LEGISLATIVE COUNCIL

Thursday 7 December 2000

_____

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

The President offered the Prayers.

STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS

Report

Motion by Reverend the Hon. F. J. Nile, on behalf of the Hon. Helen Sham-Ho, agreed to:

That the House adopt Report No. 10 of the Standing Committee on Parliamentary Privilege and Ethics, entitled "Report on Person Referred to in the Legislative Council (Mr L. R. Allen)", dated October 1999.

Response by Mr L. R. Allen

On a number of occasions during 1992, 1993 and 1994, my name was mentioned in the Legislative Council by Mr R. S L Jones, MLC and Mr P F O'Grady, MLC.

Their remarks about me were published in newspapers circulating throughout the Shire of Bega Valley and cast aspersions on my character.

A newspaper report on Mr O'Grady's remarks calling me a "crook" was recently accepted and allowed as evidence by the Commissioner, in an inquiry into Bega Valley Council.

My reputation was adversely affected to a great extent. People I had known as friends avoided me and my family and my own Trade Association, the Caravan and Camping Industries Association, deserted me. At the time, I was immediate Past President and a recipient of awards bestowed on me for my honorary work for the Caravan Industry in NSW. My grandchildren too, were subject to disparaging remarks both by teachers and other children. My business, run in conjunction with my partners, all members of my family, suffered a considerable drop in revenue.

I will refer only to some instances out of the many times I was referred to in the Legislative Council in derogatory terms and another where it was inferred that I was using my position for gain.

On 28 October 1992, Mr Richard Jones asked "Does the draft report of the Local Government 212 Inquiry into the Bega Valley Shire Council and Twofold Beach Caravan Park recommend that development consent must be obtained for parts of Twofold Beach Caravan Park and that no new licence for its operation be issued until such consent has been obtained? Did Councillors have possession of this report when a new licence was issued to Shire President, Mick Allen, the proprietor of the Twofold Beach Caravan Park?"

The draft report was confidential to Councillors and senior staff and the Minister was therefore unable to respond until a final report was available. Licences were issued to all 26 Caravan Parks as they had expired on 31st August. The draft was not issued until 11th September. The inference in the question that Councillors, which included myself, had the draft report before the licences were issued cannot be sustained.

I have mentioned the above in the light of statements made by Mr P F O'Grady on 20 April 1993. I quote "After more than a year, the Minister for Local Government has released a scathing report damning the Twofold Bay Caravan Park development. Mick Allen, Shire President and part owner of the caravan park, celebrated the reception of the draft report by awarding himself with two new licences, so who knows what he will do tonight. Maybe he will award himself with another four. He is a crook; absolutely."

I have evidence that when the draft report was received, I was on holiday with my wife in Belmont. Also that the Chief Health and Building Surveyor, who issued licences under delegation, was also absent from the Shire in transit to New Zealand with a Council delegation after having issued the licences.

The Macquarie Dictionary classifies a "crook" as a "swindler" or "thief". Mr O'Grady had no ground whatsoever to label me a crook but nevertheless his statements were made public in the media.

Other statements made by Mr O'Grady have no basis for allegations of criminality.

Cr Mack Hopkins is no "mate" of mine. He declared a pecuniary interest at all times, and all decisions on Mirador were based on the proper considerations. The ICAC certainly found no wrong doing in this development nor in the Nethercote subdivision. A full Council had passed the Local Environment Plan signed by the Minister.

I have never insisted that tapes be wiped. I have never threatened to assault members of Council. The State Government approved regulations that taping of the Committee of the Whole by individuals could be disallowed.

I now quote Mr Richard Jones from Hansard on 20 May 1993. "No doubt some bad apples enter Local Government for personal gain. Some Councils are full of them; others have none at all. The majority of Councils are relatively clean. Honourable members will be very much aware of the notorious Mick Allen the Shire President of Bega Valley Shire Council. He is the kind of character who gives Local Government a bad name and spoils it for others. He has his illegal caravan park development on the foreshores having levelled the sand dunes to erect cabins".

My "illegal" development had been licensed long before I became the Shire President on land fully owned by myself and family.

It was later ruled to be unlawful by the Land and Environment Court despite the fact that the Bega Valley Shire Council had fully approved it under the Local Government Act - including the cabins. The Council had even signed a Deed of Agreement to that effect long before I became Shire President and when I was considered to belong to the minority faction. I have never used my position for personal gain and my civic record has been praised by Mr John Hatton - a noted upholder of the truth - in a published media release.

Another quote from Hansard on 20 May 1993, "A Section 212 Inquiry has been held into his activities" is not correct. The terms of the Inquiry were "To inquire into and report on the circumstances surrounding, and matters arising from the Council's handling of alleged unauthorised works at the Twofold Beach Caravan Park and any other related issues".

It severely criticised the previous Council for its actions and was based on interpretation of law - not on deliberate wrongdoing - certainly not on my part.

I have been finally vindicated in the Court by the conclusion that Twofold Beach possessed a five year approval under the 1993 Local Government Act.

All these aforementioned allegations have been recorded in Hansard and in the interests of my family and the Office of Shire President/Mayor should be corrected by recording my statements in Hansard to at least restore some of the damage that has emanated from the privilege to denigrate a citizen without fear of redress.

L R ALLEN ("MICK")
September 1999

STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS

Report

Motion by Reverend the Hon. F. J. Nile, on behalf of the Hon. Helen Sham-Ho, agreed to:

That the House adopt Report No. 12 of the Standing Committee on Parliamentary Privilege and Ethics, entitled "Report on person referred to in the Legislative Council (Mr S. Forbes)", dated November 2000.

Response by Mr S. Forbes

It has been brought to my attention that a Member of the Legislative Council has referred to me by name in the House, in respect of my function as a Member of the Fair Trading Tribunal. The reference occurred in the Legislative Council on 28 June 2000, in a speech given by the Hon. J. F. Ryan. I have detailed below the subject paragraph of Mr. Ryan's speech from page 82 of *Hansard:*

"… 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 (sic) 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."** (my emphasis).

I wish to place it on record that I repudiate all the accusations made against myself by Mr Ryan.

In the context of a meaningful and transparent rebuttal of the accusations, I will briefly outline the listing policy of the Tribunal and the impact of that policy on the subject of 'settlements'. It is necessary to have an accurate understanding of that policy in order to comprehend that the accusations are misconceived.

The days for which a part-time Member may properly receive payment include the following

- days on which hearings are listed to be heard,
- days allocated for case conferences or directions,
- days allocated for the writing of reserved decisions and reasons,
- days allocated for considering re-hearing applications or applications for postponement,
- training days,

- days allocated for attendance of committee meetings,

- days allocated for the writing of other material, for example, preparation of draft practice and procedure guidelines or responses to drafts written by others.

If a listed matter does not proceed on the scheduled hearing day(s), either because it has settled or been discontinued or been adjourned, then the allotted part-time Member is still paid for the day. The Member's listed time is redirected to other tasks, such as writing reserved decisions or considering re-hearing applications.

Consequently, I believe that it is misguided to accuse a part-time Member, of calling parties together to a hearing 'to ensure that he gets paid.' There could not be such an improper motive because, even if the hearing was cancelled, the Member's time would be directed to other Tribunal tasks.

For the sake of clarification I would also like to touch briefly on the policy of setting matters to a hearing in circumstances where one party, or both, may claim that the hearing should not, go ahead. In those situations some of the reasons commonly given by parties for seeking an adjournment include:

- that 'settlement discussions are taking place', or

- the matter 'may have settled', or

- that 'the parties have agreed, in writing, to an adjournment and thereby agree that the matter be adjourned by consent.'

By way of background, it is necessary to briefly recount the recent history of this Tribunal and its predecessors.

The Tribunal commenced operation on 1 March 1999. It subsumed much of the jurisdiction of three previous tribunals, being: the Commercial Tribunal; the Consumer Claims Tribunal and the Building Disputes Tribunal. Those former tribunals apparently had differing policies on the granting of adjournments once the hearing date had been set. I understand that one previous policy was that if both parties consented in writing to an adjournment then the matter would, almost as a matter of course, always be adjourned.

At the outset of the operation of this Tribunal however, it was decided as a matter of administrative policy, that any matter which was listed for hearing would not be simply adjourned 'by consent.' On the contrary, it was decided that matters would only be adjourned if there were persuasive and compelling reasons for doing so.

The intention of this new policy was to enhance the efficiency of the Tribunal's hearing process by ensuring that parties, and more particularly their legal representatives, would not be granted adjournments unless there was good reason for doing so.

This policy change has delivered increased efficiency of hearing times. And although this result brings benefits to both the Tribunal and the parties personally, it has not always pleased their legal representatives. This is particularly so in 'insurance appeal' cases where the parties are generally both legally represented.

In the area of insurance appeals many of the legal representatives had become familiar with, and had apparently to some extent been comforted by, the previous entrenched arrangement whereby adjournments would almost always be granted if sought 'by consent'.

Indeed, there have been to my knowledge a number of occasions where legal representatives have been so confident that a listed matter would, as a matter of course, be adjourned upon request, that they have written to the Tribunal and attached what has been referred to as a draft 'consent order' to the effect that the matter 'has been adjourned by consent.'

Consequently, there have been circumstances in which legal representatives have been disappointed when notified that an already listed matter would not be adjourned, as had been anticipated and presumed, but that it would proceed to hearing on the scheduled day. This result being despite the parties agreement to the contrary.

Sometimes, the request for an adjournment would continue to be pressed and subsequent submissions would be made that an adjournment should still be granted because 'settlement discussions are occurring.'

In those situations where 'settlement' is given as the justifying reason for a sought adjournment the parties are generally advised by the Tribunal that if a matter is only 'likely' to settle, then it is better that the parties attend the hearing so that the detail of any actual settlement can be confirmed and converted conclusively into a final Tribunal order. Indeed the express provisions of s. 44 of the *Fair Trading Tribunal Act*, whereby the Tribunal may give effect to any agreed settlement, require firstly, that the settlement be reduced to writing and secondly, that the Tribunal be satisfied that it would have the power to make a decision in terms of the agreed settlement.

Unfortunately, often when 'possible settlement' has been submitted as the reason for a sought adjournment it often transpires at the actual hearing that settlement has not actually been discussed in any great detail, or at all, and the matter has to be heard on the evidence in any case.

Parties are never intentionally called together unnecessarily and I personally deny holding hearings unnecessarily.

S. Forbes
September 2000

PETITION

Windsor Women's Prison Select Committee Recommendations

Petition praying that the proposed women's prison at Windsor be abandoned and that the alternative punishments suggested in the interim report of the Select Committee on the Increase in Prisoner Population be acted upon immediately, received from the **Hon. R. S. L. Jones**.

SNOWY WATER AGREEMENT

The Hon. I. M. MACDONALD (Parliamentary Secretary), on behalf of the Hon. J. J. Della Bosca [11.08 a.m.]: I move:

> That, under section 2 of the Snowy Hydro Corporatisation Act 1997, this House does not propose to disapprove of the agreement between the State of New South Wales and the State of Victoria on the outcomes of the Snowy Water Inquiry, dated 5 December 2000, and tabled in this House on 6 December 2000.

I start by pointing out that this agreement has the overall support of all the major parties and all of the New South Wales stakeholders concerned with water issues. I will return to that shortly, because it is very important that honourable members realise that the agreement results from long and intricate negotiations and that there has been wide consultation on it with all interested parties. All stakeholders have had a role in coming to the final outcome that was agreed to and launched on 6 October this year at Jindabyne.

The Snowy corporatisation project commenced in late 1994, when the then Prime Minister and Premiers of New South Wales and Victoria agreed on principles to guide the corporatisation process. The project has been extremely complex because of the number and breadth of the issues that have had to be resolved. Various aspects of the Snowy corporatisation have been dealt with by this House over the past six years. Honourable members would be aware that a former Coalition member of Parliament, Mr Robert Webster, conducted the major water inquiry.

Corporatisation legislation was passed by the Commonwealth, Victorian and New South Wales parliaments in 1997 but has not yet been proclaimed. Since then a great deal of work has been carried out, culminating in the development of more than 30 complex legal agreements which, when executed, will effect the corporatisation. One of the most difficult issues that has to be resolved is the arrangements for water releases, particularly the balance between the use of water for hydroelectricity generation and its subsequent release to the western rivers for use in irrigation farming, and the impact on the Snowy River of this diversion of water to the west. All three governments, particularly the New South Wales Government, have been concerned to redress some of the environmental damage which has been done to the Snowy River while not adversely affecting the availability of water for irrigation farming. To deal with this very difficult issue the three governments agreed to set up the Snowy Water Inquiry. Provisions to do this were included in the New South Wales Snowy corporatisation legislation.

The water inquiry was established to investigate environmental issues arising from the current pattern of water flows in rivers and streams in the designated area of the inquiry caused by the operation of the Snowy Mountains Hydo-electric Scheme. The inquiry, chaired by the Hon. Robert Webster, was established in early 1998 and reported at the end of that year. Following the inquiry the New South Wales and Victorian governments were to reach an agreement on the outcome of the inquiry. It is indicative of the complex nature of these issues that it has taken two years to reach this agreement. Negotiations during the first year after completion of the inquiry were very difficult and the positions of the two governments were very far apart. During the second year negotiations were much more fruitful and the Commonwealth Government also became involved. After a six-month period of intense negotiation in the middle of this year final agreement was reached between all three governments in September. The part of this agreement that did not involve the Commonwealth was announced by Premiers Carr and Bracks on 6 October 2000 at Jindabyne.

The Premiers outlined an agreement on increased water releases from the Snowy scheme to the Snowy River, the upper Murrumbidgee River and the Snowy region alpine rivers. This package has been designed to deliver environmental flows to the rivers while at the same time protecting the environment of the Murray-Darling Basin, safeguarding the interests of irrigation farmers, maintaining the quality and quantity of South Australia's water supply, and preserving the viability of the Snowy scheme. Following this announcement all the various stakeholders, including both environmental groups and irrigation farmers, strongly supported the agreement. However, while both the New South Wales and the Victorian Cabinets endorsed the agreement, the

approval of the Commonwealth Cabinet was not secured until Monday this week. Even after the Commonwealth Cabinet meeting, further negotiations were required between the three governments to finally settle the details of the agreement, which was achieved on Tuesday of this week. That is why it was not possible to bring the agreement before this House until yesterday.

I now bring to the attention of the House the particular issue under discussion by means of the motion. The Special Minister of State yesterday tabled an instrument in this House which described the specific requirements under the New South Wales Snowy corporatisation legislation. The legislation requires only two items: firstly, the initial release of water to the Snowy River for environmental reasons on the issue of the Snowy water licence; and, secondly, the increased amounts of such releases of water following the first review of the Snowy water licence will not give the Snowy Hydro Company an entitlement to compensation. The instrument provides that the initial release will be 38 gigalitres per annum, which is equivalent to 6 per cent of the average natural flow of the Snowy River. The current release is around 1 per cent. The increased release—which will not give rise to compensation—is 212 gigalitres per annum, which is equivalent to 21 per cent of the average natural flow of the Snowy River. These two volumes are the subject of the debate in this House today. However, yesterday the Special Minister of State also incorporated into *Hansard* for the information of honourable members a more detailed heads of agreement. I must stress that the heads of agreement document is not the subject of this debate. I draw the attention of honourable members to some of the provisions of that document.

In addition to the minimum requirements in the legislation the three governments were able to agree on additional benefits. First, 70 gigalitres per annum of dedicated environmental flows will be provided to the Murray River. Second, increased water flows will also be provided in the Snowy montane rivers. Many of the Snowy montane rivers, such as the upper Murrumbidgee and the Snowy above Jindabyne, have high environmental value. The Minister and I and several members of the negotiating team had the great experience of walking along the rivers. It was very instructive for us to learn at first hand what a great improvement the scheme will bring to the upper montane. This applies to threatened species and rare upper montane ecosystems. The agreed outcome from the Snowy Water Inquiry will achieve significant improvements in the environmental conditions of the rivers. I urge honourable members to support the motion so that the implementation of increased flows in the Snowy River, the Murray River and Snowy montane rivers can go ahead.

I must stress that if the motion is not passed today the implementation of increased flows cannot go ahead until after this House returns next year, effectively not until April or maybe later. Only New South Wales has the problem of having to wait 10 days for a possible disallowance motion. The other jurisdictions do not have this limitation. I think that 15 November was set as the last day when it would be possible to meet that requirement. The Minister, aware of this requirement as a difficulty in concluding negotiations, wrote to the Federal Minister, Mr Minchin, and outlined our time frame. Unfortunately, the Commonwealth Government was unable to meet that time frame and therefore this instrument has been placed before the House today. It will enable us to implement the agreement that has been wrought by three governments.

Support for the agreement has been very wide ranging because the basic stakeholders were consulted. Negotiators and officers spent considerable time with all the stakeholders working the basic concept into shape. All stakeholders supported the announcement on 6 October by the Premiers of New South Wales and Victoria. I refer honourable members to the statements of support by the stakeholders for the broad framework of the agreement. For instance, on 13 August the Total Environment Centre said in a media release in the lead-up to the discussions that it supported the basic objectives of the water inquiry. On 6 October, after the agreement had been struck, a media release by the Australian Conservation Foundation headed "Rebirth of the Snowy River" stated:

> Australian Conservation Foundation President Peter Garratt has welcomed the new agreement to save the snowy. he says "today's deal is historic. It will restore the Snowy River. We have never seen such a commitment before. It's a symbolic step forward for all Australian rivers**."**
>
> The agreement between the Victorian Premier Steve Bracks and New South Wales Premier Bob Carr will lift Snowy River natural flows by 28% within 15 years. Currently Snowy flows are down to 1% of the natural levels at Jindabyne—where the river flow is the lowest. The deal also guarantees $300 million dollars to an independent body to oversee the "purchase" of water efficiency savings in the Murray and Murrumbidgee River valleys.
>
> Speaking from the Jindabyne launch of the deal, Peter Garratt has said "Bob Carr and Steve Bracks deserve our praise and congratulations for their negotiation on this landmark agreement, along with Independent Victorian MP Craig Ingram. The Snowy Valley community has shown great patience and persistence."

To save time I seek leave to incorporate in *Hansard* the remainder of that media release.

The Hon. M. J. Gallacher: Leave is not granted.

The Hon. I. M. MACDONALD: Then I will read the media release onto the record.

The Hon. Dr B. P. V. Pezzutti: No way.

The Hon. I. M. MACDONALD: The Hon. Dr B. P. V. Pezzutti, who was obviously stirred up last night, is seeking to interfere as much as possible with the progress of debate on this issue. Why does he not stick to putting people to sleep in Lismore? The media release continues:

> Mr Garratt says "This deal has achieved a win-win outcome. The Snowy will be restored without reducing flows from the Murray and Murrumbidgee rivers—South Australians will be pleased. The deal targets water efficiency savings so inland irrigators will not lose out on the water they currently get."
>
> ACF urges both the Victorian and New South Wales governments to move quickly to find the water savings and restore Snowy flows well ahead of the 10-15 year timeframe. It will be important to make sure this work is open to the active involvement of people who live along the length of the Snowy River.

I have a number of statements from other conservation groups. Environment Victoria congratulated the Government on this agreement and said:

> This agreement will bring the Snowy back to life. We welcome the Government's ongoing commitment to restoring water to the river.

That body is clear-cut in its support. For the information of honourable members, the Federal Government, which is a party to this agreement, put it through Cabinet. Senator Minchin made a statement yesterday and released it to the world. Even the National Party has been locked into this agreement. It is quite right that it should be locked into this agreement as its alleged constituency in the Murrumbidgee area, which is locked into this agreement, supports and endorses it. After the announcement of the agreement on 6 October rice growers in the Murray irrigation areas supported the agreement.

They support it as it will result in the expenditure of a lot of money to enhance water efficiency in the Murrumbidgee irrigation areas. The $150 million contribution from New South Wales, the $150 million contribution from Victoria and the $75 million contribution from the Federal Government will make a huge difference in improving water quality and the delivery of water efficiency. For the benefit of honourable members I have several copies of Senator Nick Minchin's media release. However, I am sure that the Leader of the Opposition has some idea of what Senator Minchin said.

The Hon. M. J. Gallacher: I have it.

The Hon. I. M. MACDONALD: I am sure that the Leader of the Opposition has Senator Minchin's media release. Senator Minchin would have sent it to him and he probably also sent copies of the media release to the Deputy Leader of the Opposition.

The Hon. R. S. L. Jones: Read them.

The Hon. I. M. MACDONALD: I seek leave to incorporate Senator Minchin's comments in relation to the Snowy water agreement.

Leave not granted.

The Hon. I. M. MACDONALD: How extraordinary! Senator Nick Minchin, the Federal colleague of honourable members opposite, made this magnificent announcement and Opposition members will not even allow its incorporation in *Hansard* so that honourable members are able to ascertain the views of the Federal Government.

The Hon. Dr B. P. V. Pezzutti: Point of order: This is an historic debate of great national importance. It does not enhance debate when the Hon. I. M. Macdonald responds to interjections. More importantly, he is questioning decisions that have been made by you, which is a reflection on you. I ask you to call him to order.

The PRESIDENT: Order! The honourable member should not canvass decisions of the Chair. I warn him also not to take points of order in order to make debating points.

The Hon. I. M. MACDONALD: I will table these documents. However, I wish first to quote from them as they adequately summarise the position of the Federal Government which, I might add, has been party

to the discussions. We have had several productive meetings with Nick Minchin in South Australia, which resulted in this agreement. On 6 December, yesterday, Nick Minchin issued a media release, which stated:

> Plans to finalise the corporatisation of the Snowy Mountains Scheme early next year have been given the go ahead by Federal Cabinet, Minister for Industry, Science and Resources, Senator Nick Minchin said today.
>
> This decision creates the opportunity to improve the environmental condition of some of Australia's most important rivers and establish a dedicated environmental flow down the River Murray.
>
> As part of the corporatisation process, the Federal Government has given in-principle agreement to commit $75 million to deliver a significant increase in environmental flows down the Murray.
>
> Under the Heads of Government Agreement reached with New South Wales and Victoria, the three governments will provide a total $375 million over the next ten years to implement water efficiency projects and carry out riverine works which will benefit the environmental condition of affected rivers.

Quite clearly, the Federal Government has come on board in favour of this agreement. I seek leave to table the media releases of Senator Nick Minchin, the Federal Minister for Industry, Science and Resources.

Leave granted.

Documents tabled.

In conclusion, the Snowy water agreement is a major agreement. It is unfortunate that we have had to deal with it at this point in time and in this way, but I emphasise that it was not of our making. In fact, I do not think anyone in particular is to blame. It has been brought about by the fact that the magnitude of these decisions has taken time to go through several jurisdictions, including the Federal jurisdiction. It has not given us the time frame within which to meet the requirement on disallowance in the way that we would have liked—and in the way that Minister Della Bosca sought in writing to Senator Nick Minchin. Today, our hands are on the table and no tricks are involved. This agreement, which was announced in September, was agreed to by all parties.

The Hon. M. J. Gallacher: October.

The Hon. I. M. MACDONALD: We reached in-principle agreement in September. The agreement was announced on 6 October. There is no hidden agenda. We are debating this issue now purely and simply so we do not have to wait until some time next year to get on with the process of corporatisation and the release of water to the Snowy—something that I have supported for years and something about which I have written articles. I have been several times to the Snowy River. I am really pleased that this agreement has come to fruition and that we can finally get some water down the river. I urge all honourable members to support the motion that I have moved.

The Hon. M. J. GALLACHER (Leader of the Opposition) [11.28 p.m.]: The motion moved today by the Hon. I. M. Macdonald on behalf of the Government states:

> That, under section 2 of the Snowy Hydro Corporations Act 1997, this House does not propose to disapprove of the agreement between the State of New South Wales and the State of Victoria on the outcomes of the Snowy Water Inquiry, dated 5 December 2000, and tabled in this House on 6 December 2000.

[*Interruption*]

The interjection by the Hon. Dr B. P. V. Pezzutti highlighted the historic significance of what we are debating today. Yesterday the Special Minister of State led on that very point. Three-quarters of the ministerial statement made by the Minister yesterday was couched in historical terms—looking at the cultural, environmental and social significance of the Snowy to the Australian people, and the examinations and inquiries that have been conducted that have led us to the debate today. This is an extremely important issue for all Australians who have an interest in and love for the Snowy River. It is an issue that the Opposition believes is deserving of considerable debate and most certainly considerable public consultation.

The Minister and the Parliamentary Secretary, the Hon. I. M. Macdonald, spoke at length about the 6 October announcement and the subsequent letters of support that resulted from that joint announcement by Premier Carr and Premier Bracks of Victoria. The Premiers outlined an agreement to increase water flows from the Snowy through the Snowy River and on to the upper Murrumbidgee River and the Snowy region alpine rivers. It was interesting that the letters of support that the Hon. I. M. Macdonald mentioned in debate this

morning were from the Total Environment Centre in August 1999, the Australian Conservation Foundation on 6 October 1999 and Environment Victoria. There was absolutely nothing in his submissions to this Chamber this morning to indicate the views of the other stakeholders involved in this process: the rice growers and the irrigators. There has been a lot of discussion about their initial support for the announcement of 6 October, but even the Hon. I. M. Macdonald would concede that that announcement was a draft agreement. I am reliably informed that a number of changes have been made to that draft agreement, and that is what the House is debating today.

We should look at the issue in that light. At that time the rice growers and the irrigators were supportive of the draft announcement made by the Government. We need to be assured that all the irrigators, rice growers and those affected by this heads of government agreement are involved in the process. This extremely important debate has been thrust upon us this morning and that, in itself, is another concern that the Opposition raises. We have been told in the past few days that we have to ram through as much legislation as possible to ensure that the House rises. I speak for the Opposition—I think most members of the crossbench would agree—when I say that we were not interested in the time it took to get through the legislation that has been on the notice paper for the past few days; we were concerned to maintain the integrity of the legislation that was passed in what we believe to be the last few days of this sitting. Just after three o'clock yesterday afternoon the Deputy Leader of the Opposition and I were summoned to a meeting with the Minister and his secretary to discuss this proposal.

The Hon. D. J. Gay: There was one at 1.15 p.m. that he didn't turn up for.

The Hon. M. J. GALLACHER: We were originally told 1.15 p.m., but the Minister had his staff inform us that he was tied up with another meeting, and we accepted that. Be that as it may, within the hour prior to question time—which was held between 4.00 p.m. and 5.00 p.m.—we were told this was going through. The Deputy Leader of the Opposition rightfully raised concerns, as did I, about the speed with which this was proposed to be pushed through Parliament and we asked for an opportunity to consult with the stakeholders on the proposal. Even at that stage the Deputy Leader of the Opposition and I had not been given an opportunity to look at the agreement. We were not aware that some changes had been made, so we decided to ensure that the stakeholders involved in this historic decision had the opportunity to raise their concerns. Of course, we were told by the Government that it was quite happy for us to go away and discuss this with the stakeholders. Within a very short time of leaving the meeting we found that that great Government negotiator—the Hon. I. M. Macdonald—with his strong-arm tactics—

The Hon. J. H. Jobling: Bully-boy.

The Hon. M. J. GALLACHER: With his bully-boy tactics, the Hon. I. M. Macdonald tried to push the crossbench members to ensure that this motion was rammed through the House with great haste. The Opposition is concerned that there may not have been an opportunity in the past 24 hours to consult with the stakeholders other than the environmental groups that the Hon. I. M. Macdonald has mentioned in the course of this debate. We want to be assured that there has been an opportunity for people whose livelihoods rest on the success or failure of this instrument to have their concerns heard and their livelihoods protected. The Opposition has looked at what is hoped to be achieved with these increased flows. Yesterday the Special Minister of State said in his ministerial statement:

> The outcome can be summarised as follows: in implementing increased flows in the Snowy River below Jindabyne, in the Murray River and in the Snowy Mountain rivers, the three governments will aim for no adverse impacts on water entitlements for irrigation in diversions from the Murray River and in the Murrumbidgee and Goulburn- Murray river systems; water flows for environmental purposes in the Murray River and in the Murrumbidgee and Goulburn-Murray river systems; and South Australian water security or water quality consistent with water sharing arrangements in the Murray-Darling Basin Agreement.

All honourable members will agree that we are talking about an incredibly large project, one that the motion details will be played out over the next decade. Over the next 10 years, possibly longer, this instrument will have a significant effect on the environmental viability of the region, and the economic and social impact of the proposal needs to be examined. We recognise that the Federal Minister has made comments about this instrument and his support for it. Be that as it may, this Parliament is a sovereign Parliament and we uphold the right to make our own inquiries of our constituents to ensure that their voices are heard. I suspect that will work in tandem with what the Federal Government has done and will continue to do, but it is beholden on all members of this Chamber to be sure in their own minds that in the ensuing days all possible inquiries that can be made will be made.

The honourable member for Ballina made a very quick examination of this instrument. Honourable members should bear in mind that the lower House is not sitting and members of that House have not had an

opportunity to look at or discuss this matter either. The honourable member for Ballina raised a number of valid concerns, which I am sure the Deputy Leader of the Opposition will expand upon, including water purchasing and its likely impact on the availability of water for irrigation purposes.

The honourable member for Ballina asked: What will protect the market from a distortion in price as a result of government purchases? He is concerned that, as yet, the Government has not spelled out what safeguards will be in place to ensure that licence-holders suffer no detrimental effects as a result of the agreement. The honourable member for Ballina is also concerned to know how the $375 million will be spent to achieve water savings. I am sure honourable members believe that these are all significant issues; that it is appropriate to examine and debate them; and that the Opposition has the right to be assured that the Government, in conjunction and consultation with other governments, has in fact got it right. We in this Chamber represent the people of New South Wales. We are the voice of the people of New South Wales and we must do absolutely everything we possibly can to ensure that the interests of the people of New South Wales are being safeguarded. That is the case in respect of the passage of all motions and legislation through this Chamber.

