to parents if their child received religious instruction in a faith different to that which they followed. This is a sensitive matter that the Government should keep under observation. The Director-General of the Office of Children and Young People and others in similar positions must keep a close eye on that aspect of the bill.

Clause 158 deals with the physical restraint of a child or young person. Recently we debated teachers not being able to use corporal punishment to curb a child's behaviour. Clause 158 of this bill states that a child or young person can be physically restrained; it even provides that "reasonable force" may be used, but it does not define "reasonable force". It is inconsistent to say that teachers cannot use reasonable force, but that an appropriate person in this clause can use reasonable force.

I know of a school teacher who restrained a boy who was smashing up the classroom by throwing chairs around. The teacher physically restrained the boy by grabbing his arms and was later charged with child abuse. There seems to be an inconsistency in that there is strong control over teachers using force, but under this bill reasonable force may be used to control a child who is behaving in such a manner that might cause damage to himself or others. Clause 158(1) states:

This section applies if . . . the child or young person is behaving in such a manner that, unless restrained, he or she might seriously injure himself or herself or another person or might cause the loss of or damage to any property.

We are highlighting that as one of the areas to keep under observation. I note too that there has been some controversy about the mandatory reporting aspect, which I believe the Government had rightly included in the original bill. In her second reading speech the Minister for Community Services stated:

Chapter 3 Introduces the term "reports" to refer to information given to the department that a child or young person is at risk of harm. There will be no requirement in law to investigate all reports as may exist under the current Act.

I was puzzled that there would be no requirement in law to investigate all reports that may exist under the current Act. I had in mind the case of the baby in the back of a car; people were concerned about its welfare, but it was not until the baby was dead that the Department of Community Services became involved, by which time of course nothing could be done. I am curious, therefore, as to why that emphasis has been changed in this legislation so that there is no longer any requirement in law to investigate all reports. I do not suggest that there should be a 10-person team investigating every

report for 20 weeks, but there should be some requirement to make an initial investigation to see whether there is any basis for the report. If there is not, the report can be put to one side. The Minister went on to say in her second reading speech:

The information received may be sufficient for the department to conduct an assessment and if the report does not disclose any grounds for believing that the child is at risk of harm, then the department may choose to take no further action beyond recording that the report was made.

The Government had planned to have mandatory reporting up to the age of 18. There was an outcry in the media by the Family Planning Association and others—even from the abortion lobby—that this somehow seemed to be a draconian requirement. I do not think it was, particularly if it seems from picking through reports that there is some form of abuse going on, some paedophile network into which a young person is being recruited or intimidated. The Minister said further:

The Government has not acted on the review recommendation that mandatory reporting should be extended to include young people aged 16 to 18 years. There were significant differences of opinion in submissions and the consultations about whether mandatory reporting should apply to all those under 18 years and we are of the view that mandatory reporting of 16 to 18 year olds is not appropriate.

The Government did feel it was appropriate and the review made that recommendation. It is a pity sometimes that just because there is an outcry in the media—and both sides of politics do this—the Government moves away from what it thinks is a controversial issue that it cannot cope with; on the basis that it is wiser politically to surrender to some of the media headlines. It may be that the original review was correct in wanting that requirement retained in the legislation.

We are concerned for what has happened in the past. I could spend all night talking about parents who have come to see me, particularly single mothers whose longstanding marriage has broken down. The mother is not a young person and the daughter is perhaps 15 years of age. The daughter has left home and become involved in prostitution and so on. The mother has gone to the Department of Community Services to try to find her daughter and—these women have told me; and there has been more than one of them—they are certain that the department knew where their daughter was, but would not tell them.

That has happened when the child has been under 16 years of age. Somehow it was argued that there was some privacy issue for the child, but the distress caused to the mother was unbelievable. The

Government must show more care not just for the child but for the relationship between the child and the mother. There must be more co-operation between Government departments and parents than there has been in the past. I hope this bill will help to bring this about.

