LEGISLATIVE COUNCIL

Wednesday 28 June 2000

The President (The Hon. Dr Meredith Burgmann) took the chair at 11.00 a.m.

The President offered the Prayers.

The PRESIDENT: I acknowledge we are meeting on Eora land.

ASSENT TO BILLS

Assent to the following bills reported:

Trustee Companies Amendment Bill
Occupational Health and Safety Bill
Victims Compensation Amendment Bill

TABLING OF PAPERS

Report

The Hon. Carmel Tebbutt tabled, pursuant to the Annual Reports (Statutory Bodies) Act 1984, the report of the Wollongong Sports Ground Trust for the year ended 30 June 1999.

Ordered to be printed.

PETITION

Windsor Women's Prison

Petition praying that construction of a women's prison at Windsor be abandoned, that additional funds be channelled into research to assist girls, adolescent and adult women at risk of offending, and that social programs on crime prevention be introduced, received from the **Hon. R. S. L. Jones**.

CRIMES (FORENSIC PROCEDURES) BILL

In Committee

Parts 1-13

The Hon. R. S. L. JONES [11.09 a.m.], by leave: I move my amendments Nos 1 to 13 in globo:

No. 1 Page 2, clause 3 (1), lines 21 and 22. Omit all words on those lines. Insert instead:

> **appropriately qualified person**, in relation to carrying out a forensic procedure, means a person (other than a police officer):

No. 2 Page 20, clause 13 (1) (f), line 18. Omit "police officer or".

No. 3 Page 41, clause 50 (3), line 16. Omit "police officer or".

No. 4 Page 41, note to clause 50 (3), lines 20-22. Omit all words on those lines.

No. 5 Page 41, clause 50 (4), line 26. Omit "police officer or".

No. 6 Pages 42-45, second column of the table to clause 50, line 14 on page 42-line 12 on page 45. Omit "police officer or" wherever occurring.

No. 7 Page 45, note to clause 50, line 24. Omit "police officer or".

No. 8 Page 66, clause 82 (4) (b), lines 1-4. Omit all words on those lines.

No. 9 Page 66, clause 82 (4) (c), lines 5-7. Omit all words on those lines.

No. 10 Page 66, clause 82 (5), lines 8-33. Omit all words on those lines.

No. 11 Page 78, clause 94 (2), line 20. Insert "and the DNA profile" after "derived".

No. 12 Page 78, clause 94 (3), line 27. Insert "and the DNA profile" after "system" where secondly occurring.

As I foreshadowed during the second reading debate, the Crimes (Forensic Procedures) Bill is fraught with difficulties. My amendments address community concerns about the bill in its current form. A number of community groups including the Bar Association, the Privacy Commission, the Law Society, the Ethnic Communities Council, the Sydney region Aboriginal Legal Service, the Youth Action and Policy Association of New South Wales and the Council for Civil Liberties have shown us that the current bill is flawed.

The bill encroaches on privacy and contains procedural difficulties for the taking and maintaining of DNA samples. It also has the potential for time-consuming and expensive legal challenges. It diverts police resources from the front line to this new technology for the sake of technology, relies on technology that international precedent shows us is not as reliable as people might think, and adversely impacts on vulnerable communities such as indigenous groups, people from a non-English-speaking background and our young people. Many of my concerns were set down in the second reading debate. I have therefore sought leave to move my amendments in globo. I add only that the current unacceptably lax protocols for removing key identifying information from all record-keeping mechanisms would change under my amendments Nos 11 and 12.

Under my amendments the DNA profile of volunteers and those found not guilty or pardoned of a crime would no longer be retained. I have also sought to remove public concern that the police would be responsible for the collection of DNA samples by amending the bill to allow only civilians—non-police—to collect samples from volunteers, suspects or those convicted of an offence and already in our gaols. That would remove any perception of bias or community feeling that wrongdoing could attach to the collection of samples by police. As I said at the second reading stage, this could bring potential harmful allegations against the collection process and the integrity of the system. My amendments follow the civilianisation of the process in the United Kingdom, where trained forensic civilians, not police, take samples from convicted people. It does nothing more than parallel the safeguard that the United Kingdom has already embraced in its DNA legislation.

The Hon. M. R. EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [11.13 a.m.]: The amendments moved by the Hon. R. S. L. Jones provide for civilian personnel independent of the Police Service to undertake various activities. They also relate to the admissibility of evidence. The effect of the amendments would be that police officers would be excluded from the definition of "appropriately qualified person". Therefore they would not be able to carry out certain forensic procedures.

The Hon. R. S. L. Jones: Correct.

The Hon. M. R. EGAN: The Hon. R. S. L. Jones confirms that. From the Government's perspective it would be impractical and inflexible to require civilians to take samples in all circumstances, particularly in rural areas. I emphasise that police officers would have to be appropriately qualified to carry out procedures. In addition, the bill already provides various safeguards in relation to the carrying out of procedures, including a prohibition on cruel, inhuman or degrading treatment. Amendments Nos 8 to 10 inclusive would have the effect of removing the provision for admissibility of improperly obtained evidence where the desirability of admitting the evidence outweighs the undesirability or where evidence was obtained under mistaken but reasonable belief as to a child's age.

Providing exceptions to the rule that improperly obtained evidence is inadmissible is necessary to ensure that the court has access to vital evidence in appropriate cases. This is not a new concept. Similar provisions appear in section 138 of the Evidence Act 1995, which incidentally would apply as a matter of course if the amendments were adopted. Furthermore, clause 82 (6) provides that the probative value of the evidence itself does not justify the admission of improperly obtained evidence. I am advised that the effect of amendments Nos 11 and 12 would be to require removal of the DNA profile in addition to removal of identifying information from the database system. I am advised that this is unnecessary. The bill already provides for the removal of identifying information linking an individual and a DNA profile.

The Hon. M. J. GALLACHER (Leader of the Opposition) [11.16 a.m.]: The Opposition opposes amendments Nos 1 to 12 moved by the Hon. R. S. L. Jones in globo. In one of his earlier comments he

expressed concern about diverting police resources from the front line. These provisions will put police ahead of the front line; the bill will make them the front line. It is extremely important that the concerns of the community be heard in relation to DNA testing and that the legislation not be delayed. The Hon. R. S. L. Jones also raised concerns about the scrutiny of the collection process. We are cognisant of the role that the Ombudsman will play in observing that the protocols for this groundbreaking law are administered. Individuals will also have the ability to complain to the Police Integrity Commission if they feel that there has been corrupt conduct in relation to their being—I hate to use the term—loaded up with evidence, which was referred to in earlier debate. There are procedures to ensure that that does not happen, and we are confident that that will be the case.

We are mindful of the role that the Parliament will play in ensuring that the Government gets this groundbreaking legislation right. We cannot for one moment take our eye off the ball once this legislation is passed because we will be leading the way for many other States in ensuring that the legislation is a success. The last thing we would want would be to change the mechanisms so that the other States lack confidence in relation to the application of DNA testing. DNA testing is an invaluable resource for police in forensic procedures. The final point made by the Treasurer in relation to his vast understanding of the Evidence Act is true: under the Evidence Act there is provision for allowing some of the concerns that have been raised in this debate to be addressed. The Opposition opposes the amendments.

Reverend the Hon. F. J. NILE [11.19 a.m.]: I am very concerned about the amendments. I understand that the Hon. R. S. L. Jones does not trust the police and wants to eliminate them from the procedure. But then he wants to hand the procedure to unnamed civilians who do not take any oath and have no secrecy requirements. He would be opening the door to the very thing he is concerned about. With all the supervision that is available now through the Police Integrity Commission and the Ombudsman's office I would be happier with the present wording of the bill, which refers to people who are appropriately qualified. The people conducting the procedures will have to have all the qualifications set out in clause 3 of the bill. They will have to have suitable professional qualifications or experience and be qualified under regulations to carry out the forensic procedures.

If these amendments were agreed to, police officers would be banned from carrying out these procedures, even if they possessed all the qualifications to which I have referred. The amendments, which are ridiculous, are prejudiced against serving police officers in this State. The Christian Democratic Party does not support the amendments.

The Hon. R. S. L. JONES [11.19 a.m.]: Evidently, Reverend the Hon. F. J. Nile is not aware of legislation in the United Kingdom, which works well without police actually doing the work. My amendments will not lead to unqualified people doing this testing. The provisions on page 2 of the bill quite clearly point out that appropriately qualified people will carry out these forensic procedures. They will have to have suitable professional qualifications or experience and be qualified under the regulations to carry out these procedures. The people carrying out these procedures will be well qualified.

The Hon. J. HATZISTERGOS [11.20 a.m.]: I am concerned about amendments Nos 10 to 12, which have been moved by the Hon. R. S. L. Jones. The way in which clauses 82 and 83 of the bill deal with the question of the inadmissibility of evidence provides adequate protection for people who might be the subject of various tests. In relation to evidence that has been obtained improperly or illegally, in the end the court has a discretion as to whether or not to permit that evidence to be admitted, bearing in mind the appropriate value of the evidence and the prejudicial value to an accused person if such evidence is admitted. However, this bill goes somewhat further. Clause 82 (6) states:

> The probative value of the evidence does not by itself justify the admission of the evidence.

The amendments moved by the Hon. R. S. L. Jones propose to set back the clock, thus making it more difficult to admit DNA evidence rather than any other type of evidence. For those reasons I believe the Hon. R. S. L. Jones should reconsider amendments Nos 10 to 12.

Amendments negatived.

The Hon. Dr A. CHESTERFIELD-EVANS: [11.23 a.m.], by leave: I move Australian Democrats amendments Nos 1, 28, 30, 31, 33 and 34 in globo:

> No. 1 Page 7, clause 3, lines 23 and 24. Omit all words on those lines. Insert instead:

serious indictable offender means a person who is convicted of a serious indictable offence after the commencement of this definition.

No. 28 Page 52, clause 61 (4), lines 12-16. Omit all words on those lines.

No. 30 Page 54, clause 68. Insert after line 28:

(2) Before a request is made under subsection (1), the police officer must be satisfied on the balance of probabilities that the request for consent to carry out the forensic procedure is justified in all the circumstances.

No. 31 Page 55, clause 69 (1) (i), line 14. Omit "section 84". Insert instead "section 81".

No. 33 Page 58, clause 74 (6), lines 1-3. Omit all words on those lines. Insert instead:

(6) In determining whether to make an order under this section, a court is to take into account:

(a) whether this Act would authorise the forensic procedure to be carried out in the absence of the order, and

(b) the seriousness of the circumstances surrounding the commission of the offence, or offences, that the serious indictable offender was convicted of committing, and the gravity of those offences, and

(c) whether the carrying out of the forensic procedure is justified in all the circumstances.

No. 34 Page 58, clause 75, line 20. Omit "section 74". Insert instead "section 71".

These amendments deal with the definition of "serious offenders". Amendment No. 1 will prevent the bill from acting retrospectively and prevent the possibility of all inmates currently detained, including men, women and juveniles, being forced to undertake forensic procedures. In other words, these amendments will prevent fishing expeditions. The Australian Democrats do not believe that retrospective legislation is good in principle and we are certainly concerned about fishing expeditions. However, these amendments would not prevent the taking of samples from someone serving a prison sentence who is a suspect in a criminal investigation.

If there is reason to suspect that someone has committed a crime, he or she should be tested in the way in which any other suspect would be tested. Suspects should not be tested simply because they are conveniently available within the criminal justice system, which effectively is discrimination against prisoners. These amendments will also ensure that serious indictable offenders convicted after the commencement of this legislation will not be subjected to indiscriminate testing or harassment. Procedures will be carried out either by consent or by order but only if they are warranted in circumstances that are relevant to both the offender and the offence of which he or she was convicted. I commend the amendments to the Committee.

The Hon. M. R. EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [11.25 a.m.]: A number of issues have been raised by these amendments. I will address each of them briefly. Australian Democrats amendments Nos 1 and 28, which relate to clauses 3 and 61, would have the effect of limiting the testing of serious indictable offenders to those convicted after the legislation commences. The Government does not support the amendments, which would limit the testing of serious offenders to those who are convicted post-January 2001. The proposed amendments would significantly reduce the ability of police to clear up unsolved crime committed by serious indictable offenders convicted prior to the commencement of the legislation but still serving a term of imprisonment.

Democrats amendment No. 30, which is an amendment to clause 68, would insert a requirement that a police officer be satisfied that the request for consent from a serious indictable offender to a forensic procedure is justified in all the circumstances. Likewise, the Government cannot support that amendment. The bill already limits the taking of samples from offenders to those offenders currently serving a sentence of imprisonment. The criterion "justified in all the circumstances" comes from the model bill, which also provides for the testing of offenders who have been released, and is designed to ensure that the lives of offenders who have been released are not unduly disrupted by a request to undergo a forensic procedure. Therefore, this criterion is not required under the New South Wales scheme, which provides only for the testing of offenders serving a sentence. There is a distinction there, as I am sure the Hon. Dr A. Chesterfield-Evans would acknowledge.

Democrats amendment No. 31, which is an amendment to clause 69 of the bill, relates to information to be provided to an offender before consenting to a procedure. It would change the requirement to inform an offender of the effect of section 84, which concerns admissibility of evidence relating to consent, to a requirement to inform the offender of the effect of section 81, which concerns court orders for volunteer testing when a parent or guardian withdraws consent. The Government does not support the amendment, as there is no rationale for informing an offender about the provisions regarding court orders for volunteers, which is what is dealt with in clause 81.

Democrats amendment No. 33, which is an amendment to clause 74, would insert additional criteria for the court's determination of an application for an order to carry out forensic procedures on an offender, consideration of the seriousness of the original offence, and whether the procedure is justified in all the circumstances. The Government does not support the amendment. Clause 74 (5) already provides that the court must be satisfied that the carrying out of the forensic procedure is justified in all the circumstances in respect of offenders. This is a broad test which will allow courts to take various matters into account, including the seriousness of the offence for which the offender was originally incarcerated.

Democrats amendment No. 34, which is an amendment to clause 75, would replace a reference to "order under section 74" to "order under section 71". I regret to say—and I do not want to be offensive to the Hon. Dr A. Chesterfield-Evans—that the amendment makes no sense. There is no order under section 71, to which this cross-reference refers. The honourable member should tell us about that. He should not just sit speechless in this Chamber.

The Hon. M. J. GALLACHER (Leader of the Opposition) [11.29 a.m.]: The Opposition views these amendments and a large number of other amendments simply as barriers to the effectiveness of this legislation. The Opposition, therefore, will not support any measure that is simply being put in place to stymie the effectiveness of this legislation.

Reverend the Hon. F. J. NILE [11.29 a.m.]: If these amendments were agreed to—and I hope they will not be—they would sabotage one of the main reasons for the introduction of DNA testing. Apparently, 10 per cent of the population commits 90 per cent of the crimes. British testing of prisoners identified a number of rapists in the prisons.

The Hon. R. S. L. Jones: Ten per cent of what population?

Reverend the Hon. F. J. NILE: Of the total population.

The Hon. R. S. L. Jones: Are you suggesting that 10 per cent of the whole population commits crime?

Reverend the Hon. F. J. NILE: Yes.

The Hon. R. S. L. Jones: Are you saying that 10 per cent of the whole population commits crime?

Reverend the Hon. F. J. NILE: Ten per cent of the population commits 90 per cent of the crimes.

The Hon. R. S. L. Jones: Of the prison population?

Reverend the Hon. F. J. NILE: No, 10 per cent of the population. That is the figure.

The Hon. R. S. L. Jones: That is nonsense. Are you suggesting that one in 10 people commits crime?

Reverend the Hon. F. J. NILE: No, 10 per cent of the population commits 90 per cent of the crimes. That is a fact. The Hon. R. S. L. Jones can study it later; he is trying to distract me. These amendments will destroy the impact of the DNA legislation. The British experience clearly showed that many people who are in prison for serious offences—not those who are in prison for traffic offences but for a serious indictable offences with a maximum penalty of five years or more imprisonment—had committed other crimes that had not been solved. I made that point in my contribution to the second reading debate. It will be a great comfort to some victims to know that eventually a crime has been solved and a person has been apprehended, even though that person may already be in prison. I do not support the amendments.

The Hon. Dr A. CHESTERFIELD-EVANS [11.31 a.m.]: The Leader of the House referred to the model bill. It is important to point out that my amendments are designed to return the bill to the same form as the model bill, which has been changed in a number of ways to make things easier for police. The model bill is a superior bill to the one presently before the Committee. If police take a DNA sample without an order, they have to take into account the likelihood of whether they would obtain an order if they were to apply for one. If their view is that an order would not be made they should not take the specimen. In other words, the amendments effectively allow for the will of the court to become the standard benchmark for whether people should be tested. That is an important aspect of the rule of law. That is my answer to the question asked by the Leader of the House.

Amendments negatived.

The CHAIRMAN: Greens amendment No. 1 conflicts with amendment No. 1 of the Hon. R. S. L. Jones, which has been negatived. For that reason it could not be moved.

Ms LEE RHIANNON [11.34 a.m.], by leave: I move Greens amendments Nos 2, 3, 15, 16, 17, 18, 32, 33, 34, 37 and 38 in globo:

No. 2 Page 12, item 2 of the table to clause 5, lines 21 and 22. Omit "senior police officer under Part 4" from the third column. Insert instead "Magistrate under Part 5".

No. 3 Pages 13 and 14, table to clause 6, line 9 on page 13 to line 27 on page 14. Omit all words in the third column.

No. 15 Page 22, clause 13 (3), lines 5 and 6. Omit "senior police officer may order the carrying out of the forensic procedure under Part 4 if he or she is satisfied of the matters referred to in section 20". Insert instead "Magistrate may order the carrying out of the forensic procedure under Part 5".

No. 16 Page 22, clause 13 (6), lines 26-28. Omit all words on those lines.

No. 17 Page 23, clause 14 (b), line 10. Omit "senior police officer under Part 4 or a".

No. 18 Page 24, clause 17 (1), line 6. Omit "senior police officer under section 18 or 19". Insert instead "Magistrate under Part 5".

No. 32 Page 52, clause 62 (1) (b), line 25. Omit "police officer under section 70". Insert instead "court under this Part".

No. 33 Page 55, clause 69 (2), lines 24-26. Omit "a police officer may order the carrying out of the forensic procedure under section 70 if the police officer has taken into account the matters set out in section 71". Insert instead "an application may be made to a court for an order authorising the carrying out of the forensic procedure".

No. 34 Page 56, clause 69 (4) (a), lines 1 and 2. Omit all words on those lines.

No. 37 Page 82, clause 98 (2) (b), lines 18-20. Omit all words on those lines.

No. 38 Page 86, clause 107 (b), line 2. Omit "police officer or".

The Greens seek to delete all provisions of the bill that authorise anyone other than a magistrate to authorise a compulsory forensic procedure: all compulsory forensic procedures must be authorised by a magistrate. It should be understood that these amendments seek to improve the bill and to ensure that safeguards are in place when this momentous step is taken in the law of this State. That is the reason I have moved the amendments. The bill allows police officers to authorise compulsory forensic procedures in certain circumstances. The Greens believe this gives too much discretionary power to the police and that such discretionary power is open to abuse.

Unfortunately, that has happened too often in the history of New South Wales and is continuing today. It should be noted that until 1995 in New South Wales the taking of bodily materials without consent was an assault and, indeed, a trespass against the person. If police have the power to authorise DNA testing, all semblance of fair, impartial and independent administration of DNA testing will be lost. Police will be able to use their power to authorise forcible testing as leverage when interviewing or simply dealing with members of the public. There is a clear need for independent control. All compulsory DNA tests should be authorised by a magistrate and that is the reason for the amendments, which I commend to the Committee.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.37 a.m.]: The Government does not support the amendments, as there are circumstances in which a senior police officer should be able to order non-intimate procedures on capable adult suspects who are under arrest, as provided in the bill. Under the bill the authority of a senior police officer to order a forensic procedure is already restricted to cases where the suspect is a capable adult under arrest. This is a sensible balance between those who support the amendments and those who may support police officers being given a broader authority to take samples. Both arguments have been considered in detail by the Government in formulating the relevant provisions.

The senior police officer must be satisfied that there are reasonable grounds to believe the procedure might produce evidence tending to confirm or disprove that the suspect committed a relevant offence. That provides adequate limitations on the authority of the senior police officer. In the case of offenders, as distinct from suspects, the Government has been guided by the experience in other jurisdictions, particularly in Victoria and the United Kingdom, in formulating a provision that permits the taking of samples from prisoners in the

least intrusive manner. That is balanced with the Government's intention that such samples will form a crucial part of the offender index of the database. It should be noted that the senior police officer may authorise only the taking of a hair root sample or the taking of prints in respect of capable adult offenders. Procedures carried out on children and incapable offenders must be authorised by a court and a non-consensual buccal swab or blood sample from an offender must also be authorised by a court.

Amendments negatived.

The Hon. Dr A. CHESTERFIELD-EVANS [11.39 a.m.], by leave: I move Australian Democrats amendments Nos 2 to 4, 6 to 8, 14 to 17 and 24 to 27 in globo:

No. 2 Page 13, item 1 of the table to clause 6, lines 14-20. Omit "within 2 hours after suspect presents to investigating police officer, disregarding "time out" " from the fourth column. Insert instead "within 4 hours after suspect presents to investigating police officer, including "time out" ".

No. 3 Page 13, item 2 of the table to clause 6, lines 23-30. Omit "within 2 hours after suspect presents to investigating police officer, disregarding "time out" " wherever occurring from the second and fourth columns. Insert instead "within 4 hours after suspect presents to investigating police officer, including "time out" ".

No. 4 Page 14, item 3 of the table to clause 6, lines 3-9. Omit "2 hours after the end of the investigation period permitted under section 356D of the *Crimes Act 1900*, disregarding" from the fourth column. Insert instead " 4 hours after the procedure is ordered or suspect is arrested, including".

No. 6 Page 14, item 4 of the table to clause 6, lines 14-20. Omit "than 2 hours after the end of the investigation period permitted under section 356D of the *Crimes Act 1900*, disregarding" from the fourth column. Insert instead "than 4 hours after the procedure is ordered or suspect is arrested, including".

No. 7 Page 15, clause 7 (3), lines 12-14. Omit "2 hours after the expiration of the investigation period provided for by section 356D of the *Crimes Act 1900*". Insert instead " 4 hours after the suspect is arrested".

No. 8 Page 15, clause 7 (4), line 16. Omit "disregarded". Insert instead "included".

No. 14 Page 23, clause 16 (1), line 28. Omit "2 hours". Insert instead "4 hours".

No. 15 Page 23, clause 16 (2), line 31. Omit "disregarded". Insert instead "included".

No. 16 Page 24, clause 17 (3), lines 14-16. Omit "2 hours after the expiration of the investigation period provided for by section 356D of the *Crimes Act 1900*". Insert instead " 4 hours after the suspect is arrested".

No. 17 Page 24, clause 17 (4), line 18. Omit "disregarded". Insert instead "included".

No. 24 Page 37, clause 40 (1), line 16. Omit " 2 hours". Insert instead " 4 hours".

No. 25 Page 37, clause 40 (2), line 19. Omit "disregarded". Insert instead "included".

No. 26 Page 38, clause 42 (1), lines 9-11. Omit "2 hours after the end of the investigation period permitted under Part 10A of the *Crimes Act 1900"*. Insert instead "4 hours".

No. 27 Page 38, clause 42 (2), line 15. Omit "disregarded". Insert instead "included".

These amendments would impose a real time limit of four hours for the carrying out of a forensic procedure. The bill seeks to add two hours to the time that a person may be held under section 356D of the Crimes Act 1900, which allows for an investigation period of four hours, excluding time-outs. That means that a person can be questioned for more than four hours real time. The bill seeks to add another two hours, excluding time-outs, which will mean an extension of more than two hours. The investigation period plus the extra two hours for the forensic procedure could mean that real time spent at a police station could extend to possibly 12 hours because of the extra time-outs.

The amendments would mean that the forensic procedure would not take longer than four hours real time, and therefore the procedure would be done within the time of the investigation period in the case of a suspect who was under arrest. In the case of a person who is not under arrest—when there is consent or an order from a magistrate for a forensic procedure—the bill, as it stands, provides for a two-hour period in which to take the sample, disregarding time-outs. There is no real time limit, so that two-hour period could extend almost indefinitely. The amendments would deliver a real time limit of four hours in this instance.

It must be remembered that the taking of a sample is a very quick procedure, involving merely taking a scraping from the inside of the mouth. It can be done in 30 seconds, although if an explanation is provided it may take a little longer than simply saying, "Open your mouth, let's take a sample". However, to add a huge

amount of time to the time allocated for this quick procedure is to infringe the civil liberties of anyone who has a sample taken. These are commonsense amendments that seek to prevent the addition of a silly amount of time for a minor procedure, and I commend them to the Committee.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.43 a.m.]: The Government cautions honourable members about the possible unforeseen aspects of this series of amendments. The proposal could lead to suspects not under arrest being detained for a longer period than currently allowed under the bill. Time-out does not necessarily apply in all cases so to incorporate time-out automatically within a four-hour period would be inappropriate. In addition, further Australian Democrat amendments would result in an overlap between the detention-after-arrest period and the time taken to carry out a forensic procedure. Therefore, the amendments should not be supported.

Amendments negatived.

The Hon. Dr A. CHESTERFIELD-EVANS [11.45 a.m.], by leave: I move Australian Democrat amendments Nos 9 to 13 and 18 to 23 in globo:

No. 9 Page 18, clause 12 (c), line 31. Omit "might". Insert instead "is likely to".

No. 10 Page 19, clause 12 (d), line 10. Omit "might". Insert instead "is likely to".

No. 11 Page 19, clause 12 (e), line 21. Omit "might". Insert instead "is likely to".

No. 12 Page 19, clause 12 (f), line 32. Omit "might". Insert instead "is likely to".

No. 13 Page 20, clause 12. Insert after line 2:

(2) In determining whether a request is justified in all the circumstances, the police officer must balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned against the public interest in upholding the physical integrity of the suspect.

(3) In balancing those interests, the police officer must have regard to the following matters:

(a) the seriousness of the circumstances surrounding the commission of the offence concerned, and the gravity of the offence,

(b) the degree of the suspect's alleged participation in the commission of the offence,

(c) the age, physical and mental health and cultural background of the suspect, to the extent that they are known to the police officer,

(d) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the suspect committed the offence,

(e) any other matter considered relevant to balancing those interests.

No. 18 Page 25, clause 20, line 13. Insert "on the balance of probabilities" after "satisfied".

No. 19 Page 25, clause 20 (d), line 25. Omit "might". Insert instead "is likely to".

No. 20 Page 25, clause 20. Insert after line 28:

(2) In determining whether the carrying out of the forensic procedure without consent is justified in all the circumstances, the senior police officer must balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned against the public interest in upholding the physical integrity of the suspect.

(3) In balancing those interests, the senior police officer must have regard to the following matters:

(a) the seriousness of the circumstances surrounding the commission of the offence concerned and the gravity of the offence,

(b) the degree of the suspect's alleged participation in the commission of the offence,

(c) the age, physical and mental health and cultural background of the suspect, to the extent that they are known to the senior police officer,

(d) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the suspect committed the offence,

(e) if the suspect gave any reasons for refusing consent-the reasons,

(f) any other matter considered relevant to balancing those interests.

No. 21 Page 27, clause 25, line 25. Insert "on the balance of probabilities" after "satisfied".

No. 22 Page 29, clause 25 (f), line 6. Omit "might". Insert instead "is likely to".

No. 23 Page 29, clause 25. Insert after line 9:

(2) In determining whether the carrying out of the forensic procedure is justified in all the circumstances, the Magistrate must balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned against the public interest in upholding the physical integrity of the suspect.

(3) In balancing those interests, the Magistrate must have regard to the following matters:

(a) the seriousness of the circumstances surrounding the commission of the offence concerned and the gravity of the offence,

(b) the degree of the suspect's alleged participation in the commission of the offence,

(c) the age, physical and mental health and cultural background of the suspect, to the extent that they are known to the Magistrate,

(d) if the suspect is a child or incapable person-the best interests of the suspect,

(e) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the suspect committed the offence,

(f) if the suspect gave any reasons for refusing consent-the reasons,

(g) if the suspect is under arrest:

(i) the period for which the suspect has already been detained, and

(ii) the reasons for any delay in proposing the carrying out of the forensic procedure,

(h) any other matter considered relevant to balancing those interests.

The bill before the Committee fails to reflect provisions that are already in place in part 1D of the Commonwealth Crimes Act with regard to seeking consent to and ordering a forensic procedure. The provisions represented by these amendments have been incorporated in the model bill that was released in February this year and will produce closer uniformity and consistency with Commonwealth legislation. The amendments make it clear that police and the courts must be satisfied, first, that the carrying out of a forensic procedure is justified; and, second, that unnecessary procedures are not carried out.

As it stands, the bill allows for forensic procedures to be used in a broad range of circumstances that have little or no links to the crime being investigated. It could also lead to unrestricted comparisons and random searching for a match by police anywhere in Australia. Given what I said in my second reading speech, the likelihood of a match may be as low as one in 40. Depending on the specificity of the DNA profiling, this random searching could turn up a number of false matches. The lack of control over random searching will also make monitoring the use of the database very difficult. I commend these amendments to the Committee.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.47 a.m.]: These amendments deal with threshold issues with regard to requesting and determining whether a procedure should be undertaken. The Government does not support the amendments. The bill provides that there must be reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that a suspect committed the offence and that carrying out the procedure is justified in all circumstances. In regard to the latter amendments, it is already necessary for the police and the courts to be satisfied that there are reasonable grounds to believe that a request for consent to the procedure is justified in all circumstances. Therefore, the Government does not support amendments Nos 18 to 21. Before ordering a procedure, a senior police officer or magistrate must first be satisfied that there are reasonable grounds to believe the suspect committed an offence and that the procedure might produce relevant evidence.

Amendments negatived.

Ms LEE RHIANNON [11.49 a.m.], by leave: I move Greens amendments Nos 4 and 5, 8 to 13, 19 to 21 and 24 to 31 in globo:

No. 4 Page 18, clause 12 (c) (ii), line 35. Omit "or". Insert instead "and".

No. 5 Page 19, clause 12 (c) (iii), lines 1-4. Omit all words on those lines.

No. 8 Page 19, clause 12 (d) (ii), line 14. Omit "or". Insert instead "and".

No. 9 Page 19, clause 12 (d) (iii), lines 15-18. Omit all words on those lines.

No. 10 Page 19, clause 12 (e) (ii), line 25. Omit "or". Insert instead "and".

No. 11 Page 19, clause 12 (e) (iii), lines 26-29. Omit all words on those lines.

No. 12 Page 19, clause 12 (f) (ii), line 36. Omit "or". Insert instead "and".

No. 13 Page 19, clause 12 (f) (iii), lines 37-40. Omit all words on those lines.

No. 19 Page 25, clause 20 (c) (ii), line 20. Omit "or". Insert instead "and".

No. 20 Page 28, clause 25 (b) (ii), line 6. Omit "or". Insert instead "and".

No. 21 Page 28, clause 25 (b) (iii), lines 7-10. Omit all words on those lines.

No. 24 Page 28, clause 25 (c) (ii), line 19. Omit "or". Insert instead "and".

No. 25 Page 28, clause 25 (c) (iii), lines 20-23. Omit all words on those lines.

No. 26 Page 28, clause 25 (d) (ii), line 30. Omit "or". Insert instead "and".

No. 27 Page 28, clause 25 (d) (iii), lines 31-34. Omit all words on those lines.

No. 28 Page 28, clause 25 (e) (ii), line 40. Omit "or". Insert instead "and".

No. 29 Page 29, clause 25 (e) (iii), lines 1-4. Omit all words on those lines.

No. 30 Page 40, clause 49 (a) (ii), line 28. Omit "or". Insert instead "and".

No. 31 Page 40, clause 49 (a) (iii), lines 29-32. Omit all words on those lines.

These amendments are designed to close loopholes that will seriously disadvantage people. Effectively, these loopholes allow police to go fishing, as the saying goes. In the absence of any reasonable suspicion of an offence, as this bill now stands police can effectively carry out DNA testing on anyone. We could even have the ridiculous situation of members of this House being tested for the horrific Wanda Beach murders, which I remember from a long time ago, if police choose to go on a fishing expedition. Many clauses in the bill will allow the police to request DNA testing in circumstances that are too broad, too flexible or simply inappropriate. DNA testing needs to be seen for what it is: a fairly extreme step, something not to be done lightly and a process fraught with practical and technical difficulties. We need to acknowledge that at all times. These amendments will help to tighten up the bill. The police should need substantial grounds on which to proceed to the testing stage. I commend the amendments to the Committee.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [11.51 a.m.]: I am not sure I understand the logic behind Ms Lee Rhiannon's comments about the Wanda Beach murders. I thought the honourable member, and indeed all honourable members, would be prepared to tolerate and accept attempts to obtain any evidence that could be produced that would lead to the resolution of the Wanda Beach murders and the detection and conviction of those responsible, even if the murders occurred a long time ago. Murder is a capital crime and, indeed, people continue to be affected by the fact that such terrible crimes remain unsolved. If real evidence leading to the detection and conviction of the offender is able to be collected—although no doubt the offender is probably quite an old person as the crimes were committed a long time ago—I think most people would support the view that the gathering of that evidence, DNA or otherwise, is acceptable in accordance with community or policing standards.

The Greens' briefing note refers to this cluster of amendments as "amendments to counter fishing expeditions"; Ms Lee Rhiannon used that terminology in her contribution. The Government is of the view that this is unfortunate and misconceived terminology, and does not reflect the modern approach to forensic testing

or policing that the New South Wales Police Service has undertaken post the reforms of the past few years. The more general approach of using DNA as envisaged in this bill, within the limitations the Police Service has recommended for itself and as the Government considers appropriate, is invaluable in terms of eliminating suspects from police suspicion.

That approach will have two effects. For example, someone who has been a suspect in a serious or capital crime for a long time, and perhaps subject to close or intensive police observation and examination, would be free of that suspicion if police are able to substantiate, by way of a forensic procedure, that the person is unlikely to be, or is not possibly, the offender. Therefore, the Government does not support these amendments. To delete these criteria would mean that suspects are more likely to be subject to more than one request for consent to a forensic procedure, which would not be an efficient exercise of police time and resources. It will also be an inconvenience to otherwise innocent suspects and disruptive to the community, and will undermine the integrity of the evidence-gathering procedures permitted under this bill.

The Hon. Dr A. CHESTERFIELD-EVANS [11.54 a.m.]: I did not intend to speak in relation to these amendments, but when I hear nonsense such as that spoken by the Special Minister of State I must respond to it. We all want the Wanda Beach murders to be solved. At the time of the murders my understanding was that one person was under suspicion, but police were unable to obtain sufficient evidence to establish the guilt of that person. If that is the case, let the police find that suspect and undertake DNA testing. The idea that it would be profitable to test honourable members of this House—indeed, to test Ms Lee Rhiannon, of all people—and that spending the State's money on testing honourable members would go anywhere towards solving the Wanda Beach murders is nonsense. Basically, if police test everyone because of the minute possibility, no matter how unlikely it is, that they committed a crime, effectively we are losing our civil liberties and wasting money. We should use DNA testing when appropriate, which is what these amendments seek to do. Simply taking emotive situations and saying, "Let's test everybody" is absurd. It is the same argument that results in ventilators in intensive care units never being turned off and puts endless resources into silly causes. We must look at society in a more sensible and balanced way.

Ms LEE RHIANNON [11.56 a.m.]: The Special Minister of State may have misunderstood the situation. When he was discussing the Wanda Beach murders he said that if real evidence is available, and those were his words, surely that is when police need to be able to carry out DNA testing. That is the whole point of these amendments. We call these amendments to counter fishing expeditions because under this bill DNA testing can be carried out in the absence of any reasonable suspicion of an offence. Many people object to that, and the provisions in the bill need to be tightened up. I felt that the Minister misunderstood that point, and it needed to be clarified. The way police can effectively go on fishing expeditions in all sorts of ways under the bill as it stands is most inappropriate.

Amendments negatived.

Ms LEE RHIANNON [11.57 a.m.], by leave: I move Greens amendments Nos 6 and 7 and 22 and 23 in globo:

No. 6 Page 19, clause 12 (d) (i), line 12. Omit "or a summary".

No. 7 Page 19, clause 12 (d) (ii), line 13. Omit "or summary".

No. 22 Page 28, clause 25 (c) (i), line 17. Omit "or a summary".

No. 23 Page 28, clause 25 (c) (ii), line 18. Omit "or summary".

The bill allows DNA testing of those suspected of summary offences. Summary offences are rarely serious enough to warrant this invasion of privacy, and this bill will allow police abuses of civil liberties. It is also highly questionable whether the cost of DNA testing people suspected of summary offences is justified. It is worth noting at this point the well-documented way that summary offences operate in New South Wales. The operation of certain offences discriminate against indigenous people, thus contributing to the high rates of incarceration of Aborigines and Torres Strait Islanders. It is disappointing that the Government has put forward a bill that will exacerbate further the racially discriminatory nature of the New South Wales legal system. The Greens seek to replace all instances of "indictable or summary offences" in this bill with the term "indictable offences". I commend the amendments to the Committee.

Amendments negatived.

Ms LEE RHIANNON [11.59 a.m.]: I move Greens amendment No. 14:

No. 14 Page 20, clause 13 (1). Insert after line 34:

(l) without limiting paragraph (k):

(i) that information so placed on the DNA database system may be used for the purposes of the investigation of a crime he or she did not commit, and

(ii) that information so placed on the DNA database could be used to identify family members and may reveal details of family relationships of which the suspect is unaware.

The Greens believe that the bill provides an insufficient guarantee that someone requested by police to give consent to a forensic procedure will receive adequate information to enable an informed decision to be made. A decision to consent voluntarily to a DNA test is a decision likely to have a far-reaching impact on an individual's life. It is not good enough to leave it to the discretion of police to properly inform people of the consequences of such a decision. The Greens amendment specifies that police must inform people that, as a result of voluntarily consenting to a test, they may be investigated for an offence they did not commit, and that the DNA sample they have given could be used to identify family members and may reveal details of family relationships of which the suspect is unaware. I commend the amendment to the Committee.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [12.01 p.m.]: The Government does not support the amendment. It is unnecessary. Clause 13 (1) (k) states that the DNA database must be explained to the subject.

Amendment negatived.

Ms LEE RHIANNON [12.04 p.m.]: I move Greens amendment No. 35.

No. 35 Page 59, clause 76. Insert after line 22:

(3) Subsection (2) does not authorise a person to carry out a forensic procedure on a person having a connection with a crime scene who volunteers to undergo a forensic procedure (or for a child or incapable person to undergo a forensic procedure) at the request of a police officer unless the police officer was authorised to make the request by an order under subsection (4).

(4) A Magistrate may, by order, authorise a police officer to request one or more persons having a connection with a crime scene to volunteer to undergo a forensic procedure (or for a child or incapable person to undergo a forensic procedure) to assist the police officer in the investigation of an offence that was committed at that crime scene.

(5) The Magistrate must not make an order under subsection (4) unless he or she is satisfied that:

(a) there are reasonable grounds to believe that forensic material obtained from carrying out the forensic procedure may assist the police officer in investigating the offence concerned, and

(b) the public interest in obtaining such evidence outweighs any expense and community disruption entailed.

This amendment relates to the Wee Waa scenario that was so embarrassing for the Government. It is possible that a similar scenario is arising in Darlinghurst. Although police portrayed the mass testing at Wee Waa as voluntary, in practice anyone who did not consent was singled out and stigmatised. This had the effect of dividing the community of Wee Waa and victimising those who had well-founded concerns about giving a DNA sample when it was not clear what would ultimately happen to that sample. The cost of the exercise is also of concern and the Government has still not released its full costing, which is most significant. The timing of the event had much to do with the tabloid politics of the Government.

Police should not be able to subject communities to mass DNA screening simply on their own initiative. If inability to solve a crime has driven police to an invasive and expensive act that can divide communities, the approval of a magistrate should be required. The voluntary DNA testing of people who are not suspected of a crime is an unprecedented and dangerous move. The Greens propose an amendment to the bill to require police to seek the approval of a magistrate before carrying out voluntary testing. In giving approval, a magistrate must take into account both the expense and the community disruption involved. This is not a high hurdle but it would, at least, require police to justify their actions. Surely it is not much to ask. I commend the amendment to the Committee.

The Hon. J. HATZISTERGOS [12.07 p.m.]: This would have to be one of the silliest amendments proposed to the bill. Its concept is that a person cannot volunteer to give a DNA sample and that police have to get a court order to permit a person to volunteer for a DNA test. That is absolute rubbish; talk about impeding the operations of the DNA bill! I wonder if the Greens are really interested in solving crime, or having guilty people dealt with by the courts. This would be the silliest of the amendments that have been proposed this morning. The Greens are totally wasting the time of this Committee.

The Hon. M. J. GALLACHER (Leader of the Opposition) [12.07 p.m.]: I support the comments of the Hon. J. Hatzistergos regarding the silliness of the Greens amendment. Time and again we hear the spurious argument that communities are divided. It is quite obvious that Ms Lee Rhiannon has not been to Wee Waa and has absolutely no idea of what is occurring in the community. I assure honourable members that the only divisions that have occurred are in the mind of the honourable member and between the two Greens members of this Chamber. There is absolutely no division in the minds of the people at Wee Waa; they want DNA testing and they want it now.

The Hon. Dr A. CHESTERFIELD-EVANS [12.08 p.m.]: I support the amendment. I apologise for not withdrawing my amendment. I did not move it because it was similar to the Greens amendment. This is not a fishing expedition at a national level. There is a danger in fishing expeditions, they dragoon a whole town into what is supposedly a voluntary action. In fact, the dynamics of the town are such that a person could not refuse.

The Hon. R. S. L. JONES [12.09 p.m.]: I add my strong support to the Greens amendment.

Amendment negatived.

Ms LEE RHIANNON [12.09 p.m.]: I move:

No. 36 Page 69, clause 87, lines 24-30. Omit all words on those lines. Insert instead:

> If a forensic procedure has been carried out on a serious indictable offender or a suspect who is later convicted and the conviction is quashed the police officer who requested the procedure (or some other police officer) must, as soon as practicable after the conviction is quashed, ensure that any forensic material obtained as a result of carrying out the procedure is destroyed.

This amendment concerns the destruction of forensic material. As it stands, the bill allows for only certain categories of forensic material to be destroyed after a conviction has been quashed. This raises the serious issue of DNA material continuing to exist even after a conviction has been quashed. The Greens amendment broadens the categories to be destroyed to all categories of forensic material and, again, provides necessary safeguards so there is no abuse of the system.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [12.10 p.m.]: The Government does not support the amendment. The destruction of forensic material taken from suspects is already adequately dealt with under clause 88 of the bill.

Amendment negatived.

Parts 1 to 13 agreed to.

Part 14 agreed to.

Part 15

Ms LEE RHIANNON [12.11 p.m.]: I move:

No. 39 Page 91, clause 118. Insert after line 31:

> (3) Without limiting subsection (2), the regulations may:
>
> (a) require the responsible person in relation to the DNA database system to be a person other than a member of the Police Service, and
>
> (b) set out the procedures to be followed to ensure that forensic material is taken, stored, tested and analysed, and DNA profiles are derived from forensic material, in a way that safeguards the privacy and civil liberties of suspects and others from whom forensic material is taken, and

(c) provide for the establishment of a body to:

(i) develop guidelines relating to the management and administration of the DNA database system and to monitor compliance with the guidelines, and

(ii) conduct research into the reliability of matching DNA profiles for the purposes of forensic identification and to evaluate the results of such research and inform courts of such matters.