In conclusion, the Opposition will move an amendment to the Government's motion seeking sufficient time—not a lengthy period, but a sufficient period—to allow for consultation with the stakeholders and then the motion will be brought back to the House before the end of this year. The House will be able to agree to the motion, knowing that all stakeholders have been consulted and that the concerns of the Opposition that I have outlined and as the Deputy Leader of the Opposition will raise shortly have been addressed. Currently there is no such guarantee. The Coalition put its concerns to the Government in a meeting held before four o'clock yesterday. We are not ambushing the Hon. I. M. Macdonald, who is sitting opposite. He is fully cognisant of those views, although he did not address them this morning when he had an opportunity to do so. The Coalition is putting forward a reasonable proposition. We are seeking a few days in which to examine the agreement, to take into account the views of stakeholders and to bring those concerns back before this House to ensure that everyone involved in this process is being looked after.

The Hon. D. J. GAY (Deputy Leader of the Opposition) [11.42 a.m.]: It is interesting to note that today is 7 December. Yesterday was 6 December—

The Hon. A. B. Kelly: And tomorrow will be 8 December.

The Hon. D. J. GAY: The convenor of County Labor is trying to be smart. This is a matter of huge importance. I would have thought that the people he purports to represent would expect better than trite, stupid comments from the so-called convenor of Country Labor. If he can control his stupidity in regard to this matter I will continue. Yesterday a motion was moved relating to this important matter and several bills that I regarded as important were recently debated in this Chamber. When one is talking about legislation one is loath to say which is the most important bill to have come before this House, but I will narrow it down. We have had a couple of goes at water. We debated the Water Management Bill put forward by the Department of Land and Water Conservation—

The Hon. R. S. L. Jones: Four days!

The Hon. D. J. GAY: As the Hon. R. S. L. Jones interjected, debated continued in this House for four days—22 hours in Committee—and it was debated in the other House. It was an exposure bill with heaps of amendments. At the end of the day, although that bill is not perfect, it is a damned sight better than it was when it was introduced into this House. Yesterday afternoon we got our first look at this motion, which will have huge ramifications for the State. This is probably one of the most important notices of motion we will ever have to vote on. One of the reasons it was late is that, after agreement was reached, the Federal Government took 10 weeks to sign off on it—10 weeks! That is not the State Government's fault. The Opposition does not for one moment blame the State Government for that.

Reverend the Hon. F. J. Nile: Who delayed it in Cabinet?

The Hon. D. J. GAY: Reverend the Hon. F. J. Nile is being just as trite as the convenor of Country Labor. Who delayed it in Cabinet? Who cares who delayed it in Cabinet? They were trying to get it right.

Reverend the Hon. F. J. Nile: The National Party?

The Hon. D. J. GAY: It was probably the National Party. I would like to think it was because the National Party had real questions of concern that needed to be addressed in that particular instance.

Reverend the Hon. F. J. Nile: Now they are happy.

The Hon. D. J. GAY: They may be happy with the Federal link, but we do not know what the ramifications will be of the New South Wales portion of the agreement. We have not had appropriate time to talk to the irrigators or to the Snowy River Alliance. We have not had an opportunity to talk to the honourable members for the electorates of Monaro, Wagga Wagga, Albury and Murrumbidgee, whose constituents will be affected.

Reverend the Hon. F. J. Nile: What will you do then, reject the agreement?

The Hon. D. J. GAY: Look, you will have a chance. You represent the Government in this place. You will get a chance to speak. I will not interrupt you. You should not interrupt me.

The Hon. A. B. Kelly: Is that a promise, you won't interrupt?

The Hon. D. J. GAY: No, I will not interrupt him.

The Hon. I. M. Macdonald: You will not interrupt? That's a deal!

The Hon. D. J. GAY: I will not interrupt him. I will give him a chance when he gives me a chance.

Reverend the Hon. F. J. Nile: Answer the question.

The Hon. D. J. GAY: What is your question?

Reverend the Hon. F. J. Nile: What will you do after all that consultation, reject the agreement?

The Hon. D. J. GAY: If the honourable member would wait a moment and give me a chance to speak, he might be enlightened. If he does not, he will not be enlightened. The Leader of the Opposition indicated that we have had this important motion for only 12 hours. We are asking that the debate be adjourned until 19 December. On that day the Legislative Assembly will meet to consider the bills that we have amended and forwarded to that House. It will take that House most of the day to consider the amendments forwarded by this House. We ask honourable members of this House to support us and to adjourn this motion until then. That will enable us to take this motion and these heads of agreement to the stakeholders who will be affected—such as the Snowy River Alliance and local members of Parliament—for their consideration.

The Hon. I. M. Macdonald: We have done all that.

The Hon. D. J. GAY: The Opposition has to take the Hon. I. M. Macdonald's word, which is not always the best thing to do—although, sometimes it is. I was probably a bit short with Reverend the Hon. F. J. Nile. He asked a fair question. I suppose he was trying to help me. The Opposition is seeking to have debate on the motion adjourned until 19 December. We are members of Parliament and we are paid a salary to work all year. Under the current sitting arrangements our time in Parliament is hardly onerous and we should be able to put ourselves out a little bit. The Legislative Assembly will meet again on 19 December. This House could meet on that morning—having taken this motion and the agreement to the stakeholders and having considered the concerns that have been raised—and put it to the vote.

That will not delay the matter beyond Christmas. I do not suggest that we wait until the House meets next year. I am asking for a little extra time to enable the Opposition to address any concerns related to the agreement. I do not think that is too big an ask. We are not saying that we will oppose the motion, because the agreement contains a lot of good things and, as Reverend the Hon. F. J. Nile pointed out, our Federal colleagues have signed off on it. The chances of the Opposition going against its Federal colleagues are pretty remote. The motion is quite explicit. It states that under section 2 of the Snowy Hydro Corporatisation Act this House does not propose to disapprove of the agreement between the State of New South Wales and the State of Victoria, et cetera. We have no come back. If this motion is passed by the House, it will wipe out our right to come back and change the agreement. If there is a mistake in the heads agreement that inadvertently affects a township or some of these people, we will not have the right to come back and review the matter.

The Hon. Dr B. P. V. Pezzutti: Reverend the Hon. F. J. Nile doesn't like to review things. He does not like being in a House of review.

The Hon. D. J. GAY: The Hon. Dr B. P. V. Pezzutti makes a valid interjection that, after all, this is the House of review. We are not here simply to rubber stamp whatever the Government puts in front of us, be it the State Government or the Federal Government—my colleagues and the colleagues of members opposite. We need an opportunity to examine the agreement, to get the reactions of those who will be affected by it and to find out whether it contains any mistakes. Having said those few words, I move:

> That this debate be adjourned until 19 December 2000.

The House divided.

Ayes, 10

Mr Colless	Mr Gay	
Mrs Forsythe	Mr Harwin	*Tellers,*
Mr Gallacher	Mr Pearce	Mr Jobling
Miss Gardiner	Dr Pezzutti	Mr Ryan

Noes, 23

Mr Breen	Mr Johnson	Ms Rhiannon
Ms Burnswoods	Mr M. I. Jones	Ms Saffin
Dr Chesterfield-Evans	Mr R. S. L. Jones	Mr Tingle
Mr Cohen	Mr Kelly	Mr Tsang
Mr Corbett	Mr Macdonald	Dr Wong
Mr Dyer	Mrs Nile	*Tellers,*
Mr Egan	Revd Nile	Mr Primrose
Ms Fazio	Mr Obeid	Mr West

Pairs

Mr Lynn	Mr Della Bosca
Mr Moppett	Mr Hatzistergos
Mr Samios	Ms Tebbutt

Question resolved in the negative.

The Hon. D. J. GAY: "Disappointing" is the only word to describe the work ethic of my colleagues in the Labor Party and on the crossbench, because they are not prepared to come back at a later time, to give up one day.

Reverend the Hon. F. J. Nile: We are, but not on this matter.

The Hon. D. J. GAY: Reverend the Hon. F. J. Nile now says that he would come back on another matter, but not on this matter. Frankly, I cannot see anything more important before the House than this motion, but the Opposition was unable to adjourn debate on it. In the limited time available to us, in 12 hours, we have received concerns from various people in the community—I hope the Government's advisers are in a position to take notes. Last night I contacted the honourable member for Monaro, Peter Webb. He sent me an email which stated:

> There is some concern that the 28% or progress toward 28%, doesn't take into a/c stock and domestic requirements. The flows are supposed to be over and above current uses. There is no mention of the current syphon and to what level it would be opened up to.
>
> Dalgety needs assurances that it won't be any worse off than it is now. Over the next three years.
>
> There is no mention of 6% in the first 4.1.1.

The township of Dalgety has been promised certain water flows in the future. There is no guarantee that that will happen or that the current flow will remain. The email continued:

> In 4.2.1 (and clarified in section 8.2 and 8.3) there is no mention of who will pay for the thermal outlet on Jindabyne that will need to be built in the 2 to 7 years stage that will enable 28% flows for the Snowy, ultimately.

We need clarification on who will pay for that. The email continued:

> And also 4.2.4 for the Snowy Hydro to build within three years the necessary constructed outlet on Tantangara that will allow increased flows down the upper Murrumbidgee. Snowy Hydro trading and the authority are quite concerned about this.
>
> Apart from the outlets capacity for 28% in 4.2.1 and in 5.2 for compensation the Snowy Hydro P/L for future flows above 21%, there is no mention of 28% …
>
> 6.12 talks about monthly schedules, what if it doesn't rain for three months as is common or indeed 12 months or longer as is also common.

Peter Webb's point is that Monaro often has no rain for three months; sometimes it has no rain for 12 months or longer. Constituents from Monaro have also contacted me. This morning I received a fax from Ms Jo Garland, who is based in Dalgety.

The Hon. I. M. Macdonald: I know her well.

The Hon. D. J. GAY: As the Hon. I. M. Macdonald would be aware, Jo Garland is the deputy-chair of the Snowy River Alliance. She has also telephoned me. Her fax referred to the agreement between Victoria and New South Wales on the Snowy River environmental flow. She indicated that the agreement marks a tremendous outcome for the Snowy River compared with the current situation. I do not think anyone would disagree with that. She listed a few concerns which mainly relate to ensuring that the stated goals are reached. Her fax stated:

> The long-term nature of the agreement will most likely mean changes of government and political will and the Snowy River Alliance does not want to risk the survival of the River after we have campaigned so hard to achieve it.

That is a fair point. That is one of the reasons the Coalition needed extra time to work out the details. The alliance is concerned about the 28 per cent environmental flow, the 10-year time frame, the amount of water required for Dalgety's town water supply plus the stock and domestic rights of land-holders on the river, which must be calculated and added to the environmental flow. The 28 per cent environmental flow is required to stay in the river to its mouth. There would need to be provision to review and increase the amount of water required for local townspeople and landowners as development and population increase. The fax from Ms Garland also mentioned that the 50-centimetre syphon, through which water currently leaves Jindabyne Dam and enters the Snowy River, can give the river 50 megalitres a day. The alliance asks that the syphon be fully opened at the same time as the Snowy hydro corporatisation is achieved.

The Hon. I. M. Macdonald: Do you support that?

The Hon. D. J. GAY: I am outlining the concerns of the alliance. Those concerns are the reason that we asked for more time to consider the motion. The water released from Jindabyne Dam, combined with the water from the Mowamba aqueduct, would be the minimum Dalgety could get until major structural works are completed. The alliance would like confirmation of the money that will be available in New South Wales for Snowy River rehabilitation. The terms of the motion made it necessary for the Coalition to contact the relevant shadow Ministers. The shadow Minister for Land and Water Conservation, Don Page, lives on the far North Coast. We had to get him down here to look at the agreement. We also contacted the shadow Minister for the Environment, Peta Seaton, and asked her to look at the agreement. Both shadow Ministers have had a brief but close look at the agreement.

The Hon. I. Cohen: Don't you have faxes?

The Hon. D. J. GAY: Yes we do.

The Hon. R. S. L. Jones: Don't you have emails?

The Hon. D. J. GAY: Yes, we do, but honourable members would understand that matters as important as this need face-to-face contact. The shadow Ministers have the carriage of a matter as important as this, and that is why Don Page had to be here. He has been in the Chamber and is in Parliament House today. On behalf of the Coalition he has said that the environmental flows for the Snowy and Murray rivers would be achieved through two sources, one of which is water savings through investment in infrastructure. The Coalition supports those measures. They are innovative, and they are probably the reason most people became a little more than excited about the direction in which the agreement was heading.

However, the Coalition is concerned that there is no detail on how the $375 million will be spent to achieve water savings. The Coalition would be much more comfortable if the Government had identified some

major projects to achieve water savings. Indeed, we have serious doubts about whether the projected water savings of 21 per cent can be achieved within the 10-year time frame. We believe that the enterprise will have to resort to water purchasing to meet its targets. Given the time that would be needed to detail some of the projects, it is fair to place those concerns on the record. Had we had an extra week to study the agreement, the Government may have been able to explain how the $375 million is to be used and how it is to be staged over the years to make infrastructure savings. As I indicated earlier, that is what most people, including the Greens and the Coalition parties, identified as one of the most exciting and innovative aspects of the water savings process.

The shadow Minister, Don Page, said that environmental flows will also be achieved through water purchase by the newly created enterprise. The Opposition has serious concerns about that. Purchasing water entitlements from irrigators will reduce the water available for irrigation purchases and will have flow-on effects for dependent communities, especially those in the Murray and Murrumbidgee valleys. Once a quota is taken out of a valley, part of the economy of the valley is also removed. The Coalition will revisit that concern a little later. Furthermore, Government purchases of water entitlements will distort the water market by driving prices up, which will in turn affect licence holders, who will have to pay for water at dearer than normal rates.

When State Forests competes for agricultural land the price of that land is forced up. The Government is in competition with farmers and, with the resources available to it, it usually ends up buying the water entitlements. If it does not, the farmers are forced to pay more. It should be noted that I am talking about permanent purchases of entitlements. That water will never again be available for irrigation. The Coalition argues that water purchases should be the measure of absolutely last resort. In the limited time available since yesterday we have sought comment from key stakeholders, particularly the New South Wales Irrigators Council. Today the Coalition received a letter from the council in which it indicated its support for the agreement, subject to various conditions. The letter from the New South Wales Irrigators Council reads:

> Dear Don
>
> Further to our discussions by telephone today, I confirm that NSW Irrigators' Council is supportive of the Snowy Environmental Flows agreement, but only on the understanding that:
>
> a) Additional flows for the Snowy are sourced from combined government investment in water savings in the Murray and Murrumbidgee Rivers.
>
> b) That the savings are identified, agreed and audited in consultation with industry.

I will seek assurances from the Government on those matters.

The Hon. I. M. Macdonald: Both are in the agreement.

The Hon. D. J. GAY: The letter continues:

> c) That purchasing of entitlement is considered a last resort option where savings are unavailable.
>
> The NSW Irrigators Council looks forward to ongoing discussions with the NSW Government and Opposition in relation to industry participation in the above processes.

To assist the Government I will provide a copy of the letter to the Parliamentary Secretary so that he is able to address the council's concerns in his reply.

The Hon. I. M. Macdonald: I will certainly do that.

The Hon. D. J. GAY: The Parliamentary Secretary indicates that he will give those matters consideration. The Coalition appreciates that. The Opposition seeks an assurance from the Government that purchasing of water will be a measure of absolutely last resort when savings are unavailable. It is simply too easy to achieve savings by buying a licence out of a valley. Part of the widespread community support for the agreement relates to the innovative idea that infrastructure will be used to prevent evaporation, help protect against salinity and bring a proper focus to the saving of water. The Government certainly deserves part of the credit for that idea. However, it is such a good idea that it obviously could not have come from the State Government originally. It must have come from the Federal Government or, perhaps, the Victorian Government. However, it is an idea that the Coalition supports and wish to see realised. There is concern that the Government will go for the least-cost option in the agreement. I will seek an assurance that the Government will not go for that least-cost option, because the least-cost option will be the purchase of water title out of a valley rather than achieving savings through infrastructure. Such an assurance will go a long way towards settling the concerns of many people about that ambiguity.

The Hon. I. M. Macdonald: We will do that.

The Hon. D. J. GAY: That is excellent. The Opposition also seeks an assurance from the Government that additional flows for the Snowy River will be sourced from water savings in the Murray and Murrumbidgee rivers and that these savings will be identified, agreed to and audited in consultation with industry.

The Hon. I. M. Macdonald: It is in the agreement.

The Hon. D. J. GAY: The Parliamentary Secretary indicates that that is in the agreement. The Opposition also seeks an assurance from the Government that the proposed water saving projects will be clearly identified as quickly as possible in consultation with industry. That is the concern I expressed earlier. With regard to the $375 million, no-one has said if it will be spent, how it will be spent and where it will be spent.

The Hon. I. M. Macdonald: We do have some idea about that! I will speak to you about that later.

The Hon. D. J. GAY: The Parliamentary Secretary indicates that the Government has some idea about that matter. Frankly, instead of treating honourable members like mushrooms it would have been better for the Minister to detail that matter in his ministerial statement rather than require members to drag it out of him. I thank the Parliamentary Secretary for the indications he has given in response to most of the Opposition's concerns and for his indication that he will address the remaining concerns in his reply. The Opposition's support for this agreement is certainly dependent on the answers we receive.

The Opposition believes that this is a good agreement. However, we remain disappointed that such an important notice of motion was given to the House at five minutes to midnight, as it were. Indeed, I moved that debate on the matter be adjourned so that it could be further discussed on 19 December. The Opposition was willing to continue work on the matter, but it appears that the Government and the crossbenchers were not. C'est la vie. The Opposition hopes that the results of the agreement turn out to be as good as what is envisaged. If they do, they will herald an exciting time for this country. However, I am concerned that if there are problems with the agreement because of the haste with which the motion will pass through the Parliament it will be too late to protect those who need protection.

The Hon. M. I. JONES [12.19 p.m.]: I seek the Government's answer to a question which is simple and straightforward. The document entitled "Principles for an Agreement" states in paragraph 10:

> All increased flows in the Snowy River and the River Murray are to be for environmental purposes and are not to be used for irrigated agriculture or any other consumptive purpose.

I seek an assurance from the Government that normal riparian rights of property owners alongside the river valleys will be maintained.

The Hon. I. M. Macdonald: That is correct.

The Hon. M. I. JONES: The Hon. I. M. Macdonald has said that those rights will be retained. I take the opportunity to comment on a statement by the Deputy Leader of the Opposition about the Government entering the water purchasing market. Historically, from an economical perspective, competition between government and the private sector for a resource is a primary and major source of inflation. I ask the Government to take that into account. Although there are many economists in Treasury, it is crucial that the Government monitors that issue to keep inflation under control in the future.

The Hon. R. S. L. JONES [12.20 p.m.]: The Snowy Mountains Hydro-Electric Scheme was rightly regarded as a great engineering achievement in the days when it was considered important to conquer nature. Nature was an impediment to human progress. There was absolutely no understanding or appreciation of the consequences of damming the Snowy River, and no thought was given to the environment or to Australia's flora and fauna. No-one seemed to appreciate the importance and glory of the wild Snowy River. Man and his achievements came first—and I use the word "man" advisedly. Our amazing wild places and nature took a back seat. It was not until the 1960s and 1970s that awareness of the importance of wild places came to the fore. This awareness was promoted by such campaigners as the late Milo Dunphy and David Brower, founder of Friends of the Earth, who died last week.

The attitude that we need to control everything is still present. Virtually every river in New South Wales is regulated in some way. Very few wild streams and rivers are left to run free in their natural state. The

obsession with human control over everything has come at a high cost. We have lost some of the essence of Australia, including many native species of plants and animals. To maintain the true spirit of Australia we need to relinquish some of our control and allow wild places to remain untouched by humans. We need to allow wild rivers to flow unhindered to the sea or to vast inland waterways. Turning the tap back on for the Snowy River is a significant advance not appreciated by those who only regard rivers as a means to irrigate crops or produce electricity. The value of the Snowy River is beyond mere dollars and cents. It is part of the legend of Australia.

We are reclaiming part of Australia's soul which was lost when the great Snowy River became a trickle. Let us hope that this is the beginning of the reclamation of other parts of Australia that we have lost or are in the process of losing, for example, the Murray-Darling system. We are not turning back the clock by restoring the flow of the Snowy River. We are turning it forward to a time when we can appreciate the beauty of nature and our wild places and regenerate those that we have lost. I congratulate all those who have campaigned to restore this mighty river and the three governments who have taken this historic step. I include locals living on the Monaro plains in New South Wales and around Orbost in Victoria.

As a result of their efforts an expert panel which consisted of scientific experts in freshwater ecology, fish ecology, geomorphology, riparian vegetation, hydrology and local knowledge was convened by the Snowy Genoa Catchment Management Committee in 1995 to report on the structure, stability and ecology of the Snowy River since the construction of the Snowy Mountains Hydro-Electric Scheme. The panel reported in February 1996 that the river's channel in many reaches was silted up, that once-deep pools were filled in and that weed innovations had been promoted. The panel also reported dramatic reduction of macro-invertebrate diversity because of habitat loss, water temperature changes, and reduced flow velocity and variability. In addition, fish populations had been dramatically reduced due to habitat loss, there had been reduced oxygen levels and difficulties in upstream migration, river bank vegetation of much of the Snowy River had been altered and weed invasion had been severe.

Those impacts have made the river much more susceptible to erosion by tributary flood events that cut swathes through the riparian vegetation with the result that the Snowy River ecology resembles that of a lake more than that of a river. The panel therefore recommended a 30-fold increase in the average release to 800 megalitres per day, the removal of obstacles to fish migration, the implementation of a research program and the development of a vegetation management plan to repair the river. It is more than clear that in November 1997, when we debated the merits of corporatisation of the Snowy River Hydro-Electric Scheme, that remedial action was urgently needed to return the river to some semblance of ecological health and that the river needed water returned to it, using a managed environmental flow regime, as soon as possible. In fact, it had already been scientifically determined and was widely known that an environmental flow of 28 per cent of the original river flow was required for the Snowy River to survive, let alone to be restored or enhanced.

It was also widely known that the benefits to be derived from the introduction of a 28 per cent environmental flow would not merely be environmental. Fish breeding would increase, water quality would improve and the public would have increased opportunities for recreational activities, such as fishing and canoeing in receiving rivers. Large financial returns and employment opportunities would also be generated from events such as fly fishing championships, from rafting companies and from marketing the region internationally. The allocation of water to meet environmental needs has also become an important public issue. Community awareness of environmental values has increased, and the impact of the Snowy Mountains Hydro-electric Scheme on the environment outside its boundaries has been a contentious issue since the mid-1960s, and will continue to be so. Without an allocation to the Snowy River, the issues of reducing nutrient load on the river, appropriate environmental flows and the impact on irrigation leases and other water uses in the Murray-Darling basin are unlikely to be resolved.

The document entitled "Heads of Agreement: Agreed Outcome from the Snowy Water Inquiry" will finally put right the poorly planned engineering and land clearing of the post-war era and save another great Australian river from certain death. The agreement not only provides for a 21 per cent average natural flow to be returned to the Snowy River within 10 years and an additional 7 per cent to additional major capital works program to achieve water savings, it also provides for dedicated environmental flows for the Murray River. Three governments have worked on this agreement, and the Federal Government has been dealing with it for 10 weeks. I hope the motion is passed by this House today without any problem.

Ms LEE RHIANNON [12.25 p.m.]: The Greens are pleased to support this important motion. We recognise that it has come after years, indeed decades, of work by thousands of people who had the vision that the Snowy River would run free again. I was concerned earlier in the debate to hear Opposition members

effectively misusing this debate as a grab for relevance. I remind members where this motion comes from. On 10 June the Leader of the National Party in this State, Mr George Souris, accused the Premier of doing a sleazy political deal. The National Party has tried to present the whole Snowy agreement as a sleazy political deal.

The Hon. R. H. Colless: Rubbish!

Ms LEE RHIANNON: They are the words of the Leader of the National Party. Is the Hon. R. H. Colless saying that his leader's words are rubbish?

The Hon. R. H. Colless: No, I am not.

Ms LEE RHIANNON: That is what it sounded like. The Leader of the National Party said, "Mr Carr has sold out on New South Wales irrigators and producers to stitch up the political future of his Victorian counterpart." It would be interesting to hear the Leader of the National Party comment on the reflections he cast there, considering that some of his colleagues eventually, after many shadow Cabinet meetings, saw some sense. So the situation has been a little unsavoury. It is relevant to remind my Opposition colleagues of the catalyst for this motion. The election of Craig Ingram as a Independent representing East Gippsland in the Victorian Parliament brought the issue of letting the Snowy River run free again to a new stage as a result of which an agreement has come forward between the Commonwealth, Victorian and New South Wales governments. I was again surprised about the development with the Nationals, considering the election decimated the conservative parties in Victoria. Hopefully, they will learn sooner or later.

The Hon. D. J. Gay: Nationals, not nationalists.

Ms LEE RHIANNON: I did not say "nationalists". Do not put words into my mouth—and I would advise the Deputy Leader of the Opposition to check in *Hansard* what he said yesterday. This is a historic day: the New South Wales Parliament is on the eve of passing this important motion. It is the beginning of the end of abuse of the Snowy River, which for many decades has had 99 per cent of its flow sent westward into the Murray River system. On the eve of having a considerable proportion of the water returned, the Greens still hope that a greater proportion will flow into the Snowy. It is vitally important that the water that is returned to the Snowy River mimics natural flows. Most of the water should be sent down the river at the end of the winter months when the snow is melting, and after that the water flow should be allowed to subside.

The Hon. D. J. Gay: Will there be drought runs?

Ms LEE RHIANNON: For the information of the Deputy Leader of the Opposition, that is precisely what is meant by what I am suggesting. The Greens believe that it is necessary to concentrate on the positive environmental impacts that will result from the agreement, which will apply to other regions of New South Wales and Victoria. Its operation will not be confined just to the Snowy, and that is something that honourable members ought to keep in mind. I note that a number of environmental groups will be monitoring the increased flows very closely. Environmental groups will take great interest in how the agreement plays out and develops.

I place on record the fact that we have arrived at this point because of the tremendous work of so many environmental groups and local community organisations. Organisations such as the Australian Conservation Foundation, the Total Environment Centre and the Nature Conservation Council often come to the minds of honourable members in this place but there are literally hundreds of grassroots community and environment groups, particularly in northern Victoria and southern New South Wales, that have worked for years to achieve this outcome. On behalf of the Greens I congratulate those groups. I am pleased to support the motion.

The Hon. Dr P. WONG [12.31 p.m.]: I support the Government's motion on the agreed outcome from the Snowy Mountains inquiry. As the Special Minister of State pointed out—

The Hon. D. J. Gay: Where is he?

The Hon. Dr P. WONG: Good question! The Snowy Mountains scheme was, and still is, of major practical and symbolic significance to south-eastern Australia. As it was built during the sixties and seventies, it was a major employer of thousands of new migrants. It is a large part of the collective memory of many migrants and refugee communities who came to Australia after World War II. It was one of the birthplaces of multicultural Australia. It has made a major contribution to the wealth of Australia through power generation and irrigation.

Of course, when these waters were first harnessed we had less knowledge and appreciation of the environmental impact of it on the Snowy River. With water being scarce and unreliable, it was generally accepted that the best thing one could do with a river was to build a dam on it. Times change, and there is now broad agreement that when allocating water we must consider broader environmental considerations as well as direct economic benefits.

The agreement outcome by the Federal, New South Wales and Victoria governments is a significant step towards formally recognising and making provision for water for the environment. I congratulate those governments on co-operating to bring this about. Given that the State governments are contributing $150 million each, I do not quite understand why the Commonwealth Government is contributing only $75 million, but there may be some sound reason for that. That the Snowy may begin to flow again will touch our imagination today as much as did the Snowy scheme in the fifties. Perhaps it will even inspire some new poetry.

The Hon. I. COHEN [12.33 p.m.]: I speak with pleasure during debate on the motion concerning the Snowy River agreement. This significant historic occasion will draw together, rather than separate, many sections of the community, such as the farming community and both city and country conservationists. I am reminded of my first real experience of a river campaign, which involved the Franklin River in the early 1980s. I was part of the protest campaign. I was told by many a person from the Wilderness Society in Tasmania that the aim was not so much protecting the forest, although members of the society were keenly aware of the issues, but seeing the river maintaining its flow from beginning to end in its wild state—flowing to the sea through its own natural ability. That was the ideal. The conservation movement has felt very strongly about the preservation of rivers. In Australia and overseas, particularly in United States, there have been many campaigns against dams. In United States dams have been decommissioned to allow the waters to flow free once again.

It is important to look towards less regulation of rivers and returning them to their natural state. Although we do not condemn our forebears for an amazing post-war engineering feat at a time when engineering solutions were regarded as the way to go, at that time we were imbued with a scientific ethos and were overawed by technology. We had only a rudimentary awareness of the environment and ecology, and environmental values were essentially unknown. The Snowy Mountains scheme was part of the building of society and post-war reconstruction. However, as time has passed, in common with the farming community, we have learned to work with,, rather than against, nature.

We have witnessed development in all areas of the community.We should join together as one to accept that development and acknowledge that the Snowy River should have its environmental flows reintroduced and then maintained. The human centred and non human centred opportunities that arise are fantastic. The ecology of the river can be regenerated from what it is at the present time: a mere trickle in a very unhealthy ecological situation. Towns such as Dalgety, which I understand was one of the original sites proposed for the Australian Capital Territory—

The Hon. D. J. Gay: So was Crookwell.

The Hon. I. COHEN: That is very interesting. I acknowledge that Crookwell could well have been put on the map, and I make the point that Dalgety could also have been put on the map. I have been to Dalgety to visit friends; it is a wonderful little town. It is just waiting for what could be a real tourism boom in the not-too-distant future when the flows are reinstituted and fishing is reintroduced. I understand that fish bypasses are being allowed in the town of Dalgety near the caravan park. Once those bypasses are established, the environmental flows can start to develop and that will lead to the introduction of more native fish. After that, a very healthy tourism industry will come into an area which is otherwise fairly economically depressed.