The Hon. I. COHEN [10.15 p.m.]: The Greens New South Wales support this legislation and congratulate the Government on introducing it. It is the result of four years of review of the Children (Care and Protection) Act 1987. During 1994, the last year of the Fahey coalition Government in New South Wales, a review of the 1987 Act was commenced. Shortly after coming to office the Carr Government indicated that it would conduct this review. Associate Professor Patrick Parkinson of the University of Sydney was appointed as chairperson of the community welfare legislation review.

In 1996 a discussion paper was issued entitled "Law and policy in child protection". In 1997 two further discussion papers were issued covering children's services and children in employment. This was after 4,000 letters were sent out in May 1995 to individuals and organisations inviting them to identify issues to be addressed in the review. The review team undertook a number of public consultations across the State and received more than 350 submissions. In November 1997 the team published a document which it presented to the Government. It contained major recommendations for reform. The document was an excellent document and the Greens congratulate Patrick Parkinson and his team on their hard work in preparing this document. The Greens fully endorse the proposals and recommendations.

On the whole the legislation reflects many of the recommendations contained in the document. However, the bill does not implement the recommendations regarding children's employment. The bill reproduces, without amendment, the former provisions of the 1987 Act. We hope this is because the Government ran out of time rather than because of a desire not to implement the recommendations of the report. On October 26 Gerald Ryle and Gary Hughes of the *Sydney Morning Herald* published a special report on child employment.

The report uncovered some alarming facts; 1,600 child workers, some as young as 12, are being seriously injured or maimed each year in Australia. Some of these children are working in Third World conditions with children as young as eight working in dangerous environments for long hours and for token wages. Injuries include amputations of fingers and limbs, damage or loss of eyes, disfiguring burns and fractures.

In the four years to 1996-97, 7,132 child workers aged 16 years and under were seriously injured in mainland States. In New South Wales there was one fatality and 390 serious injuries involving children aged 16 and under in 1996-97, with 42 victims left with permanent disabilities. In New South Wales, 42 per cent of the WorkCover claims made by children were from those working in the wholesale and retail trade; and 22 per cent of serious injuries involved children working in manufacturing. The *Sydney Morning Herald* reported:

They are victims of a hidden child labour industry employing tens of thousands of young workers and flourishing behind a wall of fear, government indifference and public ignorance. A patchwork of inadequate, outdated or unenforced Federal and State laws are failing to stop exploitation. States either do not have minimum working ages or do not properly enforce them, or provide no special protection for children.

The Greens hope that the *Sydney Morning Herald* is wrong about the Government's indifference, and that the Government, whichever side is elected next year, will look at this matter and introduce legislation to rectify it. We seek a commitment from the Government and from the Opposition that they will do that. The *Sydney Morning Herald* pointed out that the child labour industry may put the State and Federal governments in violation of the United Nations Declaration on the rights of the child. Under the declaration, governments are obliged to have and enforce laws that protect children from economic exploitation and injury. According to Patrick Parkinson, child labour laws are so inadequate in New South Wales that young children can still be used legally as chimney sweeps, provided it is done safely. He said in the *Sydney Morning Herald*:

Of course we don't have a problem now with children going up chimneys. But we may well have a problem of children working long hours helping their parents making clothing or engaging in a range of other forms of employment which is to the detriment of their education, health and safety.

The review recommended an overhaul of the laws covering child labour in New South Wales. The *Sydney Morning Herald* stated:

The review committee's recommendations include the need for licences for the employment of children under the age of 10 and licences for the employment of children up to the age of 15 if that child works more than 10 hours a week.

Those running family businesses and farms will be exempt if the children work under the direct supervision of a parent or guardian. The review also recommends banning children under 15 years of age from engaging in door-to-door selling or street trading, working with dangerous machinery or in hazardous environments, and carrying out activities

of a sexual nature. In the *Sydney Morning Herald* of 27 October Patrick Parkinson said:

What is amazing is that, in New South Wales, there are almost no laws that specifically concern children's employment. There are laws governing children as actors in the film, TV and theatre industries but, in practice, there is almost no regulation of children in other forms of employment other than through general industrial relations law and health and safety legislation. Children employed by parents are not protected by State industrial relations legislation at all. Health and safety legislation is good as far as it goes, but it does not take any account of the special vulnerability of children, and some children in domestic premises are not covered.