The Greens are concerned that the bill does not make specific provision for any independent bodies to implement the provisions contained in it. Such bodies are essential if proper safeguards are to exist and function correctly. They are also essential in order to maintain public faith in the DNA database and the procedure for DNA testing generally. Greens amendment No. 39 makes specific provision for the regulations to establish such bodies. Again, surely this is a necessary safeguard and should be agreed to by the major parties. I commend the amendment to the Committee.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [12.12 p.m.]: The Government does not support an amendment specifying things that may be done by regulation. The regulation-making powers under clause 118 are broad enough to cover matters not inconsistent with the Act. There is no need to specify matters that may be addressed in the regulations.

Amendment negatived.

The Hon. R. S. L. JONES [12.13 p.m.]: I move:

No. 13 Page 93, clause 121. Insert after line 4:

(8) This Act (other than this section) expires on the eighth sitting day after the day the report referred to in subsection (3) is laid, or taken to be laid, before both Houses of Parliament (the **expiry day**). However, it may, by resolution of both Houses of Parliament, be revived within 5 sitting days of the expiry.

(9) If the Houses of Parliament pass such a resolution, they may also resolve that the Minister should introduce a Bill for an Act to amend the Act as revived in the manner specified in the resolution as soon as practicable after the resolution is passed.

(10) Subsections (8) and (9) do not have effect if, before the expiry day, an Act of Parliament or resolution of both Houses provides that they do not have effect.

This is a very straightforward amendment. It does not warrant the hysteria exhibited by the Minister for Police that we have witnessed in media reports. I cannot understand why his comments were taken seriously by anybody. This amendment will ensure that Parliament will be given an opportunity to act on and implement the recommendations of the parliamentary inquiry, the Ombudsman's review and/or the Minister's review. Currently, there is no provision in the bill for Parliament to amend the Act if any of those reviews recommend that course. Therefore, these reviews may have no effect at all.

My amendment does not require the Government or bind Parliament to amend the legislation. It merely provides a mechanism by which Parliament can act on the recommendations if it so wishes. If the reviews find there are no problems with the Act and/or Parliament is of the view that there is no need for the amendments, the operation of the Act can be extended without any problem whatsoever. The Law Society has written in support of my amendment as follows:

> The provision for the Act to expire following the delivery of the Standing Committee's report and be revived by resolution, with the accompanying provision for an amending Bill to be introduced, is … supported.
>
> Without this mechanism, Society would be concerned that Parliament may not be afforded the opportunity to consider whether the legislation should be amended in accordance with the Standing Committee's recommendations.

The Council for Civil Liberties has also written in support of the amendment in a similar vein to the Law Society. Mr Kevin O'Rourke, the president of the council, stated:

> It is our opinion that, without [this] amendment, there may be no further opportunity for the Parliament to review the Bill, regardless of any findings that might be made by the NSW Ombudsman and the Standing Committee on Law and Justice.
>
> That result could only be detrimental to the provision of safeguards for the privacy and civil liberty of persons on whom forensic procedures are carried out.

The Bar Association of New South Wales has also written in support of this amendment. As those organisations have pointed out, it is not difficult to understand why we need a safeguard. The Government's refusal to

consider the proposal must raise the question: What does the Government have to hide? Despite the comments by the Minister for Police, this amendment will not give the go-ahead for an 18-month, worry-free crime spree in New South Wales. That is a most absurd comment for the Minister to make. Is he suggesting that if the amendment that Parliament reviews the legislation is carried, we would have a crime spree for 18 months, unhindered by police action? Is he saying that for the past five years, while this Government has been in office, there has been a worry-free crime spree in New South Wales? That is an absurd comment to have made. I hope nobody took him seriously.

I have a letter from the Police Association of New South Wales. One of the interesting comments that association makes in its letter, amongst other things, is that the bill satisfies its concerns that it be user-friendly for police and that it not contain unnecessary legal impediments limiting the use of this important technology. Of course the police are happy with this bill. They are also happy, by the way, to have a review by the Standing Committee on Law and Justice, because the police will not be hindered by unnecessary legal impediments. I am afraid legal impediments are put in the way of police action in certain instances in case police go beyond the pale. Sometimes they do. In the United Kingdom the collection of forensic material is undertaken by civilians because of the fear that police may use it unwisely.

I know the Opposition supports this amendment for a sunset clause—which can be revived, anyway, by motions of both Houses—for quite different reasons. The Leader of the Opposition will explain why in a moment. I think this is a very reasonable amendment. It will not prevent enactment of the bill and it will not delay the use of DNA testing in New South Wales. It is nonsense to say there will be a 18-month, worry-free crime spree. That is an absolutely ridiculous comment for the Minister to have made. To suggest that the legislation will be delayed or blocked in anyway is totally incorrect. It is a blatant attempt to mislead members of this House and the public of New South Wales. I trust my colleagues in this House will not be fooled by the Minister's shamelessly sensational rhetoric and will support a very sensible amendment.

The Hon. R. D. DYER [12.18 p.m.]: The amendment moved by the Hon. R. S. L. Jones would commonly be characterised as a sunset clause. It is the most unusual sunset clause I have ever seen. It requires the Act to expire on the eighth sitting day after the day the report referred to in subsection (3) of clause 121 is laid before both Houses. That is described as the expiry day. However, it then provides that the Act may be revived by resolution of both Houses of Parliament within five sitting days of the expiry. In my view, that is an extraordinary and most unusual way in which to draft a sunset clause. It puts the statute out of existence and then allows it to be revived within a short period of days.

However, what I find even more extraordinary is that the amendment seeks to insert the provision in the legislation alongside no fewer than three different forms of review or monitoring mechanisms. First, clause 121 (1) provides for the Act to be monitored by the Ombudsman. The subclause provides that for a period of two years after the commencement of the section the Ombudsman is to keep under scrutiny the exercise of the functions conferred on police officers under the Act. Second, clause 122 provides for a review of the Act by the Minister to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives of the Act, and for the review to be undertaken as soon as possible after the period of 18 months from the date of assent to the Act.

If that were not enough, the Hon. R. S. L. Jones will undoubtedly shortly move his amendment No. 14, which will provide for yet another review by the Standing Committee on Law and Justice that I chair. I would like to say that the review would be in good hands. However, the fact remains that this legislation would be subject to three reviews: monitoring by the Ombudsman, ministerial review by the Attorney General and, prospectively at least, if this Committee agrees, inquiry by the Standing Committee on Law and Justice. I regard it as quite extraordinary and almost inexplicable that one would set up three review mechanisms and then have a sunset clause as well. If a matter is to be reviewed, that is well and good, and there are three mechanisms to do it.

To suggest, as the Hon. R. S. L. Jones appeared to suggest, that that will not inevitably result in an amendment is, in a sense, beside the point. Any responsible government having matters brought before it as a result of any such reviews would, as a matter of course, I would have thought, bring forward suitable amendments to the legislation. However, in my view it is ridiculous to provide in this dragnet way that the legislation be knocked out by a sunset clause. I ask rhetorically—because I do not necessarily expect to receive an answer—how many checks and balances does one reasonably expect to have in this legislation?

The Hon. M. J. GALLACHER (Leader of the Opposition) [12.22 p.m.]: On behalf of the Opposition I wish to clarify some of the disinformation that is being spread, particularly by the Government and the

Minister responsible in another place, with regard to the Opposition's position on this issue. The Hon. R. S. L. Jones is correct in his observation that the Opposition is supportive of this amendment. However, we come to the debate from a totally different perspective to that put forward by the Hon. R. S. L. Jones and a number of crossbench members, who, by way of amendments put so far, have in my view tried to stymie the application of this legislation as an extremely useful resource for policing and therefore an extremely useful resource for the entire community of this State.

The Government's proposition, primarily to the media, that the Opposition is somehow interested in watering down this legislation and creating a situation in which the legislation will simply stall in accordance with the amendment, is a significant falsehood. Upon recognising the application of clause 121 (10)—which provides that subclauses (8) and (9) do not have effect if, before the expiry date, an Act of Parliament or resolution of both Houses provides that they do not have effect—it would be an incredibly foolish government that on the last day woke up and said, "Whoops, we forgot about this", and simply introduced the legislation on the last day. Potentially, the Government would leave itself open to the suggestion that it had left the legislation until the very last moment.

Earlier in the debate I alluded to the fact that this legislation breaks new ground and is crucial for policing. We simply cannot allow it to pass through the House today and to disappear into the ether under this Government, as often happens in relation to other legislation. I remind honourable members that I and the Leader of the Opposition in another place put forward a fairly strong view that we had some reservations about the legislation being potentially strong enough in some areas; and that it would be necessary to revisit the legislation to address any matters identified by the Standing Committee on Law and Justice prior to the commencement date of 1 January and by the Ombudsman in relation to the application of the legislation.

We would all feel a lot better if this Government had a proven track record in relation to openness and accountability with regard to legislation. But we all know that that is completely false in relation to the way in which the Government operates. Time and again the Government has simply introduced legislation and let it go through with no mechanism whereby this House could review it—other than as it works through the Committee stages. This is groundbreaking legislation The Opposition is concerned to ensure that the Parliament maintains a watchful eye in relation to the implementation of the legislation between now and January, and maintains its responsibility to ensure that the legislation meets community expectation.

Again I make the point that we have continually raised our concerns that the legislation may not go far enough. This amendment guarantees that the legislation will be revisited at some stage—and, I would expect, well and truly prior to the expiration date, which some members of the Government are saying is simply the end of the issue. This will allow for the legislation to be brought back before this House and debated. I again place on record that if the Opposition believes that the legislation is not strong enough and that it fails in a number of ways, we will move to strengthen the legislation to ensure that it meets community expectation. The suggestion made by the Government, that the Opposition is trying to weaken the legislation, is absolutely false. The Government knows that, and it is becoming evident as this debate continues that the Government does not want this legislation to come back before the House. The Government has simply ticked off the box, "Yes, we have got it done for 2003; DNA is in." We can hear the Premier's speech now. But the Premier does not want any opportunity for this Government to be held accountable to the people of New South Wales.

Once CrimTrac is introduced, once the Federal model is introduced across a number of other States, the Premier does not want his Government exposed in this House as having potentially the weakest legislation in the nation. That is what we are talking about. The Opposition is of the view that the introduction of such a system, albeit groundbreaking today, will see New South Wales dragging the chain in 12 months time. But, of course, the Government will give us an assurance that as a matter of course amendments will be put forward. We do not trust the Government on this legislation; we have not trusted the Government on other legislation, either. The Government says, "Trust us. We will put regulations into effect to fix the problems." Of course, what happens is that the Government makes an absolute mess of the regulations and there is then very little that this House can do.

Even worse is the way the Government manages the Legislative Assembly, where this legislation originated. There is no mechanism in that House by which members can effectively scrutinise Government legislation to amend, rectify and strengthen it. The moment the Opposition or a crossbench member moves in any way to rectify Government legislation, the Government applies the gag. It starves the Chamber of oxygen, and there is no opportunity for any public scrutiny or amendments to strengthen legislation.

Again I make the point so that Government members get it into their skulls: The Opposition will not stand for a situation that weakens the position we have taken on this legislation. There is only one way for us to

go, that is, to ensure that any discrepancies or failings that are identified as a result of the review are brought back to this Chamber. Let the Government stand in this Chamber and explain to the community why it is not prepared to rectify the problems which, I have no doubt, will be identified in the review. This is a safeguard to ensure rectification should problems be identified.

There is no provision in this legislation that deals with parolees. A number of groups in the community have serious concerns about parolees. The Hon. D. E. Oldfield has raised some concerns about this legislation and wanted to move amendments to it. These issues are significant when one looks at them in isolation, but are subject to further determination when one considers the problems that may arise as this legislation is, firstly, implemented and, secondly, acted upon following 1 January 2001. It is extremely important that this House, representing the community, voices its concern to the Government that we are not prepared to simply walk away from this legislation once it passes through this Chamber today. We want a safeguard that will enable the legislation to be brought back.

The very last part of the Hon. R. S. L. Jones's amendment allows for the Government to reintroduce the legislation at any stage. The Government does not have to leave it, as it is trying to paint the picture, to the eleventh hour. If it did, it would be negligent. It should reintroduce it once the Ombudsman, and the select parliamentary committee in its oversighting role, has conducted a review. The standing committee has already looked at the problems in the legislation. The Government should reintroduce the legislation so that we can debate it and toughen it up. Simply allowing it to disappear out the door today is unacceptable.

The Opposition is committed to ensuring that this legislation works. We are committed to ensuring that there are no barriers to law enforcement, that there is a fair and equitable application of this law, and that it does what we want it to do: identify people who break the law in our State and bring them to justice. We want to make sure that if problems are identified once this legislation comes into play, we have a vehicle by which we can reintroduce it and fix up the Government's poor handiwork.

The Hon. J. HATZISTERGOS [12.33 p.m.]: The comments of the Leader of the Opposition are peculiar. On the one hand he says that he wants to toughen up this bill. Yet he has not put up a single proposal in this debate, nor has the Opposition moved one amendment, to toughen up the bill. In fact, the Opposition has joined the Government in knocking over every proposal that has been put forward by the crossbench. Let us have a look at what the amendment is trying to do. Proposed subclause (8) of clause 121 states that this Act will expire on the eighth sitting day after the Ombudsman tables a report on the operation of the Act, but it may be revived. In other words, the bill will expire and cease to have effect—that is the sunset clause—and it cannot be revived until five days after the expiry by resolution of both Houses. Therefore, there will be a hiatus period in which no legislation operates.

The Hon. R. S. L. Jones: That is not true. You are misleading the House.

The Hon. J. HATZISTERGOS: No, the Hon. R. S. L. Jones is the one who is misleading the House. He is committing a fraud upon the people who want DNA procedures in operation. The honourable member wants to hold the whole Act as a hostage to be used for the sort of nonsense he was moving earlier in the Committee stage. Not only will the amendment leave us with a period in which basically no legislation or scheme is operating; the police will not be able to carry out any procedures. If they do, they will not have the protections which the Act provides.

The way the amendment tries to subvert the Constitution is insulting. The amendment says that the bill will be capable of being revived upon a resolution of both Houses. My understanding of the Constitution the last time I saw it is that legislation is enacted by a bill being passed by the Legislative Assembly and the Legislative Council and being assented to by the sovereign, not by resolution of two Houses of Parliament. What sort of nonsense is the honourable member proposing? He is putting the legislation under threat because the amendment may be unconstitutional.

Even if this silly, ill-conceived proposal is passed, there is a problem with the definition of "revive". We do not know what it means. Does it mean that the bill continues to operate forever? Does it mean it is revived on the day that the two Houses of Parliament pass their resolution, so that there is still a gap in between? The next problem with this proposed amendment is that proposed subclause (9) states that the legislation will be revived in such a manner as is specified in the resolution and as soon as practicable after the resolution is passed. How on earth will that resolve anything? The Hon. R. S. L. Jones refers to proposed subsection (10) of clause 121, which states:

> Subsections (8) and (9) do not have effect if, before the expiry day, an Act of Parliament or resolution of both Houses provides that they do not have effect.

The Hon. R. S. L. Jones has seen fit to propose an amendment which states that the provisions of an Act do not have effect if a bill is passed saying they do not have effect. That is enlightening! Proposed subsclause (10) of clause 121 also provides that they do not have effect if a resolution of both Houses of Parliament provides they do not have effect. We have the same problem. A bill is passed, then all of a sudden it can be changed or altered by a resolution of both Houses of the Parliament!

Reverend the Hon. F. J. Nile: Who drafts the resolution?

The Hon. J. HATZISTERGOS: Heavens knows. The next problem is that proposed subclause (10) of clause 121 carries the implication that an amending Act of Parliament or a resolution will not apply unless they are passed before the supposed expiry date. Overall, this is a silly proposal. It does more than what the Leader of the Opposition has suggested. The honourable member said that he does not trust the Government. But he has not put forward an amendment, because he has not thought about it or he does not know how it operates. There will be a ministerial review, a review by the Standing Committee on Law and Justice and an Ombudsman's report. If pressure from those three bodies does not force the Government to make necessary changes as a consequence of the operation of the bill, I do not know what will. This bill must not be held hostage. After the expiration of this bill, for the period of the sunset clause no legislation would be in operation and the police, or anyone else investigating crime, would be impeded by the operation of this silly proposal.

Reverend the Hon. F. J. NILE [12.38 p.m.]: The Christian Democratic Party opposes the amendment, which is described generally as a sunset clause. It is my understanding from previous debates about sunset clauses that members support a sunset clause because they have strong reservations about particular legislation. In other words, they are not happy with the legislation. That is the principle that has been followed in the House. It does not make sense for the Opposition to support the amendment when it says that this bill is not strong enough. A sunset clause is provided because members have reservations about the bill itself. The Hon. R. S. L. Jones, when speaking to his amendment, said "We are not able to review the legislation." The Christian Democratic Party received a letter from the Police Association of New South Wales. The letter, signed by the secretary, stated:

> We are nevertheless satisfied that there ought to be appropriate review mechanisms given the complexity of the proposed legislation. Following discussions with both the Government and the Opposition the Association believe that the amendments proposing reviews by the Ombudsman, the Attorney General and the Standing Committee on Law and Justice will ensure any problems with the legislation can be rectified.

Obviously, at any of the stages mentioned, amendments can be recommended by those bodies. Usually the Government accepts them and brings forward amending legislation. Even more importantly, the letter also stated:

> However we can see no justification for the amendment, which proposes that the legislation would expire should there be no "resolution by both Houses of Parliament". This is unprecedented in my experience and can only lead to unnecessary confusion and uncertainty in the event that the section was triggered. Whilst we have been given assurances that this would not permit this to happen there remains this possibility. Additionally, the proposal would seem to ensure that any amendments recommended by the reviews would have to be rushed through without time for due consultation and consideration. We believe it to be more appropriate for the legislation to continue in force pending a proper consideration by the parliament and relevant stakeholders of any recommended changes. We would be happy to participate in any discussions regarding these issues.

The association re-emphasises the importance of this legislation. The letter further stated:

> Noting the experience of our colleagues in the United Kingdom and the United States it is clear that the use of DNA testing combined with an effective database will revolutionise policing in this state.

That fits in with concerns expressed by the Minister for Police about anything being done that will weaken or undermine the bill. The letter further stated:

> Additionally, it will assist the criminal justice system to more efficiently determine the guilt or innocence of those persons accused of serious crimes. We urge therefore that the Bill be passed without further delay and without the amendment, which could result in the expiration of the legislation.
>
> Yours faithfully
>
> Peter Remfree
> SECRETARY

The Christian Democratic Party is very disappointed that the Coalition Opposition supports the amendment, because that support is completely inconsistent with its position and that of the Leader of the Opposition, the Hon. M. J. Gallacher, a former long-serving and highly efficient member of the New South Wales Police Service.

I do not think anything could stop a general purpose standing committee, upon referral to it by a House of this Parliament, investigating DNA testing if a problem emerges in a particular area. No gag is being applied to this legislation. In fact, a surplus of inquiries may well cause confusion if there are conflicting recommendations and subsequent amendments. For those reasons, the Christian Democratic Party cannot support the amendment. I acknowledge that some of the amendments proposed by crossbench members would weaken the legislation, if not destroy its actual purpose. The Christian Democratic Party believes that the amendment to insert a sunset clause reflects a frame of mind that seeks to undermine confidence of both police and community in the legislation.

Ms LEE RHIANNON [12.43 p.m.]: The Greens support the amendment and congratulate the Hon. R. S. L. Jones on introducing the idea of a sunset clause. The Greens support the amendment because it provides a mechanism for checking on the implementation of legislation that will have a momentous effect on the application of criminal law and on how this State abides by fundamental principles of human rights. The Greens will be pleased to support this amendment and to see it in the statute books.

I was surprised by comments by honourable members on the Government bench. The Hon. R. D. Dyer stated that the amendment is "most unusual" in the light of various other means available for assessment of legislation. The honourable member should know that just because a proposal is unusual does not mean it should not be supported. As the Hon. R. S. L. Jones has explained, the amendment provides a mechanism to assess the operation of the legislation.

This debate has been proceeding for approximately an hour and a half, notwithstanding other agenda already unfolding. I have been a member of this Parliament for a little over one year, but I find it extraordinary that the Minister in charge of the bill is missing from this Chamber. I imagine that does not occur frequently. Honourable members have heard that the Attorney General, and Minister for Industrial Relations has resigned. The two Ministers at the table—the Treasurer, Minister for State Development, and Vice-President of the Executive Council, and the Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast—are like the Bobsey Twins and are sharing the carriage of this bill.

Honourable members understand from rumours that have been circulating that the bill has been the subject of very contentious discussion within the Australian Labor Party, right up to Cabinet level. It is interesting that this point of time, when the legislation is being considered by the Parliament, has been chosen for the Attorney General's resignation. One is left wondering whether the absence of the Attorney General is an indication of a lack of consensus within the Australian Labor Party about this highly questionable legislation.

[*Interruption*]

As usual, there are attempts to talk down members of the crossbench and to deny what is obviously happening. There has been a lack of consensus associated with this legislation and I am surprised that the Treasurer would deny that. The fact that the Attorney General is not present in the Chamber to speak to this legislation surely warrants comment because it is a most unusual situation. As well as speaking to the actual amendment, I think the Treasurer and the Special Minister of State owe the Committee an explanation of what is actually going on. The Greens support the amendment.

The Hon. J. S. TINGLE [12.46 p.m.]: There is no question that the legislation is vital, for it will give the Police Service and the criminal justice system a tool they have never had before. Nobody doubts that. However, honourable members seem to be confronted by two ideologies contesting the manner in which the bill should be developed. When the bill was mooted, I was approached and asked what I thought about a sunset clause. I have no problem with sunset clauses because my party's policy is that all legislation should have a sunset clause, and, to spell that out, the requirement is for review at a stipulated period after it comes into force. A sunset clause does not call for legislation to be allowed to expire, to be repealed or to be knocked off. Honourable members should not be asked to contemplate such an amendment to any legislation without being quite sure of the consequences.

Legislation for DNA testing should either be done properly or not at all. For the life of me I do not see how testing can be done properly if a threat is left hanging that the legislation will expire 18 months after

commencement. I have lingering concerns about those who may be engaged in DNA screening at a gaol and who may have to take DNA samples knowing that empowering legislation will soon expire. Would they be left wondering whether their actions would subsequently be regarded as legal and whether samples taken could be retained and used? If the amendment is adopted and becomes part of the Act, honourable members will have passed a sentence of death on the effectiveness of the legislation.

I do not believe that 18 months is sufficient time within which to determine whether the legislation can work effectively or, at a social justice level, whether it is really needed. The Opposition is quite sincere in suggesting that the legislation should be reviewed shortly after it commences operation to ascertain whether it needs strengthening. The bill is groundbreaking legislation and nothing like it has ever been enacted before in Australia. The Opposition is correct in saying that it should be kept under review, and I agree that re-examination of the legislation is not unreasonable. However, I perceive a curious dichotomy between the attitude adopted by the Opposition and the amendment moved by the Hon. R. S. L. Jones. The Opposition wants to bring this bill back to Parliament in 18 months to examine it and possibly strengthen its provisions, but I am quite sure that the amendment, if carried, will be so restrictive that it will do nothing more than gut the bill.

The amendment is designed to make the bill ineffective and incapable of being properly applied. The amendment suggests that the section will not have effect before the expiry date if an Act of Parliament or resolution of both Houses so provides. The situation referred to by Hon. J. Hatzistergos—a hiatus of five days with no law in place—must be avoided. We cannot support an amendment that would stop in its tracks for five or 10 days, or even three weeks, an Act passed by this Parliament, if that legislation is to be the subject of a report to the Parliament. The bill is a good measure. I accept the Opposition's assurances—and I think it is right—that the bill may need to be reviewed and strengthened. But three reviews are already in place and therefore the amendment is not necessary. I do not support it.

The Hon. Dr B. P. V. PEZZUTTI [12.50 p.m.]: I support the amendment moved by the Hon. R. S. L. Jones. The Opposition is totally committed to the introduction of DNA testing for criminal investigations. A lot of science and magic is involved in the interpretation and collection of DNA samples, and the legislation will have to be revisited very soon after its enactment. The Government cannot be relied on to do that. Today I heard the Premier interviewed in Maclean about the Dairy Industry Bill. He said that the amendment by the Opposition is of no account because it is an amendment, and he added, "We are committed to the legislation." The Premier's statements remind me of the procedures referred to today by the Hon. J. Hatzistergos. The function of members of this House is to review legislation and make it better for the grateful people of New South Wales who elect us.

Reverend the Hon. F. J. Nile: Not scrap it.

The Hon. Dr B. P. V. PEZZUTTI: The legislation will be scrapped only if the Government is not sensible about putting in place a more accountable arrangement than it is offering. The amendment moved by the Hon. R. S. L. Jones will improve the legislation and take away some of the uncertainties in the community and among privacy groups, the Law Society and others. They want to ensure that any failings in the Act, if it has any, can be remedied rapidly. The proposed inquiry is a good idea: it will monitor the introduction of the bill and the practices that flow from it. If the proposed inquiry identifies any shortcomings in the bill, the Parliament can bring forward appropriate amendments.

Earlier Ms Lee Rhiannon used the "con" word—in her references to the economy overseen by the Treasurer and to her lack of confidence in the Government—and she is right: if an idea is not the Government's idea, it is condemned as a bad idea. That concept has to be struck from the thinking of members of this House. Members should assess legislation that comes before this House as a greenfield site opportunity, and should be ready and determined to use all the brains, experience and support available to them to make the legislation sing. If the Government is so arrogant and so out of touch that it cannot recognise an opportunity staring it in the face to get it right, I have even less trust in it.

I do not know why the Attorney General has retired today, but I wish him all the very best. I wish to put on record my appreciation of the work of the Attorney General and the huge amount of legislation he brought forward—in this session alone—to improve the lot of the people of New South Wales. Obviously, he has had some wins and some losses in Cabinet. So be it, that is the way it is. In answer to a very difficult question asked by me the other day about the protection of outworkers he gave a very studied and sensitive answer.

It is something he had obviously anguished about, taken account of and done something about. All the talk in the newspapers today is that the final chapter of the book of life has been written because the human

genome project has come to an end. We have now mapped DNA for the first time. It is great that the project has been completed, but it does not answer all the questions about DNA, DNA testing, or how it can be manipulated to assist the justice system or medical treatment. I support the amendment moved by the Hon. R. S. L. Jones. It is time that this House took itself seriously and gave itself responsibilities as well as privileges.

[*The Chairman left the chair at 12.55 p.m. The Committee resumed at 2.30 p.m.*]

The Hon. R. S. L. JONES [2.30 p.m.]: During the lunch break I obtained a long list of Acts that contain a sunset clause, including the Workplace Injury Management and Workers Compensation Act, the Administrative Decisions Tribunal Act and the Industrial Relations Act 1966. The Hon. J. Hatzistergos has insulted Parliamentary Counsel, who carefully worked on the amendment to ensure that it would achieve what many honourable members want it to achieve. The Bar Association and the Law Society support the amendment—they are obviously more expert in constitutional law than the Hon. J. Hatzistergos—and believe that it will not cause any problems. This straightforward amendment, which is supported by the Opposition and the majority of sensible crossbenchers, will ensure that the legislation continues without any hindrance.

The Hon. J. Hatzistergos asked what would happen if the clause becomes inoperable. Recently the police DNA tested almost the entire male population of Wee Waa, apparently without any problems—that will be determined later—and without legislation in place. Evidently, the police can continue to DNA test without legislation in existence. Sensible crossbenchers and the Opposition propose that the clause should come before the House of review, when the Government so determines, so that it can pass a motion if it believes the legislation is adequate. The Government determines when motions come before the House, and that may be before or after the expiration of the clause.

A number of honourable members have flagged this as a problem in quite an hysterical way in the media, but no problem exists. The legislation will continue. The police can test without the legislation. If the Government wants to move a motion in the House prior to the expiration of the clause it can do so. If this House of review then believes that the legislation is unworthy of being broadened nothing will change. The Opposition proposes to toughen up the legislation and see how it works during the next 1½ years. It may be that after the 1½ years the Government will say that it has to toughen up the legislation, that it is too draconian, that it has problems, that it is too tough or that other amendments will have to be moved along the lines proposed by the Australian Democrats and the Greens, but we do not know yet. I believe that honourable members should support this amendment to ensure that the Government comes back to, and respects, the House of review and allows honourable members to make a decision about the legislation further down the track.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 17

Mr Bull	Miss Gardiner	Ms Rhiannon
Dr Chesterfield-Evans	Mr Gay	Mr Ryan
Mr Cohen	Mr Harwin	Mr Samios
Mr Corbett	Mr R. S. L. Jones	*Tellers,*
Mrs Forsythe	Mr Lynn	Mr Jobling
Mr Gallacher	Dr Pezzutti	Mr Moppett

Noes, 22

Mr Breen	Mr M. I. Jones	Ms Tebbutt
Dr Burgmann	Mr Macdonald	Mr Tingle
Ms Burnswoods	Mrs Nile	Mr Tsang
Mr Della Bosca	Revd Nile	Dr Wong
Mr Dyer	Mr Obeid	
Mr Egan	Mr Oldfield	*Tellers,*
Mr Hatzistergos	Mrs Sham-Ho	Mr Manson
Mr Johnson	Mr Shaw	Mr Primrose

Pair

Mr Hannaford	Ms Saffin

Question resolved in the negative.

Amendment negatived.

Ms LEE RHIANNON [2.41 p.m.]: I move:

Page 92, clause 121. Insert after line 15:

(4) The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the exercise of functions conferred on police officers under this Act.

This amendment is another measure to help tighten this legislation and ensure the safeguards that many crossbench members and organisations who closely track human rights issues in this State have thought were well and truly needed. This amendment strengthens the Act by more clearly spelling out the role of the Ombudsman. We recommend this amendment most strongly to the Committee.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [2.42 p.m.]: The Government accepts this amendment. It merely spells out that the Ombudsman can provide recommendations and any report for consideration by the Minister. One would hope the Ombudsman would do so if required. However, on the face of it, there is no harm in specifying this in the legislation.

Amendment agreed to.

The Hon. R. S. L. JONES [2.43 p.m.]: I move:

No. 14 Page 93. Insert after line 13:

123 Inquiry by Standing Committee on Law and Justice

(1) The Committee of the Legislative Council established under the name of the "Standing Committee on Law and Justice" is to enquire into and report on the operation of this Act and the regulations.

(2) The report is to be tabled in the Legislative Council as soon as possible after the end of the period of 18 months from the date of assent to this Act.

(3) Without limiting the matters that the Committee may take into account for the purposes of its enquiry and report, it may take into account the following:

(a) any relevant provisions of the Model Forensic Procedures Bill 1999 set out in Appendix 3 of the Discussion paper dated May 1999 prepared by the Model Criminal Code Officers Committee or of any State, Commonwealth or other law,

(b) the wider social and legal implications of use of information obtained from matching of DNA profiles derived from forensic material,

(c) the effectiveness of matching of DNA profiles as an investigative tool,

(d) the reliability of the matching of DNA profiles for the purposes of forensic identification.

(4) The Committee may make recommendations in its report about amendments that might appropriately be made to the Act to enhance its operation and provide further safeguards for the privacy and civil liberty of persons on whom forensic procedures are carried out, or proposed to be carried out, under the Act.

Although the Government is not prepared to refer the issue to an inquiry before the passage of the bill, it has been conceded that a full parliamentary inquiry into DNA testing in New South Wales is needed. The Opposition and the Government have been sympathetic to community concerns in speeches in both the upper House and the lower House. I thank them for recognising that a referral to the Standing Committee on Law and Justice is a vital step in monitoring this bill and in reassuring the citizens of New South Wales that the Parliament will be assessing the operations of this highly complex issue. The Law Society has written in support of the amendment as follows:

> Your proposal that the Standing Committee on Law and Justice have the opportunity to inquire into and report on the operations of the legislation once it is enacted and to make recommendations for any amendments deemed appropriate is supported.

The President of the Council for Civil Liberties, Mr Kevin O'Rourke, has stated that the council unreservedly supports this amendment. The New South Wales Bar Association has also written in support of the reference to the law and justice committee. Therefore, I urge honourable members to support the amendment without calling a division so that a parliamentary inquiry can be undertaken into this contentious issue and that the multitude of concerns raised during debate on the bill are given the consideration they deserve.

Ms LEE RHIANNON [2.44 p.m.]: I move:

That the amendment be amended by inserting after proposed section 123 (4):

(5) The Committee is to furnish a copy of the report to the Ombudsman for consideration.

This amendment strengthens the legislation to ensure that a copy of the report is forwarded to the Ombudsman for consideration.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [2.45 p.m.]: The Government supports the amendment moved by the Hon. R. S. L. Jones and the amendment moved by Ms Lee Rhiannon to that amendment. While there are already two reviews of this legislation by the Ombudsman and the Minister, the Government has no objection that a review be conducted by the Standing Committee on Law and Justice 18 months after the date of assent. Further, in relation to the specifics of the amendment moved by Ms Lee Rhiannon, it will be appropriate for the standing committee to provide a copy of its report on the legislation to the Ombudsman as part of the co-ordinated response to the review. Honourable members will be aware that this will be one of the best-monitored pieces of legislation considered by this House as it contains in-built reviews. The more co-ordinated they can be, the better. It is for this House to consider the bill in the future if required.

The Hon. R. S. L. JONES [2.46 p.m.]: I support the Greens amendment to my amendment.

Amendment of amendment agreed to.

Amendment as amended agreed to.

Part 15 as amended agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

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

MINISTRY

The Hon. M. R. EGAN: Following today's resignation by the Hon. J. W. Shaw as Attorney General, and Minister for Industrial Relations, I hereby notify honourable members that the Hon. Bob Debus has been sworn in as Attorney General and the Hon. J. J. Della Bosca has been sworn in as the Minister for Industrial Relations. I will represent the Attorney General in this Chamber under the new ministerial arrangements. The Hon. Carmel Tebbutt will continue to represent Minister Debus's other portfolio responsibilities in the Legislative Council. The Hon. Kim Yeadon will continue to represent the Minister for Industrial Relations in the Legislative Assembly.

INDUSTRIAL RELATIONS AMENDMENT BILL

Second Reading

Debate resumed from 23 June.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [2.50 p.m.], in reply: I thank all honourable members who contributed to the debate on the Industrial Relations Amendment Bill. However, the contributions of some honourable members were more

considered and perceptive than the contributions of others. It is highly significant that the Leader of the Opposition devoted a considerable portion of his remarks to attacking matters that are not in the bill. This clearly shows the paucity of critical comment that he could find to make about what is actually contained in the bill. The Leader of the Opposition, in his remarks about the proposal to allow the Industrial Relations Commission of New South Wales to make orders declaring independent contractors to be employees, ignored the whole of the statutory context in which these proposed provisions are being put forward. It is not the position that all independent contractors will suddenly become deemed employees.

The bill put forward a comprehensive process which the commission—the independent umpire—would need to follow, with specified criteria to which regard must be had, before such orders could be made. As I announced, this part of the bill is to be detached from the remaining provisions and dealt with at a later time. Alarmist comments from the Leader of the Opposition serve only to obscure what the bill is seeking to achieve. The Leader of the Opposition spoke also about the proposed amendments to the unfair dismissal provisions. There are clearly some problems in reconciling two different legislative schemes for dealing with unfair dismissals, so that the New South Wales system picks up some gaps in the Federal system, but not others. Moreover, the existence of a right to seek a remedy against unfair dismissal is not some dire affliction visited upon employers but a desirable protection against arbitrary and unfair treatment.

The unfair dismissal provisions of the New South Wales Industrial Relations Act 1996 merely seek to ensure that all employees receive the treatment that a good employer would provide in any case. The point can also be made that the consequences alleged to flow from the provisions in the bill are much exaggerated. However, as the intention of the proposal in this area was merely to provide an unfair dismissal remedy to those currently without any such right due to constitutional constraints, the Government is prepared to amend the bill in this respect. Listening to the comments of the Leader of the Opposition about the provisions in the bill dealing with the reversal of onus in victimisation proceedings, one would not think that all we are doing is achieving conformity with what has been in Federal industrial relations legislation since 1914, and with the situation that existed under the previous New South Wales Industrial Relations Act 1991, enacted by the Greiner Government.

The extravagant statements of the Leader of the Opposition on this topic have no basis in substance. The proposal contained in the bill is being put forward because, without a reversed onus provision, victimisation provisions are largely ineffectual. Again, with the proposals in the bill regarding the removal of non-judicial members of the Industrial Relations Commission, what is being put forward will merely bring the position into line with what was in the New South Wales Industrial Arbitration Act 1940, the Greiner Government's Industrial Relations Act 1991, and what is currently the situation under the Federal Workplace Relations Act 1996. The Leader of the Opposition is opposing what State and Federal Coalition governments have done in this area.

The Hon. M. J. Gallacher: We are cutting our own path.

The Hon. J. J. DELLA BOSCA: That would be right! The standing and impartiality of members of the Industrial Relations Commission justify protection against arbitrary dismissal. It would be highly undesirable to have a situation where members of the commission who displease the government of the day can be thrown out of office. It is worrying that this appears to be the approach advocated by the Leader of the Opposition.

The Hon. M. J. Gallacher: Your people don't do that?

The Hon. J. J. DELLA BOSCA: We can't do that.

The Hon. M. J. Gallacher: No, not much!

The Hon. J. J. DELLA BOSCA: It appears that the Leader of the Opposition would want to do that, because that appears to be the approach that he advocates. I should like to thank the Hon. Dr P. Wong for his comments on the bill. He rightly identified trends in the work force which modern industrial relations legislation must seek to address. It was especially pleasing to hear him reaffirm the importance of a collective approach to industrial relations. As favoured by the Hon. Dr P. Wong, the provisions dealing with enabling orders to be made declaring contractors to be employees for the purposes of the Industrial Relations Act have been deferred. I am pleased to note his support for the remainder of the bill.

I wish to thank also Ms Lee Rhiannon for her thoughtful contribution to the debate. The honourable member appears to appreciate that the exploitation of workers is a wrong that should be corrected. It is a shame

that more honourable members of this House do not subscribe to that view. As Ms Lee Rhiannon stated, it is disturbing to learn from listening to the debate that members in this place have such little understanding of how hard life is for the majority of people. This bill as introduced was about ensuring that little people, vulnerable workers, are given some modest measure of additional protection. It is a shame that the Opposition has sought to play politics with this bill rather than to ensure that all workers receive fairness and equity.

The Hon. I. Cohen made some sensible comments about the provisions dealing with enabling orders to be made declaring contractors to be employees for the purposes of the Industrial Relations Act. He noted in particular that some of those most closely affected support those provisions. I thank him for his expressions of support regarding the bill. The proposals contained in those aspects of the bill which it intended to progress will ensure that the Industrial Relations Act 1996 continues to provide a fair and just framework for the conduct of industrial relations in New South Wales. The New South Wales industrial relations system remains firmly based on co-operation and consensus. Our system is practical, user friendly and expeditious. It reflects pragmatism and utility. It supports the role of the independent umpire. It demonstrates that a collectively based system can deliver workplace productivity and efficiency, whilst also protecting vulnerable workers. The bill before the House embodies this sensible approach to industrial relations. I commend the Industrial Relations Amendment Bill to the House.

Motion agreed to.

Bill read a second time.

ROAD TRANSPORT (HEAVY VEHICLES REGISTRATION CHARGES) AMENDMENT BILL

Second Reading

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [2.58 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 purpose of the bill before the House is to amend the Road Transport (Heavy Vehicles Registration Charges) Act 1995 to enable the adoption of a second generation of charges for heavy vehicles. The basis for this amendment is the policy proposal developed by the National Road Transport Commission which was approved by the Australian Transport Council in January 2000. The Australian Transport Council comprises Ministers responsible for transport in all States and Territories as well as the Commonwealth. The Minister for Transport, and Minister for Roads represents New South Wales on the council.

As honourable members would be aware, the heads of government in all Australian jurisdictions agreed in 1991 and 1992 to a process of national reform of road transport law. Part of the reform process was the development of a common system of registration charges for heavy vehicles. In New South Wales, the reform was implemented by the enactment of the Road Transport (Heavy Vehicle Registration Charges) Act 1995. That Act commenced on 1 July 1996 and applied to all vehicles with a gross vehicle mass of more than 4.5 tonnes.

The introduction of national charges by this Government in 1996 resulted in a productivity saving to industry of $59 million in 1996-97. If the flow-on effect of the reduction in heavy vehicle charges that occurred at that time is further considered, then it is estimated that subsequent industry savings were of the order of $62 million in 1997-98 and up to $71 million in 1998-99. There is no doubt that the introduction of nationally uniform heavy vehicle charges into New South Wales has delivered substantial productivity savings to this State's trucking industry.

I must point out that, unlike other costs faced by industry, there has been no subsequent increase in heavy vehicle charges since they were introduced back in 1996. Heavy vehicle charges are not even subject to consumer price index [CPI] adjustments. In real terms this means that charges have actually gone down. The new heavy vehicle charges that this Government, along with all other Australian States and Territories, is seeking to introduce, represent a marginal increase for most vehicle operators. In New South Wales approximately 61 per cent of the heavy vehicle fleet will experience no increase. The vast majority of the remaining 39 per cent will experience an increase ranging from $50 per axle for a trailer, and up to $750 for a B-double prime mover.

This point needs repeating: for 61 per cent of the New South Wales heavy vehicle fleet there will be no increase in registration charges. That means that, since 1996, registration charges for these vehicles have remained static. That demonstrates my Government's commitment to providing a stable and productive environment for the New South Wales trucking industry. And for the remaining 39 per cent of vehicles that experience an increase in charges, this is being done on the basis of the costs these vehicles impose on road infrastructure in terms of wear and tear. These increases are necessary and justified. These new charges demonstrate this Government's commitment to keep business costs down and only increase charges where it is justified and necessary to do so to ensure equity and efficiency.

It was decided to introduce second generation charges from 1 July 2000 because the Commonwealth diesel fuel credit scheme, which will return to industry approximately $600 million in 2000-01 and $690 million in 2001-02, will become effective. Therefore, industry will have a capacity to pay the increased charges and it is unlikely to be an added burden. Within this context it should also be noted that the National Road Transport Commission [NRTC] estimates that registration charges only represent from 1.4 per cent to 2.1 per cent of total vehicle operating costs. The NRTC estimates that the revised charges regime will raise an additional $20 million nationally in extra registration revenue from the heavy vehicle industry.

In respect of those vehicles that impose additional wear on the New South Wales road infrastructure, there are three particular vehicle categories where charges will increase. They are B-doubles, six-axle truck-trailer combinations operating above 42.5 tonnes and special purpose vehicles. In respect of B-doubles, the charge for the most common B-double combination increases by $1,000. The current charges that apply to B-doubles were calculated using 1992 data. Since that time there has been a significant increase in the number of B-doubles using the road network and the number of kilometres they travel. They are very large and very heavy vehicles. They carry loads that average from 50 tonnes to 62.5 tonnes. These vehicles represent a significant imposition on the road network in terms of wear. The extra cost in road wear and road damage that has resulted from the growth in number and use of these vehicles needs to be recouped through higher charges.

There is another group of heavy vehicles known as the six-axle truck-trailer combinations that operate above 42.5 tonnes and up to 48 tonnes. This small group of combination vehicles, which the Roads and Traffic Authority estimates to be about 1,000 in number, now pay $2,850 in charges. This is less than half the amount that a vehicle of similar weight, such as a B-double, pays in charges. The charges for these heavier truck-trailer combinations are not consistent with the level of road damage they cause, and the increase in charges is justified. In recognition of the extra wear and tear that these heavy vehicles impose on the roads, they have been reclassified into a higher charging category and their charges will subsequently increase by $1,850, going to $4,700 for the truck-trailer combination.