There will be fantastic opportunities all the way downstream along the Snowy River. The Greens look forward to that and hope that the agreement will receive bipartisan support. The agreement will help all country and city people by implementing the ideal of environmental restoration in our society. It will provide practical support for the regeneration of areas that have been ignored and abused for a long period. It is a pleasure to support this motion. It seems that Australians have finally agreed on a way forward to ensure that our national icon can flow once again. The Greens hope that the agreement will result in sufficient water being given back to the environment to redress the damage that has occurred as a result of water being taken from the river over the past 30 years. I thought I heard the Hon. I. M. Macdonald, who has moved the motion on behalf of the Special Minister of State, say that there was the commitment to a 28 per cent flow within 10 years. I ask him to repeat that during his reply.

The Hon. I. M. Macdonald: It is 10 years now, is it?

The Hon. I. COHEN: We will make it 15 years then. Even if that commitment is not made now, the conservation movement will be working towards achieving that target over future generations to bring about an adequate restoration of the river. The Deputy Leader of the Opposition referred to the sale of water licences as a last resort. However, $395 million has been allocated to achieving efficiency in the use of water and to getting this right. Nevertheless, it is fair to acknowledge that a fair bit of wastage has occurred in the past for which all sections of society, both in the city and in the country, share some guilt. We should also acknowledge that through efficiencies, technology enables us to produce water resources.

I know that honourable members on the Opposition benches have seen an improvement in farming techniques and drip irrigation systems to create conservation farming, and that is what we are talking about. There is real potential for the sharing of ideals and practicalities between the Green movement and the farming sector to create conservation farming.

The Hon. D. J. Gay: I don't disagree with you,but it doesn't negate the point I made. The point still stands.

The Hon. I. COHEN: We can ameliorate the point made earlier by the Deputy Leader of the Opposition. There will be an opportunity to buy up licences and at the same time there will be an acknowledgment from the farming community that it can cope with less water by using it far more efficiently. The Snowy River has flowed at less than 1 per cent of its average annual flow for the past 30 years. The February 1996 report of the expert panel on the environmental flow assessment of the Snowy River below Jindabyne Dam commissioned by the Snowy-Genoa Catchment Management Committee stated:

> The channel has dramatically contracted in size and has been invaded by exotic vegetation, including blackberries and willows.

In summer the river dies. The shallow water, choked by weeds, heats up and releases oxygen to as much as 120 per cent saturation. At night the prolific algae and weed growth uses much of the available oxygen, crashing it to below less than 70 per cent saturation. The natural inhabitants of the Snowy, the fish and macro-invertebrates, cannot survive such large fluctuations in oxygen levels: they die in significant numbers. The environmental flows are usually described as the minimum flows that will sustain the necessary ecological process of a watercourse. They are a baseline, the bare minimum. They are not a luxury flow, which represents waste, but a flow that represents the survival of species within the watercourse. Currently, the Snowy scheme delivers approximately as much water to the Snowy-Tumut-Murrumbidgee as it does to the Snowy-Murray scheme:approximately 2,360 gigalitres per annum.

A minimum requirement is outlined in the Commonwealth-States agreement and the Murray-Darling Basin agreement of at least 1,062 gigalitres per annum for each scheme. The Snowy River represents only 5 per cent of the Murray's flow, and approximately 14 per cent of the Murrumbidgee's average annual flow. That is, however, a significant flow as it can be supplied quickly during periods of low flow or high salinity. Redressing that situation has put Australia's standing as an advanced nation and conservation community in line with intelligent thinking on the use of resources. The Snowy River has international significance. It is far more than just a river, it is certainly one of a kind. It is steeped in Australia's traditional psyche. Virtually all Australians have supported the restoration of environmental flows to the Snowy. However, the agreement did not happen overnight.

The agreement is the result of a long and arduous campaign. In the last Parliament the Greens were pleased to support the Snowy Mountains Corporatisation Bill and associated legislation, which provided for a water inquiry with public participation prior to the proclamation of the corporatisation provisions. The inquiry report was handed down in October 1998. It was agreed that efficiency savings in the irrigation industry would be achieved to redirect sufficient water to guarantee a sufficient level of environmental flows. Negotiations proceeded between the Commonwealth and various States, and the outcome of those negotiations is the agreement that this House is considering today. We were made aware of this agreement only yesterday. We have not had sufficient time to study the terms of it in detail, although we have certainly gone through it in the past 24 hours. It is therefore difficult to give a considered response on many aspects of this very important document.

The Hon. D. J. Gay: Why didn't you support our amendment?

The Hon. I. COHEN: However, I acknowledge that there has been an inquiry and that there has been a lot of lobbying by both industry and conservation groups. Campaigns have been waged over many years. The Hon. Robert Webster, a former Leader of the House, headed the inquiry. This matter has been the subject of an incredible amount of discussion and inquiry. It is not as though the whole thing has been dumped onto us at the last minute.

The Hon. D. J. Gay: He has nothing to do with the heads of agreement.

The Hon. I. COHEN: Communication on this matter has been long and arduous.

The Hon. D. J. Gay: You're making all the noises that you should have argued on my amendment.

The Hon. I. COHEN: The Deputy Leader of the Opposition is becoming a little bellicose. It is interesting to note that he has complained that honourable members voted the way they did because of an indisposition to return because the workload might be heavy. I find that extremely offensive. I am on record as saying a number of times during my six years in this Parliament that I work hard, as do many other members of this House, including most if not all of those on the crossbench. It is totally inappropriate and reprehensible of the Deputy Leader of the Opposition to assume that I do not want to come back. I will come back day in and day out. I will come back over the whole of Christmas, if it is appropriate. But I will not come back to be part of a National Party stunt to debate further a matter that has been well and truly ventilated over a long period. The only way I can describe the comment of the Deputy Leader of the Opposition is that it is a telegraph comment: he will get himself a line in the *Daily Telegraph*. It is a cheap shot at the Parliament. I thought that we were all working towards maintaining the integrity of this place. It is very unbecoming of the honourable member to make such a cheap shot. If he has something worthwhile to discuss further down the track I will come back at any time.

The Hon. D. J. Gay: Are you saying that this is not worthwhile?

The Hon. I. COHEN: I am saying that this has been discussed and that we have been through it time and time again.

The Hon. D. J. Gay: You just made a contribution that backed up my amendment. You are playing politics.

The Hon. I. COHEN: I was acknowledging certain things. This matter and associated legislation have been discussed for many years.

The Hon. D. J. Gay: Not these heads of agreement.

The Hon. I. COHEN: On the other hand, the Government claims the Parliament must not delay the agreement because any delay may place the restoration of flows in jeopardy. I fear that time spent in the intervening period up to Christmas could place the restoration flows in jeopardy. The Snowy River Alliance has asked me to raise a number of issues. Earlier this year I circulated to honourable members a letter from the alliance. The Deputy Leader of the Opposition quoted some parts of it, but I would like to go through it. The letter from Jo Garland, Deputy Chair, Snowy River Alliance, states:

> As we understand it, the agreement marks a tremendous outcome for the Snowy River, compared with its current situation. There are a few concerns which I will list, but mainly they are related to ensuring that the stated goals are reached. The long term nature of the agreement will most likely mean changes of government and political will and the Snowy River Alliance does not want to risk the survival of the River after we have campaigned so hard to achieve it.
>
> 1. While the 28% environmental flow is committed to in principle, we ask that the full 28% is delivered within the 10 year time frame.

For the information of the Hon. I. M. Macdonald, that is where I got the 10 years from

The Hon. D. J. Gay: I put those on the record earlier.

The Hon. I. COHEN: But it was incomplete.

The Hon. D. J. Gay: I do not think I put them all on the record, but I had put those particular ones on the record.

The Hon. I. COHEN: I seek leave to incorporate this letter from Jo Garland, Deputy Chair of the Snowy River Alliance.

Leave granted.

As we understand it, the agreement marks a tremendous outcome for the Snowy River, compared with its current situation. There are a few concerns which I will list, but mainly they are related to ensuring that the stated goals are reached. The long term nature of the agreement will most likely mean changes of government and political will and the Snowy River Alliance does not want to risk the survival of the River after we have campaigned so hard to achieve it.

1. While the 28% environmental flow is committed to in principle, we ask that the full 28% is delivered within the 10 year time frame.

2. The amount of water required for Dalgety's town water supply plus the stock and domestic rights of landholders on the river must be calculated and added to the environmental flow amount. The 28% environmental flow has to stay in the river to its mouth. Also there would need to be the ability to review and increase the required amount of water for local townspeople and landowners as development and population increase over time.

3. The 50 cm siphon through which the water currently leaves Jindabyne Dam and enters the Snowy River can give the river 50 megalitres per day. We ask that the siphon be fully opened at the same time as Snowy Hydro Corporatisation is achieved. This water, combined with that from the Mowamba aqueduct would be all Dalgety can get until the major structural works are competed and it is minimal.

4. How much money will be available for Snowy River rehabilitation in NSW?

5. Regarding the upper montane streams and rivers, the Snowy River Alliance continues to support the expert panel's recommendations including 25% environmental flow for the Eucumbene River.

6. The Snowy River Alliance believes it would be appropriate to have community representation on the governments "entity" to achieve the water efficiency savings.

7. What happened to the "contingency" water required by the 1997 Snowy Mountains Authority corporatisation legislation? This was a percentage of water to be nominated to be accessed in the case where the environmental outcomes were not achieved by the initial environmental flow level decided upon, after a 5 year review. Use of this water was to be non-compensatable to Snowy Hydro. This is an important safeguard for the River as the environmental health of the river is the goal and is unmeasurable until the water is sent downstream and the river health monitored over time.

8. For Victoria 21% environmental flow will not achieve the required environmental outcomes. It will not move sediment, drop water temperature nor maintain the channel as required. Therefore 28% is necessary.

The Hon. I. COHEN: I thank the House for that leave. Therefore, the major issue is the amount of water that the agreement will redirect into the Snowy. Yesterday the Special Minister of State said in a ministerial statement that increased flows of up to 21 per cent of average natural flows—212 gigalitres within a 10-year period—would be the target. Any increased flow above 21 per cent would result in compensation being paid to Snowy Hydro Ltd. The Minister's statement and the terms of the agreement raise a critical issue about whether the amount of water that it promises will be sufficient to restore the river. The agreement allows for only 212 gigalitres of extra flow. The agreement is very vague about the extra 7 per cent of flow that is necessary for sufficient flow.

The Parliamentary Secretary must explain how this agreement will result in the availability of sufficient water. A related question is compensation. Yesterday the Minister stated that the flow level in the river above which compensation will be paid to Snowy Hydro Ltd will be set at 21 per cent. This means that the 28 per cent flow level will not be achieved unless compensation is paid. I certainly hope that the electricity from Snowy Hydro Ltd is worth less when the Government is confronted with that situation, and that we are so well endowed with stand-alone alternatives and a sustainable means of electricity power generation that this will not be an issue. In the meantime the Greens will continue to watch the situation.

Another issue is the compensation to be paid for publicly owned resources. Although Snowy Hydro Ltd is a publicly owned corporation, it is likely that pressure will be brought to bear for it to be privatised, which the Greens will oppose as we have opposed other Government moves in Parliament to privatise. The agreement contains an in-built entitlement to compensation by the owner of Snowy Hydro Ltd if flow levels above 21 per cent are achieved. It therefore seems to contain an in-built disincentive to achieve the 28 per cent flow. Again, I ask the Parliamentary Secretary to comment on that issue in reply.

The Greens recognise the significance of the commitment of $375 million by the New South Wales, Victorian and Commonwealth governments to this worthy cause. This agreement has the support of all the major conservation groups. As previous speakers have said, many small organisations have worked in various areas around the Snowy River, at the dam site area and also downstream. I particularly thank and congratulate

those people from the Snowy River Alliance and many others, including Paul Leete, who for many years has led the campaign with intensity and idealism, and Jo Garland and Carl Drury, who honourable members may have seen jump the tiny creek which is the Snowy River. Carl is a mountain man down to his boot straps. I first met him in the Victorian forests downstream in the Snowy River, not far from Orbost, when he was a real bush bloke defending the forests against unsustainable logging. These conservationists are not seeking acknowledgment in the community; they are merely doing the hard work to help a wonderful icon river flow free again. I congratulate the Government.

The Hon. Dr A. CHESTERFIELD-EVANS [12.52 p.m.]: This is an historic motion. Obviously, the Snowy hydro scheme was a great concept. It was an engineering solution that was the product of a time when people dreamt of making deserts blossom by undertaking huge public works projects to redirect water. At that time it was regarded as a waste if a drop of water flowed into the ocean unused. The scheme fulfilled a dream, but not much was known about ecology, river systems and salinity problems arise because of changes in watertables and so on.

The Hon. R. H. Colless: What about the wealth it created for Australia?

The Hon. Dr A. CHESTERFIELD-EVANS: It must be acknowledged that immense wealth and economic benefits to Australia have been created by soldier settlers and those who took up allotments along the irrigation areas. They developed industries that have fed millions of people around the world. As the problem of salinity was identified, the suggestion was made for a possible win-win situation by dramatically cutting leakages out of the system to produce much more water to improve the ecology of the Murray-Darling Basin and also put water back into the Snowy. Of course, a large amount of money was needed to fix the channels. Perhaps the catalyst for this agreement is the electoral change in Victoria where the Independent who was fighting for this cause, Craig Ingram, the member for East Gippsland,, had to cut the Gordian knot. He derived the will to initiate this agreement from his balance of power position in the Victorian Parliament. A small group of activists were the prime movers in the Victorian Parliament, and that says a lot about the balance of power and the importance and effect of Independents in Parliament. It is odd that for some reason the major parties have not mentioned that.

The input from the New South Wales Government and the Victorian Government will be $150 million each, while the Federal Government will contribute $75 million—a somewhat miserly amount given its resources—to fix these channels and, hopefully, to deliver water. The Deputy Leader of the Opposition said that there are still some problems with the agreement. The assumption is that the money is sufficient to deliver the required amount of water, but that has not been spelt out in detail. Obviously, if the costings and the anticipated amount of water to be delivered from the public works projects were clearly given it may be more reassuring. It would seem that we are able to get 15 per cent relatively easily, 21 per cent with a little more difficulty and 28 per cent with more difficulty again, but without knowledge of the likely costs and returns from the public works it is obviously still somewhat of an imponderable.

However, in relation to this Government delaying the passage of the motion, it is a question of the three governments—New South Wales, Victorian and Federal—coming to the party. The Victorian Government has been spurred on to keep the matter at full throttle by the Independent with the balance of power. The New South Wales Government seems enthusiastic but the Federal Government has a poor record on environmental issues, as illustrated by its $75 million contribution compared to the $150 million from each of the State governments, which have much less money. Accepting the agreement as a certainty rather than putting it at risk through the Federal Government was prominent in my mind, and probably in the minds of other crossbenchers, when wedid not support the adjournment motion of the Opposition. The Deputy Leader of the Opposition made the rather unworthy suggestion that we did so because of laziness. We are willing to sit longer and discuss legislation at great length, and it is it cheap shot to claim that we are just lazy.

Obviously, there are other problems. The Snowy River Alliance wants guarantees of more water and a number of us want more costings on the public works. The agreement has been reached and the sooner it is confirmed the better it will be for the people of New South Wales. We hope that the outcome will be as has been suggested: a win-win situation with the input of money-saving water to improve the ecosystems of the Murray and the Snowy rivers. Tourism benefits will then flow from the Snowy River, an Australian icon, and be enjoyed by the people of Australia in the future.

The Hon. I. M. MACDONALD (Parliamentary Secretary) [12.57 p.m.], in reply: The New South Wales Irrigators Council in correspondence with Don Page, the shadow Minister, dated 7 December raised the following three issues:

(a) Additional flows for the Snowy are sourced from combined government investment in water savings in the Murray and Murrumbidgee Rivers.

(b) That the savings are identified, agreed and audited in consultation with industry.

(c) That purchasing of entitlement is considered a last resort option where savings are unavailable.

I advise, first, that no additional flows will be sent down the Snowy River unless they are offset by water savings from western rivers.That is the clear-cut agreement by the three governments. Second, the savings will be identified, agreed and audited in consultation with industry. Third, purchases of water will be very small and will only be done when excess water is available. Water available for irrigation farming will not be significantly reduced. There will be no impact on the price of water in the market because the purchases will be so small. It is clear from discussions with the three governments and irrigators that those water efficiency savings are wanted by the irrigators. We have been looking at projects at Barrenbox Swamp at Griffith to develop a major program to enhance greater water efficiency savings and capabilities of storage. We have also looked at a number of the irrigation channels in that area that need considerable work.

The three governments have projects in mind, as I outlined in the case of Barrenbox Swamp, to achieve water savings. Two major reports have been prepared: the Bewsher report in New South Wales and the Sinclair-Knight report in Victoria. Those reports identify possible projects. However, when the joint government enterprise, as mentioned in the agreement, is established, it will have to conduct its own feasibility study, including reviewing the two previous reports to identify which projects are put in place. Jo Garland from the Snowy River Alliance, whom I have met many times in relation to this project, obviously is seeking an assurance about riparian rights in the Snowy.

The Hon. D. J. Gay: As was Peter Webb.

The Hon. I. M. MACDONALD: Absolutely. We can state categorically that the existing riparian rights are guaranteed, but we make it clear that the agreement does not intend that the additional or enhanced water flows down the Snowy will be used for irrigation. That was regarded as contrary to the spirit of what we were endeavouring to do. Stock and domestic water requirements are not affected by these arrangements; specific allowance is made for those requirements in the New South Wales corporatisation legislation. It was said during the debate that 38 gigalitres, increasing flows to 6 per cent in the Snowy River, will be released from the first year, and the question was asked: Where is the money coming from for the Jindabyne outlet? This will be paid by Snowy Hydro, as provided in clause 8.2 of the Heads of the Agreement, after corporatisation. Honourable members will be aware that that will take two to three years to get up and running, as major engineering works need to be completed.

The Hon. D. J. Gay: Is the Snowy Hydro going to pay for that?

The Hon. I. M. MACDONALD: Snowy Hydro is paying for that. A second point raised in the debate was: What will happen if there is a drought? If there is a dry sequence—that is, no rain— water in the Snowy storages will be used. The storages enable use to be balanced during variable climatic conditions. The Snowy River Alliance suggested also that 28 per cent should be delivered within 10 years. It is not possible to acquire sufficient water savings to offset that level of flow within 10 years. Achieving 28 per cent would be dependent on establishing major capital works programs through public-private partnerships to do such things as pipeline irrigation channels. The idea of achieving 28 per cent in 10 years is somewhat quixotic.

The Hon. I. Cohen argued that compensation payable above a 21 per cent flow would be a disincentive to achieve a 28 per cent flow. It is intended that the establishment of public-private partnerships will include payment of compensation in assessing the financial viability of the major public works program. In other words, that can proceed only if that is built into the financing structure for proceeding with any particular project. Compensation will be from that particular process. I believe that the Deputy Leader of the Opposition remarked that market prices might be distorted.

The Hon. D. J. Gay: Yes.

The Hon. I. M. MACDONALD: Our position is that it will not be distorted, because any purchases on the market will be minimal. The emphasis in the agreement is to actually have the water efficiency programs.

The Hon. D. J. Gay: And not the option of first resort?

The Hon. I. M. MACDONALD: That is correct. The comment was made that things might have changed since the first agreement. This instrument has not changed since it was announced on 6 October. The

heads of agreement, or the terms sheet, has undergone changes, but that is not the subject of the debate. Reference was made to consultation, and the Government has consulted extensively with the stakeholders. We have had many meetings with stakeholders both in Griffith and in Deniliquin, and in the Snowy area at Orbost and Dalgety, with the environment movement.

Further, we have had a large number of meetings with various instrumentalities that have a role in maintaining the quality of the environment of the Snowy Mountains, including the National Parks and Wildlife Service [NPWS], the Department of Land and Water Conservation and other groups. We believe there has been an extensive consultation period. Honourable members might recall in the 12 October edition of the *Land*, the first issue after the initial release of the agreement by the New South Wales and Victorian governments, several comments were made by the New South Wales Irrigators Council about the consultation process. The article stated:

> NSW Irrigators Council president, Colin Thomson, said irrigators had already lost significant amounts of water to environmental flows but would lose no more.
>
> "Irrigation in the Southern Murray-Darling Basin underpins prosperous rural communities and generates billions of dollars in economic activity for the nation—but nobody benefits from inefficient delivery and storage systems."
>
> Ricegrowers Association president, Ian Douglas, said all water users across the region would benefit from a more efficient irrigation system, but irrigator profitability must not be compromised.

I believe we have addressed those concerns in this agreement. After the agreement was reached, the Murrumbidgee Irrigation group inserted, at its expense, an advertisement in local papers supporting Snowy flows. In that advertisement Mr Dick Thompson, Chairman of Murrumbidgee Irrigation, said:

> ... that measures in the agreement are designed to:
>
> - Safeguard the interests of irrigators;
> - Deliver environmental benefits to the Snowy River and its communities;
> - Protect the environment of the Murray-Darling Basin;
> - Maintain the quantity and quality of South Australia's water supply; and
> - Secure the financial position and operating flexibility of the Snowy Mountains Hydro Electric Scheme..

As I said, that advertisement was published and paid for by Murrumbidgee Irrigation. I believe it satisfies any doubts about the fairness of the consultative process over the vast period that this issue has been before this Parliament, in effect waiting for determination. The process that has been followed is a model of how government instrumentalities and the Government itself should seek to reach agreement between stakeholders.

The Hon. D. J. Gay: It's a pity you spoiled it at the last minute.

The Hon. I. M. MACDONALD: I believed I had dealt with those aspects in my original speech. The Deputy Leader of the Opposition has made some good points and I have tried to answer his questions. I did not particularly want to revisit the point covered in my opening speech that, unfortunately, there was a problem with the timing of this matter, which was why we have had to deal with it this way.

I should like to conclude on what I believe is a positive note. A week or so ago I was in Griffith to meet with irrigators and go over a number of issues. I had the opportunity of visiting a small farm at Hanwood owned by Steve Barbon, who had won an award as the young irrigator of the year in Griffith. His tremendous farm has been converted, at considerable cost I might add, to the most modern technology. He has introduced efficiencies in every possible form, and they are fantastic for the environment. He has dramatically reduced the amount of water he uses. The water table has actually lowered, as drip irrigation operated by a computer system delivers the right amount of water at the right time to his 18 hectares of grapes.

These are the sorts of changes that need to be implemented in the Murrumbidgee Irrigation Area—in fact, in irrigation areas throughout the southern half of the State. Mr Barbon's system is a model for the future of irrigation in this country. It is not flood irrigation; it is drip irrigation, trickle irrigation and small microspray systems. This is the way we are going in the future. Again I place on record my support for the initiatives of Mr Barbon. That has been our intention from the beginning of negotiations on this agreement with the Commonwealth and Victorian governments. I commend my motion to the House.

Motion agreed to.

[*The Deputy-President (Reverend the Hon. F. J. Nile) left the chair at 1.10 p.m. The House resumed at 2.15 p.m.*]

TABLING OF PAPERS

The Hon M. R. Egan tabled the following reports:

Department of State and Regional Development, for the year ended 30 June 2000
Office of State Revenue, for the year ended 30 June 2000

Ordered to be printed.

CRIMINAL PROCEDURE AMENDMENT (PRE-TRIAL DISCLOSURE) BILL

Second Reading

Debate resumed from 6 December.

The Hon. P. J. BREEN [2.16 p.m.]: I generally support the Criminal Procedure Amendment (Pre-trial Disclosure) Bill. Some aspects of the bill as it stands represent an attack on fundamental principles of due process in the criminal law system. Those principles, as has been said already in debate, are the right to silence, the presumption of innocence and the burden on the prosecution to prove its case. The bill is more or less consistent with the recommendations of the Law Reform Commission report No. 95, entitled "The Right to Silence", published in July 2000. An earlier report, in 1993, by John Nader QC made similar recommendations. I hope to move certain amendments that will allay concerns about the contravention of due process rights provisions as presently in the bill.

When the bill was first mooted there was a problem in the criminal law system that needed to be addressed. But information I have received is that we no longer have the problem. A logjam of criminal law cases had developed in the courts, with serious implications for the administration of justice. Today, however, outstanding criminal cases in the District Court have been cut dramatically. The Hon. I. Cohen gave figures, but I would like to analyse the figures a little more closely. Since April 1999 the number of outstanding cases in the Sydney city and Sydney west District Court has been cut from 1,186 to a figure that I understand is now 648. So, from April 99 to June 2000 there has been a decrease of nearly 50 per cent in the number of criminal cases awaiting trial in the District Court. I am informed by the Law Society representative, David Giddy, that we now have the lowest recorded number of criminal cases awaiting trial in Sydney since records were first kept.

The Hon. J. M. Samios: What about the Supreme Court?

The Hon. P. J. BREEN: The figures I have just given are for the District Court.

The Hon. M. R. Egan: When were records first kept?

The Hon. P. J. BREEN: I have no idea when records were first kept. I understand that those are the lowest figures for the District Court. In the same period there has not been such a dramatic change in the number of District Court cases awaiting trial in country New South Wales. That number has been reduced from 997 in 1999 to 963 in 2000, a very small change by comparison with the city figures. Similarly, in the Supreme Court, I understand that the figures are static, at around 300 cases awaiting trial, although the figures are difficult to confirm. During a recent Government briefing of the crossbenchers, a representative of the Attorney General's office indicated that about 300 cases overall will be affected by the pre-trial disclosure requirements of this bill. It is not clear whether they are Supreme Court trials, or whether some District Court matters also will be classified as complex and lengthy, and therefore will be affected by the bill.

One statistic promised by the Attorney General's office is the number of accused persons in the 300 cases affected who are likely to be unrepresented. This is an important statistic, not just for the purposes of the bill but generally. In civil litigation, for example, something like 30 or 35 per cent of litigants are unrepresented. Although the Attorney's office has not subsequently provided those figures, it put forward amendments that were made to the bill in the lower House to provide that unrepresented litigants are not to be included in the pre-trial disclosure provisions. That is a significant concession by the Government, and one for which it is to be applauded.

Another argument in support of the bill is the need to eliminate ambush defences. Reverend the Hon. F. J. Nile said that the Director of Public Prosecutions is concerned about ambush defences. The Director of Public Prosecutions, Mr Cowdery, is probably the last person who is likely to be surprised by an ambush defence in a

criminal matter. I am informed by lawyers who practise in the criminal law jurisdiction that ambush defences are extremely rare. One practitioner told me that he had never seen an ambush defence in 12 years at the criminal bar.

An ambush defence is one put forward by an accused at the last minute. The issue clearly would need to be addressed by the Legislature if it were a problem, but again I suggest that there is no problem with regard to ambush defences. Any prosecution worth its salt will anticipate all the defences an accused is likely to raise. Furthermore, a statutory obligation already exists to disclose an alibi defence or a defence of mental incompetence. One aspect of ambush defences worth remembering from a practical point of view is that the prosecution would simply obtain an adjournment, as the Hon. Helen Sham-Ho said. Finally on the subject of ambush defences, it would be a tactical disaster to go down that track—that is why it is so rare—because it gives the prosecution the opportunity to call evidence in reply and have the last word with the jury. So dealing with ambush defences is not a legitimate reason for introducing the bill.

Turning to the principles of due process, which if unamended the bill would abrogate, the rights involved are best illustrated by an example. Assume for a moment, Mr Deputy-President, that you are charged with assault. Let us assume that you bashed someone in a hotel brawl but you did this only after the victim first struck you. The victim says that you are a liar and that he never laid a glove on you. Invariably, the case will turn on what the witnesses say. Three witnesses may be giving evidence and each of them may have been alerted to the brawl at different times. Only one of the witnesses saw the victim strike you first. It is critical to your defence that you be given the opportunity to cross-examine all three witnesses as to when they first became aware of the brawl.

Under the pre-trial disclosure regime you would be required to give the prosecution notice of your intention to plead self-defence. Almost certainly the police will become aware of the defence, the police will alert the witnesses, and two of the three witnesses will come to court with the preconceived idea that you are a liar. The witnesses will structure their evidence—either consciously or unconsciously—to accommodate your defence of self-defence. What you lose in this situation as an accused person is the right to have all the evidence considered in a fair and balanced way. Your right to silence has been compromised, you have lost the presumption of innocence, and there is a subtle shift in the burden of proof from the prosecution to the defence. Three of the pillars of the criminal justice system are to be compromised for no good reason except, in my submission, that there is a logjam of cases going to trial.

It should also be mentioned that the need for pre-trial disclosure of the prosecution case has existed in New South Wales since the Parliament enacted section 48E of the Justices Act in 1996 to truncate committal proceedings. As a result, police statements are now limited to the bare bones of an offence. I might also mention the practice, which has developed in the police force since the Wood royal commission, of not providing witnesses with copies of statements. Last week I raised this matter with the Minister for Police. The practice is seriously compromising the administration of justice.

To illustrate the problem in relation to witnesses I will give another example taken from a case dealt with under section 48E of the Justices Act. A schoolteacher was charged with sexually assaulting a pupil 20 years earlier. The pupil alleged that the teacher taught English and sexually assaulted her after class. As part of the committal hearing disclosure the accused revealed to the prosecution two things: firstly, that he was out of the country at the time of the alleged offence and, secondly, that he taught maths, not English. By the time the case went to trial the prosecution had changed its brief so that the offence was alleged to have taken place when the accused was in the country, and the accused was now correctly described as a maths teacher.