And of course, in order to be effective, laws have to be known to the public. There is a specific offence in the Children (Care and Protection) Act 1987 of allowing a child "to take part in any employment in the course of which the child's physical or emotional well-being is put at risk". No prosecutions have ever occurred under this section, which is not surprising. The law is very vague.

Another issue that has caused concern to the child welfare sector is kinship placement. Both the Council of Social Service of NSW [NCOSS] and the Association of Children's Welfare Agencies [ACWA] have expressed concern to our office. NCOSS points out that the legislation defines out-of-home care in such a way as to exclude care by a person who is related to the child or young person. The problem with this is that while some children and young people may be in temporary kinship placements without need for care orders, et cetera, many are there by order of the court in a situation that parallels foster care.

In this situation the young people require the same kind of support and entitlement that non-kinship placements receive. NCOSS has concerns about the eligibility of these children and young people to support services in relation to assessments and mediation, their entitlements to after care services and the entitlement of carers to allowances. It notes that it is a particular problem for Aboriginal and Torres Strait Islander children and young people for whom kinship placements are the preferred placement option. On the same issue, ACWA stated in a letter to our office dated 19 November:

We have concerns about the exclusion of children placed with relatives as being within the definition of out-of-home care. All other sections that refer to out-of-home care, therefore, do not seem to apply to kinship care thus potentially depriving both children and their carers of support and services. Since kinship care accounts for 25% of children currently in care this has major implications. It would be unfortunate if children who might currently be subject to a wardship order and placed with relatives were disadvantaged by any new legislation.

Another issue that has caused some concern among these organisations is the omission from the

principal bill of any reference to outside school hours care in chapter 12, which deals with children's services. In a letter dated 18 November sent to the Hon. Faye Lo Po', a copy of which was forwarded to our office, NCOSS states:

Clause 200 defines a children's service as one that provides education and/or care for "one or more children under the age of 6 years and who do not ordinarily attend school" thereby excluding totally all school age services for before and after school care and vacation care. While we understand that as things currently stand, it would be difficult to develop a comprehensive set of regulations for outside school hours care services that services could meet, we do not believe that the solution is to exclude them from licensing and regulation. It should be possible to take the definition provided in the original set of recommendations—to include services for children up to age 14—with a rider that there will need to be a transitional process for outside school hours care services.

Chapter 10 of the main bill establishes the Children's Guardian. The review report stated that the important legal functions of guardianship be vested in a specialist office—the Office of the Children's Guardian—that can also ensure that the welfare of all children in substitute care is being promoted and safeguarded. The Greens congratulate the Government on including the Children's Guardian in the legislation. Many submissions to the review discussed the need to have a separate Children's Guardian. For instance, a submission from the Community Services Commission dated 29 April 1997 states that the current legal framework under the Act tends to blur the distinction between decision-making—the role of the guardian—and service provision.

Almost all functions to do with children in need of care and protection reside with the Department of Community Services. It investigates abuse or neglect, advises and supports families who abuse or neglect their children, removes children from their families, cares for them on a long-term or short-term basis or pays someone else to care for them. When the Minister delegates his role of advocating for children in his care to officers of the department, they are then in the difficult position of possibly advocating against their own decision-making and service provision. District officers cannot be expected to support a family, make guardianship or parental responsibility decisions and advocate for the child as well as investigate notifications. The commission recommended the establishment of an office of the Children's Guardian to overcome these problems.