This change is supported because: it brings the truck-trailer combination charge into line with similar heavy vehicles such as 50 tonnes B-doubles, which will pay up to $5,500; the charge more appropriately accounts for the level of road wear imposed by the vehicle; and it ensures the total charging regime delivers price signals that favour safer and more stable vehicles such as the six-axle semi-trailer, which face slightly lower charges. The third and final group of vehicles, for which I wish to detail proposed charges, is the special purpose vehicle. Currently, there are two types of special purpose vehicles. Type one is made of plant vehicles and truck-based plant vehicles, which are not overloaded, on an axle. Type two are vehicles which are overloaded on an axle.

Under the new charges, three charging categories will be created. These are: type P, which will be plant vehicles such as backhoes, tractors, graders, et cetera, which will pay a nil registration charge, as there is little or no use by them of the road network. Type T, which will be trucks such as cherry pickers, mobile cranes, concrete pumps, et cetera, will pay a $200 flat charge. Most vehicles in this category previously paid no charge. The reclassification has been done to more effectively categorise these vehicles according to their level of road usage. Again I reiterate that it is appropriate that the cost of maintaining roads is recouped from those who impose costs on the road network in terms of wear and damage. Type O—overmass—is the third category which will retain the existing charge of $250 per axle for Type T—truck—which is overloaded on an axle.

The introduction of the new Type P—plant—category may affect primary producers. However, a previous amendment to the New South Wales heavy vehicle charges legislation ensures that farmers pay no more in national charges than they would have paid under the previous New South Wales motor vehicle tax. Since their introduction, heavy vehicle charges have not been adjusted to take into account the impact of inflation. Between 1995 and 1999 it is estimated that the real value of charges, especially in terms of their ability to maintain a given level of expenditure on road maintenance, has been eroded by some 3 to 4 per cent. In contrast, light vehicles in New South Wales are subject to annual indexation based on movements in the CPI.

The NRTC has also proposed that heavy vehicle charges be subject to annual indexation based on CPI. The decision to apply a CPI adjustment would be the subject of annual consideration by the Australian Transport Council [ATC]. This matter was considered by members of the ATC in February 2000. The outcome of ATC member votes was that all jurisdictions supported the introduction of indexation except Western Australia and the Northern Territory. The matter was again considered at the May 2000 meeting held in Queensland. Again, a majority of Ministers supported the concept of indexation. Supporting jurisdictions are now moving to introduce a mechanism into their legislation that will allow for the introduction of CPI-based indexation on an annual basis.

When originally considered by the New South Wales Minister for Transport, and Minister for Roads and other members of the ATC, it was determined that the decision to apply indexation would be an annual decision made by the council. The first decision on whether to apply indexation will be put to the ATC in respect of charges to apply from 1 July 2001. This gives Ministers and governments some flexibility to ensure indexation is applied to accurately recoup the growth in road wear costs and not simply applied to incrementally increase charges. The indexation of the NRTC's revised heavy vehicle charges would have the following benefits: it would ensure that the purchasing power of revenue raised from charges is preserved between recalculation reviews; the national charges would remain comparable with charges for light vehicles in New South Wales; and indexation would ensure the size of any adjustment made to the national charges when the rates are recalculated would be smaller.

In commending the legislation to the House, let me conclude by saying that there has been no subsequent increase in heavy vehicle charges since their introduction in 1996. Sixty-one per cent of the New South Wales heavy vehicle fleet will experience no increase. For the remaining 39 per cent, the charges represent a marginal increase and these increases are justified and are based on recouping the cost of road wear from those who impose the damage. Heavy vehicle charges have been one area of cost where industry has been able to plan and budget with the confidence that levels are known, predictable and stable. I commend the bill to the House.

The Hon. C. J. S. LYNN [2.59 p.m.]: The Opposition will not oppose this bill other than in relation to the indexation of the proposed registration charges, which I will discuss more fully later. As always, the Government has planted little time bombs in a piece of legislation. At present the trucking industry, and

particularly owner-drivers, in New South Wales—and indeed possibly Australia—is in dire financial straits. Truck protests have recently been held in various parts of the State. Whilst there are many reasons for the blockades and protests, the bottom line is financial hardship. The rises in registration fees anticipated under the bill are significant, even if they will not apply to the majority of vehicles. For instance, the charge for B-double combinations will rise by $1,000, and for six-axle truck-trailer combinations by $1,850. A new charge for cherry pickers, mobile cranes, concrete pumps and the like has been levied, and owners of such equipment will now pay a fee of $200.

Our advice from industry sources is that there is some common ground in relation to the acceptance of registration charges and increases as being part of the totality of recovery of road system costs imposed on the trucking industry, and that is necessary to ensure that Australian industries can compete with global competitors in a fair manner. But offsetting this, of course, is the need to have the right balance. There is a fine line involved in ensuring that cost pressures do not outweigh any gains that may accrue from increased registration charges in creating that fair climate. The present method of calculating road charges lies in a government agreement signed in 1991. It is believed that the process was open and clear and was available to industry and public scrutiny.

Whilst I acknowledge—indeed, the Minister in the other place acknowledged this in his second reading speech—the benefit of the Commonwealth Government's GST in relation to the diesel fuel credit scheme, I do not think it should be used as a specific reason for increasing registration charges. The Minister needs to spell out clearly the reasons for the charges and expand on the productivity savings to the industry of $59 million that will allegedly be made in relation to the increased charges. I note that the Minister acknowledges that the introduction of the new type P, plant category, registration might affect primary producers. It is unfair to introduce that form of tax on the basic tools of trade of farmers. Whilst it might be argued that farmers can derive some form of income from those items, they are vastly different from people in the trucking industry and carrying business generally, and it is trite for the Minister to say that farmers pay no more in national charges than they would under the previous New South Wales motor vehicle tax.

Presently, special-purpose vehicles that do not use the road do not pay a road user charge. That must continue. I note, however, that the type T special purpose vehicle mentioned in the legislation is designed for road use. There may be some grey areas in regard to type T vehicles in relation to the need to register, and I hope commonsense and discretion will prevail in that regard. Consider a situation in which a farmer uses a cherry picker mounted on a truck chassis primarily for off-road use. He or she will pay $200 in national charges when registering the vehicle, whereas if the same farmer used a cherry picker designed for orchard use mounted on a tractor there would be no national charge. Turning now to indexation, I note that in the last part of the second reading speech the Minister tried to justify indexation. He said:

> ... the indexation of the NRTC's revised heavy vehicle charges would have the following benefit:
>
> 1. It would ensure that the purchasing power of revenue raised from charges is preserved between real calculation review;
>
> 2. The National Charges would remain comparable with charges for light vehicles in NSW;
>
> 3. Indexation would ensure the size of any adjustment made to the national charges when the rates are recalculated would be smaller.

I regret to say that those comments do not totally reflect the concerns within the industry that there would be no open and clear scrutiny of the charges. The comments I just read are straight out of a *Yes Minister* script. The Opposition has received a letter from the Australian Trucking Association opposing the indexation aspect of the bill. It states that it would represent an unjustified increase in charges that could hardly come at a worse time for trucking companies. It will also undermine the credibility of the existing open and accountable method of determining registration charges. That is one of the key objections to the process. The association advises that currently truck registration charges are set through a process laid down in the intergovernmental agreement on road transport signed on 30 July 1991. The association's letter states:

> This process is open, objective and subject to industry and public scrutiny. Indexation has none of these features. Even worse, indexation would undermine the credibility of the existing system.
>
> Trucking operators accept that we should pay for the use of the roads. We do so now. We are prepared to accept fair adjustments to the existing registration charges which reflect genuine changes to the cost of using roads.
>
> But we don't believe we should pay any more than needed to recover road costs.

The association refers to the recent huge escalation that has occurred in fuel prices as an added burden to the industry. The association notes:

> On the broader scene, quite a number of participants in the rail industry have expressed an interest in implementing the same open, objectively driven process for determining rail access charges as currently exists in road transport.

Ron Finemore, the chairman of the association, concludes the letter by saying:

> If there are any concerns about the way in which the existing arrangements for determining truck registration charges work, then we believe these should be exposed in public and debated.

That is the issue here, because indexation charges will mean automatic increases each year without consultation or justification. As with any other tax or government charge, the increasing registration charges should not be automatic but should be a transparent process subject to public scrutiny. That is an issue on which the Government could come under heavy criticism, because it is not seen to be open in its dealings with the public. Whilst the bill certainly does not spell out the annual registration charges and the type of vehicles those charges will apply to, it is only current for one year. Then the open public scrutiny provided under the bill—which by then will be an Act—will become obfuscated by the fact that indexation will occur. One presumes that details of that indexation will be buried in a regulation, which will be promulgated annually, and unless a disallowance is moved and accepted by the Parliament, inevitably the charges will continue to roll on with little or no public scrutiny and with little or no industry input.

I am reliably informed that the trucking industry petitioned the Minister earlier this year to reject indexation. It believes that it would be a giant step backwards. The industry's main thrust for the rejection of indexation is, as I have said before, to ensure that there is open, objective and credible scrutiny for the determination of truck registration charges. The Australian Trucking Association has noted in correspondence its reasons why indexation should not proceed. Indexation based on the consumer price index [CPI] will not necessarily reflect changes in road maintenance costs and would cause registration charges to increase faster than the increase in road maintenance costs. Additionally, indexation takes no account of the changes in vehicle use, either in total or by vehicle class, leading eventually to some vehicle groups paying a road user charge that is not reflective of the amount of road wear they cause. The June 2000 news section of *Truck and Bus* magazine said in relation to indexation:

> The proposal to index truck registration charge variations in line with the CPI is being opposed by the Australian Land Transport Association on the grounds that it will seriously affect regional Australia.
>
> The ALTA has written to all Transport Ministers seeking commitments to vote against the proposed measure.
>
> 'People and industries in regional Australia will be hit very hard by a proposal to index truck registration charges if it is given the green light by federal, state and territory ministers at the ATC on May 19 in Cairns', ALTA president Ross Fraser said.
>
> 'Regional Australia depends on road transport and it will bear the full brunt of city-orientated ministers looking to slug the road transport industry.'

The article also states:

> [He] said the three ministers who had so far opposed the move, Western Australia's Murray Criddle, the Northern Territory's Michael Palmer and federal minister John Anderson were regarded as being keys to the success of the anti indexation campaign.
>
> Regional and rural Australia needs solid help.
>
> The vote that ministers take at the ATC will show whether they are really interested in keeping people in the country or whether they are just interested in a tax slug which looks after some special interest groups.

That was a foregone conclusion with this Minister and this Government. He and his Government—the highest taxing government in the country—would grasp the tax slug option with both hands. The Minister should have put up his hand for New South Wales. He should have put up his hand for the truck operators in this State—those who are doing it tough every day. But no, this insensitive, arrogant Minister simply took the easy option of the additional tax slug.

It is in that context that the Opposition will move to amend that part of the bill to delete those references to indexation charges. The Minister will probably thump his chest and say, "The Coalition is responsible for the halting of uniform charges in accordance with the desires of the National Transport Council. It will be on the heads of members of the Coalition. All other calamities that might happen in the western world will pale into insignificance if the Opposition does not accede to the Minister's request for this matter to go forward in its entirety without amendment. The Minister, of course, will highlight the fact that uniform legislation is due to be implemented on 1 July. The incompetence of this Minister is evident in relation to his handling of his Transport and Roads portfolios. We certainly heard about his incompetence in a recent no confidence motion in the other place.

With only one day of this parliamentary sitting remaining, the Minister has introduced a bill that industry and New South Wales farmers have said they are not satisfied with and with which they have real problems and difficulties. It is not as though that information was given to the Minister in the last week or so. He has had that information for nearly a year; yet he introduces legislation in the twilight of the Parliament during the log jam that traditionally occurs under the Carr Labor Government. The shadow minister in the other place has advised me as follows:

> I have received reliable information that on the 19th May, 2000 at a meeting of National, State and Territory Ministers, it was decided that any decision on the issue of indexation should be deferred for further consideration in early 2001.

I understand that that letter has been circulated to members on the crossbenches. The shadow minister also said:

> In light of this information, it would appear that the NSW Roads Minister, Carl Scully has ignored this determination and the Road Transport (Heavy Vehicles Registration Charges) Amendment Bill, if passed, will see indexation introduced.

The Hon. Diana Laidlaw, a Minister in the South Australian Government, said in a letter to one of her constituents:

> As it is not considered tenable for indexation of changes to proceed in Zone A, thereby undermining uniformity in registration charges, the indexation issue was again considered by Ministers at our meeting on 19 May 2000—

The shadow minister in the other place referred also to this letter—

> but has been deferred for further consideration in early 2001.
>
> For your interest, the NRTC's publication "Updating Heavy Vehicle Charges: Regulatory Impact Statement" November 1999 contains a full discussion of the reasons for indexation—and is available from the NRTC web site.

The important point is that it has been recommended that the indexation issue be deferred until 2001. The Opposition is rather tired of the Government's threats that uniform legislation will fail if this bill is not passed by a certain date. If Ministers are not competent enough to introduce legislation which has gone through the Cabinet process in time for the community and industry to ventilate proper concerns, they deserve to have their legislative deadlines fail. To seek to almost blackmail the Opposition into passing legislation because it is some form of uniform legislation is a signal of their ineptitude and weakness.

The dairy industry, of course, is only one example of a Minister professing to oppose deregulation but nevertheless feeling bound to proceed to destroy the lives of dairy farmers because of national legislation. Leadership on uniform legislation is something that is sadly lacking by the Carr Labor Government and its Minister. When the indexation amendment is debated in Committee I would like the Minister to address the concerns of industry—concerns about which he has been aware for some considerable time—rather than espouse rhetoric, which I expect from him, about how the Liberal and National parties will destroy the western world as we know it if they do not pass these indexation provisions in the bill. The Opposition will not oppose the bill, but it will move an amendment to remove the indexation provisions, consideration of which should be deferred until 2001.

The Hon. I. COHEN [3.16 p.m.]: On behalf of the Greens I speak to the Road Transport (Heavy Vehicles Registration Charges) Amendment Bill. In 1995 the New South Wales Government, strongly supported by the Coalition, enacted the Road Transport (Heavy Vehicles Registration Charges) Act. The Act ensured that annual registration charges that had been determined by the truck-friendly National Road Transport Commission [NRTC] would be adopted by New South Wales. These NRTC charges saw annual registration and permit charges for the heaviest semitrailers operating at 42.5 tonnes gross vehicle mass [GVM] halve from $8,000 a year in 1996 to $4,000 a year. At the same time, B-double annual fees were slashed from $14,000 to about $5,500 a year. The cost to New South Wales of the new scheme was conceded by the Government to be over $50 million a year.

This annual loss was, and continues to be, money that would be better spent not only on better roads but also on hospitals, public transport and education. However, there were other costs to New South Wales. The NRTC charging regime also allowed all six-axle semitrailers to increase their GVM from a standard 38 tonnes to 42½ tonnes. The effect of heavier trucks on lightly constructed rural and regional roads in Australia is one reason why there has been increased demand for road funds. Indeed, current levels of road funding have not been enough to satisfy all road users, leading to ongoing calls for even more road funds. Another such call was made at the Rural Roads National Congress held at Moree in March.

A third cost of low road user charges in Australia is encouraging more freight onto roads, including some freight that would be better moved by rail, conveyors or pipelines. In fact, Australia is so good at encouraging the conduct of freight by road that, as a nation, we have the highest road freight per capita in the world. This is recognised by Austroads in a publication entitled "Australia at the Cross roads". The proposed increases in charges for heavy trucks are modest. Given that the first generation NRTC charges were determined in 1992 and were not indexed for inflation during the 1990s, the increases are long overdue. The new second generation NRTC charges will still result in a massive underrecovery from the heavier semitrailers and B-doubles that haul long distances each year.

The NRTC charges have a fuel use charge which was set at 18¢ a litre. This reflects the distance driven, but it is not a good proxy for road wear and tear. For this reason authorities such as the former Interstate Commission recommended the use of a mass distance charge for heavier long distance articulated trucks. Although the intergovernmental agreement [IGA] setting up the NRTC allowed the NRTC to impose a mass distance charge, that has not been done. The IGA also allowed for two zones in charging, but the NRTC, again in truck-operator-friendly mode, has kept one zone.

The least that the New South Wales Government can do is actively work towards charges with some mass differentiation so that the six-axle trucks hauling heavy road-wearing loads pay a higher annual charge than such trucks dedicated to lighter loads. There is also a need for distance differentiation in annual charges so that a truck operator hauling, say, 10,000 kilometres a year between Port Botany and nearby warehouses is not paying as much as an operator with five Sydney to Melbourne return trips each fortnight hauling over 200,000 kilometres a year.

Trials of tracking trucks are under way, and our own Safe-T-Cam could be used to assist with a more equitable system of charges for heavy vehicles to reduce the large hidden cross-subsidies to the heavy semitrailers and B-doubles. The technology is present—New Zealand has had mass distance charges for more than 20 years—and the computer systems and data acquisition can handle fairer charges. All that is needed is the political will. Although people in New South Wales can be grateful that the present Government has resisted the push from the road transport lobby, the NRTC and the Federal Minister for Transport for heavier trucks with so-called road-friendly suspension to accelerate the wear and tear on our roads for no extra payment, New South Wales simply cannot afford to go on with uniform truck charges.

The options of two zones allowed for in the intergovernmental agreement that set up the NRTC should be pursued by the New South Wales Government; so, also, should mass differentiation and distance differentiation for articulated trucks be pursued. Continuing to have only one zone in Australia with flat charges imposes a huge cost on New South Wales. Such issues could have been canvassed in a public inquiry into road funding and pricing, which was recommended by the Productivity Commission in its final report on rail reform. Anxious to please the road transport lobby, the Federal Government, in a statement made on 13 April, chose not to proceed with such an inquiry. It pretends that road funding and pricing do not need an inquiry. Because of this cop-out by the Howard-Anderson Government, the New South Wales Government should have its own inquiry into road funding and pricing.

It is altogether too easy for the Roads and Traffic Authority, with its generous funding from general revenue, car registration fees and share of fuel excise, to avoid the hard questions of equitable and efficient road pricing for heavy trucks. It is also too easy for the Environment Protection Authority to have a 25-year action for air plan, but for the Government to continue funding roads without road pricing at a level to deliver vehicle demand management.

Action for Transport 2010, which was released in December 1998, is also vague when it comes to road pricing. It talks about a freight 2010 study, which includes a statement about the need for promoting rail freight. It is understood that a detailed freight strategy was under preparation in 1998 for release in 1999. The question is: Where is the freight strategy and the extra investment in mainline rail track so as to make rail freight more efficient and competitive? For example, a failure to upgrade the North Coast railway at the same time as the North Coast freeway will encourage more and more Sydney to Brisbane land freight off rail and onto B-doubles. These issues are clearly spelt out in a brochure entitled "Fix the Rails up to Queensland", published in April by the Railway Technical Society of the Institute of Engineers, Australia, which in December 1999 released an infrastructure report card that gave this track an F-minus rating. In part the brochure states:

> The 1995 National Transport Planning Taskforce report noted that for Sydney-Brisbane rail "*Transit times, reliability and costs are so poor that the corridor may not survive as a commercial freight alternative unless improvements are implemented.*"

As someone who comes from the North Coast and has often referred to rail conditions and appropriate transport options, both passenger and freight, on the North Coast, I think it is appalling. Road development has caused considerable destruction, and the lack of the development of an appropriate rail transport infrastructure, which would resolve many of the problems on the North Coast, has caused alienation of that area from Sydney markets in particular. The brochure continues:

> As warned by the 1998 Federal Parliamentary report "Tracking Australia", intercity rail in Australia is fast reaching the point where unless track is upgraded it will lose traffic.
>
> This report identified, "*chronic deficiencies in the interstate national track"* between Perth and Brisbane, found that this track is in urgent need of improvement and, without an immediate investment of $1 billion over the next three years, *"… rail will continue to deteriorate"* to the point that intercapital city rail will become *"irretrievable"*. This could lead to line closure, and Queensland having no rail connection with the rest of Australia.
>
> Closing the Brisbane-Sydney railway would force more heavy trucks onto our roads, squandering the benefits of the $3 billion Pacific Highway upgrade.

The situation is bad enough already, with heavy trucks being encouraged to haul heavy loads over long distances with cheap annual registration charges. Both the Federal and New South Wales governments steadfastly refuse to put any price at all on expensive externalities such as road crashes involving trucks, noise and air pollution. New South Wales, like the rest of Australia, subsidises road freight through underrecovery of road system costs. A blatant example is the 8.1¢ per litre petrol and diesel subsidies given by Queensland to its road users. This then requires border fuel price adjustments that in recent years were costing New South Wales $25 million a year. Again, it is far too easy for the Roads and Traffic Authority in particular, and the New South Wales Government as a whole, to say, "Not my problem." or "Too hard."

Up to 30 June, of the 43¢ per litre diesel excise about 8¢ a litre was collected by the Federal Government and returned to New South Wales. Articulated trucks in Australia use more than 2,500 million litres of diesel a year, of which roughly 1,000 million litres a year is used in New South Wales. This gave rise to revenue of $80 million a year, which goes some way to repairing roads knocked about by heavy trucks in New South Wales. However, come 1 July the Federal diesel excise falls to 20¢ a litre—so what will happen to the $80 million a year then?

I have cited costs through hidden subsidies to trucks in New South Wales of more than $130 million a year, and subsidies to Queensland vehicle users costing more than $35 million a year. Why is the Government so willing to deny our schools, hospitals, public transport and other essential services more than $165 million a year to allow ongoing subsidies to heavy truck operators and other vehicle operators? Why is the Opposition so keen to support such subsidies instead of pressing for more equitable road pricing?

In conclusion, this bill represents a very minimalist approach to the important question of heavy vehicle pricing. Its passage should be contingent on a media release of the New South Wales freight strategy that the Minister has had under wraps for too long and the holding of a public inquiry into New South Wales road provision, funding and pricing. We also need advice on how New South Wales can bring its mainline rail track up to speed so that rail can be more efficient and competitive with land freight. This could be done by the Government having the simple courtesy of giving a formal response to the report of the inquiry into the tilt train by the Legislative Assembly's Standing Committee on Public Works.

For all these reasons the Greens support the bill, but our support unfortunately is qualified and unenthusiastic. In and outside this Parliament I have consistently said that unless we address the anomalies of support for the trucking industry to the detriment of rail transport, we will continue to have substandard roads and many problems, including the growing incidence of crashes and damage on our roads that could be avoided if more heavy transport was financially encouraged to go by rail. This would mean our roads would be far safer. The level of damage to our roads by trucks far exceeds any payment made to it in terms of levies by the industry. It is time that the imbalance was properly redressed. Under the guise of equity with other States and the national scheme fitting in with the Federal Government, this bill once again allows the trucking industry, with its colossal level of political influence on all governments, to get away with not paying the full cost of its road usage.

The Hon. M. I. JONES [3.28 p.m.]: I speak to the Road Transport (Heavy Vehicles Registration Charges) Amendment Bill. Increases to registration charges are due to the adoption in New South Wales of the national road rules. The national road rules have been accepted by New South Wales, but the only other jurisdiction to date to have accepted similar rules is the Australian Capital Territory. Virtually all New South

Wales rules have been adopted as a template for national road rules. There are only a few minor changes in New South Wales. The road signs for "No Standing", "No Stopping" and "No Parking" will be changed to "No Stopping" and "No Parking.

Motorists will also be able to do U-turns at traffic lights. Other than that, there will be few changes. However, the volume of paperwork and bureaucracy associated with implementing the national road rules is amazing. For example, traffic police currently carry a relatively small handbook to which they refer when dealing with errant motorists. It contains all the details that they require when booking motorists. Following this small change to the road rules, traffic police will be issued with five modules because the incumbent legislation is so complex—and, it would appear, quite unnecessary.

I believe we have adopted the national road rules without giving them sufficient scrutiny. The Parliament of Victoria has a Scrutiny of Acts and Regulations Committee that examines bills introduced into Parliament. Following scrutiny of the content of a bill, the committee may comment on its provisions in a report to Parliament known as the "Alert Digest". With the adoption of template legislation for the national road rules, there is a clear need to expand the terms of reference of the Regulation Review Committee of this Parliament to include scrutiny of bills. Naturally, the Government will resist such an extension of the committee's terms of reference, wishing—as always—to maintain absolute control.

When the Minister addressed crossbenchers about the increase in registration costs for heavy vehicles, he said that this was a non-contentious issue. He went on to say that the change was compulsory as we had adopted national road rules. As we are the first State to adopt these rules and as Canberra is not necessarily the home of heavy haulage in Australia, it is within the Minister's power to resist these increases. The annual charge for an eight-axle B-double will rise from $5,500 to $6,500—a not insignificant amount. To that charge we must then add the goods and services tax [GST]. The charge for a nine-axle B-double will rise from $5,750 to $6,800, which is an increase of $950. Once again, people will then be savaged by the GST.

On behalf of the many owner-drivers who keep this State's economy and its goods moving, I argue that this is a contentious issue. There will be a substantial increase in costs that must be passed on and that will contribute to inflation. The Minister admits that price rises will occur in the three vehicle categories. Some charges will rise by 15 per cent, to which we must then add 10 per cent GST. As if the ongoing GST lies and misinformation were not sufficient, further charges will be whacked onto the transport industry, creating a highly inflationary cocktail during a highly inflationary period.

The Minister's statement is worthy of scrutiny not only in terms of its content—which is simply wrong—but in terms of the Government's attitude towards the transport industry, which comprises largely self-employed owner-drivers. The indexation to which the Hon. C. J. S. Lynn referred is not part of the national road rules. The accompanying literature states that it will be adopted by the other States, but that is not necessarily so, and I urge honourable members to resist indexation. It is again a matter of inflation. If we are to run our economy well, we must be aware of inflation. If we are not, inflation will eat away at and overrun our benefits and our standard of living. Inflation is a cancer that must be avoided. In the past 15 years the Federal Government has been at pains to curb inflation—we all saw what inflation did to society during the 1970s. It has now been brought under control, and it is absolutely essential that we do not let the genie out of the bottle again.

If these costs are necessary—and the revenue from these increases is so important—they should have been priced in the budget. They are simply another tax. I believe they are not in the budget because this small section of society is an easy target. I understand that the Opposition—which is supposed to represent small business, although I have my doubts these days judging from the comments of some Opposition members—will not oppose the bill. Therefore, I call on individual members of this House to support the foreshadowed Opposition amendment and to defeat the inflationary component of this bill.

Reverend the Hon. F. J. NILE [3.36 p.m.]: The Christian Democratic Party supports the Road Transport (Heavy Vehicles Registration Charges) Amendment Bill. However, like other honourable members, we have some reservations about that aspect of the bill that provides for indexation. The bill amends the Road Transport (Heavy Vehicles Registration Charges) Act 1995 and the Road Transport (Heavy Vehicles Registration Charges) Regulation 1996 so as to, first, revise the charges payable for registration and renewal of registration of heavy vehicles. This is in line with the charges developed by the National Road Transport Commission as part of ensuring uniform legislation in Australia.

The second objective of the bill is to provide for the indexation of those charges and heavy vehicle permit charges in line with increases in the consumer price index [CPI], subject to any determination by the

Minister of a lesser increase. The Opposition is seeking to omit schedule 1 to the bill. That schedule contains some extremely complicated mathematical formulas relating to indexation. I had assumed that, when the legislation stated that indexation was based on the CPI increase, the increase in charges would be in line with the increase in the CPI. However, that is not the case. New section 9 (6) states:

> (6) The index number for a quarter is the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) first published by the Australian Statistician for the quarter.

It appears that the CPI increase is part of the formula and is multiplied by something. Therefore, the actual increase could be higher than the CPI. Perhaps the Minister will clarify that point. I gather from the mathematical formulas in the schedule that the CPI is the measure: the CPI is multiplied by a figure in order to establish what the increase should be. That would explain why the industry is unhappy with indexation. It would be reasonable to base the increase simply on the CPI as that would be in line with other legislation that includes government charges. The Australian Trucking Association has indicated its opposition to the measure. In a letter to me it stated:

> The Australian Trucking Association and its Member Organisations are opposed to indexing truck registration charges currently being considered by the Australian Transport Council.

The letter further stated:

> The proposal to index truck registration charges is without any solid foundations at all. It would represent an unjustified increase in charges that could hardly come at a worse time for trucking companies. It will also undermine the credibility of the existing open and accountable method of determining truck registration charges. Furthermore, indexation would put paid to any real hope of putting in place a cost recovery system for rail access which could take New South Wales transport policy a long way down the track of finding an appropriate policy balance between the road and rail transport sectors.

In view of those arguments, we have some sympathy for the Opposition in terms of its proposed amendment. However, it should be noted that even with these increases, 61 per cent of the New South Wales heavy vehicle fleet will experience no increase at all, and for the remaining 39 per cent the charges represent a marginal increase. These increases are justified and are based on recouping the cost of road wear from those who impose the damage. As honourable members know, we live in Gerroa. To get to Sydney we travel on the main road through Gerroa to Kiama and Wollongong and then from Wollongong to the city. It is obvious that tremendous damage is being done to that freeway. Indeed, the damage is so great that repairs are constantly being done, with whole strips of the road being blocked. In other words, only one lane can be used while the other lane is being restored. Not only is new tar laid; the road must be excavated a foot or more and then rebuilt so that it can carry heavy loads.

Many heavy trucks now carry coal; years ago coal would have been transported by rail. A large number of heavy trucks travelling at fairly high speeds also puts pressure on car drivers. Usually trucks have a sign on the back which states that they are limited to 100 kilometres an hour. However, I have tracked them and often they travel at more than 100 kilometres an hour. They can be frightening to car drivers if they rapidly approach the rear of the vehicle; they want the cars to move out of the way. So there is pressure on car drivers, particularly nervous drivers, when they are surrounded by a number of big trucks.

I note also that the bill attempts to make the system fairer for larger trucks, particularly B-doubles, six-axle truck-trailer combinations operating above 42.5 tonnes, and special purpose vehicles. The charge for the most common B-double combination will increase by $1,000. The current charges that apply to B-doubles were calculated using 1992 data. Since that time there has been a significant increase in the number of B-doubles using the road network and the distance they travel. These very large and heavy vehicles carry loads averaging from 50 tonnes to 62.5 tonnes. They represent a significant imposition on the road network in terms of wear. The Government must have a way of recouping those costs as it must repair the roads.

It could be argued that the trucking industry should not complain too much from 1 July 2000 because of the Commonwealth diesel fuel credit scheme. That scheme will make a return to the industry of approximately $600 million in 2000-01 and $690 million in 2001-02. In some ways it could be argued that the industry will have the capacity to pay increased charges because of the diesel fuel credit scheme. So the Christian Democratic Party supports this bill, although it is concerned about indexation and the impact it may have on the trucking industry, because obviously consumers will have to pay in the long run.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.44 p.m.], in reply: The Government will oppose the amendment to delete the indexation provision. The second generation

heavy vehicle charges have been supported by every State and Territory in Australia and the Commonwealth. Indexation of fees from 1 July 2001 has also been supported by the Commonwealth Government and every State and Territory except the Northern Territory and Western Australia. In terms of industry costs, it should be noted that registration charges are estimated by the National Road Transport Commission to represent between only 1.4 per cent and 2.1 per cent of total vehicle operating costs.

In the trucking industry the price of diesel fuel is a major factor that determines business viability. Fuel costs are estimated to represent from 20 per cent to 30 per cent of vehicle operating costs. The Commonwealth Government's diesel fuel rebate scheme, introduced as part of the GST package, has been predicted by the Federal Coalition to substantially reduce fuel costs to heavy vehicle operators and to encourage further diesel fuel consumption. All States and Territories in Australia, including the Commonwealth, agreed to the introduction of second generation charges at the same time as the Commonwealth diesel fuel credit scheme because the anticipated financial impact on the industry would be minimal.

The Commonwealth diesel fuel credit scheme will return to the industry approximately $600 million in 2000-01 and $690 million in 2001-02. In comparison, the new heavy vehicle charges are expected to raise only an additional $20 million per annum nationally. With this substantial cash injection into the transport industry, the impact of marginal changes in registration charges will be minimal. All revenue raised by New South Wales in the form of charges on heavy vehicles is directly reinvested in the workplace of the road transport industry, that is, the New South Wales road system. The transport industry gets back what it is charged to help ensure that it has a road system that meets its business needs.

On the other hand, the Commonwealth, while imposing a massive tax on diesel fuel, returns less than 20 per cent of fuel excise to the States for roadworks. Registration charges are only a small element of cost recovery for the impact of heavy vehicles on our road network. Finally, it should be noted that in New South Wales the cost of heavy vehicle registration charges has remained constant since 1996. The introduction of uniform heavy vehicle charges in New South Wales resulted in a $59 million reduction in total heavy vehicle charges—money that was returned to the heavy vehicle industry to improve its profitability. The new charges to be introduced only increase charges for about 40 per cent of New South Wales heavy vehicles. This means that in real terms the component of business costs that registration charges represent in this State have actually declined since 1996.

In real terms the trucking industry has realised considerable savings when it comes to registration charges. The purpose of indexation is to ensure that the State is able to reinvest revenue into the road system consistent with the costs imposed on the road system. As Reverend the Hon. F. J. Nile suggested, heavy vehicles impose significant wear and tear on the road system, and the cost of maintaining roads to an agreed and acceptable standard increases over time. The effects of inflation need to be accounted for in the calculation of heavy vehicle registration charges. The process of deciding if charges will be indexed is not an annual automatic process. It will require a majority decision of all State and Territory road transport Ministers each year when they meet at the Australian Transport Council.

Ministers will be provided with information developed by the National Road Transport Commission which indicates whether the proposed consumer price index increase is consistent with movements in road construction costs and industry road use. The decision will be subject to detailed analysis and the rate of increase will be linked to the real cost of road wear faced by road agencies. The process of uniformity was an initiative of the Greiner Government in 1991. Compliance with national uniformity is a condition of the competition payments received from the Federal Government.

I now address issues raised by honourable members. The Hon. C. J. S. Lynn referred to the saving of $59 million in the annual cut to heavy vehicle charges since uniform heavy vehicle charges were introduced in 1996. New South Wales significantly cut registration fees that year to obtain national uniformity. The bill represents a modest increase of $5.8 million per year in already discounted charges. The Hon. I. Cohen referred to the New South Wales freight strategy. Currently this is being finalised in consultation with stakeholders, including unions and the heavy vehicle industry. The Hon. M. I. Jones referred to the Australian road rules. The introduction of uniform heavy vehicle charges is not related to the Australian road rules. Uniform charges were introduced in 1996 and this bill merely updates those and includes small increases in the existing uniform charges. GST does not apply to heavy vehicle charges; they are specifically exempt.

Reverend the Hon. F. J. Nile referred to the consumer price index. The indexation factor to be applied is either the relevant CPI number or such smaller number as the Minister may declare. This is provided for in

new section 9 (2) (b). The Minister may choose a figure lower than the CPI and will probably use a lower figure for the first indexation period, which is 1 July 2001, to discount for the effect of the GST on the CPI. It is also relevant to note that all light vehicle fees are indexed and will continue to be indexed.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Schedule 1

The Hon. C. J. S. LYNN [3.53 p.m.]: I move the Coalition amendment:

Pages 3-6, schedule 1 [1] and [2], line 5 on page 3 to line 11 on page 6. Omit all words on those lines.

The Opposition does not oppose the bill. The New South Wales Farmers Association and the road transport industry recognise the necessity for the bill and the reasons for the charges and categories. However, they do not support the automatic indexation and say that a case should be put for any ongoing increases in registration charges. Those increases should be subject to public scrutiny and review. For those reasons the Opposition commends the amendment.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.55 p.m.]: The Government rejects this amendment for the reasons I stated earlier.

Amendment negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment and passed through remaining stages.

CASINO CONTROL AMENDMENT BILL

Second Reading

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.58 p.m.]: I move:

That this bill be now read a second time.

Within the past nine months the Government has developed and introduced into this Parliament a number of items of landmark legislation whose explicit purpose is the minimisation of gambling-related harm in our community. The first of those measures was the Gambling Legislation Amendment (Responsible Gambling) Act 1999. Most of the provisions of this amendment Act commenced on 10 December 1999. The measures in this amendment Act established that the conduct of gambling at registered clubs and hotels in a responsible manner is an object of the laws governing gambling in those venues; enabled the making of regulations imposing controls over the provision of credit for gambling; enabled the making of regulations concerning advertising, promotions, signs and notices associated with gambling; enabled the making of regulations prescribing a code of practice for the conduct of gambling; promoted arrangements by which persons with gambling problems could exclude themselves from hotels and clubs; and paved the way for courts to order a person who has breached an order excluding the person from a casino to undergo a problem gambling counselling or treatment program. I seek leave to incorporate the balance of the second reading speech in *Hansard*.

Leave granted.

The second of the Government's measures was the Gambling Legislation Amendment (Gaming Machine Restrictions) Act 2000, which was passed by the Parliament earlier in this budget session, and was assented to on 9 May 2000. Particular provisions in this amendment Act have restricted the installation of extra gaming machines in clubs by imposing a freeze of at least 12 months duration; introduced pioneering social impact assessment obligations on clubs and hotels seeking to increase gaming machine numbers at existing venues, or to establish at new locations; and prohibited the establishment or relocation of clubs and hotels containing gaming machines into shopping centres.

The Casino Control Amendment Bill that I am now introducing to the Parliament will amend the Casino Control Act 1992 in ways which are compatible with the Government's undoubted policy commitment to minimise gambling-related harm. First, the bill will realign the statutory objects of the Casino Control Authority by removing, as one of the stated objects of the authority, the promotion of tourism, employment and economic development associated with a casino. At present, the casino legislation states that the objects of the authority are to maintain and administer systems for the licensing, supervision and control of a casino for the purpose of: ensuring that the management and operation of a casino remains free from criminal influence and exploitation; ensuring that gaming in a casino is conducted honestly; containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families; and promoting tourism, employment and economic development generally.

Through the removal of the fourth object—the tourism and economic development component—the authority will be under no illusion that its efforts as the controller of the Sydney casino licence are to be concentrated on the threats and harms posed by a casino, rather than on overall economic benefits. As well, this proposed amendment will reinforce my initiative in establishing, as one of the authority's annual accountabilities, the promotion of responsible gambling policies and practices for casino gaming, together with an attitude which is proactive in this regard. I also inform the House that the amendment is consistent with the advice of the Commonwealth Productivity Commission, as expressed in its "Australia's Gambling Industries" report dated November 1999, that a gambling control authority "must have no industry development or tourism-related functions, or in any way be involved in promoting gambling".

As a corollary of the objective underlying this refinement to the authority's objects, the bill amends section 135 of the Casino Control Act by adding social sciences to the list of qualifications or experience of persons being considered for appointment as a member of the authority. The current range of qualifications or experience comprises business management, gaming, law, finance and information technology. The addition of social sciences as a further qualification or experience criterion will enable the composition of the authority's membership mix to be balanced and better able to respond to the alleviation of gambling-related harm among casino patrons. Second, the bill will amend the Casino Control Act so that a person who is excluded from a casino on that person's voluntary application because of, say, an admitted gambling problem will not suffer the consequences of prosecution for a criminal offence if, because of that problem, the person enters the casino after the order has been made and remains in force.

Under the present law, the Director of Casino Surveillance and the casino operator are empowered to make an order excluding a person, upon a voluntary application, from the casino. This is the only means by which people can exclude themselves from a casino. It is an offence for an excluded person to enter or remain in a casino, and a penalty of up to $2,200 may be imposed. Observations have been made of Local Court cases in which persons excluded at their own request were prosecuted for entering or re-entering the casino. It became apparent that these persons can have disturbing levels of gambling problems. Some of the defendants repeatedly reoffend, accumulating significant monetary penalties and court costs that these persons can ill afford due to financial difficulties attributable to their gambling problem.

While the problems of some defendants may improve as a result of court experience, especially where they agree to attend counselling and in fact do so, there are others whose problem is so severe that it leads them to repeatedly enter the casino. If detected, these people are liable to significant monetary penalties not only for the offence of re-entering but also for breaching the court order or bond. Imposition of these penalties can make the financial circumstances of these defendants even more precarious. This proposal is limited to removing the criminal sanction for those persons who are voluntarily excluded from a casino through an order made by the director or the casino operator. As a way of ensuring these voluntarily excluded persons are identified for attention to their gambling problems, the casino operator will be obliged to put the person in contact with family or friends, provide relevant information about help services including counselling, and be restrained from extending promotional information about gambling and account deposit services to the persons concerned.

I emphasise that it is not intended by this proposal to absolve other excluded persons from the criminal sanction, such as persons who are excluded because of theft or causing a disturbance, or persons who are excluded at the direction of the Commissioner of Police. The patron exclusion provisions in the casino legislation were amended last year as part of the Government's responsible gambling legislation so as to alert a court to the sentencing option of making an order requiring a person found guilty of entering the casino in contravention of an exclusion order to attend a gambling service for counselling or treatment. This scheme will remain available for use by any persons who have entered or re-entered the casino despite an exclusion order being given against their will.

Third, the bill amends the Casino Control Act to require a casino operator to notify a casino inspector if an excluded person or a minor has been found in the casino. As I indicated a little earlier, the current law states that an excluded person must not enter or remain in a casino. The same applies to a person under the age of 18, except where the minor is an apprentice or trainee and is present in the casino solely for receiving training or instruction. If an excluded person or a minor is found to be in a casino, the legislation requires the casino operator to remove the excluded person or the minor from the casino. Offences apply if an excluded person or a minor are not removed as required.

The bill will impose a requirement on a casino operator to notify a duty casino inspector when an excluded person or minor is found in the casino. Notification will enable a better assessment to be gauged of a casino operator's diligence and effectiveness in identifying excluded persons and minors at casino entry points. Just as importantly, the creation of a notification process will give a casino inspector the opportunity to provide an excluded person who has entered or re-entered the casino with brochures or other relevant information on attending to gambling problems, including guidance about accessing counselling and treatment services.

I turn now to the other amendments in the bill. The bill will amend the Casino Control Act to enable certain minor offences to be dealt with by way of penalty notice, rather than by prosecution. At present, offences against the casino legislation may be dealt

with by initiating a prosecution before the Local Court. In the case of offences committed by a licensed casino operator or by a licensed casino employee, the Authority may take disciplinary action against the licensee concerned. As is the case with other legislation, an infringement notice scheme is to be introduced in the interests of improving overall enforcement operations and efficiencies. There is also the advantage of reducing the time and resources which a court and an offender would need to commit to the adjudication of offences against the casino legislation.

The scheme will be similar to schemes that have existed for some time in the liquor and gaming laws governing licensed premises and registered clubs. In short, a casino inspector, including the Director of Casino Surveillance, and a police officer will be authorised to serve a penalty notice on a person who commits an offence against the Act or the regulations, provided the regulations record that offence as being one to which the penalty notice scheme applies. Also in keeping with penalty notice schemes in other legislation, the provisions proposed to be inserted by the bill do not detail the particular offences to which the scheme is to apply; for it is customary to specify the offences in a regulation. The offences to which the scheme is to apply are limited at this time to cheating offences, provided the amount involved is less than $500; the offence of a licensed casino employee gambling in the casino; and the offence of a former key official, such as a former Government inspector, gambling in the casino within 12 months of ceasing to be a key official.

Like other penalty notice schemes before it, the penalty notice scheme for the casino legislation has been drawn so that no further action lies if the penalty for the offence is paid by the offender. However payment of a penalty notice is to be regarded as a conviction for the offence for the purposes of the disciplinary provisions of the casino legislation. As is usual, penalty notice offences under the casino legislation are not to form part of a person's criminal record. The infringement penalty is to be fixed at 10 per cent of the maximum penalty for the offence concerned, up to a ceiling of 6 penalty units. Under the casino legislation it is an offence for a casino patron to obtain or induce another person to provide any money, chips, benefit, advantage, valuable consideration or security by various fraudulent means including a trick, device, sleight of hand, representation, scheme, practice, the use of gaming equipment, or the use of an instrument or article normally used in connection with gaming. A maximum penalty of 100 penalty units or two years imprisonment, or both, applies.