These alterations were the subject of intense cross-examination by counsel for the accused. The police denied canvassing the changes with the victim but when she took the stand she was honest enough to say that the police had indeed told her that there was a problem with the date of the alleged offence and with whether the accused taught maths or English. I predict that the pre-trial disclosure regime has the potential to create chaos so far as witnesses are concerned, bearing in mind that pre-trial disclosure affects prosecution witnesses as well as witnesses for the defence. In fact, one of the attractions of the pre-trial disclosure legislation is that it puts an obligation on witnesses for the prosecution to be protected. In most cases it is witnesses for the prosecution, not witnesses for the defence, who are in danger. Those aspects of the bill are to be commended.

I draw the attention of honourable members to a book written by Evan Whitton, *The Cartel: Lawyers and Their Nine Magic Tricks*. The author says that the adversarial system manages to convict just 20 per cent of defendants charged with fairly serious crimes who go to trial. I may be a cynic but I can see no useful reason for

the provisions in the bill that abrogate due process rights except to try to improve on these figures and to promote the law and order agenda. As the bill presently stands, if the accused person fails to make full disclosure the judge can refuse to allow the evidence, make adverse comments about the conduct of the accused to the jury, or grant an adjournment. The last option, of course, is the most likely and the adjournment will simply mean another delay which defeats the ostensible purpose of the bill. Other problems likely to occur as a result of the bill include the crucial witness who comes to light at the eleventh hour, after the pre-trial disclosure period, and the possibility that an accused person may want to change his or her story on receiving certain advice.

What happens to an accused person whose lawyer writes to the prosecution because of pre-trial disclosure obligations and states, "My client did not commit the offence", and subsequently the accused gets a new lawyer who writes to the prosecutor and states, "My client did it, but here are the reasons." From the point of view of the jury, the accused with two stories is a liar and a cheat and that is the sense in which pre-trial disclosure reverses the onus of proof. Many reasons exist why an accused person may change his or her story. Before the enactment of this bill the jury would not be aware of the history of the prosecution and it would have no idea that the accused person was simply responding to different advice. Indeed, the jury would probably not know that an accused person had a new story or that he or she had a new lawyer, except under the pre-trial disclosure regime.

It is this need for continuity of legal representation under pre-trial disclosure that is the subject of my first amendment. Criminal lawyers work under extreme pressure and are forced to make many decisions on the run. An accused person relying on legal aid needs special protection under the new disclosure regime. I hope that my amendments address that problem. My second amendment deals with draft regulations distributed by the Attorney General. The regulations again interfere with fundamental principles of due process rights. It is unprecedented, I would suggest, for such important rights of an accused person to be dealt with by way of regulation. My other amendments deal with comments in relation to the failure of an accused to make full disclosure and the requirement that police officers retain relevant documents. I hope to briefly address those amendments in Committee.

Another amendment I foreshadow is an amendment to the third reading of the bill to include a reference to the Standing Committee on Law and Justice. This amendment is in line with a suggestion by the shadow Attorney General, Chris Hartcher, in the other place. It is an excellent suggestion and, as Mr Hartcher pointed out, if the Standing Committee on Law and Justice monitors the bill it gives us an opportunity to determine how effectively and fairly it is operating. The bill raises serious questions about funding in the criminal justice system and it clearly shifts the goal posts for an accused person charged with serious offences. It is in this context that the bill ought to be closely monitored by the Standing Committee on Law and Justice.

When similar laws were passed involving fundamental issues of justice—I refer to the DNA legislation and the motor vehicle accidents legislation—the Government included in the bills a provision enabling the Standing Committee on Law and Justice to oversee the implementation of the new laws. This bill is no less important, and its operation ought to receive similar scrutiny. A reference to the Standing Committee on Law and Justice for the purposes of overseeing the implementation of the legislation is supported by the Sydney Regional Aboriginal Legal Corporation and the Public Interest Advocacy Centre. Further correspondence has come to hand from Marsdens the Attorneys. From what I can gather the Hon. R. S. L. Jones received the same correspondence and he has referred to it, so I will not repeat what has already been said.

I also received a supplementary letter from John Marsden, the principal of Marsdens. It was an erudite analysis of the Law Reform Commission report "The Right to Silence." Honourable members will be aware that Mr Marsden is a frequent correspondent on various issues. One of the features of his letters is that they are usually grammatically tortured. In light of his letter of 20 November, his recent judicial catharsis has greatly improved his writing skills. What we need in New South Wales is pre-trial disclosure in civil litigation, not in criminal cases. Mr Marsden's own case against Channel 7 is a prime example. Nobody would undertake a case like that if he or she knew in advance what the proceedings involved. Similarly, the HomeFund proceedings ground to a premature conclusion in the Federal Court.

Either the Public Interest Advocacy Centre did not have a good claim in the first place, in which case it should never have undertaken the litigation, or it did not have the resources to prosecute the claim. Both propositions are untenable in my opinion, and HomeFund borrowers are rightly disappointed with the outcome. A related problem in New South Wales is what I call the civil litigation industry. Some lawyers prosecute impossible claims in the hope that they will achieve a settlement to cover their costs with a few crumbs left over

for their clients. Unethical and unscrupulous, these lawyers lead their clients to the doorstep of the court and then, if the litigation bluff is unsuccessful, the lawyers say, "The risk of losing is too great and you ought to drop the case."

Many honourable members would have had first-hand experience of this abuse of the civil litigation process. Ms Lee Rhiannon would agree with this view, given her first-hand experience of being taken to the doorstep of the court and then the lawyer pulling out. I believe we need pre-trial disclosure in civil litigation within a few months of proceedings being filed to allow greater involvement by the court, to identify the issues and weed out spurious claims. So far as pre-trial disclosure in criminal matters is concerned, the current position is that an accused person has no obligation to disclose information about his or her defence until the trial, except for an alibi defence or a defence of mental incompetence.

The Law Reform Commission came to the view that the trial process could be improved if compulsory defence disclosure took place beforehand. I believe that was a good conclusion to come to. Without the amendments I have foreshadowed, however, the bill before the House represents a serious incursion into due process rights, even though it reflects many of the recommendations of the Law Reform Commission report. It would be a grave mistake if this House were to unfairly compromise the rights of an accused for the reason of an apparent logjam in the court system. In Victoria an earlier and more extensive pre-trial disclosure regime was a dismal failure because it failed to protect the due process rights of the accused. Furthermore, inadequate funding of both the Victorian Office of Public Prosecutions and Legal Aid, together with the adversarial culture of the legal profession, meant that the previous pre-trial disclosure regime in Victoria had to be abandoned. We should avoid the same mistakes in New South Wales. I therefore commend the bill to the House, with amendments.

The DEPUTY-PRESIDENT (The Hon. A. B. Kelly): I acknowledge the presence in the gallery of former members of the Second 30th Battalion and Peter Nagle, a member of the other place. Members of that battalion fought in Malaya in 1942 and, when captured, were in Changi prison camp. We welcome them today.

Ms LEE RHIANNON [2.37 p.m.]: This is one of those pieces of legislation that takes us back to election campaign time as it falls into the category of the Government delivering on its law and order agenda. I understand that the Government committed itself to mandatory pre-trial disclosure in the lead-up to the State election. In 1998 and early 1999 we started to hear much more about it. Prior to that, in 1997, the Commissioner of Police, Mr Ryan, called for a review of the right to silence. So there was a lead-up to this bill. I understand the considerable implications involved in relation to the bill.

As my colleague Hon. I. Cohen said earlier, the Greens have considerable concerns about how this bill will play out. It will provide for mandatory and voluntary pre-trial disclosure by the prosecution and the defence. We believe that that will considerably undermine the basic tenets of the legal system in this country today. When I have been lobbied in relation to this bill I have been told that it will apply only to complex criminal trials. In reality, however, the provisions in the bill could have a much wider application. That is one of the many reasons for the Greens' concerns. People have a fundamental right not to be obliged to help those who are prosecuting somebody who has been charged. In effect it is one's right not to be obliged to help with one's own prosecution.

I listened to the Government's argument that this bill will make the process much more effective and that it will speed things up. However, after reading much of the material that has been sent to me it appears as though that is a baseless argument. There are suggestions that this legislation could cause our courts to be clogged even more by defence lawyers effectively muddying the waters by putting up a number of possibilities as to the way they might pursue cases, and the prosecution would not be any the wiser. So there are many reasons why we have concerns with this bill. We are concerned about the delays in the court system. Delays add to the inequities in the legal system because disadvantaged people are more likely to suffer the greatest hardship from delays. People with money will move through the legal system much faster.

We received a submission from New South Wales Young Lawyers which stated, in conclusion, that delays in the criminal courts can be reduced without altering fundamental principles and rights. They made a number of very useful suggestions. We also received correspondence from the Sydney Regional Aboriginal Corporation Legal Service, which outlines a number of concerns. That service opposes this bill; it considers that the bill will be unworkable under current funding arrangements. So there is a discriminatory aspect to the bill. The Sydney Regional Aboriginal Corporation Legal Service said it believed that the Aboriginal Legal Service would be in a similar position. In a letter to the Attorney General's Department of 21 November it stated:

We estimate the proposed regime would require SRACLS to devote at least two advocate positions solely to trial work and at least two solicitors solely to trial matters in an instructing capacity.

In short, the proposed statutory regime of disclosure would be unworkable under current funding arrangements.

As my colleague and I have outlined, the Greens have considerable concerns. We are pleased to hear that the Hon. P. J. Breen will move some very sensible amendments that will help to put this bill on a clear and fairer footing.

The Hon. Dr B. P. V. PEZZUTTI [2.42 p.m.]: I do not oppose the bill. However, some concerns have been transmitted to me in a letter from Marsdens the Attorneys. That letter is signed by each partner and each associate: J. R. Marsden, J. B. Adam, P. Doyle, J. H. Marsden, K. J. Searle, D. I. Percival, A. J. Seton, B. D. Alcorn, E. White, G. P. Butterfield, G. Breton, C. McElroy, D. Grant, D. Vardy, D. R. Baird, P. J. Crittenden and T. C. Reeve. The caveat I place on this letter is that it was sent before the bill was amended in the lower House. I seek leave to incorporate the letter in *Hansard*.

Leave granted.

_____

The Hon. Dr. B. Pezzutti, MLC,
Legislative Council,
Parliament House,
Macquarie Street,
SYDNEY New South Wales 2000

Dear Sir,

RE: CRIMINAL PROCEDURE AMENDMENT (PRE-TRIAL DISCLOSURE) BILL 2000

1. We wish to voice our utter disgust with regard to the proposed Bill to be placed before the Parliament. This Bill, if passed, will fundamentally change our system of Criminal Law. We have prided ourselves that an individual has a right to a fair trial. This Bill will go a long way to eroding that right which has been the corner stone of our common law Criminal Justice System since New South Wales was first founded as a colony.

2. Currently, our Criminal Justice System operates on the belief that a person is innocent until proven guilty; that the Crown bears the onus of proving the guilt of the accused *beyond reasonable doubt*; that the accused has a right to silence. These corner stones of our Criminal Justice System will be substantially eroded under this new Bill.

3. The Bill, if enacted, will only affect "complex trials" in the District of Supreme Court (section 47A). However, there is no definition of what the word "complex" means. What complex is to me, may not be complex to you. Some may say all trials are complex. This definition is open to wide interpretation and does not provide any certainty as to the operation of the Bill.

4. The operation of the proposed Bill will create further work for both the prosecution and the defence. This point was raised by Mr. Cowdery, Director of Public Prosecutions (DPP). Mr. Cowdery has raised the point that the DPP and Legal Aid Commission will require significant increase in their budgets to meet the demands that this new Bill will place upon them.

5. You will note that over the past three years the Legal Aid Commission (LAC) has been under stress and is no longer able to ensure that the rights of individuals who come under the scheme are able to obtain a proper defence. This is simply because the funds are not sufficient. With the increased workload that will be caused by this Bill the Legal Aid Commission's resources will be further tested to breaking point.

6. Not only will this Bill mean that there are obligations placed on the defence, it will mean further attendances, drafting responses, attending for further interlocutory type proceedings which will substantially increase the costs of defending a matter.

7. But what of the position of a person who comes outside the criteria of Legal Aid? There are many such people who earn too much to come under Legal Aid but who would not have sufficient resources to pay for the additional expense that this Bill will put them to.

8. The drafting of responses for the defence will mean that the defence will need to be able to have all its evidence together well in advance of the trial. Time and care will be required in drafting the response as the defence will be held to that document. Further mentions at court will be required. One could easily see the defence having to put a notice of motion on at Court that the Crown has not responded to the defence response.

9. What of the position of a person who is of low intelligence or who is not able to speak the English language? It will be very difficult to prepare such responses as will be required in such circumstances. This Bill will further complicate our system of Criminal Justice. The Criminal Justice system is complex enough for the average person without the need to make it more complex.

10. If the defence fails to disclose their case, then the judge can stop them calling evidence which they have not disclosed. Further, if the defence fails to object to some evidence of the Crown, then the Crown will be able to tender that evidence without the need of calling that witness. The Judge can also comment on a party's failure to comply with the disclosure provisions.

11. This can lead to a trial being decided on a technicality at the expense of a person who is to be treated as innocent until they are proven guilty. It can, and probably will, lead to circumstances where an accused can be found guilty of untrue evidence tendered by the Crown, due to a defence failure to disclose that they object to that evidence. Further, the accused may have a valid defence that through misunderstanding of the proceedings or inability to communicate properly with their lawyer, or maybe a failure on the part of a lawyer, to disclose a defence. The accused can then be prevented the right to raise that defence or call evidence that would support the defence.

12. Would you be happy to place into law a Bill that can lead to an innocent person being convicted of a serious crime on the basis of a technicality? All because they were not able to afford proper legal representation or find it difficult to give proper instructions. What of circumstances where evidence is not available to the defence at the time of the interlocutory proceedings?

13. If an accused person is seen as innocent until proven guilty, is it not then an onerous burden to place upon them an obligation to provide evidence as to their innocence? This, in effect, creates a situation where the accused, who may well be innocent, being placed in a position where they have to prove they are innocent rather than the Crown proving, beyond reasonable doubt, that they are guilty. Obviously, these provisions drastically affect the right to silence. Yes, you can remain silent, but then you can't raise a defence.

14. The other fear is this, once this Bill is passed, how long will it be until its obligations are placed on every accused in every Court. Once enacted, it would only require a small amendment to have this Bill place obligations on every defendant including Local Court proceedings.

15. This proposed Bill carries too high a price. It can and will lead to innocent people being convicted due to procedural technicalities. It will significantly increase the price of defending a matter. Many people will not be able to meet the costs but will not be able to obtain Legal Aid. Legal Aid already does not have sufficient funds to operate properly. Proceedings will take longer to get to trial due to the interlocutory proceedings that will delay the matter getting to trial.

16. Any legislation that will lead to any person being convicted due to a procedural technicality is too high a price. We implore that this Bill be rejected by the house. It is a direct attack on the corner stones of our Criminal Justice System. Those cornerstones being the right to silence, the belief that a person is innocent until proven guilty and that the Crown must prove the guilt of the accused beyond reasonable doubt. This Bill substantially weakens those cornerstones and an accused right to a fair trial.

_____

The Hon. Dr B. P. V. PEZZUTTI: The substantial difference between the bill that was in the lower House and this bill is that this now applies to complex criminal cases. It also contains a guide as to what is complex: the likely length of trial, the nature of the evidence to be adduced and the legal issues that may arise. Another difference is the requirement that a person who is the subject of pre-trial disclosure be represented. I would like an assurance from the Government about my main concern: If a person appears before the court accused of a criminal matter and seeks to supply the names of witnesses to support his or her defence, what is to stop the police doing what they did in the good old days—beating the living daylights out of the witnesses and changing the evidence of those witnesses to suit the prosecution's case?

I know that could lead to a miscarriage of justice and there are penalties for that, but this bill opens the whole process much wider. In other words, it makes it much easier for the prosecution to get at, if you like, defence witnesses, because it knows who they are, and it knows that much earlier than it would otherwise, and has much more time to work on them. That worries me. Nothing will convince me that the purpose of this bill is purely efficiency and economic rationalism. Economic rationalism has no place in the criminal justice system. It is important that we get this right, rather than have a very efficient process that gets the occasional one wrong. One of the tenets of our judicial system is that it is better for 100 guilty people to go free than for one innocent person to be convicted.

The letter I have had incorporated in *Hansard* alludes to a number of things that are wrong with this process. They include an accused misunderstanding the proceedings, not giving clear instructions to his or her solicitor or representatives, or not understanding the language or the nature of our court system; and the possibility that witnesses who could prove an accused's innocence could be struck out because they were not introduced into the system earlier. The letter deals with the issue of delay. When a person nominates a witness, witness statements have to be prepared and are provided to the prosecution for response. There may have to be a number of extra hearings to allow this process, and it may not be any shorter. It may be that the time spent in front of a judge may be more certain or a little shorter, but that does not mean the trial process for the accused person—the time between the charging and sentencing—will be shorter.

The Director of Public Prosecutions [DPP] has concerns about this bill and the need to increase the budget to meet the new demands that will be placed on the DPP. The Legal Aid office will also be under considerable stress to ensure that this extra workload and time load out of court is paid for somehow. The system will become more expensive for those who fall out of the safety net of access to legal aid, and it could be much more expensive to draft and lodging submissions, and so on. This will increase the time of the court, but

most importantly I believe people could be denied access to evidence if that evidence is not properly pursued before the process begins. An accused person will not know whether an issue is going to be complex until the judge decides that it will be complex.

These issues will work themselves out with experience and time, but I trust that when the process and the court rules are put in place, those court rules will be subject to major community consultation, particularly with the various corporate bodies appointed in this State—the Law Reform Commission, the Privacy Commission, the Criminal Lawyers Association, and so on. The court rules that will guide the way this provision operates will be properly tested before it is introduced. I would not agree entirely with Marsden, his associates and his partners that this is the end of the world as we know it, but I believe it has the propensity to lead to a scenario like that in the French courts where accused persons are guilty until they prove themselves to be innocent.

[*Debate interrupted*]

DISTINGUISHED VISITORS

The PRESIDENT: I am pleased to welcome into the President's gallery a delegation from the Parliament of Papua New Guinea: the Hon. Alfred Kaiabe, the Hon. Simeon Wai, Mr Charlie Moi and Mr Basil Kidu.

CRIMINAL PROCEDURE AMENDMENT (PRE-TRIAL DISCLOSURE) BILL

[*Debate resumed.*]

The Hon. Dr B. P. V. PEZZUTTI: I extend my greetings to the representatives of the Parliament of Papua New Guinea. Since the debate has been interrupted, I also extend greetings to members of the Second 30th Battalion who were captured and served time in Changi prison camp. My mother's oldest brother, James Bazzo, died in Changi. I must say that mention of their visit brought a flood of memories of my mother's regard for her brother, Jimmy. To get back to the bill, I believe it will require close attention by the Attorney General and by the Minister for Police to ensure that the new processes put in place with a view to efficiency do not act to the detriment of those who are charged with a criminal offence and taken before the court.

Any failure in that regard will weigh heavily on this Government—for example, if the new rules result in people who have been gaoled being released on a technicality on appeal, or if innocent people are found guilty because of a technicality. The Government must have in place a system to compensate those found guilty because of a technicality in the process. There should be a mechanism in place and a clear undertaking by the Government that persons who are convicted but are later found to be innocent of the charge will be compensated—and compensated more readily than they are now are. The Hon. J. M. Samios and the honourable member for Gosford have gone through this bill in some detail. I do not wish to take up the time of the House, but they are just a couple of concerns that I have.

The Hon. Dr A. CHESTERFIELD-EVANS [2.52 p.m.]: There has been considerable debate about this bill. Opposed to the bill are the Law Society, the New South Wales Bar Association and the Young Lawyers. On the other side are the Government and the forces of law and order, as expressed in talk-back radio. Central to the argument is the time-honoured tradition in our judicial system of the right of an accused to silence. This debate has been the subject of a Law Reform Commission report, and also a High Court appeal in the case of Azzopardi which commenced on 20 November. The Government says that the bill has been introduced to make the administration of justice more efficient in New South Wales.

The Government says that present pre-trial disclosure is ad hoc in procedure and practice; that it is a mixture of common law rules, legislation, guidelines issued by the Director of Public Prosecutions, and rules issued by the Bar Association, the Law Society and the Supreme Court. The Government, by introducing compulsory pre-trial disclosure, seeks to get rid of the so-called ambush defence. An ambush defence is where surprise, last-minute evidence is introduced in a trial of which the prosecution has had no prior notice and with which it is unable to deal quickly, whereupon the person believed to be guilty is acquitted. The argument against this is the right to silence, which is a group of rights afforded to an accused or a suspect. They include the right not to answer questions asked by police, the right not to incriminate oneself and the right not to give evidence at one's own trial. The argument is that the defence should not have to assist the prosecution to obtain a conviction. This is the generally held view of the law agencies.

The New South Wales Law Reform Commission says that the ambush defence arises infrequently and does not contribute to acquittal in most cases. The Law Society maintains that lengthy and complex trials can be effectively administered by judicial case management without interference to the accused's right to a fair trial. The groups that are opposed to the bill are really all the established groups in the field. They include the Law Society and the New South Wales Bar Association. The Sydney Regional Aboriginal Corporation Legal Service states that there would be a great increase in costs in complying with these pre-trial disclosures which will severely stretch that group's resources and make justice more difficult to achieve. I will not read that group's letter to me, but the point needs to be made very clearly that if more work is created, particularly for the defence, more resources must be channelled into legal aid.

It is not much good cutting costs of the courts if it simply adds to the costs of the prosecution and the defence—although the Government might argue that it only has to pay the prosecution's costs, and that the defence costs are met by the accused. The fact of the matter is that many accused people have few resources and if we are to have a just trial process and there is going to be more work as a result of this bill, more money must be channelled into legal aid. New South Wales Young Lawyers have made a submission on this subject, and that group is certainly very much opposed to the bill. I will not read the submission, but I would be happy to provide details to any member who would like me to do so. I have also received a copy of the letter from Marsdens that was sent to the Attorney General and incorporated by the Hon. Dr B. P. V. Pezzutti during his contribution to the debate. That letter is significant in that it contains the signatures of all 17 partners and associates of that firm.

The bill as it stands is quite unsatisfactory. I congratulate the Hon. P. J. Breen on his proposed amendments, which will effectively put regulations into the bill. That means that the legislation will be more difficult to change against the interests of defendants. He has also made some minor changes which I understand will limit the extent of disclosure to the general area in which the defence will be running its case, rather than force defendants to provide a large amount of detail, with the attendant increase in costs for both the prosecution and the defence. Although it might lessen the court time, it might increase the cost of the legal system overall and damage the cause of justice because of the resource implications. I believe that the amendments foreshadowed by the Hon. P. J. Breen should be supported, and I will support them. If they are not successful, I will not support the bill.

The Hon. M. R. EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [2.57 p.m.], in reply: I thank honourable members for their contributions to the debate. The Government is concerned at the move foreshadowed by the Leader of the Opposition that the Opposition will, in Committee, support the foreshadowed amendments of the Hon. P. J. Breen—which will bring regulations into the bill. The proposed regulations that are incorporated in the foreshadowed amendments are significantly different to the draft regulations as circulated by the Government. The regulations accompanying this bill have been available to any interested person since the bill was introduced into the Legislative Assembly in August.

The draft regulations have been circulated to the Director of Public Prosecutions, the Law Society, the heads of jurisdictions, the Bar Association, the Legal Aid Commission, the Law Reform Commission, members of the crossbench and members of the Opposition, to name a few. While it is the prerogative of any member to suggest changes—or, as the Hon. P. J. Breen will do, to move amendments and to have a different form of regulations brought into the bill—I am concerned that the Opposition does not realise how the changes will undermine the principles of pre-trial disclosure. The enumerated defences of which a defendant is required to give prior notice would be deleted. Nevertheless, I will canvass the impact of the amendment further in Committee.

Pre-trial disclosure has not been approached lightly by the Government. In the debate a number of honourable members expressed concern that the proposal may disadvantage the defence in a criminal trial. The Government is not of this view. The proposal is a case management based approach to ensuring further efficiencies at trial. In essence, it moves the work out of the court up front so that parties must prepare before they get to court. It is a sensible and intelligent approach to court resources and will greatly assist juries in terms of consolidating the facts for digestion, reduce the impact of court trauma on victims and require parties to be better prepared in their legal arguments. The bill is the result of painstaking consultation that included significant Government amendments in the Legislative Assembly to take into account the submissions received. It does not erode the right to silence, nor does it require a defence to prove innocence, and it does not in any way interfere with the requirement that guilt be proved beyond a reasonable doubt in criminal matters.

I refer to comments made by the Hon. Dr B. P. V. Pezzutti, who sought an assurance that police will not be able to harass witnesses whose names have been supplied by the accused. As the honourable member

pointed out, that would be a very serious offence. The proposal that witnesses provide names and addresses comes from the Law Reform Commission so that the police can check antecedents. It will apply only to character witnesses. A witness cannot be interviewed by police without the leave of the court—that proviso is in the draft regulations. The proposal streamlines the trial process and assists the court. The defence is on notice that antecedents of character witnesses will be checked. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 6 agreed to.

Schedule 1

The Hon. P. J. BREEN [3.03 p.m.]: I move Reform the Legal System amendment No. 1:

No. 1 Page 4, schedule 1 [2] (proposed section 47C (4)), lines 9-11. Omit all words on those lines. Insert instead:

(4) The court may order pre-trial disclosure only if the court is satisfied that:

(a) the accused person will be represented by a legal practitioner for the purposes of the trial, and

(b) if the accused person requires legal aid - a grant of legal aid has been made that will enable the accused person to retain counsel (as well as an instructing solicitor) for the purposes of the trial, including during the period of pre-trial disclosure.

The purpose of this amendment is to enable an accused person to retain counsel as well as instruct a solicitor. As I mentioned earlier, criminal cases are often prepared on the run and prior to the pre-trial disclosure regime a competent defence attorney would simply deal with issues as they arise in the course of the prosecution of the case in court. For example, prosecution witnesses may give evidence that is quite different from their statements, and appropriate adjustments could be made to the defence at the trial. Presumably pre-trial disclosure will reduce the number of surprises at the trial in both the prosecution and defence cases. This is the hoped-for efficiency that pre-trial disclosure will achieve.

However, confusion will reign if the accused has a different barrister at the trial from the one who advised on pre-trial disclosure. If the accused has no barrister in the period of pre-trial disclosure, the situation will be even worse because legal aid solicitors deal with many cases. Pre-trial disclosure will place impossible burdens on legal aid solicitors if they do not have the benefit of counsel's assistance. It is worth noting what the Law Reform Commission said about cases involving an accused person who requires legal aid. In paragraph 3.121 of its document the Law Reform Commission stated:

> In all cases, trial defence counsel would have to be properly briefed at an early stage to allow adequate opportunity to review the brief and confer with a defendant. Both the Crown and defence counsel require an opportunity to consider the possibility of accepting a plea to lesser charges. Legal Aid New South Wales currently pays for only two pre-trial conferences for Supreme and District Court trials. The rates are $91.00 per conference for solicitors, $101.00 for junior counsel and $146.00 for senior counsel.

Given the pre-trial disclosure regime as proposed in the bill, the Law Reform Commission rightly points out that the existing situation is inadequate. For the reasons I mentioned in my contribution to the second reading debate, if an accused has different counsel at the trial to the one involved in pre-trial disclosure, the accused would be put in a position at odds with the pre-trial disclosure requirements and, therefore, certain comments are likely to be made to the jury about that situation, and that would be detrimental to the accused's case. Therefore, I commend the amendment to the Committee.

The Hon. R. S. L. JONES [3.06 p.m.]: I support the amendment. The success of the pre-trial system demands that experienced counsel are dedicated to the cases early in the process to enable the accused to have the benefit of advice on the pre-trial requirements. There has been some acknowledgment that unrepresented accused persons cannot survive in a system like this—as evidenced by the Government's move to amend the legislation in the lower House so that it cannot apply to unrepresented defendants. However, it is essential that an accused person also has the benefit of counsel, rather than relying on a solicitor alone, whose skills lie in a different field other than the provision of expert advice on legal technicalities.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.07 p.m.]: The Government does not support this amendment, which is unnecessary because the Government has already

amended the bill in another place to ensure that unrepresented parties are not affected by the proposed pre-trial disclosure regime. The Government agrees with the Bar Association that the pre-trial disclosure regime will require more up-front work in preparing a matter for trial. In essence, counsel will need to be briefed early, and the court will take this into consideration when determining that a matter is suitable for pre-trial disclosure to come into effect. The amendment is overly prescriptive and will not enhance the case management principles of the proposed pre-trial disclosure regime. The Government will undertake a thorough review of the legislation after 18 months of operation, including the impact of the legislation on the profession. The element of discretion the Government has reserved for the courts in pre-trial disclosure, guided by the need for representation prior to the regime coming into effect, is enough to prevent unfair criminal trials.

Amendment negatived.

The Hon. P. J. BREEN [3.09 p.m.]: I move Reform the Legal System amendment No. 2:

No. 2 Page 4, schedule 1 [2] (proposed section 47D), lines 14-34. Omit all words on those lines. Insert instead:

47D Pre-trial disclosure requirements—general

(1) Pre-trial disclosure is to be made as follows:

(a) the prosecuting authority is to give the accused person notice of the case for the prosecution,

(b) after the accused person has been given notice of the case for the prosecution, the accused person is to give the prosecuting authority notice of the defence response to the case for the prosecution (referred to in this Division as ***the defence response***),

(c) after the prosecuting authority has been given notice of the defence response, the prosecuting authority is to give the accused person notice of the prosecution response to the defence response.

(2) Pre-trial disclosure is to be made in accordance with a timetable determined by the court.

(3) For the purposes of the pre-trial disclosure requirements, a reference to the accused person is to be read as including a reference to the legal practitioner of the accused person.