The Greens are extremely pleased to see the mandatory notification provisions extended. Under the 1987 Act and regulations the only people who have to mandatorily notify child abuse are medical

practitioners and educational personnel, and sexual assault only. In the Greens' view this was grossly inadequate. The New South Wales Council for Intellectual Disability, in its submission to the review, argued that mandatory reporting should extend to all types of abuse, not just sexual abuse. It argued that medical practitioners, nurses, dentists, psychologists, police, probation officers, social workers, educational personnel, family day care providers and any employee or volunteer of a government or non-government agency that provides services for children should be required to report abuse. This is the case in South Australia. The Greens agree. The new mandatory reporting categories in clause 27 of the principal bill apply to:

a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children and,

a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of—

the above services. The types of abuse to be notified are if the child is at risk of harm, which includes the full range of abuse including physical, psychological, sexual, lack of medical care, exposure to domestic violence and a whole range of other things listed in clause 23. I congratulate the Government on the new definition of "at risk of harm" in clause 23 and the mandatory reporting provisions which are both broad and inclusive. Finally, it has been brought to our attention by ACWA that currently there are problems with the wording of clause 181(1)(a) of the Children and Young Persons (Care and Protection) Bill. ACWA argues as follows:

If it is the intent of chapter 10 that the guardian would, other than in exceptional circumstances, exercise the parental responsibilities for all relevant children and young people, it appears that clause 181(1)(a) may benefit from a reconsideration of the drafting. It is at present somewhat confusing and does not make clear what we believe is to be the intention that the Minister would only "direct" the actions of the Guardian in respect of individual children or young people.

The Greens would like a commitment from the Government that this section will be amended at a later stage to address the concerns of ACWA. The Greens sincerely hope that the legislation will lead the way forward in the prevention, investigation and prosecution of child abuse. We understand a review will be undertaken of the legislation once it is up and running. We look forward to the review and to participating in an analysis of the amended Act when it is tabled next year. With great pleasure the Greens support this legislation.

Debate adjourned on motion by the Hon. A. G. Corbett.

ADJOURNMENT

The Hon. R. D. DYER (Minister for Public Works and Services) [10.27 p.m.]: I move:

That this House do now adjourn.

QUAMBONE COMMUNITY HEALTH CENTRE

The Hon. D. F. MOPPETT [10.27 p.m.]: Some months ago I drew to the attention of the House the grave dismay that was experienced in the Quambone district when the Macquarie Area Health Service decided to close the community health centre. I reminded members that the community health centre had taken over from the former bush nursing centre, a voluntary organisation providing primary health services and health care to the people of Quambone. I warned the House of the difficulties that may arise with the withdrawal of the permanent staffing of the centre. Those prophetic words have been borne out, to the great regret of the residents of Quambone. Recently a local resident fell off a horse, received a back injury and lay in grave agony. When an ambulance arrived the ambulance officer was not sufficiently trained to administer morphine. The patient had no alternative but to wait for the CareFlight helicopter, which took more than four hours to arrive.

I say this with great reluctance but the injured person was reduced to such a state that the patient begged the local nurse—not a practising person but a trained nurse—somehow or other to end the person's suffering. The lack of immediate care and attention in an area such as Quambone—we are not talking about an area out in the middle of the desert—is intolerable. In former times bush nurses were sufficiently trained that they could administer morphine in extreme circumstances such as a motor accident, a horse riding accident, et cetera. When the Nurses Amendment (Nurse Practitioners) Bill was introduced I welcomed the fact that people in the area would again be able to administer drugs which, while dangerous, in certain circumstances are the only drugs that offer relief. I hope that the Macquarie Area Health Service will reconsider the staffing of the Quambone community health centre so that if such an occasion arose in the future relief would be at hand.

WOMEN'S HEALTH IN INDUSTRY NEW SOUTH WALES INC.