The requirement in these situations to prove fraud to the satisfaction of a court has resulted in the police and the Director of Casino Surveillance being unable to effectively prosecute patrons for perceived cheating activities in some instances. The bill will therefore clarify the elements of the offence of cheating in a casino, and create a further offence of dishonestly retaining a benefit that was originally obtained without a dishonest intent, but in contravention of the rules of a game or through an error or oversight in the conduct of the game. Recognising the lesser evil inherent in this new offence, a maximum penalty of 20 penalty units will apply. The remaining amendments to be made by the bill are essentially miscellaneous items.

There are amendments to section 66, relating to the process for approving rules for casino games, to remove the need for the rules for keno games to be approved under both the Casino Control Act and the Public Lotteries Act 1996 in cases where the game of keno is to be played in a casino. In essence, this amendment will reduce red tape by eliminating the present arrangement where two, not one, Government approvals are required for any rules for the conduct of keno games in a casino. Consequential adjustments to sections 72, 110 and 125 are included in the bill. There is an amendment to section 70, relating to the manner in which prizes won in the course of gaming are to be paid. The purpose of the amendment is to allow prizes to be paid in non-monetary form, where offered by a casino operator and where elected by the prize winner. This amendment will extend to a casino an entitlement which the Parliament approved for registered clubs in 1998. It is established policy for casino gaming machine entitlements to be tied to club gaming machine entitlements, and vice versa.

There is an amendment to section 83 to make it clear that information relating to names on a list of persons excluded from a casino may only be provided to specified persons. And there is an amendment to section 113 to enable a casino inspector who suspects on reasonable grounds that a person has provided a false name or address to request proof of identity. Under this particular amendment, no penalty will attach to a failure to comply with a request to provide proof of identity. However providing false or misleading information, or failing to comply with a request to provide identity—rather than proof—will continue as offences under the current law. This bill contains a range of amendments all of which are designed to enhance the effectiveness and present day relevance of the Casino Control Act. The amendments are sensible and reasonable. I commend the bill to the House.

The Hon. R. T. M. BULL [3.59 p.m.]: The Opposition supports the Casino Control Amendment Bill. If one issue has been at the forefront in newspapers and other media in recent times it is the operation of the casino. We are all disappointed that the casino that we are proud to have in our State and in our city is not operating as well as we would have expected, especially so far as the regulatory arrangements are concerned. My colleague in the other place has gone to great pains to bring these matters forward, not only in the House but also in the budget estimates hearings, and to try to resolve the problems at the casino. The bill obviously addresses some of those concerns, especially in relation to the election of members of the Casino Control Authority and the additional qualifications of those who will be appointed to it. This serious problem has been brought about by the reduction by the Government, two budgets ago, of the number of staff in the Division of Casino Surveillance. That, in turn, put a great deal of pressure on those responsible for the regulatory part of the operation of the casino.

I do not blame the operators of the casino. That matter is the responsibility of government, and it is government alone that can fix the problem. It is important that the Government acknowledges the problem it caused when it halved the number of inspectors at the Division of Casino Surveillance from 70-odd down to 38. That in turn has led to a lack of scrutiny of the operations of the casino and to the recent concurrent allegations, which have certainly been on the minds of many people, about loan sharks, money laundering, prostitution and whatever else one can imagine at the casino. I do not necessarily believe those allegations are true, but while there is a perception that these activities are taking place at the casino and the regulatory authorities are not in a

position to do anything about them because the Government has cut back the budget, the problems and the perception will continue. I hope the Treasurer is noting these comments, because he can do something about the budgetary problems.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

MINISTER FOR INDUSTRIAL RELATIONS CONFLICT OF INTEREST ALLEGATION

The Hon. M. J. GALLACHER: My question without notice is to the Minister for Industrial Relations. How can the Minister reconcile being Minister for Industrial Relations, a position that demands fairness to both employers and employees, with seeking the national presidency of the Australian Labor Party, which is the political wing of the trade union movement? Would any ordinary person not regard that as a major conflict of interest?

The Hon. J. J. DELLA BOSCA: I find that a very unusual question for the Leader of the Opposition to ask. He knows my answer on all these fronts. I have previously given variations on the answer both in this House and publicly. On the first question about the Labor Party and its history, like the vast majority of members on this side of the Chamber and a few on the other side of the Chamber, I acknowledge that the Australian Labor Party has been here for a very long time. It is very much, as the Premier would say, given his turn of phrase, part of the comfortable furniture of Australian politics. It is important that members opposite understand—they seem not to—that the Australian Labor Party at a national level is not only as old as Federation. It is older than Federation, the Federal parliamentary Labor Party having been formed before Federal Parliament was convened.

The Hon. Dr B. P. V. Pezzutti: The tree of knowledge is dead.

The Hon. J. J. DELLA BOSCA: The Hon. Dr B. P. V. Pezzutti is wrong; the tree of knowledge is very much alive. I will be very proud if the Australian Labor Party national conference elects me as national president in five weeks time. I am led to believe there is a body of opinion of the view that I will be successful in being elected president of the Labor Party. However, I do not count my chickens before they hatch. The matter is very much in the hands of the national conference. The ALP is a democratic party, to its bitter end and to a fault. I am very comfortable in accepting what will be a great honour, one I will embrace as I would embrace any other valuable community role one could play at the same time as being Minister. As for my having a conflict of interest as a result of being Minister for Industrial Relations—

The Hon. M. R. Egan: According to that lot, a member of the Australian Labor Party cannot be Minister for Industrial Relations.

The Hon. J. J. DELLA BOSCA: It is absurd, as the Leader of the Government has pointed out to make such a claim. That would mean that any member of the Australian Labor Party would have a conflict of interest as Minister for Industrial Relations. It would mean any member of the National Party, or any member of Country Labor people, who was a farmer would have a conflict of interest as Minister for Agriculture. It would mean the Minister for Mineral Resources, and Minister for Fisheries would have a conflict of interest if he went fishing or fossicking for gold on the weekend. It is like saying that the Leader of the Government has a conflict of interest when he goes to a bank or he has a conflict of interest as a taxpayer.

The Leader of the Opposition is scraping the bottom of the barrel. I thought he would have a good question for me. He has not been kind to me. He should be kind, because the Leader of the Government has told those opposite that there are two factions. Members opposite should be careful because the Hon. Patricia Forsythe has a military bearing today. She is in a military outfit and a coup could be in the offing. I am a swinging voter. The Treasurer is a Gallacher supporter and the Minister for Juvenile Justice is a Forsythe supporter. I may have it the wrong way round, but my point is I am the man in the middle, so they had better get me on side.

The Hon. M. J. GALLACHER: I ask a supplementary question. Are the Minister's evasive explanation and his refusal to withdraw from seeking the national presidency indications that he will bring to the

industrial relations ministry the same tactics that saw him accused of betraying his own faction at the annual conference of the ALP when he offered the Left both Throsby and Macarthur simply to get their support for the national presidency?

The Hon. J. J. DELLA BOSCA: I did not, but I do not intend to canvass that. I am tempted to take a point of order in relation to that question, because it begs the indulgence of the House and is close to being in breach of the standing orders. The Leader of the Opposition has asked a question that does not relate to public affairs. However, I will simply answer his question in this way: He should not believe everything he reads in the papers and, in his case, unless he had an interpreter, he should not try to read anything in the papers. I think that is a sufficient answer to the question.

GOULBURN MINERALS EXPLORATION

The Hon. A. B. KELLY: My question is to the Minister for Mineral Resources, and Minister for Fisheries. What is the Government doing to encourage exploration in the Goulburn area, where known mineral deposits have been exhausted?

The Hon. E. M. OBEID: The Goulburn area has a long history of exploration and mining. Base metals such as copper, lead and zinc produced from the Woodlawn mine south of Goulburn made a significant contribution to the region and our State's economy. Unfortunately, resources of the mine have been exhausted and it is now closed. Major mines no longer operate in the area, but the Carr Government's $30 million commitment to the Discovery 2000 program is helping to reassess the region's mineral resources. Much has already been accomplished. In 1997 extensive aerial geophysical surveys were carried out. As a result, the area covered by exploration licence applications increased by 1,000 square kilometres in only 12 months.

Geological and geophysical mapping of both the Goulburn and Lake Cargelligo regions, which are farther to the west, started in October 1998. The information collected includes the distribution of rock types and faults and their relationship to favourable mineral deposits. That information is already available on the Department of Mineral Resources DIGS Internet site and on CD-ROM. I am pleased to advise that the Government is currently conducting further mapping of these regions.

Geological mapping in the Goulburn region is scheduled for completion in 2002. It is expected that the surveys of Lake Cargelligo will be finished in 2001. I anticipate that the progressive release of this new information will generate further interest in those areas. No new major finds have yet been discovered. However, new information from the Goulburn area has identified rocks similar to those historically known to contain gold, lead, zinc and copper. I look forward to advising the House as more details become available.

CABRAMATTA DRUG USE

The Hon. HELEN SHAM-HO: My question without notice is directed to the Treasurer, representing the Minister for Police. I refer the Minister to complaints about problems relating to the seriousness of drug crimes in Cabramatta. In particular I refer to two complaints made directly to me on Sunday 25 June when I visited Cabramatta at the invitation of a Fairfield councillor. What action is being taken to address the drug problem at 68 Hughes Street, Cabramatta, and the adjoining Hughes Street Park, where literally thousands of syringes, used swabs, a mass of drug-related waste and pools of vomit are visible, given that numerous complaints have already been made to police about the severity of the drug problem there?

The Hon. C. J. S. Lynn: Did you have your annual trip out there? Did you go out in a limousine?

The Hon. HELEN SHAM-HO: Why does the honourable member not listen?

The Hon. C. J. S. Lynn: I live out there. We go out there all the time. You get a limousine trip out there, and all of a sudden you're an expert. You're the one that votes for them. Get out there and have a good look!

The Hon. HELEN SHAM-HO: The Hon. C. J. S. Lynn does not have any brains. Why does he not listen to the question? So far he has raised no relevant questions. Is the Minister aware that the lives of children who play in the park are being put at risk because there are so many used syringes lying around the park? What assurance can the Minister give to the House that adequate police resources are provided in Cabramatta to curb drug crime?

The Hon. M. R. EGAN: I agree with the Hon. Helen Sham-Ho's comments about the Hon. C. J. S. Lynn. I will refer the honourable member's question to the Minister for Police and when I receive a response I will provide it to the House.

VICTORIAN ENERGY DISPUTE REPORT

The Hon. D. J. GAY: My question is addressed to the Treasurer. Is the Treasurer aware of a report from the National Electricity Market Management Company [NEMMCO] into the effects of the January industrial dispute at the Yallourn Energy plant in Victoria? Is it the fact, as stated in the NEMMCO report, that electricity was sold from New South Wales to Victoria during that dispute at a loss of $200 per megawatt hour? Based on the contents of that report and the figures cited, will the Treasurer now order an immediate inquiry into how New South Wales generators lost almost $3 million over the period of the Yallourn dispute?

The Hon. M. R. EGAN: I have not seen the report to which the Deputy Leader of the Opposition refers. However, I will read it. If anyone was at fault in relation to that matter, I believe it was NEMMCO. Therefore I will read NEMMCO's report with great interest. In fact, NEMMCO needs to have a good look at itself, because the arrangements that were in place during that incident clearly showed that NEMMCO operated inappropriately on that occasion.

ABORIGINAL BUSINESS DEVELOPMENT

The Hon. J. R. JOHNSON: My question without notice is directed to the Treasurer, and Minister for State Development. What is the Government doing to help Aboriginal businesses create jobs and investment in New South Wales?

The Hon. M. R. EGAN: I am pleased to advise the House that some two years ago the Government established the Aboriginal Development program. The program is designed to provide information and advice to Aboriginal people on how to set up and run a business.

The Hon. Dr B. P. V. Pezzutti: $3 million.

The Hon. M. R. EGAN: I am told that so far some 330 companies from a range of sectors, including agriculture, forestry and fisheries, construction, fashion, manufacturing and information technology, have registered with the program's databases.

The Hon. Dr B. P. V. Pezzutti: Did you go to new Italy?

The Hon. M. R. EGAN: I am sitting on the Government front bench so I am out of range of the Hon. Dr B. P. V. Pezzutti's interjections and do not hear them. The Hon. Dr B. P. V. Pezzutti even looks better from farther away. The Government also supports Aboriginal enterprise development officers based in Forbes, Kempsey, Wollongong, Newcastle, Casino, Armidale, Brewarrina and Parramatta. Between 1998 and 1999 that team of development officers has provided business advice to more than 1,000 Aboriginal people and helped set up some 30 businesses. There are some fantastic success stories. Two years ago the Redfern Aboriginal Corporation became Sydney's first Aboriginal-owned construction company. From very small beginnings it has evolved into a successful construction company which now employs some 45 people.

Over the last year the Redfern Aboriginal Corporation has secured Olympic construction contracts for work on the equestrian centre and the millennium parklands. It also has a maintenance contract for the Australian Technology Park. Honourable members may have heard me speak on other occasions about Mick Davis from Inverell. Mick Davis invented the Davis Starlifter, a dual-purpose tool to cut timber, and remove and adjust fence posts. The Starlifter won Farm Invention of the Year in 1997. In 1998 the company became the first indigenous-owned business to join the Australian Technology Showcase and a year later won an Aboriginal Business Export Award. Farmers, fencers, woodcutters, shire councils and fire departments are buying the tool at field days around the State.

Another fantastic success story is the Mudgee-based Tyreshield, a tyre repair product developed by Jonathan and Elizabeth Slottje. The product is used on cars, trucks, motorbikes and bicycles and has become the preferred product for some of the world's top rally drivers. The Tyreshield is distributed widely in Australia, and is now beginning to export to the United States of America, the United Kingdom, China and Japan. Last week a second order was despatched to Thailand. There are many similar stories of Aboriginal companies turning hard work, innovation and good planning into a successful business. On behalf of the Government—and I am sure I speak for the House as well—I am pleased to support those companies in their endeavours.

NEW CHILDREN'S HOSPITAL RESEARCH FACILITY DONATION

The Hon. Dr P. WONG: I ask the Treasurer, representing the Minister for Health, a question without notice. I refer to the reports in the daily press of the New South Wales Government's refusal to match on a dollar-for-dollar basis a $10 million donation towards the establishment of a research facility at the New Children's Hospital, despite a favourable response from the Federal Government. Does the Government acknowledge that funding for medical research in Australia is very much below par when compared with other western countries, and that we are constantly losing our scientists to overseas countries, in particular the United States of America and the United Kingdom? What strategy has been put in place by the New South Wales Government to encourage medical research in this State? Finally, will the Government reconsider this issue and hold discussions with the New Children's Hospital in order to reach a mutually acceptable outcome?

The Hon. M. R. EGAN: I will refer the Hon. Dr P. Wong's question to my colleague the Minister for Health. I saw one of the articles which the honourable member has referred to in one of this morning's papers. If the honourable member had read the article, he would be in no doubt that the Minister for Health is taking the entirely right approach to the matter.

The Hon. Dr P. Wong: I did.

The Hon. M. R. EGAN: The Hon. Dr P. Wong agrees.

The Hon. Dr B. P. V. Pezzutti: No, he didn't.

The Hon. M. R. EGAN: Yes, he did. I will refer the question to my colleague the Minister for Health, who, I am sure, will provide further details.

VOCATIONAL EDUCATION AND TRAINING ACCREDITATION BOARD

The Hon. PATRICIA FORSYTHE: My question without notice is to the Special Minister of State, representing the Minister for Education and Training. Is the Government aware of concerns being expressed by private providers of training programs in New South Wales that the Vocational Education and Training Accreditation Board may be disbanded as a cost-saving exercise? Will the Government provide an unequivocal assurance that the board will be maintained?

The Hon. J. J. DELLA BOSCA: As I have said before to Opposition members, I represent a Minister for the purpose of answering questions. However, I will decline to give undertakings on behalf of the Minister. The report of the review of the Vocational Education and Training Act 1994 has recognised the relationship between the strategic policy role of the Board of Vocational Education and Training [BVET] and the operational role of the Vocational Education and Training Accreditation Board [VETAB]. However, BVET and VETAB share a commitment to the development and expansion of a quality vocational and educational training system in New South Wales. In managing this process these bodies have clearly distinct roles.

The Board of Vocational Education and Training provides the Government with strategic advice on vocational and educational training policy, and planning and resource allocation matters. The review has highlighted that BVET has been particularly important in providing leadership for New South Wales in a national vocational and educational training sphere and has secured vital Commonwealth funding for the State. The role of VETAB is much more focused on quality assurance and the regulatory system. VETAB has a large customer base of more than 1,000 training organisations. To maintain the quality of service of New South Wales businesses, it is essential that VETAB functions independently from other bodies.

MOTOR VEHICLE THEFT PREVENTION

The Hon. P. T. PRIMROSE: My question is directed to the Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment. Can the Minister inform the House of recent initiatives targeting young people and car theft?

The Hon. CARMEL TEBBUTT: The question asked by the Hon. P. T. Primrose is about an important issue. The consequences of car theft can be far-reaching for the community broadly and particularly for those individuals who are affected by it. It is unfortunate that a minority of young people find themselves involved in stealing cars. Young people who committed car theft made up approximately 7.5 per cent of those

who appeared in the Children's Court in the 1998-99 financial year. Figures from the Department of Juvenile Justice show that this represents 1,030 young people under the age of 18 who were involved in car theft. Figures from the Bureau of Crime Research and Statistics show that between 1995 and 1998, 16,701 young people appeared before the courts on charges relating to car theft. These figures include young people up to the age of 24, but a small minority were as young as 10. That fact would be of concern to all honourable members. The majority of young people involved in car theft are boys, who make up 87 per cent of the young people who appear in court.

Those figures show that a significant number of people in New South Wales are affected by car theft each year. The inconvenience, cost and loss of transport can have a great impact on the lives of car owners. There is the consequence of contact with the juvenile and adult justice systems for those who steal cars. The unintended consequences that can arise from car theft are often overlooked. An innocent driver and his passengers may come into contact with another driver who has stolen a car and is being pursued by police or is unlicensed and loses control of the car. That can lead to tragic accidents and, in some cases, fatalities. Young people are also disproportionately represented in accidents and deaths on our roads. For example, although 17-year-olds to 25-year-olds make up only 16 per cent of all licensed drivers, they account for 27 per cent of all road traffic casualties and 30 per cent of those killed or seriously injured in road crashes. Some of these, undoubtedly, are the result of joy rides taken in stolen cars on the spur of the moment.

Over recent years the community has made significant gains in improving young people's road safety and in ensuring better outcomes for young people from the justice system. Last week I was pleased to be involved in launching a joint initiative between the NRMA and *Streetwise* comics that goes to this very issue of young people being involved in car theft. The comic that was commissioned by the NRMA, which is appropriately called "Spur of the Moment", concerns the legal and personal consequences of young people being involved in car theft. I am sure that the House would be aware that *Streetwise* has been praised nationally and internationally for its ability to reach groups that traditional information sources often fail to reach. *Streetwise* is successful because its publications are developed in consultation with workers, young people and experts. The stories are realistic and credible to the young people it wants to reach, and they speak in a language that young people can relate to and understand. This is not the first time there has been collaboration between the NRMA and *Streetwise*.

The comic "Spur of the Moment" demonstrates what happens when young people become involved in car theft. It aims to show young people the serious legal and personal consequences of stealing cars or being a passenger in a stolen car. The comic deals with the actions, decisions and consequences not only for those who steal cars, but also for the friends and peers who get caught up in the event. Young people often behave impulsively, without thinking through the consequences of their actions. This comic aims to make young people aware of the potentially tragic consequences of getting involved in car theft in a language that they understand. It is far better for all concerned that we take action to ensure that young people do not become involved in the behaviour that takes them down those paths. This comic goes some way towards achieving that goal by embracing young people's awareness and by making young people more familiar with both the intended and unintended consequences of being involved in car theft.

M5 EAST TUNNEL VENTILATION

The Hon. P. J. BREEN: My question without notice is to the Minister for Mineral Resources, representing the Minister for Transport, and Minister for Roads. Is the Minister aware of a call by the Victorian Government for expressions of interest in filtering the CityLink tunnel in Melbourne with a view to reducing air pollution for those residents living close to the source of tunnel emissions? In view of the recent successful workshop on tunnel filtration in Sydney, is the Minister likely to call for similar expressions of interest in respect to the M5 East tunnel?

The Hon. E. M. OBEID: I have no doubt that the Hon. P. J. Breen requires a serious answer to his question. I will obtain that answer from my colleague in the other House.

SUSTAINABLE FISHERIES MANAGEMENT

The Hon. JENNIFER GARDINER: My question is to the Minister for Mineral Resources, and Minister for Fisheries. Has the Government determined its response to the case brought by Sustainable Fishing and Tourism Inc? Is the Minister planning to sneak in a regulation to deal with this issue after the House rises? Is it not a fact that the Minister has ignored the pleadings from a wide range of stakeholders to have an

independent and robust environmental assessment of fisheries conducted by a body such as Resource and Conservation Assessment Council [RACAC]? Given the chaos that has typified the Fisheries portfolio since the Carr Government came to office, what is the point of snubbing so many groups that have sustainable fisheries at heart?

The Hon. E. M. OBEID: I have been away for a couple of days. I thought that, in the interim, the Hon. Jennifer Gardiner would have done a little bit of research and would have come into this Chamber and asked a sensible question, but I do not see any improvement. I hope that she will return for the Spring Session with more understanding of what is happening. This Government through my department is mopping up the faults, problems and mess created by none other than the National Party Minister for Fisheries during the term of the Fahey Government. The line of the question insinuates that this Government has done nothing and is now sneaking in a regulation.

The Hon. Jennifer Gardiner: What is the answer?

The Hon. E. M. OBEID: If the Hon. Jennifer Gardiner had been listening during the last 12 months, she would have known that from day one I have stated in this House that win, lose or draw, commercial fishers will carry on business as usual until Part 5 of the Environmental Planning and Assessment Act is complied with, and that still stands. I draw the attention of the House to an answer I gave on 1 June. I am happy to talk about it again. This Government has been leading the way in environmental management of the fisheries resource and is now taking this opportunity to strengthen the transparency and accountability of fisheries' management in New South Wales. The Government intends to introduce legislation that places the Environmental Planning and Assessment Act above the Fisheries Management Act.

The legislation will remove the anomalies created by the sloppy work of the Fahey Government when it introduced the Fisheries Management Act in 1994. The legislation will guarantee that environmental issues will be fully and transparently considered in the management of commercial fisheries. I will introduce that legislation in the Spring Session of Parliament. A regulation will also be produced shortly and will be an interim measure to ensure that there is no question about the validity of commercial fishing licences prior to the legislation being put into place. The Government has fully consulted all interest groups in relation to this matter. I have sought advice from my advisory councils on conservation, recreational fishing and commercial fishing. New South Wales Fisheries wrote to a range of interested parties on 28 February, formally seeking their views.

I also personally met with the people from Sustainable Fishing and Tourism Inc, who, pursued the court case, as well as a range of industry, conservation and recreational fishing groups. It is widely accepted that in most cases the best way of assessing the impact of fishing activity is at the fishery level, not at the individual licence level. This way the total impact of fishing activities can be fully assessed, instead of the potentially minor impacts of individual commercial fishers. The environmental assessment of a fishery will occur as part of the management planning process. Management plans will be developed for all major commercial fisheries and recreational fisheries including charter boat fishing and for fish stocking. These management plans will outline the rules for each fishery and the strategies that have been devised to ensure sustainable harvesting of our valuable resources.

Of course, there will need to be a transition period to allow for the development of these fishery management plans. Assessments will be undertaken under part 5 of the Environmental Planning and Assessment Act and will examine the impact of all commercial fishing licences that will be issued under a management plan. New South Wales Fisheries, as the independent regulator, will oversee the preparation of environmental assessments in accordance with guidelines determined by the Department of Urban Affairs and Planning. These guidelines will be prepared in full consultation with the relevant interest groups through the management advisory committee and my advisory councils.

The safeguards of the Environmental Planning and Assessment Act will apply. These safeguards ensure that an assessment is credible, exposed to public scrutiny and allows for consideration of the environmental issues. In some cases, my department or I would be considered to be a proponent, such as in relation to the beach safety shark meshing program or for some types of fish stocking. The Minister for Urban Affairs and Planning will approve the environmental assessment in such situations. These reforms will place New South Wales in the forefront of transparent and effective environmental fisheries management.

WORKCOVER WORKPLACE SAFETY ADVERTISING CAMPAIGN

The Hon. R. D. DYER: I ask the Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast: Will he inform the House of the effectiveness of WorkCover's advertising campaign?

The Hon. J. J. DELLA BOSCA: In responding to the honourable member's question, I take the opportunity to inform the House of a number of matters in regard to WorkCover's current advertising campaign, many of the features of which will already be well known to honourable members who watch television.

The Hon. D. J. Gay: Unchain WorkCover!

The Hon. J. J. DELLA BOSCA: I could start to draw unfair or unreasonable comparisons, but I will not. I could be tempted to make some observations, but instead will inform the House that since 1998-99 WorkCover has successfully conducted two $7 million work safety advertising campaigns. These campaigns have been so successful that WorkCover plans to spend $7 million in 2000-01 targeting specific high-risk industries and work practices. During the first year of the campaign, workplace fatalities decreased by 10 per cent compared to the previous year, workplace accidents decreased by 5 per cent, and gross injury costs of all employment injuries decreased by $50 million. The work safety campaign is undoubtedly one contributing factor in this favourable trend.

The second campaign for the financial year 1999-2000 presented two elements, injury prevention, on which $4.5 million was spent, and injury management, on which $2.5 million has been or will be spent. I advise the House that three independent specialists in social marketing campaigns all agree that the injury prevention campaign is achieving excellent awareness levels. WorkCover is pleased to note that there has been a 30 per cent increase in calls for information through its information hotline and Internet site. The current injury management campaign highlights the necessity for employers to develop and implement a return-to-work plan on which the injured worker, doctor, employer and insurer all work together. The protection of workers in their place of employment is of paramount concern to the Government. Through work safety advertising, this Government will continue to highlight the need for employers and employees to work together to provide a safe working environment for all people in New South Wales.

PORT KEMBLA COPPER SMELTER

The Hon. Dr A. CHESTERFIELD-EVANS: I direct my question to the Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment. What has been done to address the concerns of Illawarra Residents Against Toxic Environments [IRATE] in regard to the pollution emanating from the reactivated Port Kembla copper smelter—in particular the list of concerns delivered to the honourable member for Wollongong, Colin Markham, earlier this month and distributed since, showing extremely bad pollution levels in the local area, lack of monitoring and lack of any prosecutions by the Environment Protection Authority [EPA]?

The Hon. CARMEL TEBBUTT: I thank the Hon. Dr A. Chesterfield-Evans for his question about the Port Kembla copper smelter and advise the House that the Port Kembla copper smelter has made explicit commitments to both the community and the Government about the expected environmental performance of the new smelter. These commitments must be treated seriously by the company. There have been a number of reported incidents during the start-up phase of the Port Kembla copper smelter which began operations on 4 February 2000.

The Minister for the Environment considers these incidents to be most serious. The Environment Protection Authority [EPA] has advised that it is undertaking a thorough investigation into each incident as a potential breach of the company's environment protection licence. To ensure that any necessary legal action can be progressed with urgency, the EPA has assigned a specialist investigator to work with its local office. The $350 million environmental upgrade at Port Kembla copper smelter was completed prior to the start-up. The company has in place an ongoing process to improve its management, reduce emissions and make sure that stringent standards that are required by the EPA licence are met.

The Hon. Dr A. CHESTERFIELD-EVANS: I have a supplementary question. Will there be monitoring by the task force in those residential areas? Because there have not been any prosecutions for breaches so far, will there be prosecutions resulting from any breaches of the levels in that area?

The Hon. CARMEL TEBBUTT: I have advised the House that the EPA has undertaken a thorough investigation into each incident as a potential breach of the company's environment protection licence. I cannot add any more to that. It is a matter that the EPA is investigating.

INDUSTRIAL DISPUTES SECRET BALLOTS

The Hon. J. H. JOBLING: My question without notice is to the Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast: Will he now undertake to the workers of this State that he will champion their right to make their own decisions in relation to industrial matters? In particular, will he let them decide whether they will or will not strike by giving them a secret ballot, or will he continue to allow the union bosses to dictate policy to the very workers he claims to represent?

The Hon. J. J. DELLA BOSCA: The Opposition has really gone to the bottom of the barrel; it is looking for every old shibboleth it can find. I feel as though we have stepped into a time tunnel this afternoon, that we are going back to some old debates of the 1950s. Unfortunately, the Federal Minister for Industrial Relations, the Hon. Peter Reith, has it all wrong. We have been arguing about this for two and a half generations. The form of secret ballot he is seeking to impose in respect of industrial disputes will not have the required effect, despite his obvious deep concern for the workers of Australia. He has not had his balaclavas and attack dogs out for at least six months, so he must have a new-found concern for the workers of this country.

My understanding is that the Federal Minister is pursuing with the colleagues of the Hon. Dr A. Chesterfield-Evans in the Federal Parliament an idea that is really reaching into the bottom of the barrel—that old shibbeloth, secret ballots. It might come as a surprise to the Hon. J. H. Jobling to know that the union rules of many organisations provide for ballots in the case of strike action as a matter of course to handle industrial disputes. A longstanding issue that has been canvassed on many occasions is whether such ballot processes should be made compulsory for industrial disputes that involve strike action. In almost all cases a secret ballot will do nothing to assist the resolution of industrial disputes and get employees back to work, nor will it shed any light on the negotiating process.

The Hon. D. J. Gay: If you're that confident, why don't you try it?

The Hon. J. J. DELLA BOSCA: Because you are seeking to impose a structure on the Australian industrial relations culture that is foreign to it and inappropriate. It is a hack idea imported from the 1940s into the modern-day context which, as I have said on previous occasions, is irrelevant to the modern, flexible industrial relations climate.

PARRAMATTA E-COMMERCE CENTRE OF EXCELLENCE

The Hon. J. HATZISTERGOS: My question without notice is to the Treasurer, and Minister for State Development. Will the Treasurer provide the House with details on the e-commerce Centre of Excellence at Parramatta?

The Hon. M. R. EGAN: Earlier this month the Minister for Information Technology announced plans to establish a New South Wales e-commerce Centre of Excellence at Parramatta. The centre will be formed following an alliance between the New South Wales Government, the technology giant Unisys, the University of Western Sydney and New South Wales TAFE. The centre will be a focus for innovative ideas and e-commerce solutions. It will take e-commerce to businesses and show them how to harness the endless opportunities for expansion offered by technology. E-commerce experts will be based at the centre to provide consulting and other business services to Australian companies looking to embrace e-commerce.

The centre will also assist businesses with training and product development. The new e-commerce centre of excellence will also give students studying university and TAFE information technology courses a real career boost. The House would be aware that the information technology industry is developing so rapidly that many employers are finding it difficult to locate appropriately educated and skilled workers. This partnership will give students the opportunity to gain first-hand experience by allowing them to work on information technology projects for real business. The centre of excellence will also help university and TAFE to design e-business courses.

The Government has contributed to the project by providing a two-year lease for the Parramatta venue, fit-out and initial running costs. The contribution has been a catalyst for private sector involvement, which has

led to many industry players becoming partners in the alliance. Today the project has the support of some of the world's most prominent information technology companies, including Microsoft, Cisco and Dell. With the support of government, industry and our educational institutions successful creation of the New South Wales e-commerce Centre of Excellence will ensure that New South Wales remains the digital State for many years.

GUNNEDAH CHARCOAL PLANT WATER LICENCE

The Hon. I. COHEN: My question is to the Treasurer, representing the Premier. Last week in the House the Treasurer showed an interest in this matter. Given that the Government is intending to allow further use of our already overallocated northern New South Wales forests for the proposed charcoal plant at Gunnedah, will he confirm that the charcoal plant will also require the grant of an additional 55 megalitre per annum water licence for its operation?

Does the Government intend to grant such a licence, considering that the Namoi River is already overallocated by 70 per cent, is the most overallocated of any rivers within the State, and is in imminent danger of environmental collapse? Has the Government considered the wider environmental impacts of further depleting our north-eastern forests and the Namoi water catchment for this plan, particularly as last week the Treasurer stated that the Government would continue to work hard to ensure that development of important regional projects are not at the expense of our natural environment?

The Hon. Jennifer Gardiner: That question was longer than the Murray River.

The Hon. M. R. EGAN: As the Hon. Jennifer Gardiner pointed out, the question was longer than the Murray River.

The Hon. J. J. Della Bosca: No, the Murray River is very long.

The Hon. M. R. EGAN: And it was a very long question. At least the Hon. I. Cohen is a genuine Green. I cannot say that for everyone who goes under that party title in this House. But being a genuine Green does not mean that he is a knowledgeable Green. His question relates to arrangements for a new silicon smelter at the minerals processing park at Lithgow. I assume that the Hon. I. Cohen is a supporter of solar energy. He would understand that silicon is the thing from which the photovoltaic cells are made. One cannot have solar power without silicon. If there is anything else in the question I will refer it to the Premier.

The Hon. I. COHEN: I ask the Treasurer a supplementary question. Obviously, he is moving out of his portfolio area by a long shot, but I refer to the charcoal smelter that is part of the process to develop the silicon plant. The Treasurer said in this House that the Government would continue to work hard to ensure that development of important regional projects are not at the expense of our natural environment. It is a simple question.

The Hon. M. R. EGAN: I could not hear the supplementary question.

The PRESIDENT: Would you like it repeated?

The Hon. M. R. EGAN: No.

CROSS-BORDER ISSUES

The Hon. Dr B. P. V. PEZZUTTI: My question is directed to the Treasurer. Given his admission to the House last Thursday of cross-border problems will he support a bipartisan approach through some small independent body to help resolve these issues?

The Hon. M. R. EGAN: The problem with the Australian Federation involving, as it does and must, boundaries is that there will always be cross-border problems; they are inherent in Federation. If the honourable member has specific, sensible and affordable solutions to any of the cross-border problems I would be glad to hear them. I do not remember his government, in the seven years it was in office, doing much about them, but I would be grateful to hear of any recommendations. I point out that some problems are inherent, but Federation is a reality. As I have indicated previously, it was a conspiracy against New South Wales. If the honourable member has any sensible, realistic suggestions he should give them to me.

The Hon. Dr B. P. V. PEZZUTTI: I ask a supplementary question. Would the Treasurer support a cross-border commission to try to solve some of these problems?

The Hon. M. R. EGAN: As I indicated, there are inherent problems that I am not sure can be overcome by another bureaucracy. The Liberal Party is great at creating bureaucracies. I repeat, the honourable member should make a sensible suggestion, not merely propose the setting up of some quango to which he can no doubt retire. He is really after a retirement job but he is not getting one. He can stay here and serve out his time!

NORTH COAST AQUACULTURE STRATEGY

The Hon. A. B. MANSON: My question is to the Minister for Mineral Resources, and Minister for Fisheries. The Carr Government's proposed blueprint for aquaculture development, known as the North Coast aquaculture strategy, was widely discussed at a conference in Brisbane last month. What feedback has the Minister received?

The Hon. E. M. OBEID: I thank the Hon. A. B. Manson for his continued interest in this Government's attempt to develop a new industry for regional New South Wales. The Government has worked extremely hard to create an industry to provide jobs in regional New South Wales and it is a disgrace that it receives only slurs from the Opposition. I am sure that constituents in electorates represented by the Opposition would like to know about its attitude to this hard-working Government. I am proud that the Carr Labor Government's commitment to this growth industry includes planning strategies for its statewide development. The Government is determined to help the growth industry that has the potential to develop into one worth hundreds of millions of dollars each year.

The Hon. Dr B. P. V. Pezzutti: Hundreds of billions of dollars?

The Hon. E. M. OBEID: Hundreds of millions of dollars to New South Wales. It is a US$58 billion international industry. This Government's attempt to reach hundreds of millions is quite possible. To ensure that happens, the Government has taken a whole-of-government approach. A comprehensive draft of the North Coast aquaculture strategy has been developed and has already been on public display. The strategy identifies areas suitable for aquaculture, maps those areas using geographical information systems technology, and categorises them in levels of suitability. It streamlines the process of setting up and operating viable land-based aquaculture businesses. It maintains strict environmental controls. This draft strategy will become the blueprint for similar development in other parts of New South Wales. The Government's draft strategy was recently unveiled at an Australian Prawn Farmers Association environmental planning workshop in Brisbane.

The Hon. Dr B. P. V. Pezzutti: Did you go to Maclean on the North Coast yesterday?

The Hon. E. M. OBEID: I will answer that later. I will continue to advise this side of the House, and the crossbenchers, who really want to listen to what the Government is doing for regional New South Wales. The Government and industry representatives from New South Wales, Queensland, Western Australia, the Commonwealth and the Northern Territory attended this important forum. I am most pleased to say that the Carr Government's draft strategy was enthusiastically received by delegates at that national conference. The Worldwide Fund for Nature said that New South Wales "was miles ahead of the others States, showing enormous insight and inclusiveness in the process".

The CSIRO said of the North Coast aquaculture strategy, that it is "a robust and comprehensively definitive model for the future of coastal development in terms of its planning approach"; and that "it sets a new benchmark in aquaculture planning. Environment Australia referred to it as a breakthrough", and industry also endorsed our plan. Martin Breen, Executive Officer, Australian Prawn Farmers Association, said:

> There is a feeling of optimism that the sustainable aquaculture strategy will provide the necessary policy framework for future investment and development of aquaculture on the North Coast.

Col Price, the President of the Australian Prawn Farmers Association, said the strategy "gave the industry a direction and that the process should be adopted in Queensland". The Queensland Minister for the Environment, Rod Welsord, suggested Queensland should adopt a similar process. That is overwhelming support for the Carr Labor Government's very important North Coast aquaculture strategy. It is clear evidence of the success of this Government's initiative in developing a responsible and viable aquaculture industry. I look forward to advising the House on future developments in aquaculture.

To answer the persistent interjections of the Hon. Dr B. P. V. Pezzutti, unfortunately I did not attend the Cabinet meeting in Maclean. I have been to Maclean on numerous occasions where I have made an attempt

to visit all stakeholders who continue to have an open-door policy. The Hon. Dr B. P. V. Pezzutti is saying that the Government does not care. When the Government is able to produce a strategy that means a fast-track process in developing aquaculture and a thriving industry for the regions of New South Wales, it receives nothing but barbs and criticism from the Coalition.

OLYMPIC GAMES SITE HYDROFLUOROCARBONS USE

The Hon. A. G. CORBETT: My question is addressed to the Treasurer, representing the Minister for the Olympics. Will Coca-Cola Amatil and McDonald's use hydrofluorocarbons [HFCs] throughout the Olympics site as a refrigerant gas, despite the official and environmental guidelines calling for an HFC-free Olympics site? If so, what action will the Minister take to ensure that those two companies uphold the environmental guidelines and commit themselves to using 100 per cent HFC-free equipment, given that they have had seven years in which to order the readily available equipment?

The Hon. M. R. EGAN: I am not presently familiar with the issues raised. I will refer the question to my colleague, the Minister for the Olympics, and obtain a response.

RURAL AND REGIONAL GOVERNMENT SERVICES

The Hon. D. F. MOPPETT: My question is addressed to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. No doubt the Minister would be aware of the proposal announced by Elders to set up a network of banking facilities in country towns, many of which no longer have banking facilities. Will the Treasurer take this opportunity to commit the State Government to maintain all essential Government services in country towns throughout New South Wales?

The Hon. M. R. EGAN: The Government has taken considerable measures to ensure that the public sector work force is not only more significantly distributed throughout country and regional areas, but it has also taken measures to ensure that country towns that have lost banking facilities are assisted, particularly through credit unions. However, I am not aware, and I am pleased that it has been drawn to my attention, that Elders has set up a banking network in country towns. It must have been announced today. It is good news and I congratulate Elders on that initiative.

EASTERN CREEK DRAG RACING

The Hon. C. J. S. LYNN: My question is addressed to the Treasurer, representing the Premier. Is the Treasurer aware of public reports regarding accusations that the Premier has been misled by his Ministers and senior bureaucrats in regard to a stand-alone drag strip across the road from the Eastern Creek Raceway? In view of those reports will the Treasurer test the advice provided to the Premier's office by the Minister for Urban Affairs and Planning and the Minister for Sport and Recreation? Why does the Premier insist on referring to the proposal to establish a stand-alone drag racing strip as a get-rich-quick scheme when the Government has been in receipt of documents which clearly state the desire to operate the facility as a non-profit venue?

The Hon. M. R. EGAN: I am not aware of any public reports on any such accusations.

COMPUTER MONITORS DISPOSAL

The Hon. M. I. JONES: My question without notice is to the Minister for Mineral Resources, representing the Minister for Fair Trading. Will the Minister impose a mandatory disposal facility of old computer monitors by retailers selling the replacement monitor? The disposal of computer monitors is an increasing and serious problem, and suitable disposal facilities will inevitably need to be established. The components of computer monitors are extremely dangerous if left on council rubbish tips in the long term. In California the problem has been identified and appropriate legislation and disposal facilities have been established.

The Hon. E. M. OBEID: I will seek a detailed answer for the honourable member from my colleague in the other House.

OLYMPIC GAMES FUNDING

The Hon. J. F. RYAN: My question is to the Treasurer. Has the Treasurer seen comments by International Olympic Committee member Dr Jacques Rogge that "a big proportion of the $140 million will not

be needed"? How can he claim to be a responsible Treasurer when he gives out vast sums of taxpayers' money to recipients who admit they do not need it? How does the Treasurer justify $70 million for unexplained and unspecified contingencies, or is there another agenda?

The Hon. M. R. EGAN: I sure hope that Dr Rogge is right. As I have indicated on a number of occasions, I believe, in this House and certainly publicly, I hope that not all of that $140 million is expended. It is a contingency—and some of it is a contingency for unspecified and unimagined expenditures.

The Hon. E. M. Obeid: Explain contingency.

The Hon. D. J. Gay: We understand what contingency is.

The Hon. M. R. EGAN: But you are a Nat. The Hon. F. J. Ryan is a Liberal and he would not have a clue! What I have done is to make the amount available as a contingency, but it can be accessed only after recommendation by a contingency committee of SOCOG, I believe it is called, and after the approval of the Minister for the Olympics, and me.