47E Disclosure of case for the prosecution

The notice of the case for the prosecution is to contain the following:

(a) a copy of the indictment,

(b) an outline of the prosecution case,

(c) copies of statements of witnesses proposed to be called at the trial by the prosecuting authority,

(d) copies of any documents or other exhibits proposed to be tendered at the trial by the prosecuting authority,

(e) if any expert witnesses are proposed to be called at the trial by the prosecuting authority, copies of any reports by them that are relevant to the case,

(f) a copy of any information in the possession of the prosecuting authority that is relevant to the reliability or credibility of a prosecution witness,

(g) a copy of any information, document or other thing provided by police officers to the prosecuting authority, or otherwise in the possession of the prosecuting authority, that may be relevant to the case of the prosecuting authority or the accused person, and that has not otherwise been disclosed to the accused person,

(h) a copy of any information, document or other thing in the possession of the prosecuting authority that is adverse to the credit or credibility of the accused person.

47F Defence response

(1) The notice of the defence response is to contain the following:

(a) if any expert witnesses are proposed to be called at the trial by the accused person, copies of any reports by them proposed to be relied on by the accused person,

(b) the names and addresses of any character witnesses that are proposed to be called at the trial by the accused person (but only if the prosecution has given an undertaking not to interview any such witness before the trial without the leave of the court),

(c) the accused person's response to the particulars raised in the notice of the case for the prosecution (as provided for by subsection (2)).

(2) The accused person's response to the particulars raised in the notice of the case for the prosecution is to contain the following:

(a) if the prosecuting authority disclosed an intention to adduce expert evidence at the trial, notice as to whether the accused person disputes any of the expert evidence and which evidence is disputed,

(b) if the prosecuting authority disclosed an intention to adduce evidence at the trial that has been obtained by means of surveillance, notice as to whether the accused person proposes to require the prosecuting authority to call any witnesses to corroborate that evidence and, if so, which witnesses will be required,

(c) notice as to whether the accused person proposes to raise any issue with respect to the continuity of custody of any proposed exhibit disclosed by the prosecuting authority,

(d) if the prosecuting authority disclosed an intention to tender at the trial any transcript, notice as to whether the accused person accepts the transcript as accurate and, if not, in what respect the transcript is disputed,

(e) notice as to whether the accused person proposes to dispute the accuracy of any proposed documentary evidence or other exhibit disclosed by the prosecuting authority,

(f) notice of any significant issue the accused person proposes to raise regarding the form of the indictment, severability of the charges or separate trials for the charges.

47G Prosecution response to defence response

The notice of the prosecution response to the defence response is to contain the following:

(a) if the accused person has disclosed an intention to adduce expert evidence at the trial, notice as to whether the prosecuting authority disputes any of the expert evidence and, if so, in what respect,

(b) if the accused person has disclosed an intention to tender any exhibit at the trial, notice as to whether the prosecuting authority proposes to raise any issue with respect to the continuity of custody of the exhibit,

(c) if the accused person has disclosed an intention to tender any documentary evidence or other exhibit at the trial, notice as to whether the prosecuting authority proposes to dispute the accuracy or admissibility of the documentary evidence or other exhibit,

(d) notice as to whether the prosecuting authority proposes to dispute the admissibility of any other proposed evidence disclosed by the accused person, and the basis for the objection,

(e) a copy of any information, document or other thing in the possession of the prosecuting authority, not already disclosed to the accused person, that might reasonably be expected to assist the case for the defence,

(f) a copy of any information, document or other thing that has not already been disclosed to the accused person and that is required to be contained in the notice of the case for the prosecution.

47H Disclosure requirements are ongoing

(1) The obligation to undertake pre-trial disclosure continues until any of the following happens:

(a) the accused person is convicted or acquitted of the charges in the indictment,

(b) the prosecution is terminated.

(2) Accordingly, if any information, document or other thing is obtained or anything else occurs after pre-trial disclosure is made by a party to the proceedings, that would have affected that pre-trial disclosure had the information, document or thing been obtained or the thing occurred before pre-trial disclosure was made, the information, document, thing or occurrence is to be disclosed to the other party to the proceedings as soon as practicable.

47I Court may waive requirements

(1) A court may, by order, waive any of the pre-trial disclosure requirements that apply under this Division.

(2) The court may make such an order on its own initiative or on the application of the prosecuting authority or the accused person.

(3) An order may be made subject to such conditions (if any) as the court thinks fit.

47J Requirements as to notices

(1) A notice under this Division is to be in writing.

(2) Any notice purporting to be given under this Division on behalf of the accused person by his or her legal practitioner is, unless the contrary is proved, taken to have been given with the authority of the accused person.

(3) A notice under this Division that is required to be given to a prosecuting authority may be given to the prosecuting authority in the following manner, or as otherwise directed by the court:

(a) by delivering it to the prosecuting authority,

(b) by leaving it at the office of the prosecuting authority,

(c) by sending it in a letter addressed to the prosecuting authority at the office of the prosecuting authority.

(4) A notice under this Division that is required to be given to an accused person may be given to the accused person in the following manner, or as otherwise directed by the court:

(a) by delivering it to the accused person,

(b) by leaving it at the office of the legal practitioner of the accused person,

(c) by sending it in a letter addressed to the legal practitioner of the accused person at the office of the legal practitioner.

47K Copies of exhibits and other things not to be provided if impracticable

(1) A copy of a proposed exhibit, document or thing is not required to be included in a notice under this Division if it is impossible or impractical to provide a copy.

(2) However, the party required to give the notice:

(a) is to specify in the notice a reasonable time and place at which the proposed exhibit, document or thing may be inspected, and

(b) is to allow the other party to the proceedings a reasonable opportunity to inspect the proposed exhibit, document or thing referred to in the notice.

47L Personal details not to be provided

(1) The prosecuting authority is not to disclose in any notice under this Division the address or telephone number of any witness proposed to be called by the prosecuting authority, or of any other living person, unless:

(a) the address or telephone number is a materially relevant part of the evidence, or

(b) the court makes an order permitting the disclosure.

(2) An application for such an order may be made by the accused person or the prosecuting authority.

(3) The court must not make such an order unless satisfied that the disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the accused person's right to prepare properly for the hearing of the evidence for the prosecution) outweigh any such risk.

(4) This section does not prevent the disclosure of an address if the disclosure does not identify it as a particular person's address, or it could not reasonably be inferred from the matters disclosed that it is a particular person's address.

(5) An address or telephone number that must not be disclosed may, without reference to the person who made the statement being disclosed, be deleted from that statement, or rendered illegible, before the statement is given to the accused person.

47M Requirements as to statements of witnesses

(1) A statement of a witness that is included in a notice under this Division may be in the form of questions and answers.

(2) If a notice includes a statement that is, wholly or in part, in a language other than English, there must be annexed to it a document purporting to contain a translation of the statement, or so much of it as is not in the English language, into the English language.

47N Exemption for matters disclosed in brief of evidence

The prosecuting authority is not required to include in a notice under this Division anything that has already been included in a brief of evidence served on the accused person in accordance with section 25.

This amendment seeks to incorporate into the bill the draft regulations distributed by the Attorney. In that regard I note that the Minister, in reply to contributions to the second reading speech, said that the regulation is available to anyone who wanted it. My response is that the regulations were available to anyone who was lucky enough to come across it, because they were not distributed but extracted, as a dentist might extract teeth, from the Attorney's office.

The Hon. Dr B. P. V. Pezzutti: Is there a reason for that?

The Hon. P. J. BREEN: There is a reason. These regulations incorporate, for the first time to my knowledge, matters of fundamental human rights that go to the very heart of the criminal justice system. The responsibilities on an accused person under these regulations ought to be included in the bill. To put them in regulations and have them subject to Executive Government rather than to the ambit of the Parliament, is a complete abrogation of the responsibility that parliamentarians have to the people of New South Wales. The possibility of regulations is not precluded by incorporating these regulations; other places in the bill clearly refer to regulations. My amendment suggests that the regulations that affect the fundamental rights of an accused person ought to be in the bill, not in regulations.

The present draft regulations raise issues of fundamental principle that need to form part of the bill. Honourable members would be aware that I have circulated amendments to the draft regulations as I would like to see them incorporated in the bill. There may be some concern about my changes to the draft regulations, but all I have done in substance is delete reference to a number of points in relation to a defence. The draft regulations as circulated provide that the accused be required to say whether he or she is going to plead insanity, self-defence, provocation, accident, duress, claim of right, automatism or intoxication. My amendments to the regulations delete each of those heads. The reason for that is contained in the Law Reform Commission report.

Using the example that a person accused of murder intends to raise provocation, it is a moot point to simply say "I plead provocation" or, "I plead accident," because the onus is on the prosecution to prove that the defendant had a criminal intent. To simply plead provocation or accident does not assist in the pre-trial regime. My amendments suggest that each of those eight items need to be deleted. I recognise that that is not consistent with the recommendations of the Law Reform Commission report but it is consistent with other principles in the report. Therefore, I suggest that the amended regulations should be incorporated into the bill. I foreshadow an alternative if that proposal is not acceptable.

The defence response that I have referred to is also modified to the extent that various specific defences, which I have listed, might be deleted. Another slight amendment is that new clause 47F modifies the draft regulation by deleting responsibility on the accused person to dispute the admissibility of prosecution evidence during pre-trial disclosure. That provision is unreasonable to the extent that it assumes the defence will have all the information needed to make a decision about the admissibility of evidence.

It is extremely important that principles fundamental to the criminal justice system are contained in an Act. An accused person on trial for a particular offence would want to see in the legislation the responsibilities needed to meet the charge. If we delegate that kind of responsibility to the Executive Government by way of regulation, we are abrogating our duty to protect the rights of citizens of New South Wales. The principles contained in the regulation compromise, one after another, the rights of an accused person. On that basis I urge honourable members to support the amendment as it stands.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.14 p.m.]: The amendment is fundamentally flawed. The Government is disappointed that at the last minute the Opposition has decided to support amendment No. 2 moved by the Hon. P. J. Breen, which will incorporate into the bill regulations that significantly water down the Government's proposed regulations. The Opposition is listening to the misguided parties that argue that regulations should be incorporated into the bill. From day one the Government has circulated draft regulations with the bill. There has never been a secret about what is to be in the regulation. There is significantly greater flexibility, as supported by the Chief Judge of the District Court and the Law Reform Commission, if we utilise the regulations to guide the jurisdiction and the practitioners.

The amendment is not what it appears. It seeks to incorporate regulations into the bill; however, they are watered-down versions of the regulations circulated by the Government. In essence, this means that no longer will the defence have to take responsibility for providing information to the prosecution on significant matters. Under the Government's proposal the defence would have to provide to the prosecution a notice of defence if it chooses to rely upon insanity, self-defence, provocation, accident, duress, claim of right,

automatism, or intoxication. Under the amendment there is no longer that responsibility: the defence can introduce any of those defences with no notice to the prosecution. The consequences are: increased trial length and a risk of further court delays; victims suffering as a result of being put through longer trials and surprise tactics on the part of the defence; and the prospect of increased ambush defences.

All that is against the very principles of the legislation that the Opposition supported in the Legislative Assembly. If the Opposition supports the amendment, it will be further proof that it does not know what it is doing. The proposal goes even further to undermine the Government's approach to pre-trial disclosure by omitting the requirements that notice be given as to whether the accused person proposes to dispute the admissibility of any other proposed evidence disclosed by the prosecuting authority and the basis for the objection. This, once again, undermines the requirements of the Government's proposal that trials be case managed to ensure defence disclosure is on par with prosecution disclosure. The amendment should not be supported.

The Hon. R. S. L. JONES [3.17 p.m.]: One of my major concerns is that so much of the substance of the sweeping changes to the criminal law is being left to regulations. I agree with the submission of the New South Wales Bar Association on this matter, which stated:

> Pre-trial disclosure of the kind contemplated here fundamentally changes the structure of the criminal law in NSW. It places substantial and never before seen burdens on the accused person and their legal representative. If there is to be a regulation of this type pre-trial disclosure must be the subject of legislation not regulation. The NSW Bar Association strongly opposes any system of pre-trial disclosure that is not incorporated into legislation as determined by Parliament.

In a letter to my office dated 13 November Justice Vincent of the Victorian Supreme Court also expressed concern about so much reform to the criminal justice system being left to regulations. His Honour said:

> The scheme in Victoria is different to that which is proposed in NSW, as Victoria has a clearer statutory scheme

His Honour indicated that he would not be comfortable with such matters being left to regulations. I am glad that the Opposition has agreed to support the amendment, which is very wise indeed.

Reverend the Hon. F. J. NILE [3.19 p.m.]: My concern is twofold. First, should the regulations be part of the legislation? We have never before placed regulations in legislation; that is a new approach, although people may argue that the regulations cover important material. Second, the regulations as included in the legislation have been changed and this has undermined the purpose of the bill. As the Minister for Mineral Resources said, all honourable members should understand that the amendment is incorporating not the Government's regulation but changed regulations, according to the views of the Hon. P. J. Breen, the Law Society, and others, and, as I said, this virtually undermines the purpose of the legislation.

The Hon. P. J. BREEN [3.19 p.m.]: Reverend the Hon. F. J. Nile makes a valid point if it were the fact that my amendment made substantial changes to the regulations. But they are not substantial changes. The items identified by the Minister were exactly the same items identified by the Treasurer in his speech in reply to the second reading debate. Both Ministers read out the following provisions in the defence response: insanity, self-defence, provocation, accident, duress, claim of right, automatism and intoxication. The reason for deleting the provisions from the regulation is that on their own the so-called defences do not throw any light on the case. The first category recommendation of the Law Reform Commission was that the defences should be listed. The Law Reform Commission then stated:

> The second category is the recommendation that, in particular cases, the defence may be required to state in general terms the case intended to be presented as to why he or she is not guilty, identify those aspects of the Crown case which are in issue and indicate in general terms the factual nature of the case to be made in respect of each of those aspects. The defendant should not be obliged to disclose the specific non-expert evidence …
>
> This requirement is aimed at the same objects as the first category but will be applied only in those cases where the first category of disclosure is inapplicable or insufficient …

In other words, it is not sufficient to simply disclose a defence. As I said earlier, unless there is a power in the court and in the legislation to also require general explanation about the defence, the circumstances of the defence and the people involved in the evidence that is to be given, for a person simply to plead accident, self-defence, automatism or intoxication is quite useless in terms of pre-trial disclosure.

The Government's regulations have taken two aspects of the Law Reform Commission's report. They have implemented the first aspect but completely ignored the second aspect. That is why the provisions are

deleted from the regulation. My changes to the regulations are minor amendments. In fact, most of them were made by Parliamentary Counsel, not me. The argument that the regulation has been altered in such a way as to make it either unrecognisable or something other than what the Government intended is quite wrong.

Reverend the Hon. F. J. Nile also referred to the history of regulation as opposed to making laws by regulation. This legislation deals with fundamental principles of justice. It involves principles that go back hundreds of years. If we are to make changes to the law in relation to those principles, it is necessary that those changes be made in legislation and not by executive power. That is the purpose of incorporating the regulation in the bill. As I have said, the bill already contains provision for the Attorney to make regulations. The Minister can make regulations to his heart's content, but, apparently, not about principles involving fundamental questions of due process rights.

The Hon. Dr A. CHESTERFIELD-EVANS [3.23 p.m.]: I wish to comment on the matters raised by Reverend the Hon. F. J. Nile. The honourable member said that the incorporation of a regulation sets a precedent. I do not think we should be timid about that. We should have control of what is happening. The inclusion of a regulation in legislation would seem to suggest that this is not a delegated power.

Reverend the Hon. F. J. Nile: You do have control; you can disallow the regulation.

The Hon. Dr A. CHESTERFIELD-EVANS: To answer the interjection, yes, one can disallow a regulation, but that tends not to happen and regulations tend to be subject to far less scrutiny of detail than legislation is. While I realise regulations can be disallowed, that tends not to happen if a small nuance of evidence is picked up by the Regulation Review Committee, published in the *Government Gazette* and debated in this House. Accordingly, disallowance tends to happen at the Minister's discretion. I do not agree with the suggestion that it is somehow bad to amend regulations, as though they are sacred when really they may deal merely with trivial matters or arrogating pieces of legislation. I would argue that provisions that should be included in legislation may be included in regulations.

Increasingly, legislation contains such phrases as "the Minister shall" or "the Minister may". Effectively, this means that the House passes its power to the Minister and to regulations, although I wonder to what end. I do not think we should be timid about incorporating regulations in bills if they deal with matters as important as this matter. If a regulation were incorporated in a bill and the Parliament wished to change it, it would be changed without too much concern for anyone. Every day in this Parliament we delete and add sections to bills. If this provision is thought to be so trivial as to be included in a regulation, surely one should not blanch at this House changing the regulation in the way suggested by the Hon. P. J. Breen, particularly as it seems that everyone who is substantially involved in the criminal law supports his proposal.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 22

Mr Breen	Mr M. I. Jones	Mr Samios
Dr Chesterfield-Evans	Mr R. S. L. Jones	Mrs Sham-Ho
Mr Cohen	Mr Lynn	Mr Tingle
Mr Corbett	Mr Oldfield	Dr Wong
Mr Gallacher	Mr Pearce	
Miss Gardiner	Dr Pezzutti	*Tellers,*
Mr Gay	Ms Rhiannon	Mr Colless
Mr Harwin	Mr Ryan	Mr Jobling

Noes, 15

Dr Burgmann	Mr Johnson	Mr Tsang
Ms Burnswoods	Mr Macdonald	
Mr Della Bosca	Mrs Nile	
Mr Dyer	Revd Nile	*Tellers,*
Mr Egan	Mr Obeid	Mr Primrose
Ms Fazio	Ms Saffin	Mr West

Pairs

Mrs Forsythe	Mr Hatzistergos
Mr Moppett	Ms Tebbutt

Question resolved in the affirmative.

Amendment agreed to.

The Hon. P. J. BREEN [3.32 p.m.], by leave: I move Reform the Legal System amendments Nos 3 and 4 in globo:

No. 3 Page 5, schedule 1 [2] (proposed section 47E (4)), lines 20-26. Omit all words on those lines. Insert instead:

(4) **No comment to jury**

Comments or submissions with respect to a failure by the accused person to comply with pre-trial disclosure requirements may not be made in the presence of the jury, whether by the judge or the prosecuting authority.

No. 4 Page 5, schedule 1 [2] (proposed section 47E (5)), lines 30 and 31. Omit "or to comment on any non-compliance by the accused person".

These amendments address a significant problem with comments to the jury in relation to failure by a party to comply with pre-trial disclosure. As it stands, the judge or a party with leave of the court may comment to the jury, provided the comment does not imply that the accused failed to comply with pre-trial disclosure because he or she is guilty of the offence. These may seem like innocuous provisions but, as the Law Society points out, the application of similar provisions, both under common law and the Evidence Act, has been problematic. Many appeals have centred on whether or not comments made to juries have been appropriate or lawful. If any comment is made about failure to comply with pre-trial disclosure and the jury can infer the guilt of the accused person from that comment, the accused will walk free on appeal. That is exactly the opposite of the intention of the legislation.

Given the importance of the law and order agenda, I had hoped that this issue would be supported by the major parties. While criminal lawyers and civil libertarians argue that it is better for 20 guilty people to go free than for one innocent person to be found guilty, this conviction is not part of the law and order agenda. In these circumstances, these amendments should be agreed to as they provide one less opportunity for guilty persons to go free. The Law Society points out that the existing provisions as they stand in the bill allow comment to the jury on the failure of the accused to comply with pre-trial disclosure. If that happens, it will perpetuate the problem of numerous appeals on this ground. As the Law Society also points out, if the purpose of comment is not to imply in some way the guilt of an accused, there seems little reason for making comment at all. I commend the amendments.

The Hon. R. S. L. JONES [3.34 p.m.]: I strongly support the amendments moved by the Hon. P. J. Breen. When a similar bill was introduced in Victoria, the Labor Opposition expressed strong views on the danger of permitting a judge to comment on the failure of an accused to comply with pre-trial disclosure requirements. The Victorian Opposition called it "an extraordinary procedure". That comment applies equally to this bill. It is an extraordinary procedure whereby the judge is given the power to comment on the failure of an accused to disclose. The Government seems confused as to the purpose of the section.

Why include proposed section 47E (4)—which prohibits a judge from suggesting to the jury that the accused did not comply with pre-trial disclosure because he or she is guilty—and yet permit the judge to comment at all? What other purpose is there to the judge's comments if he or she is not permitted to suggest that the accused is guilty? History and experience show us that when similar provisions have been introduced in the common law and the Evidence Act the courts have had more work, as lawyers contest the perceived bias or potential misdirections given to juries by judges. If the aim of the bill is to streamline cases and get a quicker justice system, this is plainly not the way to do it.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.35 p.m.]: The Government does not support these amendments. The amendments are aimed at preventing a judge commenting upon the failure of a defence to comply with the regime. Already the ability to comment is limited to the extent that a judge cannot suggest the guilt of an accused if the judge comments upon the defence not complying with an aspect of the pre-trial disclosure regime. The ability to comment is available where a judge feels that it is

relevant to the management of the case to make a jury aware of the pre-trial disclosure regime and the failure of a party to comply with that regime. A jury should be able to know that a party has not complied with a court-imposed case management program. A party is on notice that a judge can make such a comment. The guilt or otherwise of an accused is not addressed in that context.

Amendments negatived.

Schedule 1 as amended agreed to.

Schedule 2

The Hon. P. J. BREEN [3.36 p.m.]: I move Reform the Legal System amendment No. 5:

No. 5 Page 10, schedule 2 (proposed section 15A(3)), lines 18-22. Omit all words on those lines. Insert instead:

(3) Police officers investigating alleged indictable offences also have a duty to retain any such documents or other things for so long as the duty to disclose them continues under this section. This subsection does not affect any other legal obligation with respect to the possession of the documents or other things.

(4) The regulations may make provision for or with respect to the duties of police officers under this section, including for or with respect to:

(a) the recording of any such information, documents or other things, and

(b) verification of compliance with any such duty.

This amendment addresses the issue of police officers retaining documents or other things for as long as the pre-trial disclosure duty continues. This is an important amendment because it brings the duty to retain documents into the legislation rather than leaving it to the regulations. As the video shown in the foyer of Parliament House says, the Executive Government does not make laws. Here is a law that quite properly falls under the jurisdiction of this Chamber. Too much police work is already left to regulation. I have previously given the example of police refusing to provide witnesses with a copy of their statements. The bill as it stands, with the regulations incorporated, has solved a large number of problems. However, this issue also needs to be included. The amendment is a small measure to bring police involved in a pre-trial disclosure under the umbrella of the bill. I commend the amendment.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.38 p.m.]: The Government can support this proposal that police must retain relevant documents.

The Hon. Dr B. P. V. Pezzutti: Will the Government support it?

The Hon. E. M. OBEID: We can support it.

The Hon. Dr B. P. V. Pezzutti: You can?

The Hon. E. M. OBEID: If the Hon. Dr B. P. V. Pezzutti listened to the answer he might ask a sensible question. I understand the police retain documents in any case. However, the amendment reminds them of the duty and prescribes it in the process to make pre-trial disclosure work effectively.

The Hon. Dr B. P. V. PEZZUTTI [3.38 p.m.]: A person being prosecuted has to declare any witnesses or evidence he wishes to rely on to support his innocence. What added protection has been put in this bill to penalise police who tamper with those witnesses or that evidence?

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.39 p.m.]: I will seek advice. I understand that the Leader of the House, the Hon. M. R.l Egan, has already answered this query. His remarks were addressed to the Hon. Dr B. P. V. Pezzutti but I will repeat what was said by the Leader of the House, even though it may take up Hansard's time. The Hon. Dr B. P. V. Pezzutti wants an assurance that when an accused person supplies names and addresses of witnesses, there are measures to prevent police from harassing witnesses. As the honourable member noted, this is a serious offence.

The proposal that witnesses should provide names and addresses comes from the Law Reform Commission to the police so that police can check antecedents, but it applies only to character witnesses. Those witnesses cannot be interrogated by police without the leave of a court. This proviso is contained in the draft

regulations. The proposal streamlines the trial process and assists the court. The defence is on notice that the antecedents of character witnesses will be checked.

Amendment agreed to.

Schedule 2 as amended agreed to.

Schedule 3 agreed to.

Title agreed to.

Bill reported from Committee with amendments and report adopted.

Third Reading

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.42 p.m.]: I move:

That this bill be now read a third time.

The Hon. P. J. BREEN [3.42 p.m.]: I move:

That the question be amended by the addition of the following paragraphs.

2. That the provisions of the Criminal Procedure Amendment (Pre-Trial Disclosure) Bill, as passed by the House, be referred to the Standing Committee on Law and Justice for inquiry and report, together with the system of pre-trial disclosure in New South Wales including:

    (a) the provision of funding to various legal bodies required to undertake pre-trial disclosure, including but not limited to:

        (i) the Legal Aid Commission,

        (ii) the Office of the Director of Public Prosecutions,

        (iii) the Public Defenders,

        (iv) the Sydney Regional Aboriginal Corporation Legal Service and other Aboriginal legal services, and

        (v) any other legal service,

    (b) the frequency and type of pre-trial disclosure orders made in the Supreme Court and District Court,

    (c) the rate of compliance with pre-trial disclosure requirements by:

        (i) legally aided defendants,

        (ii) privately funded defendants,

        (iii) Police,

        (iv) the Office of the Director of Public Prosecutions,

    (d) the impact of pre-trial disclosure requirements on unrepresented defendants,

    (e) the effect of pre-trial disclosure requirements on court delays and waiting times in the Supreme Court, District Court and the Court of Criminal Appeal,

    (f) the effect of pre-trial disclosure requirements on the doctrine of the right to silence,

    (g) the effect of pre-trial disclosure requirements on the doctrine of the presumption of innocence,

    (h) the effect of pre-trial disclosure requirements on the doctrine of the burden of proof resting with the prosecution,

    (i) any other matter arising out of or incidental to these terms of reference.

3. That the Committee report within 18 months from the date of commencement of the bill, as assented to.

The Hon. J. M. SAMIOS [3.43 p.m.]: The Opposition supports the proposal.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.44 p.m.]: The Government is already committed to the legislation being reviewed after 18 months, and that is provided for in the bill. However, the Government understands that some members are concerned that the regime work effectively, be adequately resourced, and not disadvantage legitimate defence tactics. The Government has that same commitment. The Government has no difficulty in accepting the proposal that the Standing Committee on Law and Justice also monitor the impact of the legislation and report after an appropriate review stage.

Reverend the Hon. F. J. NILE [3.44 p.m.]: In view of the various matters that have been referred to the Standing Committee on Law and Justice, will the Government give an assurance that the committee will have the resources to monitor the various provisions that have now been referred to it in addition to the references it already has?

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.45 p.m.]: I am advised that the chairman of the committee believes there are sufficient funds and that the committee would examine these matters in the last six months of that 18-month period.

Amendment agreed to.

Motion as amended agreed to.

Bill read a third time.

LAW REFORM (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Second Reading

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.46 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 amendments to the Law Reform (Miscellaneous Provisions) Act 1965 is to introduce model provisions approved by the Standing Committee of Attorneys-General, which overcome the effect of the High Court decision in *Astley v Austrust* (1999) 73 ALJR 403, by enabling damages awards in actions for breach of contract to be reduced for contributory negligence. The Law Reform (Miscellaneous Provisions) Act provides for the apportionment of liability in negligence cases where a person suffers damage which is partly the person's own fault—that is, contributory negligence—and partly the fault of another. Other State and Territory jurisdictions have corresponding provisions commonly referred to as apportionment legislation. At common law the defendant could generally raise the contributory negligence of the plaintiff as a complete defence to a claim.

The Law Reform (Miscellaneous Provisions) Act modified the common law by providing for apportionment of damages in cases of contributory negligence. The apportionment legislation requires the court, where it finds contributory negligence, to reduce the damages otherwise payable to a plaintiff in proportion to the plaintiff's responsibility for the damage. For example, where a court assesses a plaintiff's damages as $100,000 but finds that the plaintiff is 20 per cent responsible for the damage suffered, the award is reduced by 20 per cent—that is, it is reduced by $20,000 to $80,000. A plaintiff will often allege more than one cause of action. Some contracts contain an express or implied term that one of the parties has a duty to act with reasonable care. If that duty is breached in some circumstances the other party may be able to sue for breach of duty of care both in tort and in contract.

Invariably, claims in contract and in negligence will be concurrent—that is, if the plaintiff is successful, the circumstances will be found to be both a breach of contract and negligence. The Astley case required the High Court to examine the issue of contributory negligence where there is concurrent liability in tort—that is, negligence and contract. Prior to Astley the conventional understanding was that the apportionment legislation would apply, whether a cause of action was in contract and/or negligence. In Astley the High Court affirmed the existence of concurrent liability in tort and contract for those relationships based on a contract for services. However, the High Court denied the application of apportionment legislation to reduce an award of damages for breach of contract based on the plaintiff's contributory negligence.

The High Court held that although there was contributory negligence, the plaintiff was nevertheless entitled to recover the whole of the damages because, on a strict interpretation of the relevant clause of the South Australian apportionment legislation, it did not apply to a claim in contract. Although the case involved consideration of the South Australian apportionment legislation, the relevant provisions are virtually identical to the corresponding provisions in the New South Wales Act and the legislation of other

Australian jurisdictions. The practical effect of Astley is that although the plaintiff may have contributed to the loss, there can be no reduction in damages under the apportionment legislation for claims where the defendant's negligence is also a breach of a contractual duty of care.

Accordingly, where a plaintiff makes a successful claim in both negligence and contract, the defendant will be liable for 100 per cent of the damages, despite any contributory negligence by the plaintiff. The consequence of Astley is that the damages defendants must pay in these matters will increase. This can be expected to have a flow-on effect to insurance premiums, for example, higher professional indemnity insurance premiums and increased workers compensation costs. The Standing Committee of Attorneys-General has approved model contributory negligence provisions amending the apportionment legislation to address the decision in Astley. The model provisions propose amendments to the apportionment legislation so that its provisions relating to the apportionment of liability in circumstances where there is contributory negligence will apply to actions for damages for breach of a contractual duty of care that is concurrent and co-extensive with a duty of care at common law.