The Hon. JAN BURNSWOODS [10.31 p.m.]: I speak on the adjournment to congratulate Women's Health in Industry New South Wales Inc.

on another successful year as an organisation working for women, particularly women from non-English speaking backgrounds. At the annual general meeting of the organisation on Monday a number of interesting issues were discussed, in particular the changing trends in work and the implications that they have for disadvantaged workers. They include the increasing casualisation of the work force, the trend towards part-time work, the reduction in award conditions and so on—all the kinds of changes that have occurred over the last couple of decades and that have been hastened by the Federal Government's lack of compassion and lack of concern for workers' rights. Women's Health in Industry has as its main objectives:

- (i) to increase awareness by disadvantaged working women, particularly blue collar non-English speaking background women, of issues affecting their health;
- (ii) to act as a resource and referral service to other organisations and services for women;
- (iii) to act as an advisory body to unions, government and non-government bodies on issues affecting disadvantaged women workers.

It is a fine organisation. I pay tribute particularly to the work of the executive officer, Anna Maria Martell. The organisation works in an area in which not too many organisations are interested. Several members of this House had the privilege of hearing from Anna Maria when she gave evidence to the Standing Committee on Law and Justice this year on the recently completed inquiry into occupational health and safety. The organisation was very eloquent indeed in drawing attention to the problems faced by working women from non-English speaking backgrounds in particular.

I have here a copy of the 1997-98 annual report of Women's Health in Industry. The statistics in it give an idea of the range of work and the importance of the organisation's work. Staff speak Mandarin, Cantonese, Vietnamese, Lao, Polish, Turkish, Croatian, Spanish, Portuguese, Greek, Macedonian, Italian, Arabic, Serbian, Maltese, Khmer, Tagalog and English. They visit different workplaces and conduct information sessions and negotiations. They deal particularly with the clothing, laundry, metal and meat processing trades, in which there are large numbers of low-paid workers and the problems associated with outworking, low pay and very poor conditions. We have heard of the sweatshop conditions that exist in those areas.

The workplaces visited during the year included Leichhardt, Blacktown, Villawood, Hoxton Park, Kingsgrove, Parramatta, Bellambi, Unanderra, Chullora and Rydalmere. This fine organisation for women acts as an advocacy group to a number of

government and non-government departments. Yesterday I was pleased to participate in its annual general meeting. I wish the organisation well in the future.

SMOKING REGULATION LEGISLATION

The Hon. Dr A. CHESTERFIELD-EVANS

[10.35 p.m.]: I wish to speak on a distressing subject relating to a struggle over the implementation of the State Rail Authority's smoke-free workplace policy. As I have stated previously, tobacco smoke was shown to cause lung cancer in 1951, 47 years ago. In New South Wales approximately 13 people die every day from tobacco-related disease. In 1984 Roy Bishop instituted proceedings against the Surveyor General's Department in regard to passive smoking in the workplace. The matter was eventually referred to the Administrative Appeals Tribunal.

After much to-ing and fro-ing Roy Bishop won a settlement. His career was destroyed, and he retired. I believe his victory led to the Federal public service becoming a smoke-free employer in December 1987. A number of other people have been affected by passive smoking in the workplace. Liesel Scholem won a major victory in approximately 1991. The smoke-free environment Act, a pathetic little Act, was passed by this Parliament in 1996. It basically avoided dealing with passive smoking in the workplace at any level in New South Wales. However, the State Rail Authority in theory has been a smoke-free workplace for some time, although it has never bothered to implement that policy.

For some years I was president of the non-smokers movement, which received considerable correspondence about the harmful effects of smoking. Several train drivers who insisted that their carriages be smoke free or that cigarette butts not be left in carriages when they began their shift were subjected to systematic harassment. The person who suffered the most harassment was Stephen Maher of Bankstown, an enthusiastic and competent man, who tried to drive in a smoke-free environment. He has been assaulted and harassed on the job. He has been forced to resit examinations because his competence was called into question.

He passed all the examinations with flying colours. He passionately wants to be a train driver. Unfortunately he has not received union support because the arguments have involved different union workers, and unions are only of use when disputes are between workers and the boss. Mr Maher has been subjected to continual harassment and lack of support merely for asking that State Rail implement its own policy. He could almost be classified as a whistleblower and has been given a hard time from

middle management. Finally, in frustration, he tried to take cigarettes from two secretaries who ignored the smoke-free regulation. He was subsequently charged with assault.