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

CABRAMATTA DRUG USE

The Hon. M. R. EGAN: Today the Hon. Helen Sham-Ho asked me, in my capacity as the Minister representing the Minister for Police, a question about Cabramatta drug crimes and police resources. I provide the following answer:

> Experience and research around the world has shown that the best way to deal with complex community problems is for governments and communities to pool their resources and work together. The Carr Government established a Place Manager in Cabramatta to oversee the provision of services and ensure co-operation between police, health, community services, local council, residents and business people in the area. The Place Manager oversees a broad range of co-operative whole-of-government programs in the area. Among these community initiatives is the Fairfield Drug Action Team. The team has undertaken many including the development of a youth and police forum in Cabramatta, and drug and alcohol information cards, which provide contact details for drug referral, counselling and other support services in Fairfield.
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> Ethnic Liaison Officers [ELO] work with the local non-English-speaking background people to develop greater trust in the police. The ELOs also promote health and family services through community forums and the ethnic media. These officers have been working hard to help families overcome their fears about seeking help—particularly help for drug addicted children. The police also work with businesses in the area to improve security and gather intelligence. Greater Hume Region Commander, Chris Evans, continues to meet with the Cabramatta Chamber of Commerce and the Western Sydney Chambers of Commerce, as part of an ongoing co-operation on policing issues.
>
> **Operations**
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> Anyone who took even a casual interest in the proceedings of the Royal Commission into the New South Wales Police Service would remember the shocking evidence about the state of drug law enforcement in New South Wales. Shortly after the royal commission, the Carr Government hired a new commissioner to build our best weapon against crime—a clean, honest, accountable Police Service. Under the restructure, the old drug squads were replaced with Crime Agencies. Crime Agencies is tasked and resourced to fight organised and serious crime in co-operation with both the local area commands and Federal and interstate law enforcement agencies.
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> The success of Crime Agencies includes the seizure of over half a billion dollars worth of illicit drugs; 1,184 arrests and the preferring of 4,922 charges; and contributing to over $10 million of assets seized under the Criminal Assets Recovery Act. In the last six months of 1999 alone New South Wales saw restraining orders placed on the proceeds of serious crime to the value of $21 million; and most of that crime is drug related. Prior to the restructure, the Drug Enforcement Agency had an authorised strength of 174. Crime Agencies' strength is over 600. Under our plans to strengthen the Police Service in this term of government, Crime Agencies will receive an extra 150 detectives so that Crime Agencies can increase its attack on organised crime—the Mr Bigs and mid-level drug dealers.
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> Since the Government came to power it has provided the service with a record number of over 13,400 police and a record police budget of $1.4 billion. The Carr Government introduced tougher laws. These include life sentences for major heroin and cocaine dealers; confiscation of assets; a new offence for dealers who make three or more drug deals in 30 days; and a crackdown on street level crime and disorder. Increased powers and penalties are being used to reclaim the streets and instil respect for community values and the law. These include the Crimes Legislation Amendment (Police and Public Safety) Act 1998, which enables the police to crack down on street level crime, intimidation and disorder.
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> The Government also introduced tougher sentences for people who deal with children. Several major police operations are under way in the Cabramatta area, including Strike Force Portville. This is a joint investigation with Crime Agencies—the Police Service's most expert crime fighting unit. On 6 March, 10 extra officers from Crime Agencies and the Greater Hume Region were sent to Cabramatta to join Strike Force Portville. Operation Puccini, the major anti-drug operation in Cabramatta, has been running since July 1997 and has resulted in 7,477 people arrested; 11,559 charges being laid; and contributed to the seizure of 2,424.11 grams of heroin.

Other operations included Operations Pitten and Lime Street that resulted in the seizure of heroin and arrests for supply. The Minister for Police recently launched a campaign to promote the use of the Crime Stoppers telephone line to report information on drug dealers. Sadly, many people feel too intimidated to come forward with information. The police believe the use of Crime Stoppers will make the public more comfortable with reporting what they know to the police.

NSW Drug Summit

We recognise that a long-term solution must involve helping addicts to give up their habit. To do this we must target the multiple causes of addiction. The Government Plan of Action arising from the Drug Summit provides major initiatives addressing law enforcement, treatment, drug education and community action. The Special Minister for State is overseeing the introduction of a raft of programs designed to break the drug-crime nexus. The Government is trialling a range of initiatives including education, new therapies, diversion and compulsory treatment. Early results from the Drug Court trial—modelled on the successful United States version—are promising. Addicts diverted into the Drug Court have a far lower recidivism rate than those in the ordinary courts.

Drug diversion is now Federal policy. The Prime Minister and the Premier released a joint press statement on 25 May, this year, confirming bipartisan commitment to diversion as the best long-term strategy to address drug abuse and the problems which flow from it. The Government will be making evidence-based assessments of the programs arising from the Drug Summit. The Police Service will continue to commit officers and resources to removing the scourge of drugs from the streets of Cabramatta.

ETHNIC GANG VIOLENCE

The Hon. M. R. EGAN: On 23 May the Hon. Helen Sham-Ho asked me a question without notice relating to ethnic gang violence. The Minister for Police has provided the following response:

The recommendations contained in Dr Poynting's book are known to the New South Wales Police Service. The Commissioner of Police advises that matters relevant to policing and young persons who originate from a range of communities receive extensive coverage in the courses delivered by education services, within the New South Wales Police Service. In addition, cross-cultural awareness training in the constable education program exceeds the minimum 22 hours recommended by the National Police Ethnic Advisory Bureau. The constable education program, with approximately 2,000 currently enrolled officers, emphasises racial and multicultural issues in its courses covering four trimesters. Similarly, the Bachelor of Policing course that is delivered by the Charles Sturt University specifies a number of subjects that are particular in addressing cultural issues and policing.

Other training of an "in-service" variety and which contains a focus on cross-cultural issues includes: the domestic violence liaison officer's course; the specialist youth officer's course; competency based development packages; joint investigation teams training; investigative interviewing course; and detectives education program. The Police Service has also established the police and community training program with assistance from the Ethnic Affairs Commission and is aimed at setting up locally based projects designed to facilitate greater awareness of the issues confronting police in culturally and lingually diverse communities.

Each project is developed by a local team and involves the education of both police and community. There are currently nine such programs in place within New South Wales and all have been valuable in fostering dialogue and concord between police and culturally and linguistically diverse communities. The training of police spans a large number of topics that collectively aim for the development of a high degree of professionalism, sensitivity and effectiveness in the provision of policing services to all citizens. The honourable member may be assured that cross-cultural training is a key component of police training.

AMBULANCE SERVICE INDUSTRIAL DISPUTE

The Hon. M. R. EGAN: On 30 May the Hon. Helen Sham-Ho asked me a question relating to legionella disease control. The Minister for Health has provided the following response:

The Ambulance Service of New South Wales has advised that there were no industrial bans by call centres and administrative support staff between 2 June and 9 June 2000.

OLYMPIC GAMES SOFTBALL STADIUM DAMAGE

The Hon. M. R. EGAN: On 24 May the Hon. J. M. Samios asked me a question without notice relating to Olympics softball stadium damage. The Minister for the Olympics has provided the following response:

At the request of the Department of Defence, the Olympic Co-ordination Authority [OCA] made available the Blacktown Olympic Centre Softball facility for a real Games time venue simulation training exercise. Prior to the exercise some doors to offices and toilets were removed and replaced with temporary doors. During the exercise damage, estimated to be in the order of $30,000 to $50,000, occurred to the venue. The Department of Defence is responsible for the cost of all rectification work.

CHELMSFORD VICTIMS ACTION GROUP FUNDING

The Hon. M. R. EGAN: On 24 May the Hon. I. Cohen asked me a question relating to the Chelmsford Victims Action Group. The Minister for Health has provided the following response:

The grant money—$255,000—was first offered to the Chelmsford Victims Action Group in 1992. This grant was pledged by the then Premier subject to a satisfactory agreement with New South Wales Health. Over the intervening years, New South Wales

Health made repeated efforts to allocate the funds to the Chelmsford Victims Action Group but the organisation did not accept the funding. Two former office bearers with the group have now claimed the grant. New South Wales Health is encouraging the Chelmsford Victims Support Group to reconstitute its organisation and develop a program that will meet the present needs of the former Chelmsford patients and their relatives.

OLYMPIC AND PARALYMPIC GAMES BEHAVIOUR STANDARDS

The Hon. M. R. EGAN: On 24 May the Hon. A. G. Corbett asked me a question relating to Olympic and Paralympic Games facilities. The Minister for the Olympics has provided the following response:

In the event of damage to the Olympic Village caused by team members the National Olympic Committee [NOC] of the athletes or officials involved will be required to compensate SOCOG for such damage. In this regard NOCs are required to sign a form on arrival acknowledging that they are responsible for any damage caused during their period of occupancy.

POLICE DNA TESTING OF WEE WAA RESIDENTS

The Hon. M. R. EGAN: On 30 May the Hon. A. G. Corbett asked me a question relating to Police DNA testing of Wee Waa residents. The Minister for Police has provided the following response:

The Director, Forensic Services Group, advises me, that the DNA samples, related papers and profiles of the Wee Waa volunteers have not yet been destroyed. The Minister for Police is advised that the New South Wales Police Service is currently developing protocols for the destruction of these items.

OLYMPIC GAMES EXPENDITURE

The Hon. M. R. EGAN: On 24 May the Hon. M. I. Jones asked me a question relating to Olympic Games expenditure. The Minister for the Olympics has provided the following response:

The issue raised by the previous Auditor-General in relation to estimated increased revenues flowing to government from Games activity is a matter of financial reporting not one of funding. Economic studies conducted by KPMG Peat Marwick in 1993, the University of Tasmania and New South Wales Treasury in 1997 and Arthur Andersen in 1999 have all recognised that the increase in economic activity created by the year 2000 Games will result in an increase in revenues flowing to the Commonwealth, State and Local Governments.

There is no dispute that these moneys will be received. In calculating the net cost to Government of the Games, the Olympic Co-ordination Authority showed the amount of this additional State revenue, as calculated by the New South Wales Treasury, as a reduction in the cost of the Games to Government. After all, they are Games-related revenues. The previous Auditor-General considered that these revenues were indirect benefits and should be excluded from the calculation of net cost of the Games. The issue has no impact on funding or the State budget.

DUBBO POLICE CAR VANDALISM

The Hon. M. R. EGAN: On 24 May the Hon. Elaine Nile asked me a question relating to Dubbo police car vandalism. The Minister for Police has provided the following response:

On 21 May a stolen motor vehicle was pursued by police who discontinued the chase in the interests of public safety. The stolen vehicle was recovered and transferred to the police holding yard, Dubbo, for fingerprinting to be conducted the following morning. A fire broke out in the impounded vehicle at approximately 12.30 a.m. on 22 May. The fire also destroyed a highway patrol vehicle and another was damaged. Police in attendance received minor lacerations from flying shards of glass and sustained injuries through their attempts to move the vehicles from the fire.

An alleged offender was arrested by police in relation to the fire and damage sustained by the police holding yard on 22 May. Police draw no connection between the alleged offender and the exclusion of teenagers from a local school for disobedience. Police have met with concerned parents at the Gordon Centre, west Dubbo, in an effort to address the recent spate of antisocial behaviour by some residents on the Gordon estate. Since the arrest of several other suspected offenders, the incidence of instability in the area has significantly lessened.

LEGIONELLA DISEASE CONTROL

The Hon. M. R. EGAN: On 26 May the Hon. Elaine Nile asked me a question relating to legionella disease control. The Minister for Health has provided the following response:

The Legionella control system developed by Mr Rex was installed at some cooling towers at BHP, Port Kembla, for research and development purposes. A report, by an independent consultant, on the progress of the system indicates that although the process demonstrated an ability to control Legionella it is of an experimental nature and suffers equipment reliability shortcomings. Under the provisions of the Public Health Act all cooling towers in New South Wales must be fitted with an approved process of disinfection. There are about 90 approved processes of disinfection. Mr Rex has not applied for approval of his system.

BROKEN HILL BLOOD BANK SERVICES

The Hon. M. R. EGAN: On 24 May the Hon. D. F. Moppett asked me a question relating to the Broken Hill blood bank services. The Minister for Health has provided the following response:

> The Minister for Health has received representations from Broken Hill City Council concerning the Broken Hill blood bank services and you can be an assured that they will receive a response to those representations shortly.

OLYMPIC GAMES COSTS AND BENEFITS ANALYSIS

The Hon. M. R. EGAN: On 25 May the Hon. Dr A. Chesterfield-Evans asked me a question relating to Olympic Games costs and benefits analysis. The Minister for the Olympics has provided the following response:

> The full cost of the Olympic Games to the Government will be recorded, tallied, reported on and audited. The Olympic Co-ordination Authority has a legislative responsibility to report to the Government on the overall expenditure associated with the Olympic Games. The authority in June 1998, with the release of its State of Play report, published the first ever estimated cost of the Olympic and Paralympic Games, more than two years before the actual event. Updated finance reports showing the revised estimated cost of the Games to the Government have been released at the same time as the State budget in June 1999 and May 2000.
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> Furthermore, all government agencies must report to the New South Wales Treasury on the costs associated with the Olympic and Paralympic Games. This includes all direct costs as well as the cost of staff who are reassigned to Olympic duties. SOCOG reports to Treasury on its budget and is audited by Arthur Andersen and the Auditor- General. In addition, the Audit Office conducted a special audit on the Olympic and Paralympic Games in late 1998 and reported to Parliament in January 1999.
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> The Auditor-General will audit and report on the cost of the Olympic and Paralympic Games after they have been completed. Since February, the Treasury has been represented on the finance and contingency committees of SOCOG. As part of the controls placed on the $140 million Olympic contingency fund, Treasury will join a group of executives from OCA, SOCOG, ORTA, the Olympic Security Command and Sydney Olympic Broadcasting Organisation that reviews Games readiness.

BLACKTOWN HOSPITAL SECURITY

The Hon. M. R. EGAN: On 30 May the Hon. Dr A. Chesterfield-Evans asked me a question relating to Blacktown Hospital security. The Minister for Police has provided the following response:

> Decisions regarding the security of Blacktown Hospital are a matter for the Minister for Health. However, the Blacktown Local Area Commander has advised that he has invited the Deputy Director of Blacktown Hospital to continue to contact police for any future assistance she may require.

FORMER AUSTRALIAN PARALYMPIAN Mr CHED TOWNS

The Hon. M. R. EGAN: On 25 May the Hon. C. J. S. Lynn asked me a question relating to former Australian Paralympic representative Ched Towns. The Minister for the Olympics has provided the following response:

> The Minister for the Olympics is aware not only of the case of Ched Towns but also of other torchbearers who have passed away since they were chosen to carry Sydney's Olympic Torch. The Minister instituted a review of the policy regarding the death of a torchbearer and has decided that if a torchbearer has passed away a family member may run in their place to honour the memory of that person.

NURSE PRACTITIONERS LEGISLATION IMPLEMENTATION

The Hon. M. R. EGAN: On 26 May the Hon. Jennifer Gardiner asked me a question relating to nurse practitioners legislation implementation. The Minister for Health has provided the following response:

> Cobar is the only community of which the Minister for Health is aware that has expressed concern about the way in which the Nurse Amendment (Nurse Practitioners) Act is being implemented. Macquarie Area Health Service has been working on a proposal to establish a midwifery nurse practitioner service in Cobar. Consumer representation has been provided from the Cobar Health Council, and the Health and Research Employees Association and the Nurses Association have been involved. The area health service did invite the Australian Medical Association and the Rural Doctors Association but received no reply.
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> The Minister for Health understands members of the Cobar Health Council have expressed their concern about media comments claiming there had been no community consultation. They have quite rightly pointed out that there has been extensive community consultation. Evaluation and monitoring of the implementation is being overseen by a statewide committee including representatives of the Royal College of General Practitioners, the New South Wales College of Nursing, the Nursing Association, the Rural Doctors Association, the Australian Medical Association (New South Wales) and consumers.
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> Nurse practitioners will work collaboratively with rural doctors, allied health staff and hospitals to enhance health care in New South Wales. They will only practice in the public sector where there is an approved position funded from within existing

resources. The New South Wales Nurses Registration Board has developed a rigorous authorisation process. Any prospective nurse practitioner will be required to undergo the full authorisation process by the board and re-authorisation will be required every three years.

Some rural communities have limited access to medical services. Some are reliant on clinics provided by the Royal Flying Doctor Service, for example, its fortnightly service to Wanaaring. Others such as Hill End and Sofala have only monthly visits by a general practitioner. Through the nurse practitioner program the Government is giving rural communities the opportunity to enhance their local health care services. The Rt Hon. Ian Sinclair, in his report from the Ministerial Advisory Committee on Health Services in Smaller Towns, wrote:

The committee views the nurse practitioner initiative as an appropriate mechanism to recognise the current roles of many rural or remote nurses, to provide substantial enhancement of services and to compliment existing GP activities. The committee noted the current resistance from the Rural Doctors Association and some individual GPs consulted regarding the nurse practitioner initiative.

KURNELL AND BOTANY COGENERATION POWER PLANTS

The Hon. M. R. EGAN: On 2 June the Hon. R. T. M. Bull asked me a question relating to Sithe Energies Australia Pty Ltd. The Minister for Energy has provided the following response:

Mr Bull's question contains two factual inaccuracies. Sithe Energies Australia has made no such announcement, although there was an article in the St George and Sutherland Shire Leader of 1 June 2000 to the same effect to which Mr Bull may be referring. The question was incorrect in linking Sithe Energies Australia with both the Kurnell and Botany projects. A different group, the Alise Consortium, has been considering a cogeneration project at Botany and has also made no recent announcement. In fact, I am advised that the Botany cogeneration project is still being actively progressed. Sithe Energies Australia Pty Ltd has no comment to make on the question. However, the company notes that its failure to comment should not be viewed as either confirming or denying any assertion made, as the company's general corporate policy is not to respond publicly to speculation about its business affairs.

ELECTRICITY THEFT

The Hon. J. J. DELLA BOSCA: On 25 May the Hon. J. H. Jobling asked me a question about electricity theft. The Minister for Information Technology, Minister for Energy, Minister for Forestry, and Minister for Western Sydney has provided the following response:

The Minister for Energy and I are aware of the recent media attention of electricity theft in New South Wales which relates particularly to theft for the purposes of hydroponic growing of marijuana. We are, however, unsure to what you are referring when you mention privacy provisions in the national electricity code making it impossible for distributors to track people suspected of theft. New South Wales has been a participant in the national electricity market since it began in December 1998 and has operated under the code during that time. Distributors have continued to investigate all identified cases of electricity theft. EnergyAustralia, the largest New South Wales distributor, currently has approximately 300 cases of theft under investigation. All cases that are identified as theft will result in prosecution and will attract fines of up to $5,500.

While competition in the national electricity market may complicate the process of tracking electricity theft, it may also make it more difficult for potential thieves to steal electricity. With the introduction of full retail competition, retailers will face increased pressure on their retail margins, giving them a stronger incentive to identify electricity theft and pursue it vigorously. The main strategies of the distributors for combating electricity theft are to encourage staff to identify and report possible cases while at the same time raising community awareness of the issue and publicising prosecutions widely.

WESTFIELDS HIGH SCHOOL TEACHER ASSAULT

The Hon. J. J. DELLA BOSCA: On 24 May the Hon. C. J. S. Lynn asked me a question relating to Westfields High School teacher assault. The Minister for Education and Training has provided the following response:

(1) The Minister for Education and Training, the Hon. John Aquilina MP is aware of the incident which occurred on 11 November 1998 when several youths entered the grounds of Westfields High School without permission.

(2) The Minister is aware that Mr Barr sustained injuries as a result of the incident.

(3) The Department of Education and Training cannot apply for an apprehended violence order on behalf of an employee. The department through its legal services unit provides comprehensive legal assistance to employees seeking apprehended violence orders arising from their employment.

(4) The Government has given principals unprecedented powers to maintain discipline and ensure that our schools are safe learning environments. Incidents involving violence or threats of violence are dealt with under the Department of Education and Training "Good Discipline and Effective Learning: Procedures for the Suspension and Expulsion of School Students".

Any student committing an assault will bear the full consequences of the law, involving police investigation and strong disciplinary action. Assault is a serious criminal matter and is properly dealt with by the police.

(5) All serious incidents which occur in New South Wales Government schools are reported to the relevant district superintendent and appropriate action is taken by the Department of Education and Training.

Due to issues of personal privacy, as well as general security of individuals, it would not be appropriate to list details of serious incidents of public notification.

SOUTH SYDNEY CITY COUNCIL ELECTION FUNDING

The Hon. E. M. OBEID: On 23 May the Hon. D. T. Harwin asked me a question relating to the South Sydney Council election funding. The Minister for Local Government has provided the following response:

The Department of Local Government has declined to investigate the matter because it raises two issues both of which are the responsibility of the council, and not because of its restructure or the downgrading of its complaints handling function. Section 440 of the Local Government Act 1993 requires every council to prepare or adopt a code of conduct to be observed by councillors, members of staff for the council and delegates of the council. Responsibility for examining allegations of breaches of the code and imposing sanctions are matters for each council.

Further, section 252 of the Act requires councils to adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor—if there is one—and the other councillors in relation to discharging the functions of civic office. Accordingly, councillor Bush's concerns as to the appropriateness of the mayor's comments in South Sydney Council's own publication are matters to be determined by the council, both in terms of its code of conduct, and its policy regarding the payment of expenses and the provision of facilities to the mayor and councillors in the discharge of their functions of civic office.

AIRPORT RAIL LINK COMMUTER SERVICES

The Hon. E. M. OBEID: On 24 May the Hon. P. J. Breen asked me a question relating to the airport rail link commuter services. The Minister for Transport, and Minister for Roads has provided the following response:

CityRail understands the issues that commuters have raised and will continue to monitor the situation.

UNSOLICITED MAIL

The Hon. E. M. OBEID: On 26 May the Hon. A. G. Corbett asked me a question relating to unsolicited mail. The Minister for Fair Trading, and Minister for Sport and Recreation has provided the following response:

I assume that the unsolicited mail to which the honourable member refers includes legitimate advertising material offering legitimate goods and services and other material that is merely promoting scams. Many Australian direct marketing businesses are members of the Australian Direct Marketing Association [ADMA]. Members of ADMA are required to comply with the voluntary direct marketing code of conduct that sets specific standards of conduct for members in relation to their customers and serves as a benchmark in settling disputes between the member and its customers. The code promotes fair trading and serves as a point of reference for direct marketers to ensure they comply with State and Commonwealth fair trading laws.

Consumers can write to ADMA at P.O. Box 464 Kings Cross, New South Wales, 1340, to have their mailing details removed from its list to ensure that no further promotional material is received from ADMA members. During recent years, Australians have been the target of many overseas scams disguised as "games of skill", lotteries and windfalls. In the case of overseas promotional material, I can only suggest that recipients immediately dispose of such material unless the offer is of value to them and they are able to confirm the integrity of the promoters involved.

The Department of Fair Trading will investigate unsolicited mail where there is a risk to the public and where a breach of fair trading legislation is involved. The department has been successful in recent years in stopping a number of unscrupulous operators of "get rich quick" scams preying upon the New South Wales public. These scams included Regal International, Oakroyd Limited and United Equity.

PARRAMATTA TO CHATSWOOD RAIL LINK BRIDGE

The Hon. J. J. DELLA BOSCA: On 23 May the Leader of the Opposition asked me a question relating to the Parramatta to Chatswood rail link bridge. The Minister for Transport, and Minister for Roads has provided the following response:

The transfer of land at Browns Waterhole had been identified by the National Parks and Wildlife Service in 1999 as a compensatory measure for this project. The Greens proposed, and the Government agreed, that the commitment to the transfer of this land would be included in the enabling legislation for this project.

F3 TRAFFIC CONTROL ROOM INSPECTION

The Hon. E. M. OBEID: On 31 May the Leader of the Opposition asked me a question relating to the F3 traffic control room inspection. The Minister for Transport, and Minister for Roads has provided me with the following response:

> A visit to the Roads and Traffic Authority's Transport Management Centre [TMC] by the F3 traffic forum subcommittee on 23 May 2000 was postponed due to demanding operational issues and planning for the Corroboree 2000 event. The TMC was the lead agency for planning the transport operations in support of Corroboree 2000 and the week commencing 22 May 2000 was especially challenging. The Corroboree 2000 event was an outstanding success due to the focus and commitment of TMC staff. The Government is pleased to advise that this postponed visit was rescheduled and took place on 13 June 2000. Furthermore, in response to the Leader of the Opposition's supplementary question, Mr J Lloyd, MP, Federal member for Robertson, was provided with a response from the Parliamentary Secretary assisting the Minister for Roads, on my behalf, on 5 June 2000.

DOLPHIN PROTECTION

The Hon. E. M. OBEID: On 6 June the Hon. Elaine Nile asked me a question relating to dolphin protection. The Minister for the Environment has provided the following response:

> Concerns about the impacts of increased commercial dolphin watch cruises on the bottlenose dolphin population in Port Stephens has led to the establishment of the Dolphin Research Education And Management [DREAM] project. The aim of the project is to finance baseline research on the Port Stephens bottlenose dolphin population, with this information leading to the formulation of a management plan for the population and public education program. The first phase of the dolphin research project was carried out by the Macquarie University graduate school of the environment, marine mammal research group, under contract to the National Parks and Wildlife Service [NPWS]. The research involved a population census involving photographic identification techniques as well as recording dolphin vessel interactions.
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> The report on this initial phase of research findings included a population estimate of 165 animals, and that the Port Stephens bottlenose dolphin population is explored to considerable boating activity—commercial and recreational—which affects their behaviour. In 44 per cent of the recorded vessel approaches and interactions between dolphins and tour vessels there was an observable change in behaviour, and in 16 per cent of the approaches and interaction active avoidance behaviour by dolphins of tour vessels was recorded. The impacts on dolphins caused by vessel interaction is not clearly understood but is regarded to have potential impacts on feeding, resting, breeding and socialising behaviour patterns to some degree with documented cases of animal strike and injury also occurring.
>
> The 1999-2000 Christmas-New Year period has seen increased public demand for commercial dolphin watch cruises. This has resulted in a number of operators now running up to four tours a day, thus potentially increasing the amount of dolphin-vessel interaction time and pressure. This has lead to increased concerns from the commercial dolphin watch operators within the Port Stephens Commercial Dolphin Watch Association [PSCDWA], who abide by a voluntary code of conduct, restricting them to two tours a day.
>
> At a meeting of all commercial dolphin watch operators in Port Stephens on 5 January 2000, the NPWS tabled the Australian National Guidelines for Cetacean Observation and Areas of Special Interest for Cetacean Observation released by Environment Australia in August 1999. These guidelines were prepared by Environment Australia, in conjunction with each State government conservation agency, including the NPWS, along with the peak industry representative body Cetacea Australia. These guidelines take a firmer stance than the PSCDWA code of conduct in relation to approach distances and better define what constitutes approach and disturbance of marine mammals.
>
> It is expected that these guidelines will form the basis for regulations and a possible licensing system to help manage the industry and its impacts on marine mammals. This expected to take place as part of the current review of the New South Wales National Parks and Wildlife Act but outcomes of this process are not expected for at least another 12 or 18 months. In the interim, the NPWS has encouraged the dolphin watch industry to adopt the national guidelines for their operations. In applying the national guidelines as a voluntary code, the industry would be adopting best practice and preparing themselves for the introduction of a new regulatory regime. The NPWS is willing to assist the dolphin watch operators in applying this voluntary code and has offered support with education and community-based programs.

SOLITARY ISLANDS MARINE PARK

The Hon. E. M. OBEID: On 7 June the Hon. M. I. Jones asked me a question regarding the source of expenditure for marine parks, in particular the Solitary Islands Marine Park. I can now provide the following response:

> The annual budget for the Solitary Islands Marine Park is $480,000. This funding provides for the ongoing management, research and compliance, which includes enforcement and advisory, of the existing zoning plan; the development of a draft zone plan and operational plan for the marine park, this is a major project involving extensive public consultation, and support for the operation of the Solitary Islands Marine Park advisory committee. The Marine Park Authority has also negotiated some external funding to manage the Commonwealth portion of the marine park.

NORTHSIDE STORAGE TUNNEL GAS EMISSIONS

The Hon. CARMEL TEBBUTT: On 23 May the Hon. Dr P. Wong asked me a question relating to the northside storage tunnel. The Minister for Energy has provided the following response:

(1) As noted in the final report of mediation, it was agreed by all parties to the mediation that there was no way forward in terms of a mutually acceptable, single solution to the dispute between the parties and no possibility that a recommendation could be made as to a mutually acceptable solution.

(2) The proposed vent and activated carbon system at Scotts Creek were the subject of intensive consideration in 1999 by the New South Wales Health Department, the Department of Urban Affairs and Planning and Sydney Water as part of the review of environmental factors. The advice received from these processes indicates that there is insignificant risk to human health from air exhausted from the vent. Additionally, the Environment Protection Authority and the Department of Urban Affairs and Planning have placed stringent requirements on Sydney Water to monitor the performance of the vent once it is operational.

Officers of New South Wales Health have considered the public health impact from vent emissions "to bevery low, and a considerable improvement on the current situation where the public is exposed to uncontrolled raw sewage overflows." New South Wales Health acknowledges that the use of activated carbon filters will "further minimise any risk of micro-organisms spreading via vent emissions." In addition, the Waterways Advisory Panel is convinced that the proposed solution is environmentally acceptable, poses minimal health risk to the local community and represents a substantial improvement on the current environmental conditions in that valley. Additionally, the advisory panel found that the northside storage tunnel and other stormwater management programs will have significant environmental improvements to Sydney's waterways and that progress has been achieved by the Government and Sydney Water in ameliorating the effects of pollution, particularly sewer overflows, on Sydney Harbour.

(3) See answer to (2).

Questions without notice concluded.

BUSINESS OF THE HOUSE

Postponement of Business

Motion by the Hon. P. T. Primrose agreed to:

That orders of the day Nos 1 and 2 on the notice paper for committee reports be postponed until the next sitting day.

CASINO CONTROL AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. R. T. M. BULL [5.06 p.m.]: Earlier I referred to issues raised recently about the operation of the casino. I also addressed problems at the casino and where blame should be laid. There seems little doubt that the 1999 government budget cutbacks had an impact upon the efficacy and ability of the Division of Casino Surveillance, within the Department of Gaming and Racing, to monitor the ongoing functions and probity of the casino. The bill makes amendments affecting the Casino Control Authority. The Opposition welcomes those changes, but will keep an eye on whether they go far enough.

Various aspects of the bill are important. A key function of the Casino Control Authority—promotion of tourism, employment and economic development—is removed. That function fitted poorly in the parameters of authority of the casino, which has the primary responsibility of regulating the probity of the casino licence. The need to promote tourism, employment and economic development was not at any stage part of the reason for establishing a Casino Control Authority. This legislation was proposed by the Coalition Government in 1994, and I do not believe it was ever envisaged that that would be one of the prime functions of the Casino Control Authority. The Opposition supports the removal of that function.

The specification of social sciences as an additional field of qualification for members of the Casino Control Authority is a worthwhile change. It enables those fitted for the role to know a little bit more about problem gambling, its consequences and ways to deal with the issue. This amendment is very interesting and worthwhile, and the Opposition has much pleasure in supporting it. Those who voluntarily exclude themselves from the casino but are found on the casino premises are to suffer a criminal penalty, and that is a bit over the top. However, the Opposition regards this amendment as a necessary one. A self-exclusion order is an order that a person takes on himself or herself voluntarily. Obviously, such an order is in the best interests of the persons

involved and their families, and the system is promoted by them and those closest to them. These individuals tend to transgress from time to time—obviously against their own self-interests—but a criminal penalty is not required. Otherwise, this is a good amendment.

The amendment to enable imposition of penalty notices rather than prosecution for minor offences is also very worthwhile. The bill contains a number of very good measures to enhance the operations of the Casino Control Authority and the casino. It is important that all of the issues that have been raised over the past few months are properly clarified by Mr McClellan, QC, during his inquiry into the casino licence. That inquiry is ongoing and will continue until later this year. Mr McClellan has already been down the track of reviewing the licence. Similar issues are being raised now. About three years ago loan sharking, laundering of money and many other allegations were raised by people associated with or close to the casino who believed they had some evidence to put forward. Those issues that were raised in the past need to be dealt with by the Government and by Mr McClellan so that people can have confidence in the efficacy of the operation of the casino.

It is important for the public to know that the casino is properly run and that they can go to the casino and enjoy themselves without any fear. They must have confidence in the operation of the Division of Casino Surveillance and the Casino Control Authority. I urge the Government to review staffing levels within the surveillance division. If the staffing level is running at half the level it was some years ago, one would question whether the surveillance division is still efficient. Hopefully, Mr McClellan will comment, one way or the other, in his report on the surveillance division, although it might not necessarily be within the parameters of his inquiry to do so. However, when considering the appropriateness or otherwise of the licence, Mr McClellan must report on other associated and relevant issues so that the air may be cleared with respect to the many allegations that have been raised. The Opposition has genuine concerns about those matters. My colleague in the other place raised many issues which I do not believe have been satisfactorily answered. We need the answers to make sure that the Sydney casino is properly run and provides this city with a service of which we can all be proud.

The Hon. I. COHEN [5.13 p.m.]: The Casino Control Amendment Bill is a belated acknowledgment by the Government that all is not well at the Sydney casino. The Greens welcome these changes to the Act. We welcome particularly the removal of the promotion of tourism, employment and economic development as an object of the Casino Control Authority. It was this object of the Act that led to the well-publicised removal of Casino Control Authority chairperson Kaye Loder. Ms Loder dared to say she was sorry that the money spent by high rollers at the casino would leave New South Wales. The Premier removed Ms Loder from her position because she told the truth about the way the casino was being managed. But Ms Loder was simply the "fall woman", and many questions about the management of the casino remain unanswered.

I am a member of the estimates committee that recently questioned the Minister in relation to media reports about money laundering activities carried out by corrupt people at the casino. The Minister replied that the Casino Surveillance Division was responsible for investigating those matters. But, when I asked the Minister how often the top high rollers were identified and investigations followed up to ensure that those people were not putting questionable money through the casino, the Minister could not answer. The Minister took my question on notice. I look forward to a response, which has not yet been forthcoming. There is enormous community concern about people using the casino for corrupt activities and the apparent lack of action by the Government to put proper safeguards in place. The estimates committee also questioned the Minister in relation to staff cuts at the Casino Surveillance Commission. The Minister answered that as a result of:

> ... budget cuts in the area of Casino surveillance as from 1 July 1999 to create necessary savings of $1.75 million identified to the department by the Treasury, the division's staffing of 58 was reduced to 29. This was considered to be the minimum number of staff required to enable the Director of Casino Surveillance to continue his necessary statutory functions and obligations under the Casino Control Act.

The Minister's answer revealed that, despite the bonanza which the Treasury receives in millions of dollars paid to the Government from the operations of the casino, staffing was slashed by 50 per cent due to budget cuts. In those circumstances, the Government's claim that the bill is a serious attempt to address criminal activities at the casino cannot be taken seriously. The bill must, therefore, be seen in the light of a deliberate management approach that has consigned this issue as well as other important management issues at the casino to the too-hard basket. Recent media reports suggest that sexual harassment of staff is also a major problem at the casino and that staff complaints about the behaviour of patrons are routinely ignored. One staff member was reported to have said:

> If we complain that a gambler is so drunk he doesn't really know what he's doing, we shouldn't be dealing to him, we're told it's not our call; they want the money. I've been forced to deal cards to players who couldn't count their chips, let alone keep count of the cards I dealt them.

Those reports confirm that the Government simply regards the casino as a cash cow. It is either turning a blind eye to corrupt, unlawful and unethical conduct or it is actively hindering the ability of investigators to do their jobs. Finally, I turn to the issue of problem gambling. The Productivity Commission estimated that there are 329,000 problem gamblers in Australia—one-third of them, or more than 100,000, in New South Wales. Problem gambling is now recognised as one of the major contributing factors to poverty in this State.

The bill attempts to address the issue by making minor changes in the administrative structure of the casino. But it does not really attempt to deal with the root of the problem. The dominant philosophy, of looking after the revenue stream provided by the cash cow rather than the social problems caused by gambling, remains unaffected by the bill. The bill specifies that social sciences be added to the qualifications for eligibility for appointment to the board. Whilst this is welcome, it does not go far enough. The Greens will be supporting the amendments proposed by the Hon. R. S. L. Jones, for they will expand the list of qualifications to include people with skills and experience in other areas. The Greens support the bill, but feel that there is a great deal more that could be done, and needs to be done, to resolve a growing problem for our community in New South Wales. As is so often the case, the pursuit of profit outweighs the social cost.

The Hon. Dr P. WONG [5.17 p.m.]: I welcome this bill as one more positive step in addressing current anomalies in the operation of the Sydney casino and the Casino Control Authority. This bill is positive, but it is only a bandaid measure to cover up the wounds of this State created by increased gambling. The bill addresses problems relating to the objectives of the casino, the detection of cheating and infringements, and the issue of problem gamblers, only after those problems have become so evident in the public and in the media. This bill is reactive, rather than proactive, and once again I call upon the Government to come up with more positive policies to address the problems associated with gambling.

The main purpose of the bill is to change the objectives of the Casino Control Authority so that the authority is charged with harm minimisation and removal of the potential for criminal influence or exploitation. After the much-publicised and controversial views of the former chairperson of the Casino Control Authority on *Four Corners*, the authority, as a result of this bill, no longer will have the objective of promoting tourism, employment and economic development. It is positive that the Government has recognised, at last, that there could have been a conflict of interest in the objectives of the Casino Control Authority and that the Government now will eliminate that potential from the legislation.

However, it is not only the objectives of the authority in the Act that should have been a worry for the Government and for the New South Wales public. It is much more than that. I believe that an organisational culture exists within the authority and in many other key agencies and organisations concerned with the issues of gambling and revenue, an organisational culture which would prolong and extend behaviour and views similar to those expressed by the former chair of the authority. We cannot simply claim that the Casino Control Authority having the objective of promoting tourism and economic development was the only reason behind the already expressed view of the authority's chairperson that New South Wales would be losing possible revenue due to the banning of a high roller from the Sydney Casino.

These views are based not only on the legislation but also on the ongoing view that gambling is a necessary and much-needed source of revenue. We cannot eradicate this culture and attitude from the agencies and organisations as long as we continue to be a State addicted to gambling. We should therefore deal with our addiction to gambling revenue rather than simply deal with the expression of this addiction. One positive provision in the bill is that it removes the criminal sanctions imposed on people who have breached a self-exclusion order from the casino. I welcome this amendment to the Act but again I must mention that it came as a result of a large number of problem gamblers being faced with court cases and criminal records even though they had recognised their problem and had voluntarily excluded themselves from the casino.

Under the current Casino Control Act a person can be granted a self-exclusion order. However, after the order is granted the person automatically becomes a prohibited person and he or she is treated exactly the same as people who have been forcibly banned from the casino because of violence, cheating et cetera. This should never have been the case. People who voluntarily apply for exclusion orders are screaming for help. They acknowledge that they have a problem and they ask not to be let back into the casino so that they do not cause any more hardship to themselves and their families. Above all, they are one notch higher in treating their addiction because they have already recognised that they have a problem. The next logical thing for this State and society to do is to assist them in getting help for their problem.

The last thing they need, after succumbing to their addiction once again and going back to the casino and breaching their own bans, is to end up at the Local Court having to pay a fine of $500 to $1,000, gaining a

criminal record, and facing the possibility a sentence of up to 10 years imprisonment. Those sanctions increase the financial hardship faced by those people because the record of conviction will mean they have difficulties in gaining employment in some circumstances. They will even experience the stigma associated with criminal records. This will reinforce their low self-esteem and subsequently their addiction. These situations often send people on the rollercoaster of gambling addiction.

I must add that the people who often find themselves in these situations are people from lower socioeconomic, non-English speaking or indigenous backgrounds. These groups often experience disadvantage in receiving proper legal representation and they will almost always lose the case against them for the breach of an exclusion order. They are also the people who disproportionately suffer from problem gambling. This is simply due to their higher share of unemployment, lower employment skills and training, psychological problems, untreated depression and other unaddressed social problems. I thank the Government for this amendment, which will address some of the problems associated with breaches of self-exclusion orders.

However, I have the following questions, which I have already put to the Minister and his staff, but to which I have not yet received an answer. Firstly, what will happen with the passage of this amendment when a person breaches a self-exclusion order? Does the Minister intend to prop up gambling counselling and financial counselling to these persons or will they receive unlimited warnings from casino officials? Secondly, now that the criminal penalties for offences are removed, and given that a large number of people in the community have already gained criminal records due to gambling addiction, what will happen to these problem gamblers who have already passed through the legal net? Will there be an opportunity for them to apply for their criminal records to be removed due to the fact that their past offences are no longer criminal offences? Will these people be offered further counselling and support, and how does the Minister suggest he will assist problem gamblers in general? Once again, I support the bill and ask the Minister to reply to my questions.

Reverend the Hon. F. J. NILE [5.25 p.m.] The Christian Democratic Party supports the Casino Control Amendment Bill. This is almost a case of the Government shutting the stable door after the horse has bolted. We support the objective of removing criminal elements from operations at the casino. The bill will realign the responsibilities of the Casino Control Authority to ensure a sharper focus on harm minimisation and the removal of criminal elements by removing as an object of the authority the promotion of tourism, employment and economic development. The chairman of the authority, Ms Kaye Loder, made foolish remarks and was removed from her position. She was more concerned about having a high turnover and profits at the casino than about where the profits were coming from. The matter became a big issue in the media. On 25 April this year the *Sydney Morning Herald* stated that when Sydney's biggest heroin trafficker was banned from Sydney Harbour Casino Ms Loder said:

> I'm sorry to see the money go out of New South Wales, but I'm speaking personally for myself.

The quote was from an interview televised on the ABC's *Four Corners*, which examined gambling in Australia. She was referring to the banning from the casino of heroin dealer Duong Van, also known to the New South Wales Drug Squad as Van Duong. The *Four Corners* program obtained documents that showed that in 1996 Van Duong had a gambling turnover at the casino of $94 million in a six-month period. His only obvious source of income was a barbecued duck restaurant at Cabramatta. One would not have to be a genius to work out that the $94 million must have come from some other source. The source was not an Asian restaurant but drug dealing, particularly heroin dealing. Ms Loder also said that she was personally disappointed to see Van Duong banned from the casino and taking his money interstate. She said:

> One of the reasons that there is a casino in Sydney and that it is legal is because if there is no legal casino in Sydney, people will gamble at illegal casinos.

She also said:

> If you have a legal casino, at least you regulate the gaming that is available and the State obtains some benefit from the revenue.

When she was asked whether this was still acceptable, even if the revenue came from heroin deals, Ms Loder said:

> I think it's a matter of debate, and a matter of policy for others to decide, but if that money is coming from heroin deals and is going into casino gaming and is coming back to the State in the way of revenue, it's a matter of debate about whether or not that's a good thing, or an acceptable thing.

She was one confused lady. I support this amendment to remove the promotion of tourism, employment and economic development from the objects of the authority. Surely anyone with any brains would understand

tourism, employment and economic development should not be promoted by attracting heroin dealers. What is not considered is the damage done by Van Duong in his drug dealing, the number of young people supplied with heroin and the many who became addicted through his activities. Anyone boasting a gambling turnover of $94 million is obviously making a lot of money. The Hon. Helen Sham-Ho referred to the amount of heroin going onto the streets of Cabramatta. Clearly, Van Duong was a major heroin dealer.

We cannot calculate the damage that is being done to society and to our youth. Revenue which is derived from casinos and which leads to increased tourism, employment or economic development in this State should not be seen as an advantage. It would be a disgrace for anyone to try to claim that as some sort of an advantage. In my first speech in this House I warned honourable members that the establishment of a casino in this State would lead to a gambling explosion. I have studied and visited casinos all round the world and I know the way the criminal element moves. In the 1980s I gave a prophetic warning that casinos would attract criminals, prostitution, money laundering, drug dealing, loan sharks, extortion, threats, alcoholism and drug abuse. All those things have occurred. The Casino Control Authority is supposed to stop those activities, but I believe that it is almost impossible.

I am not suggesting that we give up in our attempt to stop those activities, but going on the records of casinos in other places, in particular Atlantic City and Las Vegas in the United States of America, we do not have to go far to see the shadowy hand of organised crime—the mafia, the main body running casinos—making profits from casinos. As a result of investigations that were conducted in the United States of America a crime commission was established to investigate whether the mafia was involved in casinos in Atlantic City. At that stage organised crime was so powerful that it appointed one of its own people to conduct the inquiry. So a person aligned with the mafia was investigating casinos to determine whether or not the mafia was involved. Of course he said that the mafia had no criminal involvement. I am not suggesting that that has happened in Sydney or in Australia, but it is not impossible. If we take our eyes off these criminal elements they will probably expand their activities into other casinos and it will be difficult to keep track of them.