The application of the apportionment principle where contributory negligence is established is, however, subject to any contractual defence a plaintiff may raise. The proposed amendments would enable a court, in determining contract claims for breach of a duty of care, to reduce damages awards if the plaintiff is partly at fault in causing the damage. This would achieve an outcome which reflects the conventional understanding of the operation of the apportionment legislation prior to Astley. The model provisions also provide for the amendments to apply retrospectively to causes of action, except for those matters in respect of which a court has given judgment or the parties have entered into an agreement to settle the claim. The bill also rewrites the apportionment provisions in plainer language. I commend the bill to the House.

The Hon. J. M. SAMIOS [3.46 p.m.]: The Opposition does not oppose the Law Reform (Miscellaneous Provisions) Amendment Bill. The object of the bill is to amend the Law Reform (Miscellaneous Provisions) Act 1965 to provide that in certain circumstances the damages liable to be paid by a person who is being sued for breach of a contractual duty of care are to be reduced to the extent of any contributory negligence by that person. By way of background, I mention that at common law a defendant being sued for a tort could generally raise the contributory negligence of the plaintiff as a complete defence to the claim, that is to say, if the damage suffered by the plaintiff was partly due to the plaintiff's failure to take reasonable care, the plaintiff could not recover any damages at all from the defendant. For example, a pedestrian injured by a speeding vehicle would not be able to claim damages if the pedestrian had contributed to the accident by failing to keep a proper lookout for vehicles.

I am informed that recently the High Court of Australia stated in *Astley v Austrust* (1999) 197 CLR 1 that the apportionment provisions contained in the South Australian Wrongs Act 1936 applied only to claims for damages in tort and did not apply to claims for breach of a contractual duty of care. In this regard, there is a difference between tort and contract and, as a result, if a plaintiff sued a defendant for breach of a duty of care in both contract and tort, the plaintiff's damages may be reduced for contributory negligence in the claim in tort, but not in the claim in contract.

As honourable members would no doubt know, contract law has never allowed for contributory negligence. Although the law has now been changed by the High Court decision, the purpose of this bill is to amend the Law Reform (Miscellaneous Provisions) Act to provide that in certain circumstances the damages recoverable by a person who sues for contractual breach of a duty of care are to be reduced to the extent of any contributory negligence by the plaintiff, as I stated earlier.I note that the Hon. R. S. L. Jones will move amendments in this regard. The Opposition will deal with that as is appropriate as we proceed with the matter. At this stage the Opposition will not oppose the legislation to remedy the situation following the decision in the Astley case.

The Hon. Dr P. WONG [3.50 p.m.]: The Unity party will support the legislation, which will restore the previously understood legal position and enable damages awards for breaches of contract to be reduced for contributory negligence. I note that the bill was introduced following a decision of the High Court in *Astley v Austrust* (1999) 73 ALJR 403. The practical effect would be that if the plaintiff makes a successful claim in both negligence and contract, the defendant would be liable for 100 per cent damages, despite any contributory negligence by the plaintiff. In addition, I will support the amendments to be moved by the Hon. R. S. L. Jones, which will remove the retrospective element of the bill.

The Hon. R. S. L. JONES [3.51 p.m.]: I support the Law Reform (Miscellaneous Provisions) Amendment Bill with my proposed amendments. This matter was raised on 24 November in the other place by the honourable member for Gosford. The Minister explained that retrospectivity occurred in Victoria and Tasmania, and he felt that it should also occur in New South Wales. However, I understand that the Minister has had second thoughts about that, as has the honourable member for Gosford and the Opposition. I will move an amendment to change clause 3 (2) of proposed schedule 1, under the heading "Amendments concerning contributory negligence to have retrospective application", to remove the retrospective aspect of the bill. The provisions of the bill should come into effect only on the date of the commencement of the bill; that is, the

existing law will apply to matters in which proceedings have been filed but no judgment or settlement has been entered into. The new contributory negligence provisions will apply to proceedings concerning wrongs that occurred before the commencement of the Act, but where proceedings were commenced after the commencement of the Act. Andrew Tudhope, Director of Injuries Australia, an organisation representing claimants, stated in a recent letter to me:

> We are particularly concerned about the retrospective application that the Act may have.
>
> If the Act is to be retrospective it could have a substantial impact on the position of many who have brought claims relying on a breach of contract. For some those claims may not have been brought if the claimant was aware that the amount of their damages may be reduced as a result of the contributory negligence.
>
> Many claims have been brought based on the breached contract for the sole purpose of avoiding the contributory negligence deductions that are ordinarily made where claims are based on breach of duty of care or tort. Those Claimants would not have made a claim if the value of the claim was not sufficient to justify the costs.
>
> If a claimant now finds that as a result of the retrospective application of the Act, their claim is not worth pursuing they will find themselves not only responsible for their own legal fees but that of the Defendant/Insurance Company as well, should they wish to withdraw their claim. The Claimants could well find themselves locked into their claim simply because they cannot afford to meet the cost of withdrawing their claim.
>
> If they were to proceed they may well find themselves in a position where their legal costs are more than the amount of damages after deduction for contributory negligence.
>
> In the circumstances we respectfully propose that a fair outcome would be for the Act to apply from the date of assent so as not to affect those claims that have been started.

My amendments, which I will move at the Committee stage, would give practitioners time to become aware of the new system. They would also ensure that claimants are not disadvantaged by relying on what will now be incorrect legal advice, and eliminate the risk that they could incur additional legal expenses in an attempt to withdraw from an existing action. I thank the Government and the Opposition for their support for the proposed amendments.

The Hon. Dr A. CHESTERFIELD-EVANS [3.54 p.m.]: The law provides that in certain circumstances the damages recoverable by a person who sues for breach of the contractual duty of care are to be reduced to the extent of any contributory negligence by the person. This bill went through the lower House on the voices with no opposition. It is surprising to note that there has been no lobbying from the Bar Association, the Law Society or anyone else. The amendments to be moved by the Hon. R. S. L. Jones will eliminate the retrospective element of the bill, which is sound and worth supporting. I note that the Government will accept his amendments. The bill is a model bill following a meeting of the Standing Committee of Attorneys-General. Similar legislation exists in Victoria and Tasmania, and has a retrospective element. We support the bill and the amendments to be moved by the Hon. R. S. L. Jones. The briefing paper provided by the Government states that the practical effect of legislation is that the damages the defendant must pay in these matters will increase, and this can be expected to have a flow-on effect for insurance premiums and workers compensation costs.

The bill was originally retrospective in an attempt to limit the increase in costs. The amendments to be moved by the Hon. R. S. L. Jones are sound in sentiment. The acceptance of the amendments by the Government will cost money, which is interesting. Representatives from the Attorney General's Department were unable to provide any figures on how many cases are currently in the process since the Astley precedent was set. I find it is remarkable, as the bill is designed to save money in damages and therefore insurance premiums, but the department cannot even provide information on how many cases currently exist. This means that acceptance of the amendments to be moved by the Hon. R. S. L. Jones would be at unknown cost to the legal fraternity. Although I will support the amendments to remove the retrospective element of the bill, I am surprised that no costings have been done. Perhaps the Minister will address that in his reply. We will support the bill and the amendments to be moved by the Hon. R. S. L. Jones.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.55 p.m.], in reply: I thank all honourable members for their general support for the bill. In Committee the Government will address the amendments to be moved by the Hon. R. S. L. Jones in relation to retrospectivity.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Schedule 1

The Hon. R. S. L. JONES [3.57 p.m.], by leave: I move my amendments Nos 1 and 2 in globo:

No. 1 Page 8, schedule 1 [4], line 3. Insert "and clause 4" after "subclause (2)".

No. 2 Page 8, schedule 1 [4]. Insert after line 17:

4 Pending court proceedings

(1) This clause applies to proceedings before a court concerning a wrong that:

(a) were instituted before the commencement of the amending Act, and

(b) have not been finally determined by the court before that commencement.

(2) Proceedings to which this clause applies are to be determined as if the amending Act had not been enacted.

(3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had the amending Act not been enacted continue to apply to the proceedings as if that Act had not been enacted.

It has long been a Democrats tradition—and I was a proud member of the Democrats for very many years—to remove retrospectivity from legislation. These amendments are in line with Democrats policy. I am happy to move them.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [3.58 p.m.]: The Government supports both amendments moved by the Hon. R. S. L. Jones. In relation to the question asked by the Hon. Dr A. Chesterfield-Evans, there is no capacity to know how many cases involving Astley principles are on foot, as it depends essentially on the finding of the judge at the end of the proceedings that contributory negligence has been made out.

Amendments agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Title agreed to.

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

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

EMPLOYEE ENTITLEMENTS COMPENSATION SCHEME

The Hon. M. J. GALLACHER: My question without notice is to the Special Minister of State, and Minister for Industrial Relations. On Tuesday the Minister informed the House of his five-point plan to deal with unpaid employee entitlements. He said:

> In the near future, I expect … to provide more detail of the five-point plan in relation to options … this is a complex matter, one which involves a potentially lengthy public debate about the options.

In view of the Minister's continuing preference for his five-point plan as a viable alternative to the Employee Entitlement Support Scheme, will the Minister undertake to provide to the House today a definite date on which an official document with comprehensive details of his five-point plan will be made available?

The Hon. J. J. DELLA BOSCA: That is a good question. I congratulate the Leader of the Opposition for being on the ball.

The Hon. M. R. Egan: I don't think he is. I think you have just misled the House.

The Hon. J. J. DELLA BOSCA: I apologise if I have done that. I thought it was a good question because he has accurately recounted my answer. Before the end of this year, which is less than one month away, I expect to be in a position in my own right, or jointly with Ministerial colleagues from interstate, to produce a broadly based discussion paper on my five-point plan. I hope it will have other elements incorporated in it. I cannot give the Leader of the Opposition or the House a firm date for the proposition but honourable members can be assured that it will be dispatched with every bit of efficiency that I can muster.

STEEL TANK AND PIPE MANUFACTURING COMPANY WORKERS ENTITLEMENTS

The Hon. P. T. PRIMROSE: My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. What are the latest developments relating to employees of the Steel Tank and Pipe Manufacturing Company?

The Hon. J. J. DELLA BOSCA: I thank the honourable member for his interest in workers' entitlements and his concern about the plight of members of the Australian Manufacturing Workers Union [AMWU] who are employees of the Steel Tank and Pipe Manufacturing Company. I am pleased to advise that employees of Steel Tank and Pipe at Newcastle voted this morning to return to work. This will allow the company to meet outstanding contracts and sell entities as going concerns. This development will enable employees to receive 70 to 80 per cent of outstanding entitlements, and there is growing optimism that the figure will increase to 100 per cent. The efforts of the Australian Manufacturing Workers Union and its members must be acknowledged. The AMWU has been firmly committed to securing the rightful entitlements of employees of Steel Tank and Pipe. However, it is fair to say that much credit should be given to Vi Weeks who has stepped aside as a secured creditor, thereby allowing the entitlements of approximately $1.25 million to be accessed by the workers.

It is a pity that the benevolence afforded by Vi Weeks did not extend to her sons, Stephen and Brad. Those two gentlemen, by their corporate restructuring maneuvers, have been responsible for placing 150 workers and their families across the nation under extreme financial and emotional turmoil during the past four weeks. Valuable lessons can be learned from this whole sorry saga. The Steel Tank and Pipe solution was predicated on the basis of a truly national approach to the question of employee entitlements. This Patrick's-type corporate restructuring exercise was performed under the auspices of the Federal Corporations Law, which failed to protect the interests of employees and left them financially high and dry from the east to the west coast of Australia. The hastily ill-conceived Employee Entitlement Support Scheme, referred to by the Leader of the Opposition in the earlier question, would not have delivered the outcomes that Steel Tank and Pipe workers were able to achieve. This fact was easily recognisable to the workers of Steel Tank and Pipe as it was to the New South Wales Government.

A taxpayer-funded scheme only serves to give the green light to many employers to evade their payroll responsibilities, comfortable in the knowledge that the Government, and therefore the taxpayer, will pick up the tab for their bad behaviour. This example provides further justification for the New South Wales Government to press the Federal Government to co-operate with the joint States' proposal for a national scheme, funded by employers not taxpayers, and one that provides for 100 per cent of what is owed to employees.

CANADA BAY LOCAL GOVERNMENT ELECTION

The Hon. D. J. GAY: My question is to the Minister for Mineral Resources, representing the Minister for Local Government. Can the Minister explain why Councillor Leo Kelly has been nominated to chair the inaugural meeting of the City of Canada Bay? Does the Minister agree that Leo Kelly is definitely not an impartial chairman, given his close links with the Australian Labor Party, and given that he handed out how-to-vote cards for former Concord Mayor Peter Woods at the Korean church polling booths at the Canada Bay election, and given that he is Peter Wood's deputy at the local government conference of Australia? Will the Minister reconsider the decision and appoint a truly independent chair in the interests of true democracy for Canada Bay?

[*Interruption*]

It is interesting that the Labor Party finds no problem with the fact that this bloke was handing out how-to-vote cards for a person who wanted to be mayor and is trying to defend him. What a mob of rorters!

The PRESIDENT: Order! Members should remember that interjections are disorderly. The Deputy Leader of the Opposition should ask his question without being sidetracked by interjections.

The Hon. E. M. OBEID: I thought this question was going to be relevant to my portfolio, and I am disappointed. Former Mayor of Concord Peter Woods is not a member of the party.

The Hon. D. J. Gay: It is about doing the right thing and Leo Kelly was handing out how-to-vote cards for Woods, who he will be standing for mayor. You can't defend it.

The Hon. E. M. OBEID: I do not attempt to defend the actions of Peter Woods, nor can I explain the circumstances in which the chairman was appointed. I will get an answer for the Deputy Leader of the Opposition from my colleague in the lower House. I am sure that the Hon. Harry Woods will convey an appropriate answer to this House.

DEPARTMENT OF DEFENCE LAND SALE

The Hon. D. E. OLDFIELD: My question is to the Treasurer. Has the Government been recently consulted about intended massive sell-offs of Department of Defence land around Sydney, particularly within the region of Sydney Harbour? Is the Government concerned about Federal Government plans to maximise the value of such Department of Defence lands and the consequential threat of serious overdevelopment of those sites?

The Hon. Dr B. P. V. Pezzutti: It's not even true.

The Hon. M. R. EGAN: If the Hon. Dr B. P. V. Pezzutti says it is not true, it probably is! So, with a great deal more concern than I would have had a moment ago, I will refer the honourable member's question to my colleagues the Premier and to the Minister for the Environment to ascertain the latest situation. I would be suspicious if the Hon. Dr B. P. V. Pezzutti is saying there is nothing to be worried about.

ELECTRICITY DISTRIBUTORS FINANCIAL PERFORMANCE

The Hon. A. B. KELLY: Could the Treasurer please provide the House with information on the financial performance of the State's electricity businesses during the 1999-2000 financial year?

The Hon. M. R. EGAN: I thank the Hon. A. B. Kelly for an important question.

The Hon. D. J. Gay: It's all here. It's all negative.

The Hon. M. R. EGAN: It's all negative?

The Hon. D. J. Gay: I can actually read a balance sheet.

The Hon. M. R. EGAN: Integral Energy in 1999-2000—the year that yesterday's report relates to—made a profit after tax of $112 million, and the Deputy Leader of the Opposition says it is negative! He does not understand that a $112 million profit after tax is what it says. It is a profit. The other day I had to advise Opposition members to go to the dictionary to find out what the word "policy" means. They should now go to the dictionary to find out what the word "profit" means. Do you want the page reference?

The Hon. D. J. Gay: No. Look here, brackets, loss. Down, loss.

The Hon. M. R. EGAN: Do you want the page reference?

The Hon. E. M. Obeid: Read it out to him.

The Hon. M. R. EGAN: It is on page 58: a profit after tax of $112 million for 1999-2000. What sort of Opposition is this? Is it any wonder that for the first time since opinion polls have been undertaken an

Opposition has fallen below 30 per cent of the vote! It is 29.5 per cent for both of them, the Liberal Party and the National Party! For the first time since polls records have been kept they are now below 30 per cent. No wonder they do not know what a $112 million profit is; they cannot get over 30 per cent themselves! They keep going down and down. This time next year, unless they improve their performance and put in some overtime, it will not be 29.5 per cent, it will be 19.5 per cent! The annual reports of the State's electricity businesses for 1999-2000 were tabled yesterday. The State's electricity businesses provided total dividends and tax equivalents of approximately $650 million in 1999-2000 on an accrual basis. The comparable figure for 1998-99 is $664 million. The performance of the electricity generators generally improved in 1999-2000 because of higher wholesale prices.

Overall the electricity distributors have slightly increased their dividends. However, total tax equivalent payments for the distributors have declined largely because of adjustments made by EnergyAustralia, Integral Energy and NorthPower. The Auditor-General determined in September this year that capital contributions paid to electricity distributors by developers and others connecting new areas to the power grid were not taxable. This meant that distributors wrote off tax debts from past capital contributions that they were carrying in their accounts leading to significant and unexpected reductions in the business tax equivalent payments in 1999-2000. The actual 1999-2000 result for total distributions is below the 1999-2000 figure included in the 2000-01 budget of around $700 million.

The decline on budget estimates once again is explained by the change to the tax status of capital contributions that took place after the budget was framed. While our businesses can always do better, this is a satisfactory overall performance. The national electricity market is still developing and is inherently volatile and complex. This complexity will increase over the next two years as we move towards full retail contestability. To ensure our businesses are able to perform well in the national market, the State Government has set up the Market Implementation Group located in Treasury. Leading consulting firm Frontier Economics is contracted to provide services to the Market Implementation Group. As part of the contract, Professor Don Anderson is undertaking the role of Director, Energy Reform within the Market Implementation Group. It is estimated that between 1999 and 2001 the State Government will spend around $8 million on a range of projects co-ordinated by Professor Anderson.

The lion's share of this will be around $4 million to be spent preparing for full retail contestability. The Government is determined to see that full retail contestability delivers a fair go and fair prices for consumers. Obviously, we want to see our electricity businesses grow and thrive in an increasingly competitive environment. I shall now deal with each utility. Macquarie Generation provided a $56 million financial distribution for 1999-2000. This is slightly below 1998-99, but in line with estimates in the 2000-01 budget.

The Hon. D. J. Gay: Anderson is the highest paid public servant in this State.

The Hon. M. R. EGAN: Professor Anderson is not a public servant.

The Hon. D. J. Gay: But you pay him through a consultancy.

The Hon. M. R. EGAN: That is true, he is paid through a consultancy.

The Hon. D. J. Gay: The highest paid person in this State.

The Hon. M. R. EGAN: He could be.

The Hon. D. J. Gay: Is it close to a million dollars?

The Hon. M. R. EGAN: No, it is not. During 1999-2000 Macquarie renegotiated its coal contracts. These have had a short-term cost but will provide long-term benefits. The 1999-2000 distribution from Delta Electricity is $126 million, an increase on 1998-99 and above the 2000-01 budget estimate. This is largely because of higher wholesale prices. Pacific Power will provide a $49 million distribution in respect of 1999-2000. This is an increase of 1998-99 and above the distribution estimated in the 2000-01 budget. The improvement on 1998-99 was partly because of increased tax equivalent payments. Pacific Power paid no tax in respect of its 1998-99 result because of a large abnormal superannuation expense in that year. TransGrid provided a $73 million distribution for 1999-2000.

The Hon. J. F. Ryan: If you don't sell this crock, it's going to disappear on us.

The Hon. M. R. EGAN: Sorry, would you say that again? What did you say?

The Hon. J. F. Ryan: You heard.

The Hon. M. R. EGAN: I want Hansard to know what you said. The Opposition has been running all over the place saying that it is not selling the electricity industry. Is that right? Did the Hon. J. F. Ryan speak for the Opposition?

The Hon. J. F. Ryan: No.

The Hon. M. R. EGAN: Did the Hon. J. F. Ryan speak for the Opposition in saying that it should be privatised?

The Hon. M. J. Gallacher: Why don't you tell the truth?

The Hon. M. R. EGAN: I have been. That is what my whole answer is about. EnergyAustralia provided a $236 million dividend in 1999-2000. The dividend is higher than in 1998-99, but EnergyAustralia's overall distribution is down slightly because of a reduction in tax equivalent payments relating to the change in the tax status of capital contributions. Integral Energy's return to the budget in respect of 1999-2000 of some $30 million is down on 1998-99 due to poor returns from energy trading and retail activities and the change to the tax status of capital contributions. However, Integral's profit before tax in 1999-2000 was $82 million— a substantial increase on the $38 million pre-tax profit achieved in 1998-99.

Great Southern Energy's $61 million distribution is slightly below 1998-99 and in line with estimates contained in the 2000-01 budget. Advance Energy's $12 million distribution for 1999-2000 is slightly above 1998-99. NorthPower's distribution for 1999-2000 is down on 1998-99 and below estimates in the 2000-01 budget because of the change in the tax status of capital contributions and an associated drop in tax equivalent payments. Australian Inland Energy produced a $6 million distribution that is in line with 1998-99 and exactly in line with estimates contained in the 2000-01 budget. As I mentioned, the total receipts, in terms of dividends and tax equivalents, from the electricity businesses is some $650 million in 1999-2000.

ANZAC PARADE LIGHT RAIL CORRIDOR

Ms LEE RHIANNON: I direct my question to the Minister for Mineral Resources, representing the Minister for Transport. In light of the intention of the building trades group of unions to impose a green ban on the Anzac Parade to Randwick Junction light rail corridor, will the Government now move to protect that corridor so as to ensure that residents and visitors to that part of Sydney will have the opportunity to use world standard public transport services? Further, will the Government acquire the entire corridor or rezone the land covered by the corridor in order to stop development and so safeguard this important parcel of land?

The Hon. E. M. OBEID: I thank Ms Lee Rhiannon for her question, which requires detail. I will seek an answer from my colleague in the other House.

MOHAMMAD DIB

The Hon. C. J. S. LYNN: My question is to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. I refer to the recent arrest of Mr Mohammad Dib for the murder of a young mother at Lakemba last Monday week. He has also been charged with attempting to murder the woman's de facto husband and maliciously shooting at the couple's two-year-old son with intent to do grievous bodily harm. Is the Minister aware that this Mohammad Dib was already on bail awaiting trial for allegedly hindering the police investigation into the shooting deaths of Adam Wright and Michael Hurle outside the Five Dock Hotel in July 1998 and for perverting the course of justice in relation to the murder of Edward Lee, who was stabbed to death in Telopea Street, Punchbowl in October 1998? Can the Minister confirm that this is the same Mohammad Dib who attended the ALP Lakemba day branch meeting in the Federal electorate of Watson in late 1996 as a member and/or enforcer for Leo McLeay? What action will he take to ensure known and active criminals are expelled from ALP branches in Sydney's west?

The Hon. M. R. EGAN: I am not aware of the assertions that the Hon. C. J. S. Lynn makes. However, I will refer the question to the Minister for Police for a response.

POST- OLYMPICS CONSTRUCTION INDUSTRY SUCCESS

The Hon. I. M. MACDONALD: I ask a question of the Treasurer, and Minister for State Development. Will the Minister inform the House of the post-Games success of some of the construction companies involved in building our Olympic facilities?

The Hon. M. R. EGAN: The Olympic construction program, I think all honourable members would agree, was a remarkable endorsement of the capabilities of the New South Wales building and construction industry.

The Hon. J. F. Ryan: Another reading from an annual report.

The Hon. M. R. EGAN: What are you whingeing about?

The Hon. J. F. Ryan: Another reading from an annual report.

The Hon. M. R. EGAN: Amongst the lasting legacies of the Olympics for the people of New South Wales are, of course, our world-class sporting facilities. For the New South Wales construction industry, those facilities are a spectacular bricks and mortar advertisement for the industry. All up, about $3.3 billion of private and public money was spent building our Olympic venues. The magnificent Stadium Australia, the Aquatic Centre, the Dunc Gray Velodrome, the Ryde Aquatic Leisure Centre, the Olympic villages, the tennis and hockey centres, the international equestrian and shooting centres, the Sydney Superdome and the Olympic Park railway station are all outstanding achievements in Australian architecture and construction. Local companies are clearly benefiting from the international exposure generated by the Games. For example, Multiplex has won the construction contract for the development of Wembley Stadium in London.

The Hon. Dr B. P. V. Pezzutti: A great company.

The Hon. M. R. EGAN: Yes, it is a good company. Venue Revenue Services, which provided seating for a number of Games venues, has won an 8,000 seat contract in Prague. And Xypex is producing concrete waterproofing chemicals that are now being exported to south-east Asia. The Government's Building on Success post-Olympics business strategy is designed to generate even more wins for the New South Wales construction sector. Under the strategy, five building and construction market visits are planned for 2001 to Tokyo, Hong Kong, Guangzhou, Kuala Lumpur and Singapore. Those market visits will showcase the skills of the New South Wales industry in engineering, infrastructure development, building materials and related services. I congratulate all involved in the building of our wonderful Olympic venues. The workers on site, the contractors, the designers and the construction companies all worked together to build facilities that future Games hosts will only ever try to surpass.

WHOOPING COUGH IMMUNISATION

The Hon. HELEN SHAM-HO: I direct a question without notice to the Leader of the House, representing the Minister for Health. Is it the fact that there were 233 cases of whooping cough reported in New South Wales in June of this year, more than double the number reported last year? If so, can the Minister advise what action will be taken in order to reduce the prevalence of whooping cough infection in New South Wales? Given that whooping cough can be a potentially fatal disease for young children, and infants in particular, can the Minister further advise what the department will be doing to ensure that all children in this State are fully immunised against the disease?

The Hon. Dr B. P. V. Pezzutti: You should be immunising adults.

The Hon. M. R. EGAN: I think I have been immunised.

The Hon. Dr B. P. V. Pezzutti: But only as a child.

The Hon. M. R. EGAN: Does it last?

The Hon. Dr B. P. V. Pezzutti: No. I had it two years ago.

The Hon. M. R. EGAN: The Hon. Helen Sham-Ho asks an important question, which I will refer to my colleague the Minister for Health for a response.

CHINESE TRADE DELEGATION

The Hon. Dr B. P. V. PEZZUTTI: I address a question to the Treasurer, Minister for State Development, and Vice-President of the Executive Council, in his role as Minister for State Development. Could he please explain why there was no Minister present at Sydney airport yesterday to meet the 100-strong Chinese trade delegation, which is here to purchase our agricultural products? Would he agree that this constitutes a major insult to prospective business partners, especially as the Chinese place such importance on first impressions?

The Hon. M. R. EGAN: As the House is aware, the Government is always willing, indeed keen, to meet with foreign delegations that represent opportunities for new investment and job creation. But I understand that the private sector travel agent that made the arrangements for the Chinese delegation did not advise the New South Wales protocol office of the visit.

WORKERS COMPENSATION CLAIMANT FRAUD

The Hon. R. D. DYER: I ask the Special Minister of State, and Minister for Industrial Relations, whether he can advise the House of current WorkCover initiatives in targeting claimant fraud in the workers compensation system?

The Hon. J. J. DELLA BOSCA: WorkCover is implementing two new compliance projects targeting potentially fraudulent claimants. WorkCover has developed computer-based models for identifying fraud. One model identifies claimants who may have lodged multiple claims for the same injury. Another model identifies claimants who may be claiming benefits to which they are not entitled while working and receiving wages. WorkCover is recruiting two additional specialist fraud investigators who will review suspect claims and conduct comprehensive investigations. The two new fraud specialists will commence in February 2001 and will initiate immediate prosecution action against all claimants proven to have committed fraud against the scheme.

Fraudulent claimants will now face severe penalties as a result of tough new fraud provisions introduced by the Carr Government in the Workers Compensation Legislation Amendment Bill, which will commence operation in January 2001. These provisions extend the coverage of the Act to include all persons who play any part in a fraudulent act against the WorkCover scheme. Under these provisions fraudulent claimants are subject to a maximum penalty of $55,000 or imprisonment for two years or both. WorkCover provided licensed insurers with a new insurer fraud system in mid-November 2000 and has trained key staff nominated by each insurer. The system enables insurer claims staff to investigate claims suspected of being fraudulent by using new software to search for claims details on WorkCover's claims database. Insurers will be able to search for and detect any previous and current claims lodged by the worker with another insurer. WorkCover will widely publicise its new computer-based approach to the identification of fraud through a series of advertorials commencing in February 2001.

KURNELL PENINSULA AIRPORT PROPOSAL

The Hon. J. S. TINGLE: My question is addressed to the Treasurer, and Minister for State Development. What is the State Government's position on the absurd reported suggestion of a new airport on the Kurnell peninsula? Has the State Government been consulted by the Federal Government about the impact of this proposal on the peninsula, on Sydney, on the air transport services to and from the city, and on air safety on the edge of the central business district? Most of all, can the Minister say whether any consideration has been given to the fact that the suggested airport would be at right angles to the flight paths to and from the two main runways at Sydney (Kingsford Smith) Airport and under them? Is it a fact that domestic flights approaching Sydney from the north are usually diverted eastwards over the sea, they then make a wide right-hand turn to bring them in over the Kurnell refinery to land at the existing airport from the south, and that they are at an altitude of only about 500 feet when passing over the refinery? Does this raise the very real risk of collision with aircraft landing or taking off from the proposed airport, and does it underline the sheer impracticality of the Federal proposal?

The Hon. M. R. EGAN: I noted that during the asking of the question there were murmurings and sotto voce comments from members of the Opposition indicating that they think the proposal is marvellous. Nobody on the Opposition benches is querying my comment.

The Hon. Patricia Forsythe: We put out a press release on that issue yesterday.

The Hon. M. R. EGAN: Mr O'Farrell made a comment, but from the comments that have been made on the benches in this House it appears—

The Hon. M. J. Gallacher: Now we are being verballed.