Two witnesses gave evidence against him and others claimed to have heard the disruption down the corridor. He was convicted of the assaults, although the magistrate said that the matter should have been dealt with administratively. He inferred that the matter was a waste of the court's time and was perhaps vindictive—although he could not actually come out and say it. The assault on this man by State Rail middle management continues. He was sent to a psychiatrist, who determined that he was no longer fit to drive a train. I believe that is nonsense. However, if he is unfit, it is the result of systematic harassment over a decade.

I shall make representations to the Minister for Transport on behalf of this man. Such behaviour is intolerable from a department that is unwilling to enforce its own longstanding policy. The gutlessness and lack of commitment of the department stems from the gutlessness and lack of commitment of this Parliament on this issue. A number of psychiatric reports have stated that he is perfectly well. I know him reasonably well and would agree with those reports. He has a gentle nature and will put up with far more than the average person. The idea that Mr Maher would spontaneously assault someone is absurd. He is a good and stable man who has had a bad time. Mr Maher has been sent to Coventry simply because he tried to achieve a smoke-free environment. This type of case needs the maximum support and attention of this House. Mr Maher can rest assured that I will do my best to do the right thing by him. I hope that Whistleblowers Australia and the Minister will also do so.

NARDY HOUSE DISABILITY ACCOMMODATION

The Hon. P. T. PRIMROSE [10.40 p.m.]: I again refer to Nardy House and the issue of developing a model of service delivery for people with disabilities in a rural setting. I also reinforce that the criteria developed for the inner city cannot be used in rural and regional settings. Nardy House is located in the Bega Valley Shire Council area. The council has formed a Nardy House committee. The council wished to pilot a scheme related specifically to people with severe, profound disabilities. The project will provide permanent accommodation for up to six people in one house, and in a separate, fully self-contained respite facility six more people with severe disabilities can be accommodated on a respite basis only.

The site is on 5½ acres at Quaama on land that has been donated to the committee, and council views the site as ideal for the purposes. The people to be accommodated have limited physical and mental capabilities and their greatest assets are sensory. They require 24-hour care—often one-on-one care—and therapy, including water therapy, if they are to remain as fit and as comfortable as possible. As an indication of community care and concern, the local gardening club has committed itself to helping design the gardens and activity areas so that they are as sensory in nature as possible. The local community supports the project. Solicitors, architects, structural engineers, surveyors, tradespeople of all kinds, landscapers and so on have offered their assistance in relation to this project.

Council has worked closely with other community groups and has provided help whenever possible. The project is unique as it was instigated by a community need, and the committee was specifically set up to address that need. Parents of children with severe disabilities are members of the committee and have been instrumental in designing the unique accommodation. The accommodation is designed to specifically meet the needs of the severely disabled and their carers who live in a rural setting. The facility addresses a group home need, which has not been catered for in the past. When carers can no longer look after people with severe disabilities, the alternative has often been nursing home accommodation. The proposed facility provides a model for an alternate, more economic and certainly more appropriate means of accommodation. The model specifically fits into the social fabric of the Bega area, which has been developing over a number of years.

Bega Primary School and Bega High School provide facilities for children with disabilities. The schools aim for maximum integration—children with severe disabilities are part of the school community and mix with other pupils on a daily basis. The council believes that Nardy House can and should be modelled statewide as a facility for people with severe, profound disabilities. Bega Valley Shire Council has given a financial commitment to the Nardy House project. Council has also indicated that it would provide professional expertise in assisting with the formation of the plans and specifications of the building, particularly regarding the relevant Australian standards concerning access and mobility. I have spent a day with parents, I have visited the council and I have met the children who wish to have the facility. I am extremely impressed by the dedication and commitment of all of those involved. The State and Federal governments should support this project.

Motion agreed to.

House adjourned at 10.45 p.m.