Criminal elements get front-line people to run these casinos, which is why there seems to be some inconsistency in the Government's stated policy. We have additional information about criminal involvement and those who are involved with drugs. Since the casino opened in September 1995, 2,085 people have been banned by casino police or the surveillance branch for a range of offences. According to the records that I have, the number of inspectors in the Casino Surveillance Branch has been reduced from 55 to 29 in the past 18 months. If we are trying to stop money laundering at the casino we should not be reducing the number of inspectors. I gather that that means there has been a reduction in the number of people in charge of surveillance and the video monitors that are set up throughout the casino. Obviously, if an insufficient number of surveillance staff are employed, criminal activity could go unobserved.

There have been reports—I do not think anyone has discounted these reports—that casino chips are used by drug dealers as currency. I am not sure whether that practice has been stopped. At one stage hundreds of thousands of dollars worth of chips went missing from the casino every day. Drug dealers were using them as currency to purchase drugs. They would obtain a number of chips, go to Hong Kong and use the chips to purchase drugs. The person with the chips would come to Australia, go to the casino and cash in the chips. That is how drug dealing and money laundering are carried out in a casino. I hope that no-one is attracted to or is tempted to do those things. The bill will impose a requirement on a casino operator to immediately notify a casino inspector when an excluded person or a minor is found to be present at the casino. The Christian Democratic Party supports that provision.

The bill will also remove the criminal penalty that presently applies to persons who enter a casino contrary to a self-initiated exclusion order. I find puzzling the proposed removal of that provision. I believe it should remain, even if a person breaches a self-exclusion order. The bill will also streamline the enforcement provisions for specific offences against casino gambling laws by authorising the issue of infringement notices. It will reduce red tape by eliminating the need for government approval of the rules for keno games conducted in the casino. As I said earlier, when I inspected casinos in Las Vegas, I was shocked to see the amount of money going through them. The prizes that were being offered—$5 million machines—were very attractive. It would take a strong-willed person to resist such temptation.

Some honourable members have suggested that the amount of money that can be played at any one time should be restricted to, say, $2. At some machines a gambler can lose $100 with one press of a button. Some people become disoriented at casinos. Casinos are designed to cause disorientation, which is why there are no clocks and no windows. We support the bill but we would prefer it if the Government introduced

legislation to close down the casino. However, we accept the pro-gambling positions taken by both major parties in this House. Members on the crossbenches are in a difficult position. They are not in a position to prevent the passage in this House of any legislation. On the occasions that we had the numbers to do so the Opposition did not avail itself of the opportunity.

The Hon. Dr A. CHESTERFIELD-EVANS [5.37 p.m.]: The Australian Democrats believe that the Casino Control Amendment Bill will do little or nothing to reduce the incidence of gambling in this State. The Minister in the other place said that, over the past nine months, the Government had introduced landmark legislation with the explicit purpose of minimising gambling-related harm. Of course, that is pompous nonsense.

Reverend the Hon. F. J. Nile: It is like shutting the door after the horse has bolted.

The Hon. Dr A. CHESTERFIELD-EVANS: It is a classic case of shutting the door after the horse has bolted, as my colleague Reverend the Hon. F. J. Nile just said. The gambling industry is a huge industry. We have seen huge increases in the number of poker machines and licences, which has led to a doubling in the value of hotels. The minimalist, pusillanimous, minor changes in this bill have been hailed as some great breakthrough in resolving an eminently predictable problem. The Street inquiry into whether or not a casino should be established in New South Wales was given very narrow terms of reference. I said to Sir Laurence Street that the onus of proof should not be on those opposing the casino to show that it would do harm; the onus of proof should be on those proposing the casino to show that it would do no harm.

As practically no systematic gambling research had been funded anywhere in the world, there was no evidence to show that a casino would do harm. The inquiry's terms of reference were such that it had to be proven that a casino would cause harm even before it was established. The lack of systematic studies the world over meant that that was impossible. The Government, bowing down to other monetary forces, said at the time that the establishment of a casino would assist the economy of this State. All the criminals in this State who wanted to launder money were ready to do so. Whenever a legitimate business enterprise is established in the country or anywhere else we hear all about the wonderful multiplier effect of jobs and how every job that is created results in the creation of an additional six jobs. One-third of all gambling revenue comes from people with gambling problems. I have waited in vain for another honourable member to refer to the effect of gambling and drugs on families and the social harm that is being caused through misspent money.

We hear nothing about the multiplier effect of insurance fraud, its effect on police and the criminal justice system. Instead, when there is a problem the Government introduces silly bills such as this that make little difference. The Government takes increasing revenue from the poor, mug punter of this State, the person who can least afford it—but Kerry Packer can drop a couple of million dollars at the blackjack tables for an evening's entertainment and not feel a thing. This bill also seeks to stop cheating in casinos, which is similar to the workers compensation area. For example, there are many laws to protect injured persons from getting a small benefit to which they may not be entitled, but if there is a systematic way that insurance companies can rip off workers that is all right, that is business. The same applies in the gambling industry: it can rip off punters.

Some years ago I went to Las Vegas as part of a political education tour of the United States of America—and quite an education it was. The message from those who ran the casinos in Las Vegas was clear to us naive little politicians, "Leave us alone to run our business. Don't you guys interfere at all." It was very clear that they did not want any interference and that they wanted their licence to print money to continue—and if any social miseries resulted they did not want to know about it. We were also shown a one-stop shop for social problems. The people there spoke of the great triumph in getting the State, county and Federal governments and social welfare organisations together to build a facility to solve the social problems. The complex included 21 beds, which were flexibly used, and offices for all and sundry.

I said, "That's great, but how does it compare to your need?" I received an evasive answer so I asked the question a second time, with slightly different wording to be polite. The answer was, "Well, there are always going to be problems." I asked the question a third time and received the following answer, "Of course, Las Vegas has the worst incidence of social and family breakdown in the United States of America." People with gambling problems were attracted to this desert town, and it had immense problems as a consequence. The people who were giving us naive young politicians this presentation did not volunteer that information—it was more or less dragged out of them by me, when I was in training to work in the New South Wales Parliament.

However, I will concede that there are a couple of minor positive aspects to the bill. For example, schedule 1 [22] removes from the objects of the Casino Control Authority the promotion of tourism,

employment and economic development. The Government has finally realised that the Casino Control Authority should not push the casino as an engine of economic development because every dollar the casino gets, restaurants or other legitimate businesses—which probably have a better multiplier effect on jobs and a much lesser multiplier effect on human misery—do not get. To his credit the Minister said that the Casino Control Authority should concentrate on the threats and harm posed by the casino rather than overall economic benefits. However, a change in a couple of words and a fine speech from the Minister do not go far to address the problems created by the casino.

Schedule 1 [21] purports to include social science as a qualification for a member of the authority. This broadens the base of members beyond those with legal or financial experience. The Council of Social Service of New South Wales is in favour of this change, and I note that the Hon. R. S. L. Jones will move an amendment in Committee to improve the situation so that it is more specific than the current Act. I am sure that this minor change to the composition of the board will be accepted by the Government. However, it will not change that massive financial engine that does so much harm, that spawns and facilitates crime and the laundering of the money from crime.

The other provisions in the bill are minor and will do next to nothing to discourage people from gambling beyond their means. It is not good enough for the Government to facilitate the establishment of a casino and allow the uncontrolled growth of poker machine numbers and then suggest it is being responsible in preventing the rot spreading. I cannot help wondering if these minor changes are just to get the cheating things through, but perhaps I am too cynical. Casino surveillance has dropped dramatically. The number of inspectors has dropped to 36—half the number available in 1997-98. When the casino was first established it was to be corruption-free and rigidly controlled. Since then the number of inspectors has fallen greatly, and that small number cannot stop corruption in a huge organisation such as this. It is a joke! The *Sydney Morning Herald* of 8 June stated:

> The inspection staff fell from 56 to 29 after $1.75 million was cut from the watchdog budget.
>
> The Minister for Gaming and Racing, Mr Face, told the committee he intended pushing for reciprocal exclusion arrangements with interstate casinos to stop money laundering.

Of course, that was after the Van Duong case in which a known heroin dealer was banned from the casino because of the origins of his money, but the casino expressed great regret that he was lost to the Queenslanders. It is suggested that we need that tiny amount of money derived from victims of heroin, who obtain the money principally from criminal activities associated with sustaining a drug habit. It is a foolish investment for the people of New South Wales to obtain a tiny amount in taxes from the casino, which promotes the illegal drug trade and immense crime. That is an absurd deal and an absurd way to manage the drug problem. An article in the *Newcastle Herald* of 20 June stated that a high roller had alleged that the Minister could buy favours such as free tickets to functions and gifts. It stated:

> Neutral Bay resident Alexander Preston has alleged that former casino operations manager Wes Elam told him police and the Minister could be encouraged not to cause waves.
>
> In a letter to an estimates committee hearing in Sydney yesterday, Mr Preston alleged Mr Elam and casino employee Nick Papal had made light of the death of Peter Dalamangas on January 31, 1998 during a conversation with him (Mr Preston).
>
> An inquest found Mr Dalamangas had died when bouncers used "unjustifiable force" to hold him down during an altercation outside the casino.
>
> In the letter dated May 22, Mr Preston claimed he was discussing the death of a "Greek gentleman at Star City" with Mr Elam and Mr Papal one or two days after the incident.
>
> Mr Preston alleged he was told he should consider himself lucky as a VIP member and not a "general punter" otherwise "my arrogance would mean I would be dead already".

This threat was made to someone who expressed outrage at the cavalier attitude of some members of the casino towards a person who had got into a fight with bouncers and who subsequently died, having been held on the floor saying, "I can't breathe, I can't breathe." If they like you, they take your money; and if they don't, they kill you, would seem to be the situation as described by Mr Alexander Preston.

In the *Daily Telegraph* of 21 June this year, it was reported that intelligence gathering by the State Government's casino watchdog had identified 15 people for loan sharking at Star City Casino in 1998. However, only three of them were banned from the casino—and police took six months to exclude them in January 1999 after police were given on 7 July 1998 the names of the 12 people involved in the illegal activity. It is said that

the police are going soft on loan sharks, and there is the evidence. I have not provided any information that is not available in the major media. It would seem that the activities of organised crime in the casino pose a considerable danger.

Yet even when that danger is identified and documented and evidence is provided, the Government is such a tightwad and is so foolishly economical that it cuts the staff who police this area. The *Sydney Morning Herald* of 5 May this year reported that a Leichhardt man charged over a multibillion dollar heroin trafficking ring had bet more than $28.6 million at the old Sydney Harbour Casino. The examples go on and on. I am afraid that those are the facts, and this bill will do little to address the problem. We support this legislation because it is a matter of accepting the crumbs from the table, but it is tokenism. The Government is not addressing in any meaningful way the problem of gambling and the harm that it causes. It really must do better than this.

The Hon. R. S. L. JONES [5.51 p.m.]: I endorse the remarks of several honourable members who have spoken about the evils of gambling. I have been to many casinos, and it seems a little weird finally to acknowledge the evil that casinos perpetrate in our society. They suck in the people who can ill afford to lose their money. There is no doubt that many families—particularly those of non-English-speaking backgrounds—suffer as a result of the proliferation of casinos. As Reverend the Hon. F. J. Nile and other honourable members have said, crime flourishes around casinos.

Some 2,085 people have been banned from the Sydney casino, which gives an idea of the types of people—including known drug dealers who have sold millions of dollars worth of heroin— who should not have been there in the first place. It is outrageous that society should stand for it. The Government should close casinos; I would support such a move. It is time to end this mad gambling habit. In the old days people used to put some pennies in a few one-armed bandits. That was not harmful: one could lose hardly more than five or six shillings a night. In those days people did not lose their houses as a result of gambling; it was good fun. Some people tried to manipulate the handle of the one-armed bandits, but gambling was not a major concern. Unfortunately, it has now become a significant problem in our society.

I am glad that the Government has sought to remove the promotion of tourism, employment and economic development as an object of the Casino Control Authority because the casino does not do any of those things. People who gamble often lose their jobs, their marriages break up, they lose their homes and their cars and their lives are ruined. We do not need that type of economic development or employment in New South Wales. I am sure that the casino's employees are glad to have their jobs, but it is a terrible way to earn a living. It is a bit like being a prostitute: one would rather earn money in another way.

I do not agree with Reverend the Hon. F. J. Nile about the criminal penalty for breaches of self-exclusion orders. If people acknowledge that they have a serious gambling problem and then exclude themselves from the casino, they should not become criminals for breaching their own exclusion orders. That is a reasonable approach. Reverend the Hon. F. J. Nile is taking a fairly hard line on this issue. Such people have at least acknowledged that they are addicts.

Reverend the Hon. F. J. Nile: It would deter them from returning to the casino.

The Hon. R. S. L. JONES: We should not deter people who have acknowledged their problem and imposed a self-ban by turning them into criminals. Such people would have a criminal record and would find it difficult to secure employment later. That does not make sense. It is humane to remove that criminal penalty. It does not make sense to impose such a penalty on people who have acknowledged their problem and are trying to resolve it. We cannot label them criminals because they have a terrible addiction. That would be very wrong. We contacted the Council of Social Service of New South Wales about the legislation, and it expressed concern about a fairly minor provision: the additional field of qualifications.

The council sought our support to expand that field, and we shall do so via an amendment in Committee. I understand that the Minister has accepted this fairly minor amendment, which seeks to remove the phrase "social sciences" and insert "human services or consumer protection in community work or the community sector". That would allow a wider range of people to serve on the authority. I support the legislation, but I agree with other honourable members who have said that gambling is out of control in our State. It is time to consider this problem seriously and to start reducing our addiction to this evil activity.

Ms LEE RHIANNON [5.55 p.m.]: The Greens will not oppose this bill but, like other crossbench members, we acknowledge that it will not have an impact on future problem gambling. The Hon. Dr A.

Chesterfield-Evans summed up the situation correctly when he referred to this "silly little bill" that makes little difference. I think honourable members should be prepared to see other silly little bills like this about once a year. It seems that these days the Government must pretend that it is doing something about gambling. Unfortunately, that is a pretence, because governments have become extraordinarily dependent upon gambling revenue—which, at about 12 per cent of gambling and betting revenue, was worth almost $3.8 billion in 1997-98. That figure continues to rise.

We hear the language of harm minimisation: the Government talks the talk, but it does not walk the walk. Ministers like to use that phrase and, although overused, it certainly applies in this case. Harm minimisation is the language, but there are no real measures in place to deliver it on the ground. The names of many of these bills are a giveaway. When the titles contain words such as "responsibility" or "control", alarm bells should start to ring. There is much rhetoric but no substance. We know that we cannot do much about this legislation. It is a sorry state of affairs because, as several honourable members have said, problem gambling is causing enormous social dislocation.

In summary, the Greens endorse completely the call for an integrated approach to all aspects of the gambling industry in New South Wales. The Council of Social Service of New South Wales has called for integration on many occasions and has pulled together some useful information about how that may be achieved. The limited effect of this legislation in achieving real harm minimisation is demonstrated by the fact that the number of inspectors who check gambling venues across New South Wales—including the casino—has been cut in the current budget. That is the reality of how the Government does business. The Greens will not oppose the legislation, but this is a sad day in Parliament. We can talk about the problem, but the social dislocation and hardship continue in the community while the Government relies on gambling revenues. That is a sorry state of affairs.

The Hon. I. M. MACDONALD (Parliamentary Secretary) [5.59 p.m.], in reply: I thank honourable members for their articulate and detailed contributions to the debate. The Hon. Dr P. Wong asked various questions about the operation of the Criminal Records Act as it affects persons convicted of breaching a self-exclusion order. In particular, he asked whether persons will be able to have the benefit of the amendment in the bill to remove the penalty for breaching such orders. These questions raised issues which I am not in a position to address at this time. I give the honourable member a commitment that the Government will, in effect, take the questions on notice and consult the Minister responsible for the Criminal Records Act, the Hon. Bob Debus, as soon as possible. The Government will take into account the matters raised by the honourable member and give him an answer as soon as possible. This bill is supported by all honourable members who contributed to this debate, and I commend it to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

Schedule 1

The Hon. R. S. L. JONES [6.01 p.m.]: I move:

Page 7, schedule 1 [21], line 25. Omit all words on the line. Insert instead:

(f) human services or consumer protection.

(g) community work or the community sector.

As I said in my contribution to the second reading debate, this amendment, which adds the words "human services or consumer protection" and "community work or the community sector", broadens the criteria for a person to be appointed as a member of the authority. This suggestion came from the Council for Social Service of New South Wales [NCOSS], and I agreed to move an amendment in Committee to that effect. NCOSS believes that the following definition of skills and experience in "human services or consumer protection" and a broad community sector background is preferable to the more generic Government proposal of "social sciences". I agree, and I understand the Minister also agrees.

The Hon. I. COHEN [6.02 p.m.]: I support the amendment moved by the Hon. R. S. L. Jones. It is extremely important that the people appointed as members of the authority have experience in those vital areas that are relevant to the problems at hand. Certainly, the Council of Social Service of New South Wales supports that initiative. We must work constantly to appoint people with relevant experience in human services and consumer protection to deal with problem gambling issues. This amendment is welcome, and I welcome the Government's support of it.

The Hon. I. M. MACDONALD (Parliamentary Secretary) [6.03 p.m.]: The Government had not considered it necessary to define this expression because the meaning of "social sciences" should be widely understood in the community. It is clear that the expression describes, in a general sense, the well-known fields of psychology, sociology and allied topics, and includes what are often referred to as behavioural sciences. But the term "social sciences" is applicable beyond the fields of academic endeavour. The Government is of the view that the expression also captures persons who have real life, practical experience in social welfare, community services, education and similar areas of human services activity. The problem in defining the expression, as with the definition of any term, is that in an attempt to be specific there is a risk of inadvertently excluding something worthwhile because it was not foreseen at the time the definition was formulated. Nevertheless, the Government will not oppose the amendment moved by the Hon. R. S. L. Jones.

Amendment agreed to.

Schedule 1 as amended agreed to.

Title agreed to.

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

FAIR TRADING AMENDMENT (ENFORCEMENT AND COMPLIANCE POWERS) BILL

Second Reading

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [6.06 p.m.]: I move:

That this bill be now read a second time.

Last week I announced the introduction of this legislation to stem the activities of those unscrupulous and dishonest traders who represent a serious risk to the public. These new powers will give the Department of Fair Trading the ability to act swiftly to stop shonks and rogues from operating. Those powers demonstrate the Carr Government's commitment to greater protection for New South Wales consumers. This bill follows other new legislation introduced last session to require traders to substantiate claims made in advertisements. This bill is further evidence of the Government's intention to crack down on shonky operators and rip-off merchants.

Under the bill the Director-General of the Department of Fair Trading will be able to immediately suspend a trader's licence for 60 days if there is evidence that consumers will likely suffer significant loss. Those traders who continue to operate while their licence is suspended will face swift action by the department, including injunctions and prosecution. I emphasise that the vast majority of traders licensed by the Department of Fair Trading are honest, reputable persons who conduct their business fairly and make a significant contribution to the New South Wales economy. These people have nothing to fear from these new laws. In fact, I am sure they will support the Government's actions in moving to weed out those unscrupulous traders who use the system to their benefit. The public expects swift action against these operators, and this bill will give the department the legal power to so act.

The Department of Fair Trading is responsible for the administration of licensing schemes covering conveyancers, employment agents, home building contractors, motor dealers, pawnbrokers and second-hand dealers, and property, stock and business agents, and valuers. Each of the Acts establishing these licensing schemes contains provisions which enable some form of disciplinary action to be taken against a licence holder. Due to historical reasons, the relevant provisions of these Acts vary considerably. That has resulted in inconsistency in the ability of the department to act promptly to protect consumers, and in some cases the only action available is to seek an injunction in the Supreme Court to stop the licensee trading.

Show cause actions can be cumbersome and may take many months to finalise. As a result, the public can be put at risk. Some operators use stalling tactics to delay disciplinary action taken by the department, as well as legal proceedings initiated by their customers. By these means, they are successfully able to continue to trade and cause financial or other loss to other persons. This new power will apply to traders in every industry licensed by the Department of Fair Trading. Consumers who ring the department to check whether a trader has a licence will be told that the licence has been suspended under the Fair Trading Act. This will alert consumers to stay well away from that trader.

I seek leave to incorporate the balance of the second reading speech into *Hansard*.

Leave granted.

As a safeguard, the power to impose a suspension will be exercisable only by the director-general and cannot be delegated. It will also only be used where it is considered that the other measures available to the department, such as obtaining from the trader an enforceable undertaking not to further engage in the improper conduct, will not protect consumers from significant loss or damage. Turning to the detail of the bill; the bill provides that where the director-general is of the opinion that there are reasonable grounds to believe that: a licensee has engaged in conduct that, under the legislation under which the licence was granted or issued, constitutes grounds for suspension or cancellation of the licence; and it is likely that the licensee will continue to engage in that conduct; and there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of that conduct unless action is taken urgently, the director-general may suspend the licence for up to 60 days.

The period of the suspension will be specified in a notice served on the licensee. Where a licence is suspended the licensee must within seven days lodge the licence with the department. If during the period of suspension the director-general is satisfied that the circumstances that gave rise to the suspension have altered and no longer justify any suspension, the director-general shall by notice terminate the suspension and restore the licence. It will be open to the director-general to impose, by way of notice served on the licensee, a further period of suspension. This notice may be served during the period of an earlier suspension.

The licensee will be entitled to apply to the Administrative Decisions Tribunal for a review of a decision of the director-general. The imposition of a period of suspension under this new provision to the Fair Trading act will not prevent or in any way limit disciplinary action being taken against the licensee under any other Act. This bill also includes an amendment to extend the existing powers given to Fair Trading investigators to investigate illegal conduct. The Fair Trading Act currently provides that where the director-general believes on reasonable grounds that there are on premises documents evidencing conduct in contravention of the Act the director-general may authorise an investigator to enter premises, inspect documents and make or take extracts from them.

The bill extends this provision so that it may be exercised in relation to contraventions of any Act administered by the Minister for Fair Trading. The reforms which I have outlined will give the Department of Fair Trading greater power to protect consumers against unfair and illegal practices and help weed out those traders who pose a significant risk to the public. I commend the bill to the House.

The Hon. M. J. GALLACHER (Leader of the Opposition) [6.10 p.m.]: The object of the bill is to allow the Director-General of the Department of Fair Trading to suspend in certain circumstances a licence, permit or other authority administered by the Minister and to clarify the scope of a power conferred by the Act to inspect and copy documents. The House has examined this important issue over some time and it has taken five years for the Minister to realise the Government's inability to put in place sufficient enforcement and compliance powers. That delay underscores the Government's inability to come to grips with what is occurring in fair trading. Fortunately, this House has had the benefit of contributions by a number of honourable members, and particularly the Hon. J. F. Ryan, who has a vast knowledge of the Government's inability to handle difficulties with compliance and enforcement in the housing sector of the Department Fair Trading.

The Hon. R. S. L. Jones: There are so many shonky builders.

The Hon. M. J. GALLACHER: The Hon. R. S. L. Jones referred to shonky builders, but, of course, the legislation goes beyond that. I am sure the Hon. J. F. Ryan will again record his concerns and those of the Opposition and the crossbenchers about the housing industry and other areas in the hope that eventually the Government will get serious about addressing the problems that they have raised time and again. This emergency legislation is designed to protect consumers from traders who are suspected of presenting a significant harm to persons or significant danger to property. The bill provides for suspension for a maximum of 60 days and for an appeal to the Administrative Decisions Tribunal.

The Opposition has consulted the stakeholders that the Government had continued to neglect, the groups that tried to convince the Government of reforms that were necessary to get rid of the shonks from their industries. The housing industry had been very outspoken and wanted the Government to introduce measures to identify, investigate and eliminate shonky builders. For years this Chamber has heard considerable argument about the way in which shonky builders continued to thrive while the Minister purported to be trying to get them out of the industry. In the recent estimates committees the Opposition asked questions of the ministry about removing the shonky builders, but we met a stony silence yet again. The Government is high in rhetoric but low in substance.

Members of the Opposition have also spoken to representatives of the Master Builders Association and the real estate industry, who are also concerned about current trends that cast a dark light upon the more scrupulous licence holders in the industry. The Opposition does not oppose the amendments but hopes that the Government is serious about trying to fix some of the black holes that we have exposed. We hope that the Government initiates a process under which victims of the system can be assured that sufficient inspectors will be appointed to inspect sites and investigate complaints. Any complaints lodged with the department regarding the conduct of a builder or other licence holder should be dealt with expeditiously.

Unfortunately, we continue to find that the department is built on obfuscation; its clients are frustrated by its inability. The department is perceived as being totally at odds with community expectations in identifying difficulties, dealing with traders or rectifying problems. The Government said that it is serious about rectifying the problems but has not provided the necessary resources, as set out in the legislation, to do the job. Time and again the Government has been quite happy to put forward legislation to rectify a problem but it is not prepared to put in the resources to implement that legislation. That is the crux of the problem, as was demonstrated in the intoxicated persons legislation. Governments can pass any legislation, introduce any offence and impose any penalties they wish—which is what this Government wants to do—but at the end of the day if departments are not given the resources they need to enforce laws and ensure that there is a significant level of compliance, the desired results will not be achieved. The Opposition will not oppose the bill.

The Hon. Dr P. WONG [6.17 p.m.]: The bill is a very positive and necessary addition to the fair trading system in New South Wales and will ensure better consumer protection in this highly commercial society. Information technology has enabled electronic messages to pass to consumers in a matter of seconds. Today's consumers can be easily inundated with volumes of advertising material that draws them into a very competitive market. Unscrupulous traders can often take advantage of that situation and present advertising material in various forms that may be untrue or misleading. As it is more difficult to regulate the increasing output of advertising material, individuals and companies can make huge profits by deceiving or confusing consumers.

Ordinary people living in a fast-paced, commercial society are often made to feel the need for improved, high-tech goods and services presented to them in a very glossy and appealing way by advertising companies and traders. I, like many in the community, have seen people spending vast amounts of money in get-rich-quick schemes that promise large windfalls of money. Other advertising campaigns promise well-priced, high-tech packages of goods, and ask consumers to pay before they receive the products. As a doctor, I have seen people accept dubious claims of beauty enhancement, healthy lifestyles, medical miracles, diet products and virility treatments—largely imposed on them through the media. Often such products do not deliver the results expected by the consumer, and some of them can be very dangerous to the consumer's health.

There are preventative systems and remedies in Federal and State legislation to deal with these medical situations, but often they are not enough. This bill adds legislative mechanisms to protect consumers from exploitation by traders, even before a situation arises. Under the legislation, the director-general will be able to issue a notice in writing to request the trader to substantiate a claim or representation made in an advertisement or other public statement. If the trader does not comply with this request he would be committing an offence, which attracts a penalty.

I must comment on what the Leader of the Opposition said earlier. Obviously there are plenty of shonky builders, although they are not the majority. I share the concern expressed by the Hon. J. F. Ryan many times previously. I do not believe that the Minister has the will to solve the problem, and I do not believe, as the Leader of the Opposition said, that there are enough resources to solve problem. In this respect, I believe the bill may be helpful in the long term, but it needs a lot more decision-making and will by this Government to ensure that homemakers and home builders receive fair treatment.

The Hon. J. F. RYAN [6.20 p.m.]: This bill is a small step in the right direction, but notwithstanding its passage I have many concerns about consumer protection for home building consumers and, for that matter, builders, who pursue matters in the Fair Trading Tribunal. As the Minister said in his second reading speech, one of the reasons this bill is being introduced is that "show cause" matters, under which licensed traders can have their licences taken from them, take so long to complete. To protect consumers it is necessary to have some sort of short-circuit mechanism to bring these matters to a head more quickly. Otherwise, shonky traders, whether they be builders, car salesmen, real estate agents or loan sharks, can continue to suck in customers and cause a great deal of damage in the community.

I take some credit for the introduction of this bill: I believe it has come about mainly as a result of pressure I have put on two Ministers concerning a builder I have referred to in this House on many occasions—

Mr Rocco Vitalone, who trades under the name Vital Homes. I wrote to the Department of Fair Trading and the Minister back in January 1999. Mr Vitalone is still in front of the Fair Trading Tribunal for numerous matters, but the matter relating to his "show cause" has only just commenced. This man was sent an order to show cause only about a month ago. On 11 January I contacted Mr Ian Shepherd, first by phone and later by a written submission, about nine separate complaints in relation to this builder. I said in my fax:

> In view of this information concerning Vital Homes I believe the Department of Fair Trading should commence a preliminary investigation into whether Mr Vitalone is a fit person to be the holder of a building licence. I understand that the Department may already be holding information regarding complaints against Mr Vitalone and I have been informed that Mr Vitalone is an "expert" in bureaucratic delays and … there may be a case involving him currently being pursued in the High Court of Australia.

I further said:

> I recognise that there are certain protocols which must be adhered to in order to initiate a formal investigation of this company. However I am concerned that this situation may become even more expensive to resolve if action is not taken to investigate this matter quickly. Consequently I am forwarding this advance notice and establishing contact with you in order to ensure that the normal processes of internal communication within your Department do not unnecessarily delay this matter from receiving adequate and prompt attention.
>
> Thank you for your assistance. I am confident that you will take appropriate action.

I naively sent that off on 11 January and I got a response back fairly quickly from Mr D. B. O'Connor, the director-general of the department, who said:

> As a result of the information you provided, the Building Investigation Branch has commenced a full investigation of the residential building activities of this contractor. You will be advised of the outcome of this investigation.

It was also recommended that the complainants I had referred to the department should lodge individual complaints to the department. I urged and assisted many of them to do so. I sent a copy of all of that correspondence, under the cover of another letter, to the then Minister for Fair Trading, the Hon. J. W. Shaw, on 18 February 1999. I even sent letters to a number of councils, including Wollondilly, Liverpool, Campbelltown and Camden, warning them of my concerns and seeking some additional information, which I passed on to the Department of Fair Trading. On 23 March 1999 I received a further reply from Mr O'Connor, largely as a result of my letter to the Minister, in which he told me the information indicated that Mr Vitalone's conduct as a licence holder appeared to warrant further investigation, and that interviews with a number of consumers had commenced on 16 March 1999. I had every reason to believe that everything was in order and this bloke was going to be caught quickly.

After that I made it a habit to contact the department and the Minister's office on almost a monthly basis to ensure that matters were proceeding properly. I brought this matter to the attention of both the Government and the Department of Fair Trading because I naively thought they would conduct a preliminary investigation to decide whether the builder was a danger to consumers and, if the answer proved to be yes, they would take every action possible to make sure that this situation was not extended by having other consumers use this builder and suffer similar problems.

Up to 17 different complaints have been lodged with the department or with the Fair Trading Tribunal in regard to this builder but since I wrote to the Minister this builder has commenced another three projects worth in the order of a quarter of a million dollars, and every single one of them is now the subject of a complaint before the Fair Trading Tribunal and the Minister. Everything this bloke touches turns to dust. In September 1999, in some frustration after having raised the issue in Parliament in July 1999, I wrote again to the current Minister and raised a number of specific matters. Inter alia, I said to the Minister:

> My second concern regards the whole Vitalone brief itself. I first brought this matter to the attention of the Department of Fair Trading on 11 January 1999. This builder is well known at the Tribunal and I provided a mass of documentation from consumers and local Councils. I cannot believe it has taken over 8 months to investigate this matter, which has been raised with 2 ministers, aired in the media and discussed in Parliament. At the beginning of August I even made contact with your office and it was indicated that action would be taken against Mr Vitalone by the Department of Fair Trading by the end of August—

That is August 1999—

> —and that you would be receiving weekly updates on the progress of this matter. It is my understanding that the investigation and documentation of these matters is still proceeding.

I knew that because I was in contact with some of the people who had made complaints and who had not even been interviewed by the Department of Fair Trading a month later. I went on:

> I have not made a party political issue of this matter and I have attempted to [be] as cooperative as possible, but I believe that we are all being taken for a ride, and I am beginning to lose patience.

In bold type and underlined I said to the Minister:

> **Could you please get your Department to bring this matter to a conclusion as a matter of urgency and have one of your staff contact me to indicate the timetable for doing this?**
>
> This builder is not only a risk to other consumers, but he must be consuming a huge amount of public resources, to no affect. It just has to stop.
>
> I await your urgent response.

I wrote that letter to the Minister on 9 September 1999. I received my response on 23 February 2000—five months later. That was the best response I could get to my urgent request for action. The Minister said in his letter to me, dated 23 February:

> Let me begin by assuring you that I view the complaints against Mr Vitalone as a serious matter.

He is not kidding that they are serious! He went on:

> Having said this, I am pleased to advise that investigations are now complete in respect of seven matters and the Department's Legal Branch is instituting legal proceedings against Mr Vitalone. In the four remaining matters, I am informed that investigations are nearing completion and will be referred to the Department's Legal Branch by 25 February 2000 for legal action.

The matter had to be again raised in the media before Mr Vitalone was sent his first show-cause notice, notwithstanding that the Minister had told me everything was ready to go. It was not until the middle of March that the Minister's office announced that a notice would be sent to Mr Vitalone, but the notice was not actually sent until June. That hardly suggests urgent action with regard to this rogue builder.

Since taking that initiative, not a business day has passed when I have not been contacted by yet another constituent with a complaint about a builder—either one I am aware of or another builder. I believe that at any time I could put to this Parliament a case to indicate that there are serious problems with the operation of the Home Building Act. We need to either require the Minister to concentrate on solving these problems or to hold an inquiry to make the public aware of them, and the Government may then take action.

Until now I have tried to pursue a co-operative relationship with the Minister, no matter how tempting it has been to do otherwise. I even accepted his invitation to meet departmental representatives in his office on 31 March. However, when I contact the Department of Fair Trading to ask for advice in relation to helping constituents, I understand that the department's staff have been told to say nothing to me. They have been told, "Say nothing to Mr Ryan. All of his complaints have to be directed through the Minister's office." I would be happy to direct my complaints to the Minister's office, but every time I contact his office it takes at least two or three weeks to get a response to an urgent complaint and five months to get a response to an urgent letter.

When I asked questions at an estimates committee hearing I received a long-winded response from the Minister in relation to the general area I asked about, in order to prevent me asking any further questions. We then decided to invite representatives of the Fair Trading Tribunal, the Department of Fair Trading, and so on, to this Chamber for an estimates committee hearing. I gave them advance notice of all the questions that I wanted to ask, but they took no fewer than 18 questions on notice. One would have to say that they are either trying to stop me finding out about the operation of the Home Building Act or they themselves do not know how the Act operates.

The Department of Fair Trading could have taken other steps to protect the public from Mr Vitalone. The department could have used its powers under section 23 of the Home Building Act to warn customers about this menace of a builder, but it has not done so. Section 23 of the Home Building Act, under the heading "Warning notices", reads:

> (1) The Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a licence, or a person who does not hold a licence, in connection with residential building work or specialist work or the supply of kit homes.
>
> (2) For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unreasonable delays in completing work—

that is true of Mr Vitalone, in spades—

> or in supplying kit homes, or of inadequately supervised work or of defective work—

the last category is also true of Mr Vitalone—

> or of failing to insure work in accordance with this Act.
>
> (3) The Director-General may authorise publication of such a notice in … one or more … ways.

Not one of those things has been done with regard to Mr Vitalone. The department has not used its powers. I have written to the Minister to ask why that is the case and have been told that a response will be provided in due course. I have asked a question in this House, but as yet have not received a response from the Minister. So I tried another tactic: I raised the matter with the director-general himself at the estimates committee hearing, but I was told, "We cannot answer that question because you have asked it in the House," and that I would get an answer in due course.

The Hon. R. T. M. Bull: You didn't take that as an answer, did you?

The Hon. J. F. RYAN: I had no other choice. The director-general was invited to give evidence before the hearing and was not under oath. Had he been under oath, I would have been keen to pursue the matter much more vigorously. Let me speculate to the House why there is no answer. I suggest that the Department of Fair Trading forgot that it could have used section 23 of the Home Building Act, and three unlucky customers have fallen prey to this builder as a result. Given the number of submissions I have received in my office, God only knows how many other customers have fallen prey to shonky builders. On 23 May I asked the following question on notice in this House:

> How many "show cause" actions have been taken by the Department of Fair Trading pursuant to section 63 of the Home Building Act 1989 since 1 May 1997?
>
> How many building licences have been cancelled as a result of "show cause" actions brought against builders by the Department of Fair Trading since [the commencement of the Act]?

The answer I received was as follows:

> Since 1 May 1997, the Department of Fair Trading has prosecuted 102 defendants for 204 offences under the Home Building Act.

That sounds impressive. However, almost none of them has anything to do with the question I asked. I specified the section, and I specified licensed builders. Many of these prosecutions that number 204 relate to unlicensed builders being prosecuted; they have nothing to do with show-cause actions at all. The answer continued:

> Under the Home Building Act, since 1 May 1997, the Department of Fair Trading has cancelled 237 building licences.

Some of those licences have not been cancelled; they have lapsed. I still want to know how many builders have actually seen the hard end of this Act, where they have been asked to come before the Fair Trading Tribunal and show cause why they should not lose their licences. I have checked media reports, and I suspect that there is only one, a Mr Gary Cohen, who was subject to four complaints and finally lost his licence. I believe that far too few actions are taken under this Act. I understand that about six such actions have been lined up. Officers of the department tell me things, but when I make a formal request no-one knows. There seems to be an attempt to keep this data from the Opposition. There are serious problems with the operation of the Fair Trading Act and the Home Building Act with regard to building complaints. I believe that it is necessary for this matter to be handled in a better way, and I look forward to some action being taken by the Minister.

[*The Deputy-President (The Hon. Helen Sham-Ho) left the chair at 6.37 p.m. The House resumed at 8.00 p.m.*]

The Hon. J. F. RYAN [8.00 p.m.]: Earlier I was making the point that I was dissatisfied with the level of information that I have been able to obtain about the operation of the Home Building Act from the Minister for Fair Trading and his department. I expressed concern about the manner in which questions were taken on notice or not answered at the estimates committee hearings. Although the Department of Fair Trading subjects traders and advertisers to a level of scrutiny to ensure that they are open and honest, it is not prepared to apply to itself the same level of scrutiny that is applied to traders covered by the Act. A matter of concern to me, which is relevant to this debate, is the number of building inspectors that are available to investigate complaints against home builders.

I note from the figures in Budget Paper No. 3 that the average staffing for the Department of Fair Trading will increase by a very modest number. In the particular program area where I would expect inspectors

to be employed, I note that the number of people employed in that section of the department will increase by only two. Yet the Minister has promised two additional lawyers and, at the latest count, 12 extra building inspectors. That information was not reflected in the budget papers. I believe at some stage soon that material needs to be corrected.

By far the greatest difficulty for people who have problems with home builders is the operation of the insurance scheme, which is also relevant to a debate that will be coming before the House, and the operation of the Fair Trading Tribunal. I wish to provide a couple of examples of people who have been to the tribunal, to demonstrate to the House how long it takes and how difficult it is to get justice from the Fair Trading Tribunal. The Fair Trading Tribunal, under its Act, is supposed to provide quick—I think the Act says "expeditious"—informal and inexpensive justice. I cannot tell the House how many examples I have of people who have gone to the Fair Trading Tribunal about matters concerning $10,000, $30,000 or $40,000 and have wound up with legal expenses that sometimes total hundreds of thousands of dollars if all the parties represented at the tribunal are taken into consideration.

That is not the way the legislation is meant to work. I believe the legislation is not working the way it was meant to because the place is run as a shambles. I have many examples of the shambolic and disorderly way in which the tribunal is run. I will give as an example a case study drawn from one of my constituent's files. I will not name the builder, but I will call the home building clients Mr and Mrs Thomas. Mr and Mrs Thomas contracted with a builder for a home extension: a new kitchen, a lounge room and, I think, a new bathroom. The total project was worth $120,000. Last December, with the project little more than half complete, their builder announced that he was leaving the site.

The builder believed that he had completed the project to lock-up stage and was due to be paid a further $22,000 progress payment. From memory, that would have amounted to 80 per cent of the total price of the project for less than 50 per cent of the job. First, Mr Thomas turned to his insurance company—Home Owners Warranty [HOW]—for help. In January 2000 he lodged a claim. When Mr Thomas took out the policy at the start of the project he received a letter from HOW which stated:

> HOW protects your investment and gives you better security in the knowledge that the insurance policy is IN YOUR NAME.
>
> The insurance better protects you against losses covered by the policy for non-completion of the building work and/or failure to rectify faulty workmanship.

How different was his experience! Mr Thomas wrote to HOW twice in January, the second time on 21 January. On 16 March, eight weeks later, he received a reply from HOW, which stated:

> It is noted that the issues raised in the claim are subject to a claim currently before the Fair Trading Tribunal. Home Owners Warranty therefore wishes to advise that at this stage liability for the matters raised are denied.
>
> Should the builder fail to respond to any order issued by the Tribunal, you may write to Home Owners Warranty requesting the claim be revisited.

The letter continued:

> NOTE: The insurer requests that you establish beyond reasonable doubt whether or not the insured event has occurred. Where an owner terminates the Building Contact, it must be clearly demonstrated that the builder has wrongfully failed or refused to complete the building work.

That paragraph of the letter from the insurer is amazing. The insurer wants the customer to meet the same standard of proof that is required in a criminal case: that is, beyond reasonable doubt. The customer does not have a chance of meeting that standard of proof unless the builder confesses that he will never again come onto the property. The appropriate standard for civil matters is on the balance of probabilities. Mr Thomas' solicitor wrote to the insurer and put what I believe was a very compelling case. The letter stated:

> We are instructed that in this case the builder did not complete the building work. Additionally, the builder failed to rectify faulty workmanship. In this regard we are instructed that the builder ceased work before completion of the job on or about 15 December 1999. As you know our client subsequently requested the builder to rectify the defective works but he did not return to the site for that purpose or any other.
>
> We have reviewed our client's policy with your company and we see nothing in it which entitles your company to deny liability. The fact that the builder is seeking to recover some monies from our client (which claim is strenuously denied by our client) and that our client has a cross claim against the builder for defective and incomplete work (which one would naturally expect him to have in the circumstances) do not constitute grounds for denial of cover. The events which our client has insured against have occurred and are the very subject of our client's action against the builder. Our client clearly has a "non-completion claim" and there is nothing in the policy, so far as we can see, which limits or excludes your company's liability in the circumstances.

> We might add that it has been suggested to our client by someone in your company that he must not only be successful in his action against the builder but that our client must pursue the builder to bankruptcy before your company will accept liability. If that is the view of your company, then it is, with respect, rejected out of hand. There is nothing in the policy to that effect and that view would make a mockery of the rights ... provided for in the policy, would put our client (and any other person who takes out this kind of insurance with your company) at a grave disadvantage and flies in the face of your company's duty of good faith as an insurer. All things considered your denial of liability is very disturbing ...

In my view that is an elegant statement of the case in many of the claims made by clients who have home building difficulties with their builders. There is no way that this State's building insurance scheme or the Home Building Act is dealing with these matters properly. The option open to the person to whom I have referred is to have the matter resolved by the Fair Trading Tribunal. In my view the insurance company should have paid the claim and then pursued the building company for damages. In this case, the builder claims that his client, Mr Thomas, paid him progress payments because the house had been completed to lock-up stage. That claim is easily checked because it would take a building inspector half a minute to determine that that is not the case. Mr Thomas' extension has a slab, a roof, a frame, some gyprock and virtually no brickwork. Anyone in the street could see without leaving his or her car that the house is covered only in blue plastic insulation and that there is no brickwork beyond a few layers from ground level. No-one would define this project as being at the lock-up stage.