The Hon. M. R. EGAN: Yes, you are being verballed. If you utter something in this House do not think that it will not be picked up. The clear reaction from the Opposition benches, as all honourable members would have noted, was a general support for the proposition that seems to have come from the Commonwealth Government. I inform the Hon. J. S. Tingle that to the best of my knowledge the New South Wales Government has not been consulted on the proposal. When I picked up the *Daily Telegraph* yesterday it was the first I had heard of the proposal. I agree with the assertions that the Hon. J. S. Tingle made in his question.

VIETNAMESE SETTLEMENT ANNIVERSARY CELEBRATION

The Hon. J. M. SAMIOS: My question is to the Treasurer, representing the Premier, Minister for the Arts, and Minister for Citizenship. Is he aware that the Vietnamese Australian community celebrated 25 years of settlement in Australia recently at a historic function convened by the Vietnamese community at the Sydney Museum? Is he also aware that the Vietnamese community resettlement in Australia has proved to be one of the great success stories of our multicultural society? Why then did the Premier or any of his Ministers or parliamentary representatives not attend this important occasion? Is this a clear indication of the Government's rejection of the importance of the contribution of ethnic communities to our multicultural society?

The Hon. M. R. Egan: When was the function?

The Hon. J. M. SAMIOS: About two weeks ago, on a Saturday morning.

The Hon. M. R. EGAN: To the best of my knowledge, I was not invited and neither of my colleagues were invited. So the three Ministers in this House were not invited. More of us would have gone had we been invited. As Ministers of the Crown we are invited to many functions. It is not possible to accept all the invitations that we receive.

The Hon. J. F. Ryan: You go to the most important.

The Hon. M. R. EGAN: Are you suggesting that a Vietnamese community function is not an important function? You should be absolutely ashamed of yourself for that unworthy suggestion. As I said, Ministers attempt to attend as many functions as they can. The Opposition has to realise that Government members have the responsibilities of government to attend to. Very occasionally it is not possible for the Government to send a representative to a function. But I can assure the Hon. J. M. Samios, as I am sure he already knows, that the Government believes that the Vietnamese community is not only an important part of the New South Wales community but indeed plays an increasingly significant role. The Vietnamese Australians who live in New South Wales are making their mark in all sorts of different areas. I can proudly say that I think I am the first Minister in any State or Federal government in Australia to appoint a Vietnamese woman as head of a government agency.

STAYING IN TOWN PROGRAM

The Hon. JANELLE SAFFIN: Will the Treasurer, and Minister for State Development advise the House of a new Government program that will promote and improve the wellbeing of communities in country New South Wales?

The Hon. M. R. EGAN: The Hon. Janelle Saffin is a very prominent member of Country Labor, and I congratulate Country Labor on the great success it has had throughout the year 2000. An interesting byproduct of that is that the National Party support in New South Wales, according to the latest Roy Morgan poll, has collapsed to 3 per cent. So of the 29.5 per cent total support for the Opposition in New South Wales, the Liberals are getting 26.5 per cent, which is pathetic, but the Nationals are down to only 3 per cent. The Australian Labor Party, which includes the city element and Country Labor, is on 53.5 per cent. That converts to a two-party preferred vote of 63 per cent for the Government and 37 per cent for the Opposition. Working out what that means for the upper House, if we could maintain that level of support we would gain 12 out of 21 upper House members elected at the next election. The Democrats, surprisingly, would get one vote, other members on the crossbenches would be struggling to get two votes between them, but certainly the Opposition would see its ranks absolutely devastated. In fact, the vote that Opposition members would get would be almost—

The Hon. Dr B. P. V. Pezzutti: Point of order: The Minister should be directed to answer the question which was asked of him by the Hon. Janelle Saffin.

The Hon. M. R. EGAN: To the point of order: I was distracted by an inane interjection, I think, from the Hon. Dr B. P. V. Pezzutti. I like to answer every proposition that is put to me.

The PRESIDENT: Order! As I have said on many occasions, members should not be distracted by interjections. With regard to the matter raised by the Hon. Dr B. P. V. Pezzutti, no point of order is involved. As I have said, also continually, it is tradition in this House that Ministers may answer questions in the way they see fit. The Minister may proceed.

The Hon. M. R. EGAN: Madam President, I take your point that I should not be distracted by interjections. But it would be asking far too much to ask the Hon. Dr B. P. V. Pezzutti not to be distracted by quite incredible poll results—poll results the likes of which I do not think have ever been seen, not only in this State but in any other State of the Commonwealth for as long as records have been kept. My advice to the Opposition, as I mentioned earlier, is to take advantage of the coming break. I will make sure that the House finishes today so that they have an opportunity to return to the drawing boards and to develop some policies. Now that is hard work. Opposition members will not be able to just pick up a piece of paper and write down some crazy words; they will actually have to work hard at developing policies. When the Labor Party was in opposition it had so many policies that, if we had put them on the floor and stacked them up, they were almost taller than me. That meant that when we went to the 1991 election we almost won. Of course, in 1995 we eventually won—

The Hon. J. J. Della Bosca: We did the hard yards.

The Hon. M. R. EGAN: We won because we put in the hard work, as was pointed out by the Special Minister of State. That has not only electoral rewards; it also has rewards for the State and for all the people in the State. It is a sad and sorry state of affairs when we have an Opposition without policies. That lack of policies is reflected in its 29.5 per cent support—the once formidable Liberal and National parties! Earlier this week my colleague the Minister for Regional Development, Harry Woods, announced State Government funding for a new youth centre in Goulburn. This project will receive $100,000 over the next year through our $6.5 million Staying in Town program. The program will ensure that country towns in which banks, post offices and Medicare offices have closed over the last few years get the best possible service from State Government agencies. The Staying in Town program is designed to make it easier for country people to use government services. More than 25 agencies have developed a whole-of-government plan—

The Hon. D. J. Gay: The last time you were there you burned half the town down. They are still rebuilding it.

The Hon. M. R. EGAN: I was in Goulburn only a few weeks after that fire and I was very pleased to see that Bryant's Pies was up and running again in premises, I think, just up the road. More than 25 agencies have developed a whole-of-government plan that will see the emergence of one-stop shops for a range of government services; government jobs and services staying in rural and regional areas; agencies strengthening local communities through better consultation and participation; and the streamlining of government support to local projects. The new youth centre in Goulburn is a good example of how the program will work. Young people will be able to use the centre to access information and help on employment, accommodation, legal and health matters. They will be able to see a doctor without an appointment, they will be able talk with social workers, and they will be able to get help on the real problems that face young people in country towns. It is important for young people to have a place where they feel comfortable to go for advice when they need it. The new centre will be an informal and friendly place that will bring together key youth services in a single location. This centre and the Staying in Town program are yet another demonstration of this Government's commitment to country New South Wales.

I am concerned that today I have not yet been asked a question by Ms Lee Rhiannon. She is not even in the Chamber at the moment. She is the biggest dobber that I have ever come across. The other day during question time I nicked out to have a cigarette and today, when I picked up the *Daily Telegraph*, I found that she had dobbed me in. Ms Lee Rhiannon, who has just returned to the Chamber, was outside having a lolly! She is allowed to go out of the Chamber and feed her face on a big bag full of lollies, but I am not allowed to go out and have a cigarette.

Ms Lee Rhiannon: I am not a Minister.

The Hon. M. R. EGAN: She is not a Minister, but she is a member of this Parliament and her place is in this Chamber, just as my place is in this Chamber. Ms Lee Rhiannon is not only a tittle-tattle; she would have made a great KGB spy and a great Stasi spy—

The Hon. J. F. Ryan: Point of order: I know that you allow a great deal of latitude and you have said that Ministers can answer questions in any way they see fit. However, the Minister is now answering a question that he was not even asked. He was asked a question by the Hon. Janelle Saffin and then, for no apparent reason, without any interjection or anything else, he proceeded to address remarks to a member who was not even in the Chamber. We need to have some limits in question time. Whilst I accept that Ministers may answer questions however they see fit, they are expected at least to be asked a question before they answer one.

The Hon. M. R. EGAN: To the point of order: That is a very good point of order, but the honourable gentleman should have taken it a couple of minutes ago.

VIETNAMESE SETTLEMENT ANNIVERSARY CELEBRATION

The Hon. Dr P. WONG: My question without notice is directed to the Treasurer, representing the Premier, and Minister for Citizenship. I refer to the celebration of the twenty-fifth anniversary of the settlement of the Vietnamese community in Australia. Did the Premier receive an invitation from the Vietnamese community to attend that celebration? Did the Premier decline that invitation stating that, as he had a prior engagement, he could not attend as he would not be available that day? Did the Premier then suddenly appear at a Buddhist temple in Cabramatta that same morning, almost totally unannounced, following an outcry after the announcement by police that there might be an amalgamation between Fairfield and Cabramatta police stations?

The Hon. M. R. EGAN: This is getting a bit ridiculous. The Hon. Dr P. Wong, who last night suggested in the House that he should be treated as an intelligent member, is now asking questions which, quite frankly, are inane. If the honourable member thinks that the Premier can accept every invitation that he gets, he has no understanding of the responsibilities of the Premier.

The Hon. D. J. Gay: He did not send a representative.

The Hon. M. R. EGAN: I would get more than a dozen invitations a day. I go to some events, but I do not send representatives to all of them. For Hon. Dr P. Wong to make anything of it indicates that he does not know what he is talking about.

AUSTRALIAN LABOR PARTY FEDERAL ELECTORAL REGISTRATION

The Hon. J. H. JOBLING: Is the Treasurer aware that 200 of the 5,500 Australian Labor Party branch members currently registered in the Federal seat of Fowler list their home address as PO Box 195, Canley Vale? Will he confirm that this post office box at Canley Vale is registered in the name of Phuong Ngo? Is this the same Phuong Ngo who was charged with the murder of the former member for Cabramatta?

The Hon. M. R. EGAN: I am not aware of the matter, nor does it come under my area of responsibility. I suggest the honourable member take the matter up with the appropriate Minister.

INVESTMENT 2000 PROGRAM

The Hon. AMANDA FAZIO: My question is to the Treasurer, and Minister for State Development. Will the Minister outline the success of the Olympic business program, Investment 2000?

The Hon. M. R. EGAN: Investment 2000 was established in the lead-up to the Olympic Games to promote New South Wales and Australia as a business investment location. I will be attending a function of Investment 2000 tonight at Government House. The aim of the program was to take advantage of the international focus and excitement generated by the Sydney 2000 Games. Investment 2000 is a joint venture between Team Millennium Olympic Partners—Westpac, Telstra and Invest Australia—and the New South Wales Government through the Department of State Development. In the lead-up to the Games, investment briefings were held in Asia, Europe and the United States of America. Global industry leaders were also invited to Australia as part of high-calibre marketing programs designed to demonstrate the business, social and cultural advantages that Australia offers.

Now that the Games have finished Investment 2000 is being wound up, having achieved very impressive results. Through its efforts, almost 2,000 business leaders in Europe, Asia and the United States of

America have been extensively briefed on Australia's investment climate and technical capabilities. More than 300 international businesses have participated in tailored visits to Australia. Forty-three of these companies have already made new investments in New South Wales and other parts of Australia, with this figure expected to double over the next two years. Investment 2000 estimates that by 2002 the program will be responsible for more than $500 million worth of new investment in Australia, creating 1,150 jobs. Investment 2000 would not have achieved this level of success without the support of our partner organisations. I take this opportunity to thank Westpac, Telstra and the Federal Government, through Invest Australia, for their wholehearted support and commitment to raising Australia's business profile on the world stage. Finally, I congratulate Andrew Gilkes and his team at Investment 2000 for their work in promoting Australia as an attractive investment location to international corporations.

ASSISTANT COMMISSIONER OF POLICE Mr GRAEME MORGAN

The Hon. P. J. BREEN: My question without notice is to the Treasurer, representing the Minister for Police. Is the Minister aware of an article in today's *Sydney Morning Herald* by Darren Goodsir and Les Kennedy in relation to the appointment by Commissioner of Police Peter Ryan of Assistant Commissioner Graeme Morgan as head of the New South Wales Crime Agencies? Is the Minister also aware that Assistant Commissioner Morgan signed a false affidavit in Supreme Court proceedings on 11 November 1998 in circumstances that attracted the criticism of the Ombudsman and, as Assistant Commissioner Morgan is a lawyer, he could be the subject of an inquiry by the Legal Services Commissioner for unprofessional conduct or professional misconduct? Given the lack of civilian oversight of the Police Service, what steps does the Minister intend to take to ensure that people in the Police Service who are promoted by Commissioner Ryan are properly accountable for their conduct?

The Hon. M. R. EGAN: I am not aware of the allegations made by the Hon. P. J. Breen. I will refer his question to my colleague the Minister for Police.

OYSTER INDUSTRY

The Hon. JENNIFER GARDINER: My question is to the Minister for Fisheries. Is the Government concerned that the latest New South Wales Fisheries annual report shows a decline in the value of production in the oyster industry of about $3.5 million? Is it not a fact that the oyster industry feels frustrated at the Government's performance in assisting this important and iconic industry? What is the Government doing to promote a turnaround in the fortunes of the oyster industry?

The Hon. E. M. OBEID: I am glad I have been asked a question by the Hon. Jennifer Gardiner, and I welcome her back. Of course, the Government is concerned about any industry in New South Wales that is suffering as a consequence of circumstances. The oyster industry is no different, but the Government is really working in very difficult circumstances to help the oyster industry. As Minister for Fisheries I am actively committed to promoting New South Wales aquaculture. The oyster industry is the undisputed backbone of our aquaculture industry, representing 75 per cent of aquaculture production in New South Wales. It creates employment in New South Wales regional areas, where jobs are vital. The Government is working hard to promote the oyster industry and to revitalise and expand production. My department, NSW Fisheries, is making sure its research is relevant to industry needs—for example, antifouling research and the overcatch of Pacific oysters that is being carried out at Port Stephens.

I am also committed to ensuring that Sydney rock oysters continue to be recognised as the best in the world. The shellfish quality assurance program is leading the way to making oysters safe and building public confidence, and it has recently been reviewed by an international expert. This program is now part of Safefood New South Wales, under the Agriculture portfolio. The Carr Government is spending $3.6 million to clean up the derelict and abandoned Port Stephens oyster leases. That is under way, and the clean-up of the Georges River QX-affected leases is expected to commence early in 2001, for which the Government has committed $200,000 each year for the next four years. I consulted fully with the Oyster Farmers Association and the New South Wales Farmers Association about the introduction of a fair lease bonds system that will come into effect at the end of January 2001.

The security arrangements over lease areas will result in greater community confidence in the oyster industry by shielding the community from the costs of clean-up of unsightly, abandoned or derelict oyster leases that result from any future poor management practices of any oyster farmer. These bonds will be called upon only as a last resort should relevant statutory enforcement avenues not bring to a satisfactory resolution the

obligations of the oyster farmer. To provide for a fair and equitable introduction of the security arrangements, they will be phased in over four years. They consist of options to provide $1,000 surety per hectare of leaseheld or pay $40 per hectare annually into a pool of funds. The Government's recently completed oyster lease survey using satellite technology and electronic maps will mean that we can more clearly and with greater accuracy show where the industry operates.

QX disease is one of the oyster industry's threats to production. It has been around since the late 1970s and has caused major mortalities of oysters in the Tweed, Evans, Richmond and Clarence rivers in northern New South Wales and, since 1994, in the Georges River in southern Sydney. Management of the disease has been addressed through strict control measures regulating the movement of oysters between estuaries. Under this program oysters are not permitted to be moved from QX-affected estuaries to other estuaries. This program has been in place since the early 1980s. To better understand the distribution of the disease, surveys of key estuaries were conducted in 1999, resulting in the Brunswick River being found to be infected with QX and subsequently also included into the restricted oyster movement management regime. As a result of this survey, a more detailed survey is planned to take place to definitively determine the QX status of other estuaries within the State.

Another major issue affecting the industry is acid sulfate soils. There are no simple solutions, and I am working on a whole-of-government approach to this serious environmental issue. The Government is committed to working closely with the oyster industry to build on its outstanding reputation. Only a couple of weeks ago the Premier, the Minister for Agriculture and I went to Port Macquarie to announce a whole-of-government answer to the issue of acid sulfate soils. We are addressing the most significant hot spots in the northern part of New South Wales, particularly in the Hastings.

The Government is addressing all the issues because the Hastings is an important producer of spat for the oyster industry; it produces approximately 35 per cent of the State's requirements. Whilst a number of issues in the oyster industry remain to be addressed, the Government has not been lax. It is providing the funds and addressing the issues that the industry has asked it to deal with. We acknowledge that the oyster industry is important for New South Wales. It is the State's major aquaculture industry and the Sydney rock oyster is undoubtedly the best eating oyster in the world. We want to be able to continue to experience the taste of the oyster, and we are working hard to ensure that we can export the oyster and meet European and North American export standards. Safefood is working on that matter. A great deal is happening and eventually we will ensure that the oyster industry remains a viable regional industry and provides jobs for regional New South Wales.

WORK AND FAMILY SUPPORT POLICIES

The Hon. I. W. WEST: My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister advise the House about the latest developments in the area of supportive policies for workers who wish to combine careers with their family responsibilities?

The Hon. J. J. DELLA BOSCA: As I have reported on an earlier occasion, the Government's work and family strategies have successfully promoted awareness of the importance of employers and employees accommodating work and family responsibilities. A testament to our success is the regular attention given to those issues in the mainstream media. The New South Wales Government has implemented international labour organisation conventions, including ILO156 on work and family responsibilities, in advance of the Federal Government and other State governments. In 1980 New South Wales was the first jurisdiction to include maternity leave in industrial relations legislation.

The New South Wales Government's reputation in these matters has expanded on a global basis and has attracted strong interest from many other countries. In recent times a number of overseas government delegations have visited the Department of Industrial Relations to gather information about New South Wales work and family initiatives. The latest of those was the Singapore Government's Work-Life Unit, which was established only in late September. The staff from the unit contacted the Women's Equity Bureau of the Department of Industrial Relations in early October. The Women's Equity Bureau was contacted because of its expertise in work and family, for information and assistance, and to fast-track the unit's research in preparation for its work and family study tour.

The Department of Industrial Relations convened a meeting for the Singapore delegation of experts from a number of New South Wales government agencies who presented information about the Government's work and family policy and program framework. The delegation was also informed of recent legislative

amendments in New South Wales which became effective from October 2000. Unlike Federal legislative provisions, the State legislation now provides for parental leave entitlements for casual employees with at least two years service with the same employer. Those developments further demonstrate that New South Wales is gaining a reputation in south-east Asia and beyond as an expert in work-family-life matters.

BELLINGER AND KALANG RIVERS PLEASURE CRAFT RESTRICTIONS

The Hon. I. COHEN: My question is addressed to the Minister for Fisheries, representing the Minister for Transport. Given that the Bellinger River is narrow and unsuitable for high-powered water craft and that there are regular users of the river such as canoeists, swimmers, kayakers, fishers and birdwatchers, will the Minister move to restrict the use of high-speed pleasure craft, such as jet skis, to four knots along the entire Bellinger and Kalang rivers?

The Hon. E. M. OBEID: The honourable member has asked an important question. Speaking while wearing my Fisheries hat, I would like his proposal to be implemented. However, I am not responsible for the Waterways Authority. That is the domain of the Hon. Carl Scully. I will seek a view from him and report back to the House.

The Hon. M. R. EGAN: If honourable members have further questions, they might like to place them on notice, or wait until next year.

PESTICIDE EXPOSURE

The Hon. M. R. EGAN: On 2 November the Hon. A. G. Corbett asked me a question without notice relating to pesticide exposure. The Minister for Health has provided the following response:

(1) New South Wales Health assesses pesticide risk by comparing exposure to nationally and internationally endorsed health criteria and does so within the regulatory framework established in Australia and New South Wales.

(2) Assessment of an individual's symptoms is the province of an individual's medical practitioner, not the Department of Health.

(3) The New South Wales Department of Health consults with Federal authorities on pesticide safety issues, not necessarily on whether symptoms are acceptable or not, but whether there is clear evidence that symptoms may be attributable to pesticide exposure.

ELECTRICITY TRADING ARRANGEMENTS

The Hon. M. R. EGAN: On 2 November the Hon. J. H. Jobling asked me a question without notice relating to electricity trading arrangements. I now provide the following response:

(1) The Market Implementation Group (MIG) has recommended a replacement for the vesting contracts.

(2) The proposed arrangements are not at all similar to the arrangements implemented in Queensland.

(3) The arrangements proposed in New South Wales place no trading restrictions on retailers or generators, they do not remove energy trading from individual businesses and do not involve energy trading by a central independent agency.

Given that there is no central independent agency trading in electricity this question is not relevant.

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT WOLLONGONG OFFICE FUNDS MISAPPROPRIATION

The Hon. M. R. EGAN: On 5 December the Hon. J. F. Ryan asked me a question without notice relating to the conduct of officers of the Department of State and Regional Development Wollongong office. I provide the following information in response to the question:

I am advised that in 1999, the Department of State and Regional Development became aware of potential breaches of discipline by some employees in the Department's Wollongong Office. The department immediately investigated these potential breaches of discipline in accordance with the Public Sector Management Act. The ICAC was also immediately advised of these matters.

A senior officer from the department and a senior consultant from the Internal Audit Bureau undertook the investigations. Departmental managers, delegated with authority to do so, assessed the findings.

One matter relating to the accuracy and appropriateness of claims for travel allowances made by a member of staff was referred to the police for further investigation. The police have yet to determine if any fraudulent conduct occurred.

The departmental investigations identified that the performance and conduct of the employees was unsatisfactory.

None of the employees continue to work for the department.

The ICAC was advised of the findings of the investigations and responded that it did not intend to pursue the matters further.

RURAL SECTOR WORKERS COMPENSATION PREMIUMS

The Hon. J. J. DELLA BOSCA: On 28 November the Leader of the Opposition asked me a question concerning rural sector workers compensation premiums. The following response is in addition to the answer I provided the honourable member on that date:

The Government is concerned about the suffering and hardship affecting many people in flood affected areas, including declared disaster areas. Some have lost telephone and postal services. Business has been severely disrupted and valuable assets lost. These are just some of the reasons why employers in the area may face difficulties meeting their workers compensation insurance premiums. WorkCover New South Wales has initiated discussions on this matter with all licensed compensation insurers in the State.

The insurers have been advised that any employer facing severe financial hardship or difficulties in paying their premiums as a direct result of the floods should contact WorkCover directly to discuss their situation. If they prefer employers can ask the insurance company to send their details to WorkCover on their behalf. Each case will be examined on its merits and WorkCover will decide on a course of action appropriate to the particular circumstances. It may decide to waive or reduce interest on late payments in certain cases.

Employers who are late with their payment instalments as a result of postal delays due to the flooding may have lost their right to pay by instalments. WorkCover can intervene to preserve or restore these rights. Insurance companies may also become aware of cases that they consider warrant sympathetic treatment. I expect that they will be lenient in extending time for payment or arranging funding for their clients experiencing hardship. WorkCover is closely monitoring these arrangements and remains prepared to make suitable adjustments as more information comes to hand from the affected areas.

NURSES WORKPLACE ASSAULTS

The Hon. J. J. DELLA BOSCA: On 5 December the Hon. Dr B. P. V. Pezzutti asked a question concerning assaults against nurses in the workplace. I now provide the following response:

Sandra Moait, Secretary of the New South Wales Nurses Association, has not raised the serious matter of assaults against nurses in the workplace with me. However, I should indicate that this important issue is a matter of ongoing dialogue between the Minister for Health, The Hon. Craig Knowles, the Nurses Association and the New South Wales Department of Health. This dialogue with the Minister for Health is most appropriate, as he is responsible for employment conditions and occupational health and welfare of nurses within the health system.

I understand that all parties including the Nurses Association are satisfied with these arrangements. It is for this reason that I have not received a representation from Sandra Moait on the issue of workplace assaults, nor will I be seeking an urgent meeting with her. Nonetheless, I am always happy to receive representation from the Nurses Association on any issue that they believe is appropriate to raise with myself.

I can inform the House that as part of the ongoing discussions between the Nurses, the Minister for Health and the department, there are a number of initiatives under consideration which will improve security for nurses who are responsible in the area of mental health and elsewhere. This will have the effect of minimising the possibility of physical assaults being inflicted upon nurses. This consideration is further demonstration of the Government's commitment to addressing the very important area of occupational health and safety issues within New South Wales in a timely and consultative manner.

WORKCOVER BOOKSHOP CLOSURE

The Hon. J. J. DELLA BOSCA: On 6 December the Hon. J. F. Ryan asked me a question concerning WorkCover Bookshop closure. I now provide the following response:

WorkCover New South Wales has not "closed the only workers compensation resource available in the inner city". WorkCover's Information Centre at 400 Kent Street, City, operates a highly efficient resource service which has been expanded and improved to cater for the increasing needs of online and telephone clients, as well as personal visitors.

WorkCover New South Wales currently produces about 600 publications covering a diverse range of workers compensation and occupational health and safety related subjects. Any member of the public can obtain two copies of any WorkCover publication free across the counter from the Information Centre at 400 Kent Street, or have publications mailed to them by telephoning WorkCover on 9370 5000. Orders for bulk copies of WorkCover publications can also be ordered by telephone.

The information centre issued 30,700 copies of WorkCover publications, either over the counter or by mail, in the six months from 1 March to 31 August 2000. The experience gained by the Information Centre Hotline (131050) shows that many requests for information from WorkCover clients can be more effectively answered from its frequently asked questions (FAQs) database or by emailing relevant sections of documents, rather than providing a whole publication. WorkCover publications are also available from its 24 local offices located throughout the state.

DRUG REHABILITATION

The Hon. J. J. DELLA BOSCA: On 15 November the Hon. Elaine Nile asked me a question concerning drug rehabilitation. The following response is in addition to the answer I provided the honourable member on that date:

I am advised that these include:

- A five-year drug treatment services plan has been developed to ensure all regions in New South Wales have an effective, responsive and adaptable service delivery system for people affected by drug use. This document, which I would like to table, was released by the Premier on 29 June.

- The services to be developed under this plan are varied and include inpatient and home detoxification, the use of methadone as well as other alternative treatments such as naltrexone and buprenorphine to deal with opioid dependence, rehabilitation, counselling and services in correctional centres.

- Funding has been provided for 62 new drug rehabilitation beds across New South Wales in the non-government sector, and providing treatment for an extra 523 people per year.

- A new detoxification unit has been built at Fairfield.

- Nine area health services have been funded to trial home detoxification services and 476 home detoxification treatments carried out between January and July.

- 1756 new clients have been placed on the methadone program in the 6 months to September this year, bringing the number of patients in New South Wales on the program to 14,517.

- In this same time frame, over 27,000 counselling and support sessions with methadone clients took place.

- For the first time ever, all methadone clients are being placed on treatment plans and agreements reflecting our commitment to better case management of these individuals. I am advised that 2,966 treatment agreements have been signed by patients receiving methadone treatment.

I am further advised that since the Drug Summit:

- an additional 535 patients received methadone through community pharmacies through the establishment of the Pharmacy Incentive Scheme

- 8 new drug and alcohol counsellors were appointed in rural areas

- an additional 2,490 drug counselling sessions were provided between January and July 2000

- The new outreach service in the Illawarra completed over 6,300 occasions of service between March and July and a 24-hour treatment line commenced operation in the Illawarra providing advice, referral and assistance within the local area

- 3 new detoxification units—Lismore, the Central Coast and Western Sydney—are either under construction or about to begin construction and will provide an additional 40 detoxification beds

Questions without notice concluded.

TABLING OF PAPERS

The Hon. E. M. Obeid tabled the following reports:

State Sports Centre Trust, for the year ended 30 June 2000
Sydney International Athletic Centre, for the year ended 30 June 2000.

Ordered to be printed.

The President tabled the following reports:

Legislative Council, for the year ended 30 June 2000
Joint Services of the Parliament, for the years ended 30 June 1999 and 30 June 2000

Ordered to be printed.

CRIMES LEGISLATION FURTHER AMENDMENT BILL

Second Reading

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [5.09 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Crimes Legislation Further Amendment Bill 2000. This bill amends the Drug Misuse and Trafficking Act 1985, the Criminal Procedure Act 1986, the Poisons and Therapeutic Goods Regulation 1994 and the Crimes (Forensic Procedures) Act 2000. Schedule 1 to the bill creates a new offence of possessing precursors for the manufacture or production of prohibited drugs, to be inserted as section 24A of the Drug Misuse and Trafficking Act 1985.

New section 24A makes it an offence for persons to be in possession of a precursor which they intend to use for the manufacture or production of a prohibited drug. The new section also makes it an offence if persons have precursors in their possession intending that another person manufacture or produce a prohibited drug—for example, if a person has bought the precursor for someone else to make a prohibited drug. Obviously the person must intend that the third party make the drug; it is not intended that the offence be made out if the person did not know what the third party was going to do with the precursor. The naïve or innocent will not be caught by this part of the section.

What constitutes a precursor is to be defined in the regulations. The penalty for the offence is 2,000 penalty units—a $220,000 fine—or 10 years imprisonment or both, reflecting the gravity with which the Government views this offence. The introduction of this offence is designed to stop manufacturers of prohibited drugs, like amphetamines, who are preying on our society. The stimulus for this offence was Government concern at the widespread use of legitimate precursor chemicals, such as pseudoephedrine, which is commonly found in Sudafed, in the manufacture of amphetamines, or street drugs such as speed.

The criminals who manufacture these drugs would go on milk runs to buy up cold and flu tablets from a number of suppliers until they had enough to manufacture speed and other drugs. Figures show that in the past four years national demand for lawfully imported pseudoephedrine has increased by nearly 100 per cent. There is no valid medical or commercial explanation for this increase. The most logical explanation is that these chemicals are finding their way onto our streets in the form of harmful illicit drugs, and are being used by our young people.