In this instance the insurance company prefers to wait until the matter has been heard by the Fair Trading Tribunal, as it does in every case. The builder and the insurer know that once the matter is in the Fair Trading Tribunal, it is locked up and sealed for months. It is worth tracking the course of Mr Thomas' matter in the tribunal so that honourable members can obtain some idea of how the system works. Believe it or not, the builder made the first complaint to the tribunal. He was seeking damages from his customer, Mr Thomas, claiming that Mr Thomas failed to make a progress payment. The complaint was lodged on 17 January 2000. The first notice from the tribunal was dated 16 March, two months later, and indicated that a one and a half hour hearing would take place on 6 April 2000, which was some 12 weeks after the complaint had been lodged.

If honourable members check the annual report of the Fair Trading Tribunal, they will find that the tribunal apparently aims for an eight-week delay between the date of lodgement and the first hearing of the claim. On 21 March 2000, a week after the first notice, the Thomases received another letter from the tribunal stating that the hearing that was due on 6 April had become a case conference. I have no real trouble with that except that it reflects a listing procedure that is not very efficient. The matter should have been listed as a case conference in the first place. The real gem occurred in the following week when Mr Thomas received a letter from the tribunal two days before the case conference was to take place. The letter stated:

> Dear Sir,
>
> I refer to the above Tribunal claim and advise that the matter set down for case Conference on 6 April, at 9.15 has been adjourned. The Member has become unavailable and you will be notified as soon as possible by mail for the next hearing date and time. Please accept our apologies regarding this short notice.

I would like to know why the matter was called off. There had been no prior hearing and it was only a case conference. At the case conference stage, all that happens is that the parties to the dispute outline their case and arrange to exchange documents. Since no tribunal member had actually commenced hearing one word of this matter, any other member could have filled in or taken over the matter. However, the letter stated that the member had become unavailable and no reason was given. The matter was delayed indefinitely. Notice of postponement was given only two days before the hearing. The tribunal finally wrote again and the matter was listed again as a case conference on 5 May 2000.

More than four months have passed since the claim was lodged and nothing has happened. In the meantime, the Thomas family has been living in the only two habitable rooms still left in their home. The incomplete extension has exposed much of their house to the elements. The building work on their home is covered in nothing more than plastic, and that is how the Thomases are still living on 28 June, in the depths of winter. I ask honourable members of this House and staff of the Fair Trading Tribunal to consider what it would be like to live in a plastic-covered house for six months, particularly during the past four weeks when the weather has been fairly cold. A case conference was finally held on 5 May 2000. Orders were made instructing both parties to file by 19 May 2000 all documents they intended to rely upon for their cases. The Thomas family complied with the order but, for some inexplicable reason, someone from the tribunal sent a letter dated 30 May to all parties indicating that documents should be filed by 5 June 2000, which would have been after the date that had been set for the hearing.

No-one seems to know why that occurred. Even so, the insurer—Home Owners Warranty, which is now a party to the dispute—did not even comply with that later deadline. I cannot tell the House how many constituents have contacted me complaining about their constant irritation with the way in which commercial parties in tribunal hearings—builders, insurance companies and so on—frequently disregard orders to supply documentation. Their failure to do so often means that home building clients, who are frequently unrepresented, are presented with the task of responding to novel-size reports from building consultants or lawyers to study over a weekend. The Thomases are now expecting to attend a full two-day hearing of their matter on 2 and 3 July, which will be some seven months after their builder left the project.

There are many more stories with which I could entertain the House in regard to the Fair Trading Tribunal but I will confine myself to one other case which involves a builder. The matter to which I refer had a history before a complaint was lodged in the Fair Trading Tribunal in March 1999. The person who lodged the complaint wrote to the Minister for Fair Trading. The letter states in part:

> I attended a directions hearing in or about June, 1999 where a timetable for the service of documents was set down. In compliance with the Tribunal's timetable, I forwarded my evidence to the respondents in July, 1999. The Respondent failed to comply with the Tribunal 's timetable.
>
> On 27 July, 1999, I attended a pre-hearing conference with my legal counsel at the Fair Trading Tribunal. The Fair Trading Tribunal set a further timetable for the provision of documents, and adjourned the matter for further directions in September.

The case was set down and the parties met again on 24 September. The tribunal agreed to set the matter down for hearing and the respondent did not object in spite of the fact that the respondent still had not provided any evidence. The matter was then listed for 22 February 2000. The respondent attended with an engineer who would give evidence on his behalf and the respondent advised on that occasion that he could not speak English sufficiently to allow the matter to proceed. The tribunal member granted an adjournment over the objection of the other parties. The respondent still had not filed any evidence. The matter was set down for hearing on 5 and 7 April. On 3 March this person filed a summons to produce documents and subsequently served the summons on the respondent. On the return date for the summons, the respondent failed to appear and did not produce the documents that were the subject of the summons. The matter still has not been resolved even though it commenced approximately 18 months ago.

This type of nonsense goes on all the time at the Fair Trading Tribunal. Recently I spoke to a legal practitioner who told me about a member who has a reputation for holding hearings unnecessarily. Honourable members should understand that tribunal members are paid a substantial free for each day on which they hear a matter. Apparently this tribunal member has a reputation for calling the parties together even in relation to matters that are settled. If matters are settled, there is no need for the tribunal to reconvene but this member reconvenes the tribunal simply to claim the fee even though the hearing is totally unnecessary. The person to whom I spoke had been told by one of the staff members of the tribunal that that particular tribunal member has a reputation for that practice simply to ensure that he gets paid. I suspect that the tribunal should do something about tribunal member Stephen Forbes.

The only reason that this bill has been presented to this House is because the Fair Trading Tribunal and the Department of Fair Trading building inspectors cannot handle the pace at which building complaints are being made. A short cut is now needed to protect new customers who become victims of shonky traders. I believe it would be better to make sure that measures already in existence work effectively, the Fair Trading Tribunal works properly and the building investigation unit has sufficient staff. I briefly draw attention to some of the claims made by the Australian Labor Party before the Government was elected. Richard Amery, who was at the time the shadow Minister for Fair Trading, stated in a press release, "We'll make sure complaints are dealt with speedily and fairly." I have demonstrated to the House that that is still not happening. The press release also stated that this Labor Government would "fund community-based consumer groups ... [which are] providing information to building consumers in a similar way to the funding of the Financial Counselling Service." That has not happened either.

I should like from the department a response to a very important question before the debate on this bill concludes. I should like the Minister to clarify what happens to jobs that are under way when the builder's licence is suspended. Does that mean that the builder cannot complete the job? Does it mean that the insurance company will pay up because the builder is no longer insured? I sincerely hope that the suspension of the builder's licence does not mean that those who are customers of allegedly shonky builders face further hardship in the tribunal or with their building projects because the Department of Fair Trading is not able to finalise matters. If the builder's licence is cancelled because of a show cause matter the result is quite simple: the builder cannot complete the work and the insurance company needs to pay the claim.

But if the builder's licence is suspended, one wonders about the status of the insurance policy or the status of the builder's capacity to continue. Although on the face of it the legislation appears to be an answer to many of these problems, I am not absolutely sure that it might not become the source of even more problems. I support the legislation, as does the Opposition, as being a small step in the right direction. But I would be interested in hearing a response from the Department of Fair Trading about what will happen to customers who have entered a contract with a builder who was suspect, about whom they should have been warned in the first place and who has his licence suspended.

The Hon. R. S. L. JONES [8.20 p.m.]: The Hon. J. F. Ryan is young enough to one day be a government Minister in this place. He may become the Minister for Fair Trading; I hope he does, because he will shake up the department like no other Minister has done since Syd Einfeld was involved in consumer affairs many years ago. Let the Department of Fair Trading be warned that its performance will be watched during the next few years by the Hon. J. F. Ryan and others. I also have a matter I would like to raise that was brought to my attention by constituents who wrote to me and other honourable members. From what Cui Hong Mei and Nie Lei tell me, they were done over by a guy called Rod Burge. He runs an organisation called Austbuild Pty Ltd, which advertises itself as a firm of architects and builders.

The Hon. J. H. Jobling: But he is not registered as an architect.

The Hon. R. S. L. JONES: Cui Hong Mei and Nie Lei and others checked and found that Mr Rod Burge was not registered as an architect with the Board of Architects, although he is both the director and company secretary of Austbuild and there is no other director that one can determine.

The Hon. J. H. Jobling: He holds himself out as an architect?

The Hon. R. S. L. JONES: He holds himself out as an architect, but he is not an architect. If this information is correct, and I have no reason to believe it is not, he is in breach of the Architects Act. Mr Rod Burge is attempting to rip $12,750 from Cui Hong Mei and Nie Lei by charging them for work that failed to pass the Holroyd City Council inspection. He told them, and I believe their story because many similar stories have come to me, that he would not charge them if the work failed to pass. The work did fail to pass, and perhaps one of the reasons for that is that he was not really an architect. What will happen with Cui Hong Mei and Nie Lei? Will they have to pay $12,750? Will they also be ripped off?

The stories about allegedly shonky builders and their practices that we have heard from the Hon. J. F. Ryan and others, and the one I briefly related, have been around for a very long time. It is about time such practices were stopped. It is about time the Minister and the department did something about it. We have had enough time to deal with these matters. It is about time the Department of Fair Trading got its act together, got on to these people and stopped them from ripping others off. We have had enough! We will have to do whatever it takes to get the Department of Fair Trading off its butt to do something about these builders.

The Hon. J. H. Jobling: You'd think they would be looking after the consumer, wouldn't you? That's what they're there for.

The Hon. R. S. L. JONES: That is what they are there for. Months and months after the Department of Fair Trading and the Minister were informed about these matters Mr Vitalone is still ripping people off. It is about time something was done about him. If nothing is done about him when we resume for the spring session I will want to know why, as will the Hon. J. F. Ryan. We will up the ante very shortly. This matter will not go away. The Minister must look at the Vitalones of this world, and people like Rod Burge and others who are ripping people off. The Government, the Minister and the Department Fair Trading must take action within the next few months. If they do not I am sure this House will want to know why.

The Australian Consumers Association and Louise Sylvan, its Chief Executive Officer, fully support the passage of the Fair Trading Amendment (Enforcement and Compliance Powers) Bill. She said that it provides long-awaited improvements to the Fair Trading Act 1987 to protect consumers by enabling the Director-General of the Department of Fair Trading to immediately suspended a trader's licence for up to 60 days while the department investigates breaches of the Acts that fall within the Fair Trading portfolio. I wonder whether 60 days is enough: To people like Mr Vitalone that is like a holiday somewhere overseas. He will come back and start again.

The Hon. J. H. Jobling: If they're fair dinkum, it is.

The Hon. R. S. L. JONES: Perhaps, perhaps not, but when the legislation is passed the first person who should be investigated is Mr Vitalone. Let us see how long it takes for his licence to be revoked. There are about 60 days between now and when we resume. I will be interested to learn whether the Department of Fair Trading has taken action on Mr Vitalone during that time. If it has not, I will want to know why. This bill is a good move. I hope the department will swiftly use the powers given to it under the bill to ensure that it does its job of protecting consumers. With people like Mr Vitalone and Mr Rod Burge still active in the community it is clear that in the past year at least consumers have not been fully protected.

The Hon. I. COHEN [8.26 p.m.]: On behalf of the Greens I support the bill. Many of the provisions of the bill were desperately needed, particularly the 60-day suspension. I wonder whether that suspension relates to specific issues, and whether the likes of Mr Vitalone and others could be suspended for failing to reasonably complete a number of aspects on various jobs. The best way to bring rogue traders into line with fair and reasonable practice, other than by long court processes, is to take action against them to prevent them from working. People who hire builders are vulnerable, and they put their trust in the skills of the builders.

I would not dream of naming people for minor infractions, but I have seen similar situations all over the coast, where building is booming. One hears stories of people whose houses or developments are beset with difficulties because the builders are not behaving in a truly professional way. I clearly remember the Hon. J. F. Ryan speaking with great clarity and gusto about Mr Vitalone. I was surprised and a little disappointed to learn that, despite positive laws having been passed and representatives of the community having raised these matters in this House, his activities are still an issue. It is a sad indictment of the department.

The Hon. J. H. Jobling: He uses the system in extremes.

The Hon. I. COHEN: As the Hon. J. H. Jobling said, this builder uses the system in a very sophisticated manner. However, it would appear that the bureaucracy lacks the wherewithal to deal with the situation, even through members of Parliament have made representations in an attempt to do so. Vulnerable people in the community trust professional people to do their building work. It is difficult enough to oversee the building of a house—it is a once-in-a-lifetime task—without having to deal with builders who abuse the system.

I hope, also, that as a result of this debate the department will become more staunch in pursuing these types of transgressions. Unfortunately, it takes a lot of will to follow through the letter of the law, as I have witnessed in regard to other government departments. The Greens support any law that gives certain protection to consumers from those involved in the industry. It is a significant step in the right direction.

Ms LEE RHIANNON [8.30 p.m.]: I endorse the comments of my colleague, the Hon. I. Cohen, and those of some crossbenchers and members of the Coalition. It was a delight to listen to the Hon. J. F. Ryan speak about one of the most extraordinary estimates committee hearings that I have attended, which was held in this room. The benches on the Government side of the Chamber were packed with people who came to listen to the proceedings but went away very disappointed. After the meeting I had an opportunity to talk to some of them who expressed amazement at how the hearing had unfolded because, as the Hon. J. F. Ryan said, so many questions went unanswered. It was my understanding that the Minister and his departmental officers had some appreciation of the questions they would be asked on that evening.

Those present were ordinary people from across Sydney who had been on the receiving end of many of the dodgy builders that we have heard about tonight. That underlines why extra resources should made available to the Department of Fair Trading to enable it to follow through on the legislation. The Greens support the Fair Trading Amendment (Enforcement and Compliance Powers) Bill which will become a hollow shell if resources are not made available to put it into effect. The Greens believes that is one of the key issues before honourable members. There are many unscrupulous traders who take advantage of others. It is often said that such people are gullible, foolish or silly but I prefer to think of them are trusting. They do not expect that they will be ripped off, and often do not know what to do in circumstances where that occurs.

It is fair enough for people who engage somebody to do work to expect that they will get a fair job and, if not, that they will have recourse to satisfaction through some government channels. At the moment the system is clogged and that is why it needs to be sorted out. The Greens believe that the Fair Trading Amendment (Enforcement and Compliance Powers) Bill will go some way towards that end. The Greens hope that resources will be made available to put some teeth into the legislation so that these unscrupulous traders can be sorted out and so that people can engage others to do work for them, confident in the knowledge that they will get a fair job and be given a fair go.

The Hon. Dr A. CHESTERFIELD-EVANS [8.33 p.m.]: The Fair Trading Amendment (Enforcement and Compliance Powers) Bill will amend the Fair Trading Act 1987 to enable the Director-General of the Department of the Trading to suspend a licence, permit or other authority issued by the Minister for Fair Trading under certain services and, to clarify the scope of powers conferred by the section 19 of the principal Act to inspect and copy documents of a licensee suspected of engaging in offences stipulated in section 62 of the Fair Trading Act.

The Department of Fair Trading is responsible for the administration of licensing schemes covering conveyancers, employment agents, home building contractors, motor vehicle dealers, pawnbrokers, property and business agents and valuers. Unfortunately, we have all heard stories about a minority of proprietors operating in the market who engage in misleading commercial conduct. The bill will provide some teeth to the enforcement and compliance powers in the Act. The Australian Democrats will support any legislation which protects the interests of consumers. The bill in its present form will put an end to the usual problems in the building industry—although it does not relate only to the building industry on which the discussion has centred tonight.

Item [1] of schedule 1 to the bill inserts an additional clause that will enable the director-general to delegate powers conferred by new section 64A. The director-general will be directly responsible for suspending dubious proprietors' licences administered under the Act, and may terminate the licence suspension. This will bring transparency to government bureaucracy. Item [3] of schedule 1 to the bill will empower the director-general of the Department of Fair Trading to suspend a trader's licence for a period not exceeding 60 days. Under new section 64A (2) if the director-general is of the opinion that: a licensee has engaged in conduct classified as an offence to the Act; it is likely that the licensee will continue to engage in that conduct; and that conduct may cause harm or significant loss to people or damage to property, he is authorised to serve notice on a licensee to suspend the licence for no more than 60 days.

Further, under subsection (4) of new section 64A of item [3], when suspended, a licensee must lodge the suspended licence at an office of the Department of Fair Trading within seven days, or if unable to do so, lodge a statement outlining the reason why the licence cannot be lodged. Under subsection (5) of new section 64A the director-general may terminate the licence suspension and restore the licence to the licensee. Under subsection (8) a licensee may apply to the Administrative Decisions Tribunal to review the decision of the director-general. The director-general will have power when it is clear that the builder or other licensee has transgressed reasonable standards, but, in practice, that is not always clear. If a large number of people have been ripped off by a builder or licensee clearly the director-general has to act and call the licensee to account, and this will give him power to do so.

However, it is not as simple as that and I believe that this bill has not been thought through. It is a step in the right direction, but I do not have sufficient expertise, and did not have sufficient time available, to draft amendments to remedy the situation. Speaking from my own limited experience, when I was adding a second storey to my home the bricks to complete the job were stolen. Interestingly enough my neighbour observed a utility, loaded with my bricks, drive off. The coincidence is that the number plate observed differed from the number plate of the car driven by the head subcontractor carpenter by only one digit, and was of a similar colour, make and model. I must confess I had no doubt who had stolen my bricks. When I spoke to the builder he said it was difficult to do something about it because he had contracted with the person in question to finish the job.

I inspected the job fairly regularly after that only to find that half of the insulation to absorb noise—consultants having been called in because I had only plaster and boards between the two floors—remained after the ceiling had gone in. That seemed odd because the correct amount had been ordered and only a little should have been left over. Sometime later when I installed airconditioning I discovered that there was no insulation there to absorb noise. No doubt it had been swiped by the same chap who swiped the bricks. In fact, the builder had fallen out with the subcontractor so that was the end of the relationship with that person. My choice was to take out the entire ceiling or put up with the noise. The effort of obtaining justice through a complex legal system seemed likely to be counter-productive, so I simply put up with the noise and lack of insulation.

That was a small problem in the relative of scale of things, so I copped it sweet. The stories I have heard since I have been a member of this House have been related to me by the Building Action Review Group [BARG], a competent and conscientious group of victims who try to draw attention to the plight of those who have been seriously ripped off. That group holds exhibitions of defective homes. If honourable members want to get in touch with what is happening, they should ask for a program of the defective homes exhibitions, which are taking place all over Sydney. Many of the houses are suitable only for the demolisher's hammer as they are beyond repair.

Irene Onotari has worked tirelessly with this group ever since her life was basically wrecked by builders who took all her money and placed her under immense stress. She has been a tireless campaigner for consumer rights. She organises visits to such exhibitions for people who have fallen victim to dodgy building contractors. I have witnessed first-hand the emotional and economic pain suffered by victims of irresponsible practices, and I understand how demoralising red tape can be. Inaction on the part of government and the department is very bad for the victims. The builders are still getting away with murder.

Carrol Cassar of Revesby endeavoured to build a house. It was built on clay fill rather than proper fill and, of course, once the fill dried out the concrete slab cracked. The cracking of the slab was facilitated by the fact that it was not the specified thickness: it was 72 cm thick instead of 100 cm. The reinforcement was not of sufficient gauge, nor was it correctly positioned within the slab. The piers, which supposedly existed at the side, did not exist. Interestingly, the formwork and reinforcement had been inspected and certified prior to the concrete being poured. In fact, an inspector later said that it could be fixed by injecting grout!

One problem Mrs Cassar encountered was that whenever she got another builder to inspect the job, that builder would say, "This is appalling. You will really have to dig it up. It's hopeless. It can't be fixed." She would say, "Thank you very much. Would you put that in writing?" Invariably the builder would say, "No, I will not put it in writing." She would ask why and the builder would say, "Because I have to get jobs in the market. If I am known as somebody who criticises other builders, if once I have inspected a job other builders cannot get work, I will get a name. I will write you a report, but not as stridently as I will speak to you.

This was a common problem. A person would pay thousands of dollars for a report and when it was received it was much more wishy-washy. In Mrs Cassar's case the report said, "It might be fixed with grout, but I don't think so." Of course, the department latched on to the possibility that it might be fixed by grout and said to Mrs Cassar, "You can spend the money repairing the house because we will not pull it down." Of course there were arguments about how the unsatisfactory string of experts had been paid, because these reports were expensive. As the reports were lukewarm the department was trying to persuade her to have the house repaired. She was told that she could not get the money until attempts had been made to fix the house. She said, "Well, by that time I'll be broke and I'll also have no insurance." It went on and on.

The suggestion that simply giving the Minister the right to suspend a builder's licence for a period will unscramble these eggs is a nice fantasy. This bill is a start, but I do not believe issues of the simplicity I have stated would be fixed in any way. I shall not go into the details of Carrol Cassar's situation. Certainly Albert Frasca and Associates, the consulting structural engineers, were clear in their opinion that the certificates of structural adequacy issued by Civil Projects were quite incorrect. The report provided by Albert Frasca and Associates stated that the floor slab and board piers were structurally inadequate; that the structural work did not comply with the contracted council drawings, Australian Standards and building codes; and that the house construction was inadequate. The report stated further:

> Based on our further investigations ... and the negative feedback we have received related to the possible use of grout injection under the residence floor slab we recommend that the residence be demolished and be re-constructed in an adequate manner in accordance with architectural and structural plans prepared by suitably qualified consultants.

To his credit, Albert Frasca is an engineer who provided a report that told it as it was and which should have given Mrs Cassar access to justice. She still has not had access to justice and Beechwood Homes, the company that built her home, is still building homes—despite the fact that she lodged her first complaint with the Department of Fair Trading on 9 July 1997.

This bill is a step in the right direction and we support it, but a lot more needs to be done. Builders' organisations simply are not able to use a self-regulatory system. Self-regulation is of the self, by the self and for the self. Trade organisations are not able to take the strong measures needed for credibility, particularly if there is wide spectrum within the trade. I have spoken to an ethical builder who I believe is competent and who has tried to work with building groups. He found it was impossible to do a job. The result of any inspection was that he was told, "You identify what is wrong and we will fix it."

If the poor old customer said, "Well, there's a crack up there I want fixed", they would not take much notice of it unless it was a big enough to put a finger in—and that is a fair size crack for a house! Customers in these instances are not sophisticated and if the slab cracks, the crack will be wide only at the top. The faulty foundations at the bottom, which caused the crack, will not be noticed. If the customer says, "There's a crack up there" when the fault is actually in the foundations far removed from the crack, requiring the house to be jacked up or walls to be demolished, the builder trying to make restoration says, "Oh, yes, I will fix that crack for you", knowing perfectly well that it will not fix the problem. It becomes an impossible situation for the builder attempting to make restoration.

Restoration builders are not supposed to find new causes of the problem. They could say, "Look, you think it's only that crack, but in fact it is the foundation, the slab. The walls are no good. You will have to demolish the house and start again because it is not fixable." But that would create an immense problem for which they would receive no thanks, and the employer or the person who contracted them to fix the problem would blame them. If they attempted to fix it and the problem recurred, they would have compounded the situation and may be sued for their inadequate restorative work—of course that would be an impossible task under the quote they gave.

Clearly, the current restoration system is inadequate. Obtaining a neutral opinion requires paying the person sufficiently not only for that job but also for providing them with a reliable source of income so that if they are blacklisted amongst builders because they give straight-shooting opinions and some builders will not work with them, they would have security in their employment. I believe we have to pay ethical builders to be inspectors as they have sufficient experience and credibility and make good decisions. They may not be able to return to the building industry, at least until the paradigms within the industry change.

The lack of fully qualified council inspectors because salaries are inadequate, and the difficulty with self-regulation need to be addressed. Obviously, evidentiary problems may be involved if the suspension of a builder's licence is challenged. Therefore, the quality of the engineers and inspectors who provide those reports is critical. The tribunal must weigh up evidence and that requires a degree of sophistication. I believe that is another mechanism that needs to be established. As I have said, this bill is a beginning but it certainly is not an end. As builders insurers, mortgagees and so on become responsible, those responsibilities will need to be clearly defined. Certainly the contracts and arguments over who is responsible for what happens have been a nightmare for those who have written to me.

I do not want to take up the time of the House going through a thick file of complaints referred to me by people in the short time that I have been a member of this House. This bill is a step in the right direction, but it is not a big enough step. I hope the Minister will shortly bring back to this Chamber a bill that details a more comprehensive system, after the director-general has defined more clearly the problems that he or she has had in attempting to implement this suspension program.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [8.50 p.m.], in reply: I thank all honourable members for their contributions and their support for the bill. No doubt there are many stories about builders and their failure to comply with contractual arrangements, just as there is no doubt that we will continue to hear about such matters. However, this bill is about better enforcement of compliance powers to be given to the Minister. I have no doubt that a lot of work is yet to be done, but I thank all those who spoke to the bill and supported it. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

HOME BUILDING AMENDMENT BILL

Second Reading

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [8.51 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 object of this bill is to address a recent decision of the Supreme Court which has serious ramifications for the future viability of the home warranty insurance scheme established under the Home Building Act. The scheme is designed to protect consumers against faulty or incomplete work which may be performed by licensed builders and tradespeople and was one of a number of significant reforms for the home building industry introduced by the Carr Government in 1996. The scheme, which is underwritten by approved insurance companies, replaced the government-operated insurance scheme.

The scheme commenced on 1 May 1997. An insurance contract must provide cover of at least $200,000 per dwelling. The period of cover for defective work is seven years from completion of the work whilst cover for incomplete work is provided for 12 months from when work ceased. Beneficiaries under the scheme are described in the Home Building Regulation. From the outset

it was intended that developers be excluded from cover, and the regulations were drafted to allow an insurer to do so. A similar exclusion applied under the government-operated scheme. It was recognised that some persons may wish to erect a small development as, for example, an investment for their retirement, and the exclusion for developers was not intended to apply to projects involving less than four dwellings.

Last year an amendment to the Home Building Act was introduced which made it a requirement for persons applying for or renewing certain categories of licences to show that they are eligible for home warranty insurance. This linking of licensing and insurance will help to ensure that only financially viable builders are allowed to operate. The Supreme Court, in its judgment given on 10 May 2000 in the matter of *HIH v Jones*, held that two developers who had engaged a builder to erect a complex of 15 home units were entitled to be covered under the insurance scheme. The court found that the wording of the Act, in particular sections 92 and 99, entitled the developers to cover and that the exclusion in the regulation was not applicable to them. I understand that HIH is currently seeking to appeal this decision. Should that appeal be unsuccessful, the result would be that any exclusion clause in an insurance contract intended to exclude a developer from making claims is void by operation of the Act. This applies to all insurance contracts issued since 1 May 1997.

The court's decision threatens the future viability of the insurance scheme. The insurers are exposed to significant loss should the builder of a development project become insolvent or be sacked from the job. For example, in a block of 50 home units the insurer could potentially be liable for up to $10 million in completion costs. Faced with losses of such magnitude it is likely that the insurers will pull out of the scheme or, at the very least, refuse to insure large development projects. Either way, this would have serious consequences for consumers and the building industry.

Leaving aside the potential loss to insurers, it is inappropriate for the home warranty insurance scheme to cover developers. In most cases the developer plays an active role in the project including the selection and payment of subcontractors and suppliers, appointment of project manager, engineer and architect, as well as exercising overall financial control. Developers undertake projects for financial reward. It is inappropriate for the home warranty insurance scheme, which was designed to protect consumers, to underwrite the success of large development projects.

The bill is intended to overcome the decision of the Supreme Court in *HIH v Jones* and to retrospectively validate exclusion clauses in insurance contracts issued since 1 May 1997. The bill amends the Home Building Act to make it clear that the licensed builder engaged by a developer to undertake the work is the person required to take out insurance over the work. It also makes it clear that the responsibility of the developer is to attach a certificate of the builder's insurance to any contracts for sale of dwellings in a development project. These are existing requirements under the Act. However, the current wording of the Act is ambiguous and needs to be clarified.

A definition of "developer" is inserted in the insurance provisions of the Act to make it clear that these provisions apply to a developer of the kind referred to in section 3A of the Act. Section 3A sets out the circumstances in which a person is considered to be a developer: that is, where the building work involves an existing or proposed dwelling in a building or residential development where four or more of the dwellings will be owned by that person. Section 3A also applies to building work done in connection with an existing or proposed retirement village or accommodation specially designed for the disabled where all the residential units are owned by one person.

Section 99 specifies the requirements for insurance for residential building work. This section provides, among other things, that a contract of insurance must insure the person on whose behalf the work is being done. The Supreme Court held that the words "a person on whose behalf the work is being done" applied to a developer and that the insurance policy must cover such persons. The bill amends section 99 to provide that it does not require a developer, on whose behalf residential building work is being done, to be insured. It also enables the exclusion of any other person belonging to a class of persons prescribed by the regulation. This is to make it clear that the builder of the project or companies related to the builder or developer cannot make a claim.

The bill validates any exclusion clauses in insurance contracts relating to developers issued from 1 May 1997. It also validates clause 42 of the regulation. That clause specifies which persons are not required to be beneficiaries under the insurance scheme. The bill will not, however, affect the judgment of the Supreme Court in *HIH v Jones* or any court proceedings that have been determined before the commencement of this part of the bill. The retrospective application of the bill will also not apply to offences that may have occurred. These will be dealt with in accordance with the law that applied at the time. I commend the bill to the House.

The Hon. M. J. GALLACHER (Leader of the Opposition) [8.52 p.m.]: I speak on behalf of the Opposition, which will not oppose the Home Building Amendment Bill. The purpose of the bill is to clarify that a person who does residential work on behalf of a developer is the person required to take out insurance, and not the developer himself or herself; to provide that the obligation of any such developer in respect of insurance is limited to not entering into a contract for the sale of the land on which the work has been done, or is to be done, on the developer's behalf unless a certificate of insurance is attached to the contract; to provide that provision of an insurance contract that excludes any such developer or other person prescribed by the regulations from making claims under that contract is permissible under the Act; to validate such exclusionary provisions relating to certain developers contained in insurance contracts made on and after 1 May 1997; and, finally, to clarify that the regulations may specify which persons are not required to be beneficiaries under a contract of insurance.

This bill arises from a review of insurance following a decision of the Supreme Court earlier this year in the case of *HIH v Jones*. The bill makes it clear that it is the builder, not the developer, of a housing estate who must take out insurance under part 6 of the Act. Clearly, the bill focuses on the real need for this form of insurance to be held by other than developers. It is suggested that where developers entertain a degree of risk in respect of the development of a site, that risk is limited to their benefit by the existence of the home building

insurance. Until the passage of the bill, there has been an anomaly in that a developer could take advantage of such insurance. I think all honourable members would agree that that was never intended by the original legislation passed by this Chamber.

This House has heard lengthy and valuable submissions put by the Hon. J. F. Ryan when speaking to an earlier bill. The comments that he made on that matter, while dealing with compliance with fair trading law, are just as relevant to the Home Building Amendment Bill. The Opposition has consulted with the Housing Industry Association and the Master Builders Association. As alluded to earlier, the Opposition will not oppose the bill.

The Hon. J. F. RYAN [8.54 p.m.]: This bill will amend the Home Building Act to ensure that the insurance scheme that protects homebuilding consumers remains viable. The Supreme Court case *HIH v Jones* established that developers could claim under the insurance scheme. It was never intended that developers should be able to make such claims. The bill, to come before this House by the end of June, relates to the *HIH v Jones* decision, delivered on 10 May, which necessitated the legislation.

The Minister has not waited two months before dashing into the Parliament to rescue the insurers, but there is a long list of problems with this scheme relating to customers, the people who actually pay the insurance bills, that have yet to be dealt with. Some of those problems are incredibly urgent. I draw attention to the speed with which the Government raced to rescue insurers from the problems that they have, and the speed with which it addressed the worries of builders, when, quite frankly, it has allowed customers to be hung out to dry and wait. The Government is reviewing the insurance scheme, but it was not until I questioned witnesses at the Fair Trading estimates hearing that I discovered they had, and have, no intention of consulting customers at all until the review of the insurance scheme is virtually finished. Those witnesses said that after they had met with builders and insurers they would bring together a number of reforms for the scheme which they would ask consumers to consider.

This scheme is in such deep trouble—at least, according to correspondence that I have received—that Fair Trading should start with the consumers, and then see whether the scheme can be worked out with the builders and insurers afterwards. In fact, that commitment was given by this Labor Government when it was in opposition. My copy of the press release issued by the shadow Minister for Consumer Affairs, Mr Amery, has been given to Hansard for their use, but, if I might paraphrase it, Labor said it would not be like the Coalition Government, that it would listen to consumers and not just builders and insurers. But with this bill the Labor Government is doing the very thing that it said it would not do.

The Hon. J. H. Jobling: They are worse.

The Hon. J. F. RYAN: Apparently, they are even worse than they claimed the Coalition was. They are not listening to consumers. I am not even sure that the Minister was aware at the time that this review process did not consult consumers. My view is that a decent compilation of the complaints that customers have about this insurance scheme is needed before any review could be considered to be in any way credible. I would like to outline to the House some of the complaints that the customers, the consumers, have with the insurance scheme that should be taken into consideration by a review. First of all, one need only ring on behalf of a consumer to know what happens. I am sure many honourable members will get that opportunity. Ring an insurance company like Home Owners Warranty [HOW] on behalf of a customer and just sample the rudeness that you will be subjected to by the insurance claims staff. I urge honourable members to ring and sample what I have sampled on behalf of a number of customers. Typical quotes from customers include being told:

> We do not pay out on rectification of defective work because we classify this as a dispute between you and the builder ... You must obtain a court order and even then we may not necessarily pay the claim.

Imagine hearing that from an insurer! A person who has a car insured and has reason to make a claim usually gets a few quotes, sends a letter to the insurance company, and receives a cheque in due course. It is nothing like that with the home building insurance scheme! A consumer has to argue and haggle with them for two months, then drag them through the tribunal—which, as I explained in debate on a bill dealt with just prior to this one, can take up to a year—and then the insurer reserves the right to decide whether to do anything about it after that. Another problem that people have is with the conflict of interest that exists between insurers, like Home Owners Warranty and HIH Insurance, and builders.

Eighty per cent or more of the insurance policies issued for homeowner insurance are issued by companies which are subsidiaries of building associations, either the Master Builders Association or the Housing Industry Association. To give an example of the arrogance of those companies, I shall read the

executive news brief produced by the executive director of the Master Builders Association of New South Wales. I will not name the person who wrote this but he was a Liberal Party candidate. I am not being anything but bipartisan on this matter. That person was employed to do a job. I respect that he was advocating on behalf of the industry, but I ask members to listen to what he had to say in commenting on the reforms that had been introduced to the Home Building Act in 1997. He said:

> Housing Indemnity insurance is not new. It has been around for years through the Building Services Corporation. The only thing new is that it will be provided by private insurers and builders can take some heart from that. Private insurance companies will not be driven by a consumer imperative and in the manner of all insurance companies will fight tooth and nail over every claim.

That is exactly what they do. The document continued:

> There are other changes to the scheme that bring the scale some way back to fairness for builders. The first of course is the $500 claim fee that a consumer must put up to lodge a claim. That will make them think twice over frivolous, or non related claims ... under the MBA MasterCover insurance builders have a fighting fund of $25,000 provided by the insurance company Jardines to fight any claim that goes to the Building Disputes Tribunal.

It is now called the Fair Trading Tribunal. The document continued:

> This is in the event that a consumer appeals against a refused claim and takes it further on. If it is a case that the insurance company agrees to fight, there is a lump sum to assist in that legal battle. That has to be a bonus.

This is an example of the arrogance shown by builders when the home building legislation first went through the Parliament. There is no doubt that the scheme is wildly tilted in favour of the builders. The conflict of interest has to be dealt with. Most home building customers organise for the builder to buy the insurance for them. They pay the premium but the builder organises it. So the insurance company regards the builder as its customer, not the person who paid the premium. That is why when customers ring up they get such a raw deal. That is why the HIA writes the sort of things contained in the executive news brief about how terrific the scheme is.

I will give a quick case study to show just how difficult Home Owner Warranty can be. A home building client complained to the insurance company about numerous defects in her new house, including wrong colour mortar, a rusty laundry tub, ill- fitting doors and structural problems with the roof trusses. The builder came to the house many times over a period of a couple of months. He would attend the site and then leave without completing the work, or the work would be rectified only to fall apart again shortly afterwards. This went on for some time so the client went back to the insurer and asked, "How many times have I got to put up with him coming back?" She was told, "As many times as it takes for the problems to be fixed." The company was not going to pay the claim; it was just going to keep sending the builder back. He obviously did not want to go back and did not want to deal with the matter.

In my last speech on this matter I dealt with the excessive litigation surrounding most building insurance claims. Almost every claim, before it is paid, if it is paid, is dragged through the Fair Trading Tribunal before it is settled—and it can be there for months. Even when the tribunal issues a rectification order against the builder HOW reserves the right to reassess the claim and pay only what it believes to be appropriate, or it tells customers that it is their job to pursue the builder until the builder becomes insolvent and then the company might think about paying the claim.

There are other anomalies in the insurance industry. I am surprised that the Minister has not addressed that particular one. There is a famous case involving the builder Gary Cohen and the Dyason family. The Dyasons discovered that even though the builder was asked to show cause and was delicensed as a builder—there is no doubt that his building work was shoddy—they were not able to claim on the insurance policy they had to cover the work. Essentially, it has been established by an order of the Supreme Court that if a builder signs a contract as the builder but takes out an insurance policy under his company name then the insurance policy does not cover that product, and vice versa. When I was speaking to the Minister on 31 May at a meeting in his office I asked, "How would anybody know when they take out a home building contract and see an insurance contract whether they were covered, without very clever legal advice?" My concerns were confirmed by the Minister's chief of staff, Ms Jane Fitzgerald.

Ms Fitzgerald agreed with me that no-one would know. No bill is being introduced in the Parliament to deal with that issue. In my view there is an inadequate level of government monitoring of the scheme. Insurers who operate in the scheme have to be approved by the Minister. To be approved by the Minister they have to agree to supply certain details. But I am sure that the House will be surprised to learn that they do not have to supply any information about how much premium they collect. So we have no idea whether they are making

undue profits or otherwise. Similarly, they do not have to give any information about how long it takes them to settle claims or whether the claims are settled with or without litigation. If such statistics were collected, the position would be very different.

One insurance company tells customers on the phone that if the company is not likely to pay the claim there is no point filling out a claim form. The purpose of doing that is so that the company does not have to record that it has refused yet another claim. The number is kept down by basically chasing the customers away prior to lodging a claim. The level of government monitoring that occurs under the new motor accidents insurance scheme that has been developed by one of the Ministers at the table does not compare with the level of monitoring of the home warranty insurance scheme.

Earlier a member complained about building consultants. Production of different reports by consultants is also a problem for the motor accidents insurance scheme. Two building consultants may write a report on a building. The consultant acting for the customer will describe it as the worst building he has ever seen and claim that it ought to be demolished before it falls down. The builder's consultant will report that it is the best building constructed since the Opera House and it will probably be around longer than the pyramids. Somehow or other, insurance companies and the Fair Trading Tribunal have to choose between the two reports. One would wonder whether they were describing the same construction.

The motor accidents scheme has implemented what has proved to be an excellent system for medical specialists to report on injuries. Reports under that scheme have to be far more complicated than housing reports. Medical reporting procedures have been standardised under the American Medical Association guidelines and under new guidelines that have been developed for psychiatric reporting. If that is possible with reports on the human body, why is it not possible to standardise home building reports? There is no doubt that plenty of work needs to be done with building consultants.

Building consultants who give customers adverse reports on their homes are doing them no favours if the reports are inadequate, because the owners feel ripped off and dissatisfied about their homes. If the reports are not fair dinkum the consultants have done a huge disservice to the customers. Similarly, if consultants provide inadequate reports for builders which inadequately describe home faults, they are not doing any favours either. The minimum amount that may be insured under the scheme is $200,000, the only limit that applies. With GST, inflation and legal costs added, $200,000 will not be nearly enough. The limit needs to be reviewed. There are also cases in which the $500 excess should not apply. I will describe one case that describes not only how the insurers handle claims but also how the $500 excess can be unfair.

I refer to a claim made by Mrs Robinson who lives in the Wilton area. She had a home built by, of all people, the famous Rocco Vitalone. Her home was one of his earlier pieces of handiwork. If I disappear one day honourable members will know who got me. Once Mrs Robinson's home was built she installed a swimming pool. Last Christmas she noticed that a significant amount of flooding was occurring near her swimming pool. On further investigation it turned out that the flooding was coming from her stormwater system. The water, which was coming off the roof and was being dumped near her swimming pool, was not only causing a mess in her backyard; it was actually placing at risk the lining of the swimming pool.

Mrs Robinson asked the builder to return and to fix the problem. Mr Vitalone flatly refused to do so. He believed that there was some sort of conspiracy to get him and he refused to return to fix the problem. Mrs Robinson contacted Home Owners Warranty Ltd, the insurance company, which told her that it would contact the builder and get him to come back. Mrs Robinson explained to the insurance company that, if something did not happen quickly, her swimming pool would be destroyed. The insurance company told her to mitigate the problem. I know that that is what the insurance company told her because I spoke to the company and it confirmed that it had done so. How does a single mother with four children mitigate the problems being generated by a stormwater system? Did the insurance company expect her to go into the backyard and dig up the system? Mrs Robinson employed a plumber at a cost of $1,200—

The Hon. J. J. Della Bosca: Are you talking about the bill?

The Hon. J. F. RYAN: I am talking about the bill. The bill is about insurance, and this matter relates to insurance. Mrs Robinson employed a plumber at a cost of $1,200 to dig up the system and to set it right. She asked the Department of Fair Trading to look at the problem. The department, after inspecting the property, agreed that the stormwater system was faulty. It took photographs of the system which were produced as evidence in a later court case. When Mrs Robinson went back to Home Owners Warranty to make a claim she

was told, "Mrs Robinson, you have fixed the problem. That means we cannot do it now. You have fixed it all up. Bad luck. You have breached clause 24 of your insurance policy." Home Owners Warranty told her to fix up the problem, she did what she was told to do and when she went back to the insurance company she was told that she was now faced with a problem.

The insurance company also said that it had been in contact with the builder and it gave her a copy of the letter. The builder said that the pool installer may have caused a problem with council. The pool was installed in the backyard but even the stormwater system in the front yard was affected, which did not seem to bother Home Owners Warranty. The builder said that council inspected the stormwater system, as it was supposed to do, on 15 August 1997. I contacted Wollondilly council, the relevant council, and asked, "Did you carry out this inspection?" I was told, "Yes, we inspected that place, but we inspected the septic system and not the stormwater system." In fact, the stormwater system has never been inspected. That proves how mendacious Home Owners Warranty was in relation to this matter. It also goes to show how difficult it is to deal with builders.

Mrs Robinson has spent $1,200 fixing a problem that was caused by the builder. Even if she is successful with her insurance claim she will still have to pay the first $500. I think most honourable members would agree that, given the problems she has had with this builder and given the circumstances under which these problems occurred, she had to spend this money only because the builder refused to fix the problem. Why should she pay the first $500? I do not believe that to be fair at all. These are the sorts of problems that the Minister should fix. The Opposition supports the bill but it wants the problems relating to the home insurance scheme to be fixed. I urge the Minister to do something about those problems in the spring session. When the review is completed by Mr Hotham of the Insurance Council of Australia the Minister should table the report in Parliament. We all want to know what that report says. It will be an interesting report not only for insurers and builders but also for the public.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [9.14 p.m.], in reply: Regardless of the rhetoric of the Hon. J. F. Ryan, I thank members of the Opposition for their contributions to debate on the bill and their support for it. I often wonder whether members of the Opposition are united in relation to measures such as this. The Leader of the Opposition, who is not greatly concerned about the bill, thinks it is a great bill, but all we have heard from the Hon. J. F. Ryan is rhetoric. I know he wants to impress Government members and members on the crossbenches, but he should be attempting to impressing his leader. We have heard all these arguments before.

The Hon. J. F. Ryan should attempt to impress members of his own team if he wants to get onto the shadow frontbench. The Hon. J. F. Ryan should know better than anyone in this House that the insurance scheme is in place primarily to assist and to protect consumers and home owners. The bill will go a long way towards allaying their concerns. I am sure the Minister will do a great job once this legislation is implemented. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

INDUSTRIAL RELATIONS AMENDMENT BILL

Instruction to the Committee of the Whole: Suspension of Standing Orders

Motion by the Hon. J. J. Della Bosca agreed to:

That standing orders be suspended to allow the moving of a motion forthwith for an instruction to the Committee of the Whole in relation to the bill.

Instruction to the Committee of the Whole

Motion by the Hon. J. J. Della Bosca agreed to:

That it be an instruction to the Committee of the Whole:

(a) that the Committee have the power to divide the Industrial Relations Bill into two bills so as to incorporate in a separate bill the provision of the bill relating to independent contractors.

(b) that the Committee report the bills separately.

In Committee

The CHAIRMAN: Order! The Committee has received an instruction from the House that the Committee has the power to divide the bill into two bills. The Committee will deal first with the Industrial Relations Amendment Bill 2000 in the normal manner.

Clauses 1 to 3 agreed to.

Schedule 1

The Hon. J. J. DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.19 p.m.]: I move according to the instruction of the House:

> That the bill be divided into two bills, and that schedule 1 [1] on page 3 and schedule 1 [24], [25] and [26] on pages 12 to 16 be incorporated in a separate bill, the *Industrial Relations Amendment (Independent Contractors) Bill 2000*, with the following long title and preliminary provisions:
>
> A bill for an Act to amend the *Industrial Relations Act 1996* with respect to independent contractors.
>
> **The Legislature of New South Wales enacts:**
>
> **1 Name of Act**
>
> This Act is the *Industrial Relations Amendment (Independent Contractors) Act 2000*.
>
> **2 Commencement**
>
> This Act commences on a day to be appointed by proclamation.
>
> **3 Amendment of Industrial Relations Act 1996 No 17**
>
> The *Industrial Relations Act 1996* is amended as set out in schedule 1.
>
> **Schedule 1 Amendments**

This is a procedure to allow the Committee to split the bill into two bills and to consider the two bills separately. The legislation will have two names according to the split.

The Hon. M. J. GALLACHER (Leader of the Opposition) [9.20 p.m.]: The Opposition has no problem with the Government splitting this bill into two bills. In fact, it need only get rid of part 9A altogether and not reintroduce the bill. I advise the Minister, in his new role, to simply lose part 9A between now and August.

The Hon. R. S. L. JONES [9.21 p.m.]: Because the bill went through rather suddenly a couple of other members and I did not have an opportunity to contribute to the second reading debate. A Minister who introduces legislation that is misunderstood or opposed by a significant section of the community with a powerful lobby group behind it should be careful. The Minister may well have been correct that this is only a minor amendment but a number of groups such as the Housing Industry Association, the information technology industry and others believe that it is highly controversial. A lot of misunderstanding surrounds the former Minister's intention in bringing forward the legislation. It is unwise to allow that kind of lobby group to be so vociferous and to cause trouble for the Government when it is not necessary.

It is a good idea to split the bill in half. The provisions that relate to independent contractors will be considered in a few weeks time and the House may decide that they should not go through. However, we do not know that yet. The Government should speak to the housing industry. It normally consults widely with various people, which is why legislation passes through the House quickly on some occasions. I support the splitting of the bill. The former Minister should not have been so hasty in introducing the legislation, particularly in relation to contractors. He should have discussed it more widely so that the community understood the legislation.

Ms LEE RHIANNON [9.22 p.m.]: The Greens look forward to the second part of the legislation. We look forward to reading *Hansard* and to photocopying and distributing the remarks of the Leader of the Opposition, which are in sharp contrast to the remarks of many lobby groups, which, I understand, worked closely with the Opposition. Those lobby groups have continually said that they wanted to work through this properly and expressed concerns about people being exploited. The Leader of the Opposition has said that the whole thing should be ditched, which is in stark contrast to what the lobby groups have said and their apparent conviction that people should not be exploited. Apparently the Leader of the Opposition is happy for these people to be hard done by and he has no commitment to improving their conditions.

Reverend the Hon. F. J. NILE [9.23 p.m.]: The Christian Democratic Party supports the amendment and the split into two bills. I understand that this will mean that the Industrial Relations Amendment (Independent Contractors) Bill will lay on the table as an exposure bill, similar to other bills which will be dealt with later, and we will now deal with the Industrial Relations Amendment Bill.

Amendment agreed to.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.24 p.m.]: I move:

Page 10, schedule 1 [19], lines 31-37. Omit all words on those lines. Insert instead:

(1A) This Part applies to the dismissal of an employee even if the person was employed in this State under a Federal award. However, this Part does not apply to the dismissal of any such employee if:

(a) the person is entitled to make an application to the Australian Industrial Relations Commission with respect to the dismissal on the ground that it was harsh, unjust or unreasonable, or

(b) the person would have been entitled to make such an application but for the exclusion of the person from the relevant provisions of the *Workplace Relations Act 1996* of the Commonwealth (being an exclusion of a kind referred to in subsection (2)).

Item [19] inserts new section 83 (1A) into the Industrial Relations Act 1996, giving some Federal award covered employees access to the New South Wales unfair dismissal jurisdiction in the event of dismissal. As the former Minister explained in the second reading speech, the intention of the provision is to provide a right to bring an unfair dismissal claim to the Industrial Relations Commission of New South Wales for some employees covered by Federal awards who at present have no remedy at all against unfair dismissal. The employees involved are unable to bring a termination of employment application in the Federal commission due to constitutional constraints. They are unable to bring a claim in the New South Wales commission because it has been held that Federal award employees are beyond the scope of the unfair dismissal provisions of the New South Wales Industrial Relations Act 1996.

However, some questions have arisen as to whether the provision as presently drafted may have the effect of conferring some additional rights to bring unfair dismissal claims not merely on those Federal award employees who are unable to make claims in the Federal commission because they are beyond the reach of the constitutional powers used to enact the Federal termination of employment provisions but on some wider classes of Federal award covered employees.

The problem occurs because the Federal and State unfair dismissal provisions are drafted in similar but different terms, which is somewhat difficult to reconcile, so as to discriminate between the various categories of employees covered by Federal awards whom the Federal Government has seen fit to deny an unfair dismissal remedy. Some of the claims about the effect of the current provision of the bill are clearly exaggerated but to expedite the passage of the bill a modified version of the provision is now being proposed to ensure that the effect of the relevant provision is as intended. It is emphasised that the amendment is technical and does not involve a substantive policy change.

Amendment agreed to.

The Hon. M. J. GALLACHER (Leader of the Opposition) [9.27 p.m.]: I move Opposition amendment No. 1:

No. 1 Pages 17 to 18, schedule 1 [31], line 35 on page 17 to line 16 on page 18. Omit all words on those lines.

This amendment relates to the freedom from victimisation provision that is spelt out in item [31], which inserts new section 210. Earlier the new Minister for Industrial Relations suggested that the Opposition was in conflict with its Federal colleagues and that Peter Reith, the Federal Minister for Workplace Relations and Small Business, was on a different tangent. The Government suggests that there is some correlation between this amendment and the Federal Workplace Relations Act, which specifies that the onus rests solely on the employer to prove that the person was not being discriminated against in the conditions of their employment. This amendment in the bill goes much further than the provision currently in the Workplace Relations Act.

The Opposition's concerns relate to two key factors. One is the expression used in the amendment that states "an employee or prospective employee who suffers any detriment". The Federal legislation does not include a definition that matches "any detriment" as spelt out in section 210 (2). In addition, there is nothing in the bill that determines exactly what is meant by "any detriment" because each individual can have a different threshold with respect to action that he may be of a mind to accept or not accept as being detrimental to him. The definition of "victimisation" also goes further than the definition in the Federal legislation.

The Opposition believes that the Government should reword section 2 (10) of the Act. Perhaps the Government will consider mirroring the wording of the Federal Workplace Relations Act 1996, which is far more descriptive than the bill before us. To the best of my knowledge there is no reference to "any detriment" or to the victimisation provisions that are spelt out in this legislation, which go much further than those in the Federal Workplace Relations Act. The Minister's suggestion that we are somehow in conflict with the Federal Government's position is false. This Parliament and this Coalition are separate entities and we might view issues differently from our Federal colleagues from time to time. It is not fair to try to lump us together on every occasion.

I take this opportunity to put on record my sadness that the Hon. J. W. Shaw has stepped down from his position and relinquished his carriage of the bill. I know he wanted certain aspects of the bill to be enacted, and I suspect that he will be feeling melancholy that some provisions, such as part 9A, have been jettisoned to a time when he will not be in a position to contribute to the debate. The Hon. J. W. Shaw and I did not necessarily agree philosophically about industrial matters, but I think all honourable members will acknowledge that everyone in this Chamber wants to ensure that both employees and employers get their fair share—we simply take different paths towards that goal.

All honourable members respect the views of their colleagues, and I certainly respected the views of the Hon. J. W. Shaw about making sure that everyone receives a bigger slice of an ever-increasing pie. The Coalition is committed to that position and we hope that, ultimately, the community will be the net beneficiary of the debates in this Chamber. As to the amendment before the Committee, we believe the definitions in section 2 (10) of the Act are somewhat grey and uncertain. I hope the Government will accept our amendment and re-examine section 2 (10) in conjunction with part 9A of the bill.

The Hon. J. J. DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [9.33 p.m.]: I thank the Leader of the Opposition for his remarks about the Hon. J. W. Shaw. He has been a major contributor to the industrial relations debate on a wide range of issues and there will obviously be an opportunity to record further tributes to him. I must make several points of clarification regarding this amendment. The Government will not accept the amendment as proposed by the Leader of the Opposition. The issue of detrimental action is in the Federal Act but it is drafted in general terms. Section 2 (10) of the New South Wales Industrial Relations Act 1996 provides protection for employees and prospective employees against victimisation in employment on a number of grounds. It is proposed to strengthen the victimisation provisions of the Act by reversing the onus of proof in proceedings involving these provisions.

I respect the comment of the Leader of the Opposition that State and Federal jurisdictions, like State and Federal political parties, must sometimes consider issues from different perspectives. However, it is important to note that there is no substantive difference between the two Acts in this case. The case for reversing the onus of proof is as strong in the State Act as it is in the Federal Act, where it already exists. That point has been made several times during the debate both in the community and in this place. The victimisation provisions of the Federal Workplace Relations Act 1996 include reverse onus provisions, so this proposal will merely achieve conformity with the position under the Workplace Relations Act. A similar reverse onus provision has existed in Federal legislation since 1914, when it was incorporated into the Conciliation and Arbitration Act 1904.

Moreover, there was a reverse onus provision in the New South Wales Industrial Relations Act 1991. In that sense, the current proposal seeks merely to restore the position that had previously existed in this jurisdiction and that exists currently in the Federal jurisdiction. The proposal recognises the difficulty for a party alleging victimisation to prove that victimisation has occurred. It throws over to the defendant in such proceedings the onus of establishing that the alleged prohibited conduct, which the legislation currently defines as victimisation, was not a substantial and operative cause of the detrimental action.

This difficulty was recognised by the Federal Court of Australia in the decision in *Wood v Melbourne City Council*, when the court stated that an employee who suffered dismissal or any other injury in his employment because of his union membership or union activities would have great difficulty proving that fact in the absence of special evidentiary provisions. Accordingly, the Parliament enacted section 5 (4) of the Conciliation and Arbitration Act 1904, which imposed on an employer, against whom a dismissal or other injury of a unionist was proved, the burden of proving that the action taken by him was not taken by reason of the employee's union membership or activity.

It should also be noted that, whereas the provisions of the 1991 Act treated victimisation as basically a criminal matter with criminal penalties and the scope to award damages, the 1996 Act, the present legislation, treats victimisation totally differently. Enforcement proceedings are now civil, rather than criminal, proceedings. The commission could award damages in victimisation proceedings under the 1991 Act, but there is no such power in the present Act. The thrust of the approach taken in the present Act is to enable the commission to reverse the effect of victimisation and to place a person in the position in which he or she would have been had the victimisation not occurred. In this context, the reverse onus provision is entirely appropriate and not unreasonable.

The Hon. Dr A. CHESTERFIELD-EVANS [9.37 p.m.]: I must confess that I was a little confused when this bill was split in two. It certainly made me wonder about the speeches delivered earlier in the debate as

I missed the second reading debate on the bill. I am surprised that the Opposition has moved this amendment. My experience is that whistleblowers who have revealed information in the public interest that has not delighted their employers have had a very hard time of it. In talking about dismissal and victimisation, this bill attempts, like all industrial relations legislation, to redress the balance of power in the workplace. Reversing the onus of proof in victimisation cases would seem a necessary change, and I am disappointed that the Opposition does not view it in that light. Therefore I urge honourable members not to support the amendment.

Ms LEE RHIANNON [9.38 p.m.]: As this is probably the last time I will speak to this legislation, I would like to pay tribute to the Hon. J. W. Shaw, the former Attorney General, and Minister for Industrial Relations, who put so much effort into this bill. This place will be the poorer for his departure. I understand that he has an excellent legal background and that he will be returning to the coalface. I wish him all the best. The Hon. J. W. Shaw is committed to humanity and to building a fairer, more equitable world. He worked hard to bring decent legislation to this place, and I hope that those who take up his portfolio responsibilities will continue in the same vein.

It is interesting to note that we are paying tribute to the Hon. J. W. Shaw during a discussion on freedom from victimisation. The Hon. Dr A. Chesterfield-Evans said he was disappointed in the Opposition. I cannot say that, because I am not surprised: the Liberal Party is the party that protects privilege. The Opposition wants to knock out this provision, to make it easier for employers to get rid of employees. Protecting employees against victimisation is not on the radar screen of the Coalition parties. It is good to see that the Government still has a backbone and wants to retain protection against victimisation. Hopefully the Coalition will have the sense to roll over on this amendment and not waste our time by pushing it to a vote. However, the Greens will be happy to vote against the amendment if the Coalition does push it to a vote.

The Hon. R. S. L. JONES [9.40 p.m.]: I also pay tribute to the Hon. J. W. Shaw. He is a very caring person and we will miss him enormously in this place. My criticism was directed not at him but basically at any Minister who introduces controversial legislation. The Hon. J. W. Shaw had real trouble battling the evil empire in the black tower. They beat him many times. He was rolled over by the evil empire many times. Of course, that is the extreme right-wing in the black tower. Perhaps if he had not been rolled so many times he would not be leaving.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 12

Mr Bull	Mrs Nile	
Mr Gallacher	Revd Nile	
Miss Gardiner	Dr Pezzutti	*Tellers,*
Mr Gay	Mr Ryan	Mr Jobling
Mr M. I. Jones	Mr Samios	Mr Moppett

Noes, 21

Mr Breen	Mr Johnson	Mr Tingle
Ms Burnswoods	Mr R. S. L. Jones	Mr Tsang
Dr Chesterfield-Evans	Mr Macdonald	Dr Wong
Mr Cohen	Mr Obeid	
Mr Corbett	Mr Oldfield	
Mr Della Bosca	Ms Rhiannon	*Tellers,*
Mr Dyer	Mrs Sham-Ho	Mr Manson
Mr Hatzistergos	Ms Tebbutt	Mr Primrose

Pairs

Mrs Forsythe	Dr Burgmann
Mr Hannaford	Mr Egan
Mr Harwin	Ms Saffin
Mr Lynn	Mr Shaw

Question resolved in the negative.

Amendment negatived.

The Hon. M. J. GALLACHER (Leader of the Opposition) [9.48 p.m.]: I move Opposition amendment No 2:

No. 2 Pages 19 to 20, schedule 1 [36], line 32 on page 19 to line 14 on page 20. Omit all words on those lines.

This amendment is designed to remove a political aspect of the bill. The Government could well argue that the necessary changes in the Industrial Relations Amendment Bill are made in such a way as to protect employees and their rights in the workplace. We have heard that time and again in relation to this bill. This amendment does nothing more than identify political appointments, jobs for the boys, of the worst kind. Not only does the Government acknowledge in this bill that there are jobs for the boys, it basically enshrines in the bill the positions held by these individuals and future individuals forever. By that I mean appointments such as Peter John Andrew Sams as Deputy President of the Industrial Relations Commission or Commissioner Janice Macleay, who is better known to most people as the wife of Leo Macleay, former Speaker of the House of Representatives.

No doubt the Government will claim that it has identified that appointees cannot be removed from the IRC because it does not have the legislative power to remove them. Because it cannot remove them, it will simply give them the same legal status as a judge. Honourable members would recall Justice Bruce, who stood a few metres away from us in this Chamber and tried to convince us that he should remain on the bench. The same situation will occur should there be an attempt to remove one of those political appointees. The Government has got it wrong in trying to give political appointees to the IRC the same judicial status as judges. For the Government to claim that is the only answer is unacceptable.

The Government should employ the provisions that are used to remove senior public servants. The Government does not give senior public servants, even political appointees, the same right as judicial officers to argue the toss on the floor of the Chamber if they are removed from their positions. Before the rowdy members of the Chamber consume the debate, I put to the House that the Government has got it wrong by appointing Peter Sams and Janice Macleay as judges under the Judicial Officers Act. The Government should support the Opposition amendment, which will provide for the removal of an appointee for unsatisfactory conduct or performance at the IRC in the same way as provision is made for the removal of an unsatisfactory senior public servant.

The Hon. Dr A. CHESTERFIELD-EVANS [9.52 p.m.]: I pay brief tribute to the Hon. J. W. Shaw. I wish I had done so the last time I spoke in this House because at that time I agreed with what he was doing, but in this case I do not. It is ironic: one should make hay while the sun shines. The intelligent humanity of the Hon. J. W. Shaw will be a great loss to this Chamber. His genuine help for constituents and, God help us, new members of Parliament will be missed. The bills he drafted demonstrated his real humanity and, by using the legal jargon that many of us struggle with, he put together elements that help in the enforcement of the law. To an extent I agree with my colleague Ms Lee Rhiannon that he may have been forced out because his humanity was not adequately rewarded by the conservative Government he served, and because of the frustration he must have felt.

This Chamber, this Parliament, this Government and this State have lost his good services as Attorney General. However, it is ironic that I do not agree with him on this clause of the Industrial Relations Bill. In fact, I agree with the Opposition. Schedule 1 [36] seeks to protect members of the IRC from dismissal by giving them the same protection as judicial officers. That puts them in the same position as judges, and that is inappropriate. It is an attempt to entrench members of the commission by making it almost impossible to get rid of them. I remember listening to Justice Bruce in this Chamber when he was defending his position. I am not convinced that the decision reached at that time was correct.

I ask the Minister for Industrial Relations to tell me the last time a member of the commission was sacked. If it has never happened, as I suspect, why is this provision necessary? I imagine the Attorney General will get letters from members of the bench asking him what he was thinking about. It is not appropriate to appoint people with no legal training to the status of Supreme Court judges. It is interesting that the honourable member for Newcastle, in another place, when speaking to this bill, said:

> The bill will also provide that non-judicial members of the Industrial Relations Commission can only be removed from office by the same process that currently applies to judicial members.

No explanation has been given as to why the amendment was necessary and no justification has been suggested. I make the interesting observation that there was no mention of it in the crossbench briefing note. Presumably

we take these things on trust and if we do not read them carefully, caveat emptor. I am concerned that no justification has been given for the amendment. Parenthetically, there is no justification for schedule 1 [2], which allows retrospectivity. However, no-one has commented on that. I am a simple man; I do not understand these things. We are against retrospective legislation. I support the amendment.

The Hon. J. HATZISTERGOS [9.56 p.m.]: The Leader of the Opposition seeks to remove the provision that those wishing to remove non-judicial members of the Industrial Relations Commission would be able to do so under section 47 of the Interpretation Act. That section indicates that wherever there is power to appoint a person, there is also power to remove that person. It is interesting that when the Coalition was in office it gave most of the commissioners their current powers, particularly in relation to reinstatement of those who are the subject of unfair dismissal by their own applications. That is the bulk of the work of many commissioners. The Opposition does not want to give them any protection for their decisions. If they do not like what the commissioners do, if the Coalition wins government—

The Hon. Dr B. P. V. Pezzutti: They can go for unfair dismissal, if they like.

The Hon. J. HATZISTERGOS: That is what they do. If the Coalition does not like people to be reinstated, does not like the decisions, does not like the outcomes, it will give the commissioners the same sort of summary justice that it proposes to give senior public servants. That is the level of protection the Opposition would provide. In other words, people would be appointed subject to a Coalition agenda. If the Coalition does not like them it will get rid of them. If people who are appointed are to be impartial and unbiased in judging disputes between citizens, corporations and government parties, they ought to be provided with some protection so that they know that the sword of Damocles is not hanging over them following the outcome of their decisions.

The Hon. HELEN SHAM-HO [9.59 p.m.]: I join with other honourable members in voicing my sorrow at the departure of Jeff Shaw from the Industrial Relations portfolio. I agree with the Hon. Dr A. Chesterfield-Evans that he has been a hard worker for humanity and was a very good Minister. We will miss him. I had discussions with him about amendments to this legislation. This bill was split into two parts through successful negotiations by the crossbenchers and the Coalition with the Attorney General.

I think the Leader of the Opposition agreed that it was a tripartite negotiation for that last amendment before the Committee. I opposed the last amendment and I oppose this amendment. As the Hon. J. Hatzistergos said, non-judicial officers should have the same protection as judicial officers. I hate to think that there are political appointments, although I am not naïve, and I understand that in reality it could very well happen. I would like to think that those people are appointed on merit and can do the job as well as anybody else, and they should be treated the same as anybody else. That is why I am against the amendment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 18

Mr Bull	Mr R. S. L. Jones	Mr Tingle
Dr Chesterfield-Evans	Mrs Nile	Dr Wong
Mr Corbett	Revd Nile	
Mr Gallacher	Mr Oldfield	
Miss Gardiner	Dr Pezzutti	*Tellers,*
Mr Gay	Mr Ryan	Mr Jobling
Mr M. I. Jones	Mr Samios	Mr Moppett

Noes, 15

Mr Breen	Mr Johnson	Mr Tsang
Ms Burnswoods	Mr Macdonald	
Mr Cohen	Mr Obeid	
Mr Della Bosca	Ms Rhiannon	*Tellers,*
Mr Dyer	Mrs Sham-Ho	Mr Manson
Mr Hatzistergos	Ms Tebbutt	Mr Primrose

Pairs

Mrs Forsythe	Dr Burgmann
Mr Hannaford	Mr Egan
Mr Harwin	Ms Saffin
Mr Lynn	Mr Shaw

Question resolved in the affirmative.

Amendment agreed to.

Schedule 1 as amended agreed to.

Title agreed to.

The CHAIRMAN: Order! The Committee will now deal with the Industrial Relations Amendment (Independent Contractors) Bill.

Clause 1 agreed to.

Motion by the Hon. J. J. Della Bosca agreed to:

1. That you do now leave the chair and report to the House that the Committee has considered the Industrial Relations Amendment Bill and, according to the instructions given by the House, has divided the bill into two parts, the Industrial Relations Amendment Bill and the Industrial Relations Amendment (Independent Contractors) Bill.

2. That the Industrial Relations Amendment Bill be reported with amendments.

3. That the Committee report progress on the Industrial Relations Amendment (Independent Contractors) Bill and seek leave to sit again on the first sitting day in August 2000.

The CHAIRMAN: The Committee reports to the House that it has considered the Industrial Relations Amendment Bill and, according to the instruction given by the House, has divided the bill into two bills: the Industrial Relations Amendment Bill and the Industrial Relations Amendment (Independent Contractors) Bill. The Committee reports the Industrial Relations Amendment Bill with amendments, and reports progress on the Industrial Relations Amendment (Independent Contractors) Bill and seeks leave to sit again on that bill on the first sitting day in August 2000.

The DEPUTY-PRESIDENT (The Hon. H. S. Tsang): The Committee reports the bills and seeks leave to sit again on the Industrial Relations Amendment (Independent Contractors) Bill on the first sitting day in August 2000.

Report on the Industrial Relations Amendment Bill adopted.

Progress report on the Industrial Relations Amendment (Independent Contractors) Bill adopted.

Industrial Relations Amendment Bill read a third time.

Message forwarded to the Legislative Assembly informing it of the action taken by the Legislative Council and requesting the concurrence of the Assembly.

ADJOURNMENT

The Hon. J. J. DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [10.10 p.m.]: I move:

That this House do now adjourn.

MINISTER FOR EDUCATION AND TRAINING PORTFOLIO PERFORMANCE

The Hon. PATRICIA FORSYTHE [10.10 p.m.]: On many occasions in recent months I have found myself describing the Minister for Education and Training as both arrogant and secretive: arrogant because he

has ignored the wishes of the community and secretive because the community has found out about decisions he has made and presented to the community as a done deal, with no consultation or involvement with the community. In fact, I can only describe the Minister's decisions in recent times as both extraordinary and inconsistent. I commence by raising an issue that I had originally intended to raise in the adjournment debate. Fortunately, there has been a partial backdown by the Minister today. Last week in this House the Opposition asked questions about whether the support unit for students with learning difficulties at Merewether High School was to close and what consultation had occurred with parents. Apparently, the Government has intended to close the unit for a long period of time.

However, the Government neglected to share its decision with the parents and the school community. After at least four earlier meetings since August last year, the parents found it necessary to call a meeting last Wednesday night to clarify the future of the unit. A month earlier the principal told the parents and citizens association of the school that the unit would be closed. However, the parents had received no advice from the Government at that point. In fact, last Wednesday was the first occasion on which the parents had been advised that the unit would be closed.

I am pleased to report that the Minister has now backed down and said that all of the 16 students who were at the unit will be able to stay there until they have completed their education. However, the long-term future of the unit is now uncertain. That is unfortunate because it is described as an important benchmark unit to which the University of Newcastle is able to send students to study. As reported in the *Newcastle Herald* last week, the District Superintendent of the Department of Education and Training said:

> To suggest this came out of the blue is not correct as there have been discussions over the past 18 months.

Discussions with whom? Discussions certainly did not take place with the parents. The district superintendent went on to say:

> But the meeting on Wednesday night was called to start the consultation process.

Indeed it was. However, the consultation was about where the students might be educated, not about the future of the unit or the decision to close the unit. That decision has clearly been taken by the Government. At the meeting it was clearly pointed out to the parents that Baulkham Hills High School had a similar unit which was also set to close. I ask the Government for clarification. The parents and the school community at Baulkham Hills High School are also in the dark about the future of that unit; they want the unit to continue to operate.

Today in Newcastle the Minister announced the New Horizons project, under which Jesmond High School will become a senior high school and will also be known as a university high school. Jesmond High School is a school I know well, being the first school I taught at as a teacher. Two other schools will feed to Jesmond High School: Waratah and Wallsend will become junior schools. The announcement has come with no community consultation, and yet the senior high school is to commence next year. Parents are rightly asking what the future holds for students currently in years 7 and 8 at Jesmond High School. Decisions have been taken without consultation with parents or school communities. An education system simply cannot be run in this way.

In 1995 part of Labor's policy on school education included options to allow schools to develop individual identities, which could include senior high schools. But Labor said that the development of a unique school charter would be a school-initiated process, that parents, teachers and school communities would come together to agree on a special status, and compete to be awarded that status. Nothing like that has occurred. There has been no coming together of parents, teachers and school communities. They are being presented with a fait accompli, a done deal, in all these situations. They want proper consultation.

I compare the decision on the northern beaches, where we have been advised this week of a new senior school to be formed on the Freshwater campus, with the decision in relation to the St George campus. Nothing will take place on the northern beaches until 2003. Parents are to be given an option about the future education of the students, whether at the Freshwater campus, at an all-girls or at an all-boys school, a comprehensive, selective or senior school, and whether students can stay at the girls or boys school until year 12.

In the St George area the students have been told that if they are to undertake year 11 next year they must go to the new St George Campus, that is, the girls and boys of three high schools will come together in a co-educational school. Parents do not want that. They were not consulted; they were presented with a done deal. In February this year they attended a parents and citizens meeting, supposedly for consultation, only to be told

that this was the final outcome. There was no consultation as to whether the co-educational school would commence next year. The schools on the northern beaches was able to achieve those results, yet they could not be achieved at Oatley or in other areas. [*Time expired*.]

FAIR WEAR CAMPAIGN

The Hon. JAN BURNSWOODS [10.15 p.m.]: The Fair Wear campaign is aimed at stopping exploitation of home-based outworkers. For some years other members and I have spoken about the subject in this House. A number of questions on this matter have been answered by the Attorney General, and Minister for Industrial Relations, the Hon. J. W. Shaw, to whom I pay tribute for his efforts to help stop the exploitation of various workers, particularly home-based female outworkers, whom I mention later. I draw the attention of the House to the response by those waging the Fair Wear campaign to the Behind the Label initiative of the Carr Government. The Government proposes a comprehensive strategy to make transparent the entire chain of production in the clothing industry from retailer to outworker and to ensure a shared responsibility throughout the chain for outworkers receiving fair wages and conditions. The Fair Wear campaign commends the Government for its excellent initiative and is confident that it will change the entrenched culture of exploitation in the clothing industry. It eagerly awaits the full and effective implementation of the proposed strategy.

Fair Wear has compiled a detailed response to the strategy, some aspects of which I wish to refer to. Not surprisingly, the Fair Wear campaign would like the Government's strategy to go further. I am sure all honourable members would agree that there is always more to be done. The response includes a proposal for legal clarification of outworkers as employees. I agree with the Fair Wear campaign that the legal clarification of employees is an important step. Not only should the proposal be introduced in New South Wales but also, through negotiation, in other States. A second proposal is to extend the definition of "outwork" beyond the textile, clothing and footwear industries. A great deal of outwork is already done in a number of other unregulated industries, and the use of outwork in general as a form of employment is expanding. It is important that this major problem is not viewed as being confined to the clothing industry.

Another proposal is to make principal contractors liable for wages. That is another important area that is strongly supported by the Fair Wear campaign. Responsibility has to be identified, but the problem that has always bedevilled this problem of outworkers is that responsibility is shared through the chain of production. There has to be a mechanism under which action can be taken and breaches of compliance established and investigated. A fourth proposal is to make principal contractors liable for occupational health and safety standards. As honourable members know, the low wages paid to outworkers and the poor conditions in which they work are major matters of concern. However, of equal concern is the appalling rate of injury and illness that results from the conditions and hours worked by outworkers and, perhaps most horrifyingly, by the young children who are often involved in such work.

The increase in accessibility of award provisions by outworkers is important. The proposal for inspectors' rights of entry to domestic premises and access to records of subcontractors are also important. Together with clauses dealing with the negotiations with other governments to which I referred earlier, these measures constitute a whole new compliance system. I will not go into details because this is a complex area and one that requires action on a number of fronts, including legislative and administrative areas. Once again, I am pleased to support the efforts of the Fair Wear campaign. I urge the Government to continue the work that has been done by the former Attorney General, and Minister for Industrial Relations, the Hon. Jeff Shaw, and other Government members to make sure that the initiatives that have been taken are not allowed to slip.

STOCKTON BIGHT SANDMINING

Ms LEE RHIANNON [10.20 p.m.]: In the weeks immediately prior to the 1995 State election, the Australian Labor Party made a most important promise concerning the Stockton Bight area. Unfortunately, to this day, that promise remains unfulfilled, which is a tragedy both for the area and for all of us who will be the losers if this area is not gazetted shortly as a national park. The area has many significant attributes which I will briefly describe. It has a magnificent sand dune wilderness and is an aquifer recharge area which provides Newcastle with a backup water supply. In addition, there are physical attributes of the area comprising a unique coastal landscape and glorious wildlife displays, particularly in spring time. The area is a joy to behold as well as the site of important resources that should be preserved for everybody to enjoy.

Public land which fronts Stockton Bight, including water reserves, was actually proposed by the National Trust as a nature reserve in its publication, *Hunter 2000*, which was produced in 1972. The National

Parks Association and the Newcastle Flora and Fauna Society as well as other groups have also published park proposals for this area from time to time. The Hunter District Water Board proposed that the water reserves be extended and made a national park in 1984. The promise made by Labor to make this area a national park has been backed up time and time again.

Sadly, Stockton Bight is now threatened by the extension of sandmining. The Greens are strongly opposed to such moves. We know that a number of Aboriginal elders also have taken a very strong stand against the proposal. Maaiangal Aboriginal Heritage Inc has written a very impressive submission which I would be happy to pass on to any honourable members who are interested in this issue. Sandmining in this area has serious consequences for the people of Newcastle both in terms of the efforts of the local people to develop a clean, green image for the Hunter and also in relation to the whole issue of water reserves and the need to preserve national park areas. If the plan for sandmining goes ahead, it will actually result in the mining of more than half of the promised Stockton Bite national park area.

The Greens are alarmed that the Government has revoked mining reserve numbers 3,050 to 3,053, which restricted mining in the promised park, by notification in the *Government Gazette* of 31 March this year. The revocation occurred a month before the mining proposal was announced. A serious problem is unfolding and many organisations, including environment groups and community groups, are fighting development in this area. Many of the peak environment groups in New South Wales have taken a stand. The Greens support the work that the Parks and Playground Movement Inc has undertaken and congratulates Doug Lithgow for his tireless work on the campaign over many decades.

We note that the Parks and Playground Movement has lodged an official request that the mining proposal be subject to a commission of inquiry appointed under the provisions of the Environmental Planning and Assessment Act, and that any such inquiry be carried out before a determination about mining is made. For many years the organisation has been working tirelessly to safeguard the Stockton Bight area and for it to be proclaimed as a national park. It was particularly invigorated by the promise in 1995, but since then it has become increasingly disappointed because Labor has been returned for a second term but there is still no action on this front.

The movement, together with many other groups including the Greens, recognises that it is only through Stockton Bight becoming a national park that we will be able to safeguard the area. National park status is the only way to protect this amazing natural feature. Unfortunately, the do-nothing policy of the Labor Government is resulting in a plundering of the natural wonder of the area. We will not have generational equity unless the Government comes to its senses. We will continue to work for a national park at Stockton Bight

TRIBUTE TO CHESTER PORTER, QC

The Hon. J. HATZISTERGOS [10.25 p.m.]: Last Friday I had the pleasure of attending a tribute night to Chester Porter, QC, who on 30 June will retire from active practice as a barrister after more than half a century at the Bar. Chester Porter, QC, will retire in the knowledge that he has been one of Australia's most illustrious advocates. A distinguished member of the legal profession, his career has been marked by countless courtroom triumphs. He was highly regarded as a legal thinker, and he has made a substantial contribution to the law. The law reports are replete with many of his appearances. For more than 50 years he has brought to the Bar his consummate advocacy skills combined with an acerbic wit and a sharp legal mind.

Chester Porter was called to the Bar on 12 March 1948, after graduating from university with first-class honours. He was only 21 at the time. Since then, in his long and successful career at the Bar, Chester Porter has practised widely in various areas of the law. As an advocate he has been as comfortable appearing in local court trials as he was appearing before an appellate court. Starting off in the landlord and tenant jurisdiction, he later acquired a reputation as an expert in administrative law. As a prosecutor, he appeared frequently on behalf of the State and Commonwealth governments. He used to appear as the Public Solicitor of New Guinea in appeals to the High Court.

He would regularly and readily appear in criminal cases, even when many of his colleagues regarded it as a distinctly unsavoury area of legal practice. Even though his practice encompassed equity, administrative law and land law, the most important part of the law for Chester Porter is the question whether people are to be disgraced and confined for offences. Chester Porter has been a barrister with the moral courage to question the criminal law. From very early on in his career he recognised that the system was not infallible. In particular, he quickly gained the impression that innocent people could quite easily be convicted.

Chester Porter has witnessed and been a part of changes to the criminal law. At his retirement he is reasonably confident that it is more difficult to convict an innocent person than was the case when he first went to the Bar. Chester Porter will be remembered for his commitment to becoming totally absorbed in his cases. Out of this came his passion to win. As an advocate he has long been admired as a master of his craft. His remarkable performances in court have led some observers to describe him as a praying mantis and a smiling funnel-web. One witness recalled that being cross-examined by him is like having your throat cut quietly, courteously and swiftly.

His remarkable talent with the English language has been passed on to his daughter, Dorothy Porter, one of Australia's leading poets. In 1983 Chester Porter sustained severe injuries in a motor vehicle accident. When he finally recovered he courageously resumed his practice with a renewed vigour. Addressing a jury for the first time since his accident he did so on crutches. No longer was pain something experienced by someone else. His professional life at the Bar was changed forever. Having faced enormous adversity, he took on a fresh passion for jury advocacy. By going through great suffering himself he was able to better understand his fellow human beings.

Chester Porter's achievements and contributions extended beyond the Bar. In 1986 he was Rostrum Speaker of the Year. He has been president of the Academy of Forensic Sciences and president of the Australian Council of Professions. Within his own profession, he has contributed much to the Bar and is highly regarded as a point of authority by his colleagues.

In the past 50 years, he has survived to build up an extremely successful practice. At all times his integrity remained intact, even when his legal battles were subjected to intense public scrutiny. To list but a few of his high profile engagements: he assisted Justice Morling in the Chamberlain inquiry; in 1981, he represented the New South Wales Bar Association in the highly publicised proceedings to oppose Wendy Bacon's admission to the Bar; and in 1985, he appeared for Roger Rogerson. Shortly after he was acquitted, Rogerson remarked, "In 27 years on the police force I have never known a corrupt police officer." In securing this acquittal, and after other courtroom victories, Chester Porter came to be admired in some circles for possessing an almost divine talent as a barrister. T-shirts bore the message: "Chester Porter walks on water." Indeed, the mid-1980s saw his rise to prominence as a high-profile criminal defence silk.

In 1992 he appeared for the New South Wales Minister for the Environment, Mr Moore, in the Independent Commission Against Corruption's inquiry into Dr Metherill's appointment to a position in the public service. His contribution, however, was not just in the practice of law, he was a regular contributor to the New South Wales Bar Association reading programs. Indeed, he lectured me when I was reading for the Bar. Having been one of Australia's brightest burning legal luminaries, Chester Porter's retirement from the Bar marks the end of an era. No longer will he grace our courts with superb advocacy and inspired legal reasoning. However, the fond memory of his talent and integrity will stand as his legacy to the Bar and to the law. We wish him well as he retires in triumph.

MYALL LAKES POLLUTION

The Hon. I. COHEN [10.30 p.m.]: The blue green algal pollution of Myall Lakes has received media coverage in newspapers that have chosen to target the fact that certain National Park facilities have been polluting the lake. However, the size of the algal bloom and its intensity clearly show that other issues are at play. Serious floods have inundated the lakes and reduced the salinity level, after about 8½ inches of rain and the backing up of the lake waters. Other significant issues are that half a million chickens on farms upstream significantly impact on effluent running out of the area, chicken manure is spread on vast areas for pasture improvement for the dairy industry, significant rain has forced phosphorus and high nutrient materials into what is essentially a shallow lake prone to that type of pollution, clearing has been carried out for 15 kilometres of highway, and other problems have arisen due to inundation of acid sulfate soil.

It is clear that the implications are serious for families on holidays, for children or whoever wants to use the lake. It is a big area with significant environmental problems such as dieback of seagrass beds in the lake off Myall shores, near old Legges Camp, and a significant breakdown of vegetation in several hundred acres of important fish breeding grounds. Professional fishermen meeting in the Bombah Broadwater are throwing away more than half their fish—mullet, bream, blackfish, flathead and whiting—due to ulcers on the fish. One box of bream has been condemned by the Newcastle Fish Markets for having an earthy smell, which is one of the indicators of toxic blue-green algae [BGA] pollution.

The Department of Land and Water Conservation has stated that this is a result of the BGA—a species of Anabeena—contaminating the fish. BGA is toxic to fish in high concentrations. It concentrates in the liver of

shellfish, oysters in particular, is poisonous to humans, and causes vomiting and diarrhoea if consumed. On 22 June the Department of Land and Water Conservation issued a media release which stated:

> The Blue-Green Algal Warning for Myall Lakes has been extended by the Manning/Karuah/Great Lakes Regional Algal Co-ordinating Committee to encompass all of the Myall Lakes. High numbers of potentially toxic blue-green algae have been observed in Myall Lake, Boolambayte Lake, Two Mile Lake and the Bombah Broadwater including the lower Myall River downstream to Little Brasswater.

Officers have advised people to avoid swimming in the affected areas or undertaking recreational water sports involving direct contact with the water where algae is present. The officer said that wind often concentrates algae on the near-shore areas, and that that is where the algae will be most obvious. Blue green algae may cause severe stomach upsets, nausea and skin irritations in both people and animals. These potentially toxic effects are a hazard to human health. Clearly, serious consideration needs to be given to these issues. The problem is serious in the Myall Lakes National Park. Really, it is an indictment of government that a national park should be suffering like that.

Proper assessment needs to be done by the Environment Protection Authority and Mid Coast Water to ensure that the Bulahdelah sewage treatment plant meets strict licence requirements. At the moment, the plant is using chemical dosing to reduce phosphorus levels in the effluent, but we need a decentralised system and better ways to get the effluent out of the systems that discharge into Myall Lakes. The dairy industry needs to be audited in that respect, and New South Wales Agriculture must implement best management practices to ensure that less effluent finds its way into our lakes. We need a study of nutrient cycling and behaviour in the estuary. There should be an audit of potential nutrient sources within the catchment, such as effluent from unsewered areas, watercraft and agricultural activities within the catchment. A community-based catchment plan is needed to tackle nutrient sources in the catchment. Clearly, we must have a serious look at this major area of pollution. [*Time expired.*]

DEPARTMENT OF COMMUNITY SERVICES INVESTIGATION

The Hon. D. E. OLDFIELD [10.35 p.m.]: Last August I took the unprecedented action, at my own expense, of advertising for public submissions on the Department of Community Services [DOCS], under the heading "Public inquiry DOCS: abuse or neglect". The information I received left no doubt that DOCS needs serious investigation. When issues surrounding the New South Wales Legal Aid Commission and others are added, it is clear that a dreadful social agenda is in play. Justice, with its concept of rights and fairness, is being given short thrift by the nefarious work of activists, mostly extreme feminists, working closely with dubious elements of the legal fraternity.

The Hon. Jan Burnswoods: Point of order: The notice paper contains a motion, standing in the name of the Hon. Dr A. Chesterfield-Evans, calling for an inquiry into DOCS. I would have thought it is not within the leave of the standing orders for the Hon. D. E. Oldfield to raise this sort of issue on the adjournment when the House is part way through debating that motion. Indeed, I think the point has been reached that the Hon. Patricia Forsythe has moved an amendment to the motion.

The Hon. D. E. Oldfield: To the point of order: I am not speaking on an inquiry into DOCS as such. I mentioned that I had initiated some action, but that was not the main thrust of the matter that I wish to raise on the adjournment—not that I will now be able to complete what I wish to say, given the interruption.

The DEPUTY-PRESIDENT (The Hon. A. B. Kelly): Order! The standing orders prohibit anticipation of debate, but the honourable member may proceed provided he does not speak to the motion or the amendment related to item 67 of Private Members' Business.

The Hon. D. E. OLDFIELD: I will not proceed, because I do not have adequate time and I will have five minutes tomorrow night. So I will make the necessary amendments and the Hon. Jan Burnswoods can put up with it then.

Motion agreed to.

House adjourned at 10.39 p.m.