This amendment follows recommendations from a working party established to review the Drug Misuse and Trafficking Act. The working party has broad representation, with its members being drawn from the New South Wales Police Service, legal practitioners and health experts. Schedule 2 to the bill makes a consequential amendment to the Criminal Procedure Act 1986 in relation to the summary prosecution of the offence created by the proposed section 24A of the Drug Misuse and Trafficking Act 1985.

Schedule 3 to the bill provides for the prohibition of cash sales to be inserted in the Poisons and Therapeutic Goods Regulation 1994 at clause 131A. This will make it an offence for a person to supply precursor chemicals to a person who does not have an account with the supplier. In addition, all payments must go through the account, thereby eliminating cash payments. In this way, supply of such chemicals will be given a regulatory basis in line with current and accepted industry practice. The penalty for supply in a manner contrary to this provision is 15 penalty units or a $1,650 fine. This is a new step in stopping drug manufacturers in their predations on the public, and demonstrates this Government's commitment to closing any loopholes that might allow for large-scale criminals to get away with manufacturing illicit drugs from legal chemicals.

Schedule 4 to the bill makes amendments to the Crimes (Forensic Procedures) Act 2000. This Act was passed towards the end of the budget session this year and introduces a comprehensive regime for carrying out forensic procedures on suspects, serious indictable offenders and volunteers. The Act is to commence on 1 January 2001. The amendments to the Crimes (Forensic Procedures) Act 2000 contained in this bill largely relate to applications for interim orders. Interim orders for carrying out forensic procedures are available in circumstances where an urgent order is required to prevent the loss of evidence that might occur if there was a delay in obtaining authorisation.

In its original form the Act provides that only magistrates may make interim orders. This amendment extends this power to authorised justices, defined in item 1 of Schedule 4 to mean, as well as a magistrate, the clerk of a Local Court, the registrar of the Drug Court or a justice of the peace employed in the Attorney General's Department who is declared to be an authorised justice.

The purpose of this amendment is to ensure access to interim orders at any time of the day or night. Unlike magistrates, authorised justices are available on a 24-hour basis and already deal with applications for search warrants and telephone interim apprehended violence orders on an urgent basis. Without this amendment, the police would only be able to apply for interim orders during court hours, which would largely defeat the purpose of making interim orders available.

Members should note that material derived from a forensic procedure carried out pursuant to an interim order is not to be analysed until a final order—which may only be made by a magistrate—has been made. Finally, item [16] of Schedule 4 amends the Crimes (Forensic Procedures) Act 2000 to ensure consistency within the Act in relation to the matching of suspect profiles against the DNA database. I commend the bill to the House.

The Hon. J. M. SAMIOS [5.10 p.m.]: The Opposition does not oppose this bill, the objects of which are to amend the Drug Misuse and Trafficking Act 1985 to make it an offence to possess a drug precursor

intended for use in the manufacture or production of a prohibited drug, subject to certain appropriate exceptions; to amend the Poisons and Therapeutic Goods Regulation 1994 to require chemicals supply companies to supply drug precursors only to account customers; and to amend the Crimes (Forensic Procedures) Act to enable both authorised officers and magistrates to make interim orders for the carrying out of certain forensic procedures. Parliament, via the Drug Summit, indicated the importance it attached to the amendment to the Drug Misuse and Trafficking Act.

The bill is important as it makes it an offence to possess an essential element in the manufacture or production of a prohibited drug, that is, a precursor. Indeed, the penalties for illegal possession of a precursor are serious. The bill provides for the acquisition of such substances only through an account, as the shadow Minister in the other House indicated. Schedule 2, which amends the Criminal Procedure Act, is a consequential amendment, and schedule 3 amends the Poisons and Therapeutic Goods Regulation 1994. I note that the Hon. R. S. L. Jones will vote against schedule 4 in Committee. The bill contains important amendments to important legislation and it is not opposed by the Opposition.

The Hon. Dr P. WONG [5.13 p.m.]: I support the Crimes Legislation Further Amendment Bill. I believe that this legislation will assist law enforcement agencies in their efforts to control the manufacture of prohibited drugs and prosecute those responsible for it. I can understand the argument that interim orders for the taking of forensic evidence should be available from authorised justices on a 24-hour basis so that there is less chance of important forensic evidence being lost due to a court delay. However, I am concerned about the Government's proposed change to include DNA testing and matching against the database in these new provisions. I am not comfortable with the Clerk of a Local Court issuing an interim order relating to DNA testing, nor does that seem necessary.

At present it is necessary to obtain such an order from a magistrate, and I believe that this is the minimum necessary safeguard for the making of such an order. DNA testing is potentially very intrusive and has far-reaching privacy implications. I understand that magistrates are available by phone 24 hours a day for the making of such interim orders, so the Government's proposal to extend this authority to authorised justices does not appear to be necessary. I believe that this is the position of the Law Society, and I will join the Hon. R. S. L. Jones in voting against schedule 4.

The Hon. R. S. L. JONES [5.14 p.m.]: I have some concerns regarding the Crimes Legislation Further Amendment Bill. In Committee I will vote against schedule 4 to the bill, which makes amendments to the Crimes (Forensic Procedures) Act 2000. I will speak in more detail on that in Committee. I also have some questions regarding the first section of the bill, which relates to amendments to the Drug Misuse and Trafficking Act 1985. The amendments make it an offence to possess a drug precursor that is intended for use in the manufacture or production of a prohibited drug. The aim of the legislation is to make it an extremely unattractive proposition to engage in the manufacture of prohibited drugs, particularly amphetamines and speed. That is reflected in the very high penalty attached to the offence. I understand that those particular drugs are now more prevalent than they should be and that they are causing health problems.

Although I am not opposed to the idea that drug manufacturing and drug dealing should not be encouraged, I am concerned that the bill might target mere couriers rather than focus on the big manufacturers higher up the food chain. I am also concerned that we are being asked to debate legislation without once again understanding the full story. What is a precursor? The Government has indicated that the definition of a precursor is to be left to the regulations. The same applies to the quantity of precursor that one is allowed to possess before an offence is deemed to have occurred. So at the time of debating the bill in Parliament we do not know what we are talking about and how much of the stuff one is allowed to have before running the risk of a $220,000 fine or 10 years gaol.

Is someone allowed to have one Sudafed tablet, a box of Sudafed or hundreds of boxes of Sudafed? When is the offence deemed to take place? The problem is that Sudafed is a legal product available in chemist shops. If one buys too much of a legal product suddenly one is committing an offence. While not opposing the bill for that reason, I express my concern that we do not have a copy of any draft regulation that might assist us to debate the matter today. Perhaps the Minister might enlighten honourable members on what the regulations are likely to contain.

I have grave concerns about the proposal to amend the Crimes (Forensic Procedures) Act so that an authorised justice is able to grant an interim order for the carrying out of forensic procedures. Currently, only magistrates are permitted to make such an order. I believe that there are very good reasons for not including the

Government's amendment in the bill. First, as honourable members will no doubt recall, there was passionate debate in the House about the Crimes (Forensic Procedures) Bill. The referral of the bill to the Standing Committee on Law and Justice indicated how seriously honourable members regarded the issues in it. Such a referral provides an opportunity for the Act to be reviewed and any problems with its practical implications addressed. As the Act has not been proclaimed, there would appear to be no need for any inroads into any of its safeguard before there has been an opportunity to test it.

Second, as well being referred to the Standing Committee on Law and Justice, the bill contains safeguards, including a limitation on anyone other than a magistrate making orders regarding the taking of forensic material. The bill seeks to diminish that safeguard by permitting authorised justices, including registrars and clerks of the court, to have the same power. The Law Society has argued that magisterial oversight represents the absolute minimum acceptable safeguard for the making of such an intrusive and intimate order. That position is supported by statements in the Australian Law Reform Commission in 1975, the Victorian Consultative Committee on Police Powers of Investigation in 1989, the Queensland Criminal Justice Commission in 1994, the Senate Legal and Constitutional Legislation Committee in 1995, and the common law in cases such as *Fernando v Commissioner for Police* (1996).

There are also important practical reasons why magisterial oversight is required. The powers under section 32 of the Crimes (Forensic Procedures) Act are extensive, including the duty to take evidence on oath from applicants, submissions from the suspect or the suspect's legal representative, the duty to give reasons for the decision, and the effective power to order someone detained for the purpose of taking the sample. This should properly be the domain of the magistracy, not any lesser office. The Government has argued that the amendment is needed so that interim orders can be made. However, it has long been the situation that magistrates can be contacted 24 hours a day by telephone if required. There is no practical need for the power they wield to be extended to other parties. Finally, the section departs from the Commonwealth model which is being developed as a uniform scheme and which was cited as a reason for New South Wales to have legislation that mirrored the Commonwealth model. The proposed changes represent an inappropriate and unjustified departure from that model. The New South Wales Law Society supports my intention to vote against schedule 4 to the bill. I ask honourable members to reconsider their position on schedule 4.

Reverend the Hon. F. J. NILE [5.19 p.m.]: The Christian Democratic Party supports the Crimes Legislation Further Amendment Bill. The bill has two main objects. The first is to amend the Drug Misuse and Trafficking Act 1985 to make it an offence to possess a drug precursor intended for use in the manufacture or production of a prohibited drug, subject to certain appropriate exceptions. We support the increase in the penalty for that offence to 2,000 penalty units or imprisonment for a term of 10 years, or both. It is clear that criminals involved in drug rackets have been buying, importing or stealing medical materials, such as headache tablets, and using the ingredients to make speed and other illegal drugs. The Hon. R. S. L. Jones expressed concern that a person caught by this legislation may have been only carrying a precursor. However, the proposed section provides that such a person must have the intention of using the precursor in the manufacture or production of a prohibited drug. The police would have to establish that beyond reasonable doubt.

The second main object of the bill is to amend the Crimes (Forensic Procedures) Act to enable both authorised officers and magistrates to make interim orders for the carrying out of certain forensic procedures. Schedule 4 [1] makes an amendment that notes that an authorised justice means a magistrate or a justice of the peace who is a clerk of a Local Court or the registrar of the Drug Court, or a justice of the peace employed in the Attorney General's Department. I am not overly concerned about that; I do not believe those provisions will be abused. However, the Christian Democratic Party is concerned that the DNA legislation should be allowed to operate and to be as effective as possible in proving that a person is guilty of a crime. DNA testing has been successful in that regard, and the DNA database is an important weapon in the fight against crime. On the other hand, in some cases DNA testing has proved that a person was not guilty of committing a crime.

The Hon. Dr A. CHESTERFIELD-EVANS [5.22 p.m.]: The Crimes Legislation Further Amendment Bill amends the Drug Misuse and Trafficking Act 1985 to make it an offence to possess a drug precursor intended for use in the manufacture of drugs. The bill also amends the Poisons and Therapeutic Goods Regulation 1994 to require chemical supply companies to supply drug precursors only to account customers. The bill also amends the Crimes (Forensic Procedures) Act to enable both authorised officers and magistrates to make interim orders for the carrying out of certain forensic procedures. The Australian Democrats have a number of objections to the bill, the major one being that it has two main aspects: first, it creates an offence relating to drug trafficking and, second, it makes the taking of DNA samples easier. The Government is putting two unrelated matters into one bill in the hope of rushing it through the House. The Australian Democrats will support the Hon. R. S. L. Jones, which I suggest is at the prompting of the Law Society of New South Wales, in voting against schedule 4 to the bill.

The proposed amendments to the Drug Misuse and Trafficking Act and the Poisons and Therapeutic Goods Regulation, which resulted from the successful Drug Summit and the interim report of the working party into the Act and the regulation, are supported The offence of carrying a precursor will attract a penalty of up to $220,000 or 10 years gaol, or both. The precursors will be specified in the regulations and I hope they include more than a bottle of water, a home chemistry set, home brewing material, or a packet of Sudafed. The Government, under the guise of attacking drug trafficking, is doing little more than helping police to charge people at the lower end of the drug trade, those who run errands, by creating a new offence. I am concerned about who the police will catch and fine as much as $220,000.

The Crimes (Forensic Procedures) Bill went through this House with much debate, much lobbying, and a couple of protests in Macquarie Street. At the time of that debate I said that the Commissioner of Police influenced the actions of the Minister for Police. If the commissioner says "Jump!" the Minister asks "How high?" How many bills have gone through this House in the past year that cranked up police powers? I have lost count of them. DNA testing of suspects appears to offer a great deal to law enforcement officers in solving crimes. In another place the Minister for Police hailed DNA as the "fingerprint of the twenty-first century". He has become a bit like Toad of Toad Hall when he first spied a motor car—poop, poop! The Minister thinks that DNA is the answer to all problems. However, care should be taken because it is easy to load up people.

The bill makes the granting of interim orders for the carrying out of forensic procedures much easier. It is odd that changes are being made to streamline a procedure before the Act has been proclaimed. The Law Society stated that oversight by a magistrate represents a minimum acceptable safeguard for the making of such an intrusive and intimate order. That position is supported by statements by the Australian Law Reform Commission in 1975, the Victorian Consultative Committee on Police Powers of Investigation in 1989, the Senate Legal and Constitutional Legislation Committee in 1995, and by the common law. The bill makes it easier for police to obtain interim orders. It moves away from the Commonwealth model, which was supposed to present a uniform scheme throughout the States and Territories. The Australian Democrats will support the Hon. R. S. L. Jones in voting against schedule 4 to the bill. If we are unsuccessful we will have no option but to vote against the bill.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [5.27 p.m.], in reply: I thank all members for their contributions and I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

The Hon. R. S. L. JONES [5.28 p.m.]: Clause 6 notes that schedule 4 amends the Crimes (Forensic Procedures) Act, and I intend to vote against clause 6 and schedule 4. The omission of schedule 4 will have the effect of maintaining the status quo, that is, only a magistrate is able to grant interim orders for the carrying out of forensic procedures. If schedule 4 to the bill is retained, the power to order the taking of forensic material will be extended to authorised justices, which includes registrars and clerks of the court.

As the Act has not yet commenced, there would appear to be no need for inroads into any of its safeguards before the opportunity to test them. If the schedule remains, we will have effectively diminished the procedural safeguards put in the Crimes (Forensic Procedures) Act by removing the magisterial oversight that was an essential feature of the original bill and which is the absolute minimum standard. I do not accept that magistrates require this change to facilitate the smooth running of their courts. Magistrates can be contacted by telephone 24 hours a day if required, and there is no practical need for the power they wield to be extended to other parties.

Clause 6 agreed to.

Schedules 1 to 4 agreed to.

Title

The Hon. R. S. L. JONES [5.31 p.m.]: Am I permitted to move my amendment to the long title as circulated?

The CHAIRMAN: As clause 6 and schedule 4 have been agreed to without amendment, your circulated amendment to the long title is redundant.

Title agreed to.

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

CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL

Second Reading

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [5.33 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

In 1996 the New South Wales Law Reform Commission recommended that sentencing laws in New South Wales be consolidated into two Acts. One Act would cover sentencing procedure, and would be used by the courts to sentence offenders. The other Act, by far the longer of the two, would cover the administration of sentences, and would be used by the Department of Corrective Services to implement sentences imposed by the courts. On 3 April these two new Acts came into force. One is called the Crimes (Sentencing Procedure) Act 1999; the other is called the Crimes (Administration of Sentences) Act 1999. Prior to the commencement of the Administration Act, the Department of Corrective Services conducted an extensive training program for its staff. During that program a number of minor deficiencies in the Act came to light. The Crimes (Administration of Sentences) Amendment Bill will rectify those deficiencies and make some other changes sought by the Corrections Health Service and other agencies. I shall now outline some of the more important changes being made.

A new, more encompassing definition of "law enforcement agency" is to be included in the Act. The current definition covers only the New South Wales Police Service, the Independent Commission Against Corruption, the New South Wales Crime Commission and the Police Integrity Commission. The bill extends the definition of "law enforcement agency" to include a police force of another State or Territory, the Australian Federal Police, the National Crime Authority, the Director of Public Prosecutions of any State or Territory or the Commonwealth, the Department of Juvenile Justice, and any person or body prescribed by the regulations under the Act for the purpose of the definition. Section 6 of the Administration Act is to be clarified. Under section 6, a governor of a correctional centre may order a convicted inmate to perform work inside a correctional centre. In certain circumstances, with the approval of the Commissioner of Corrective Services, a governor may also order convicted inmates to perform community service work outside a correctional centre.

The changes to section 6 will make it clear that an inmate performing work inside a correctional centre is not performing community service work, and that when an inmate performs work outside a correctional centre, such work is community service work unless it is performed for the Department of Corrective Services or for a public or local authority. The bill makes several changes sought by the Serious Offenders Review Council, a statutory body which is chaired by a judge, a former judge or some other person who is judicially qualified. Amendments to section 19 will clarify the circumstances in which the review council may reject an application from an inmate for a review of a segregated custody direction or a protective custody direction made by the Commissioner of Corrective Services.

New section 209A will enable a judicial member of the review council to deny a person access to a document which is in the possession of the review council if provision of the document may adversely affect the security of a correctional centre, endanger the life of any person, jeopardise the conduct of any lawful investigation, or prejudice the public interest. Section 209A is in virtually the same terms as section 64 of the Correctional Centres Act 1952, an Act that was repealed on 3 April 2000 when the Administration Act commenced. The bill makes similar amendments to section 194, which provides for a judicial member of the Parole Board to deny a person access to a document that is in the possession of the Parole Board. An amendment to section 195 will clarify that the Serious Offenders Review Council is to consist of at least eight, but not more than 14, members.

An amendment to schedule 2 will enable the Serious Offenders Review Council to hold up to six meetings each year at which all members of the review council may attend. These meetings are planning meetings which examine general issues rather than specific cases. The bill makes similar amendments to schedule 1 so far as the Parole Board is concerned. The bill amends clause 12 of schedule 1 to the Act so that the chairperson of the Serious Offenders Review Council, or a judicial member of the review council nominated by the chairperson, may choose a non-member of the review council to represent the review council at meetings of the Parole Board. This change gives the chairperson greater choice of persons for this position.

The bill amends sections 38, 77 and 249 to clarify the definition of "correctional officer" used in those sections. Essentially, for the purpose of those sections, a correctional officer may be a person employed by the Department of Corrective Services to be a correctional officer on a full-time basis or a person employed as a custodian of offenders by the privately managed correctional centre at Junee.

The bill amends section 39 to provide that a correctional officer or a police officer may arrest, with or without a warrant, an inmate on a local leave permit who the officer considers has breached the conditions of the permit. I shall give an example of the way in which section 39 will operate. A minimum security inmate may be granted a local leave permit to attend work on certain

days of the week to prepare for release back into the community. The Department of Corrective Services conducts random and targeted checks on such inmates to ensure that they do in fact go to work. If, during such a check, a correctional officer found an inmate in, say, a TAB agency, the officer would immediately escort the inmate back to the correctional centre and the inmate's local leave permit would be revoked. At present, due to the current wording of section 39, there is some doubt as to the validity of action taken to escort an inmate on a local leave permit back to prison.

The bill amends section 59 to increase from $50 to $100 the amount of compensation which a governor of a correctional centre may require an inmate to pay for loss or damage to property as a result of committing a correctional centre offence. The current limit of $50 has remained unchanged for more than 10 years. I would mention that if an inmate damages property to an extent that exceeds the monetary limit that a governor may order an inmate to pay, the governor may arrange for a visiting justice—that is, a magistrate—to hear the matter. A visiting justice may impose any level of compensation.

The bill makes a number of changes sought by the Corrections Health Service. New section 72A provides that an inmate must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the inmate, of other inmates and of any other person. The bill amends section 73 to provide that only the chief executive officer of the Corrections Health Service may order an inmate to undergo compulsory medical treatment and that such treatment may only be imposed on an inmate when the inmate's life is in danger, or when such treatment is necessary to prevent serious damage to the inmate's health.

If the chief executive officer is not a medical practitioner, the chief executive officer must designate a person who is a medical practitioner to decide whether to make such an order. I would mention that it is rare for an inmate in the New South Wales correctional system to refuse to undergo medical treatment to the point that the inmate's life is in danger or to the point that the inmate's health may be seriously damaged.

The bill inserts sections 236A, 236B and 236C into the Act. These sections provide for the functions of the Corrections Health Service, access to correctional centres by the chief executive officer at the Corrections Health Service and the appointment of medical officers. The appointment of medical officers is currently dealt with in the regulations. The functions of the Corrections Health Service and the right of access of the chief executive officer are currently not spelled out anywhere in the legislation. That concludes my remarks on amendments affecting the Corrections Health Service.

The bill also amends section 77 to enable any court, not merely those courts defined in section 3, to require that an inmate attend before it for the purposes of any legal proceeding. At present the Family Court, for example, cannot require that an inmate attend before it for divorce proceedings. The bill amends section 89 to prevent a periodic detainee who fails to attend periodic detention from gaining an unearned advantage if the detainee, soon after having failed to attend periodic detention, is arrested and remanded in custody on another matter.

At present, if a detainee fails to attend weekend periodic detention on Friday night and then, on Saturday, is arrested for, say, driving a stolen car and is placed on remand pending a court appearance in respect of the alleged offence, section 82 would operate so as to grant to the detainee credit for the time spent in full-time imprisonment during that weekend. The amendment to section 89 will prevent the detainee from being able to count such time towards completion of his or her periodic detention order. If, however, the detainee were still on remand the following weekend, time spent in prison on the second weekend would count, as the detainee would have been physically and legally unable to attend periodic detention on that second weekend.

The bill amends section 93 to provide that the Parole Board, rather than the Local Court, should hear an appeal from a periodic detainee against a decision by the Commissioner of Corrective Services not to grant leave of absence for a detention period. Since 1 February 1999 the Parole Board has taken over from the courts the function of revoking a periodic detention order for failure to comply with the order. The board has quickly built up expertise in periodic detention. It is logical that the board, the new revoking authority, should also take over the function of hearing appeals under section 93.

The bill amends section 114 to rectify an internal inconsistency in that section. Currently, section 114 states that a person on a community service order may apply to the sentencing court for an extension of the time originally granted to perform the community service, but then states that the Local Court may grant such an application. Section 114 is to be amended to state that such an application is to be made to the Local Court. In most cases the Local Court is also the court that originally made the community service order for which the applicant is seeking an extension of time. The bill amends section 115 to state that an application for revocation of a community service order cannot be made later than one month after the expiry of the time in which the order is to be served. This amendment reinstates a long-existing rule relating to community service orders. The rule had been deleted by the new Act on the basis that it would give the Probation and Parole Service greater flexibility in dealing with breaches of community service orders. Deletion of the rule has, however, caused some confusion.

The bill amends section 116 to avoid a court having to follow unnecessary procedures. Currently, when a probation and parole officer makes an application to a court for revocation of a person's community service order, the court must call upon the person to appear before it. If the person does not appear, the court may then issue a warrant for the arrest of the person. These procedures are sensible in those cases where it is likely that the offender will in fact appear in court. In other cases, however, when the location of the person is unknown, it is pointless for the court to issue a notice to the person's last known address in the hope that the person may appear.

The amendment to section 116 will enable a court, in a case where the location of the offender is unknown, to immediately issue a warrant for the arrest of the person. The amendment will also enable a Clerk of the Court to issue such a warrant in certain circumstances, after the court has authorised the issuing of a warrant. A similar procedure already exists, in another context, in section 25 of the Crimes (Sentencing Procedure) Act 1999. The bill amends section 998 of the Crimes (Sentencing Procedure) Act 1999 so that a court may use the new streamlined procedures in section 116 of the Administration Act when it deals with an alleged breach of a good behaviour bond.

The bill amends section 138 of the Administration Act to make it clear that the Parole Board may amend a parole order in circumstances when the board considers that a parole order should be amended. There are rare cases where the board makes a

parole order but, before the offender is actually released, the offender's intended place of residence becomes no longer available. In such a case, the board currently has to revoke the order and then, when new accommodation arrangements have been made, re-make the order. The revocation of the order may imply later on, however, that the offender must have done something wrong.

By the Parole Board amending such an order, rather than revoking it, the possibility of a future misunderstanding as to what actually occurred will be avoided. The bill amends sections 163, 167 and 170 to enable an offender to apply for revocation of a periodic detention order, home detention order or parole order. There are rare cases where an offender wishes to have an order revoked. The bill also amends section 167 to make it clear that, if a co-resident of a home detainee withdraws consent to the continued operation of the home detention order, the Parole Board may revoke the order.

The bill amends section 163 to enable the Parole Board to revoke a periodic detention order, on application by the Commissioner of Corrective Services, on health or other compassionate grounds and, in such a case, on application by the commissioner, to make any order that the board may consider appropriate. There are rare cases where the commissioner may consider that a particular periodic detainee is incapable of completing a periodic detention order but may also consider that the person concerned would be able to complete some other kind of order, such as a community service order. Rather than exercise his power to exempt the person from periodic detention, in which case the person would go free of any penalty, the commissioner may wish to seek to have the Parole Board impose some other appropriate penalty on the person.

The bill amends section 165 to give the Parole Board more options when it revokes a periodic detention order and seeks to have the offender serve the remainder of the sentence by way of home detention. Currently, when the board revokes a periodic detention order and refers the offender for assessment by the Probation and Parole Service as to suitability for home detention, the board has two options: either the board can place the offender in prison, in which case assessment is difficult to carry out; or the board can allow the offender to remain in the community. Since the offender would have already breached the conditions of the periodic detention order, the board may be reluctant to have the person live in the community without any supervision whatsoever.

The amendments to section 165 parallel the current situation in section 80 of the Crimes (Sentencing Procedure) Act 1999 under which, when a court has sentenced a person to imprisonment and has referred the person for assessment as to suitability for home detention, the court may grant the person supervised bail. Similarly, under the amendments, the Parole Board may impose supervision as prescribed by the regulations. The regulations will prescribe conditions similar to those imposed by a court when a court grants supervised bail. Time spent by an offender under such supervision will not count towards completion of the sentence.

New section 168A will enable the Parole Board, on application from a home detainee whose home detention order has been revoked, to reinstate the order after the offender has served three months in full-time imprisonment. The rationale for this amendment is twofold. It will give incentive to the home detainee to improve their conduct whilst in prison, and it will give the Parole Board greater flexibility in cases where circumstances may warrant a reconsideration of home detention at a later stage.

The bill amends section 179 to enable the Parole Board, when it revokes a consecutive periodic detention order, to make a home detention order in respect of both the first and the consecutive order. If, for example, an offender was serving two consecutive periodic detention orders, each one year in length, and the offender breached the first order after six months, the Parole Board would revoke the first order and may revoke the second order even though there has been no breach of the second order. If the board did in fact revoke both orders with a view to the offender serving the remaining 18 months by way of home detention, the board could currently make a home detention order only for a remaining six months of the first periodic detention order. The amendments to section 179 overcome this problem.

New section 179A will ensure that, in a case where the Parole Board revokes the first of two consecutive home detention orders, but does not revoke the second home detention order, the board must refer the offender for reassessment as to suitability for home detention when the offender has completed the remainder of the first order in prison. A new assessment is necessary to ensure that home detention is still a viable option for the offender and the offender's family. The offender's home circumstances may have significantly changed while the offender was in prison.

The bill amends sections 180 and 181 so that the secretary of the Parole Board may sign, in accordance with a decision of the board, a warrant requiring an offender to appear before the board and a warrant requiring an offender to go to prison. This change will obviate the current need for a judicial member of the board to wait after a meeting of the board for warrants to be filled out so that the judicial member may sign them. The bill amends section 184 to enable a division of the Parole Board to consist of more than four persons.

New section 235B will enable the Commissioner of Corrective Services to issue "commissioner's instructions" to staff of the Department of Corrective Services, in the same way in which the Commissioner of Police is able to issue "commissioner's instructions" to staff of the Police Service. This change will mean that the department will be able to rewrite its code of conduct to delete disciplinary matters, thereby converting the code into a purely aspirational document. The change will also mean that the department will be able to use commissioner's instructions to spell out more clearly than it does at present acts or omissions which amount to breaches of discipline. The bill amends clause 31 of schedule 5 to the Act to overcome a technical problem relating to transitional provisions.

I have spent some time outlining most of the amendments being made by this bill. I felt that honourable members would appreciate obtaining background information about these various amendments. The driving force behind the amendments is commonsense. All of the amendments are designed to make the Crimes (Administration of Sentences) Act 1999, a long and somewhat complicated Act, work even better than it is working already. I commend the bill to the House.

The Hon. J. M. SAMIOS [5.33 p.m.]: The bill makes a number of amendments to the Crimes (Administration of Sentences) Act 1999, which was passed last year following a recommendation by the New South Wales Law Reform Commission that sentencing laws be consolidated into two Acts. The proposed

amendments are largely a response to recommendations made by the Parole Board to facilitate administration of sentences. The bill expands the definition of "law enforcement agency" to include police from another State or Territory, the National Crime Authority, the Director of Public Prosecutions and the Department of Juvenile Justice. It clarifies that an inmate performing work inside a correctional centre is not performing community service work and expands the definition of "correctional officer" to full-time officers employed by the department as well as those employed in the privately managed centre at Junee.

The bill will allow police or correctional officers to arrest an inmate on a local leave permit who breaches conditions. It increases the amount payable as compensation for damage to property caused as a result of committing a correctional centre offence from $50 to $100. The bill provides that an inmate must be given such medical treatment as is necessary for the preservation of his or her health, and that only the Chief Executive Officer of the Corrections Health Service may order the compulsory medical treatment. The bill extends the definition of "court" so that any court may require an inmate to attend before it for legal proceedings. It amends the Act so that time served on another matter while out on periodic detention cannot be counted towards the completion of the periodic detention sentence. The bill gives the Parole Board, rather than the Local Court, the power to hear appeals against a decision not to grant leave of absence for a detention period. It enables the Parole Board to revoke an offender's periodic detention order on health or compassionate grounds and to make a home detention order that replaces a periodic detention order if the remaining sentence is 18 months or less.

The bill also provides that the Parole Board may revoke a home detention order and may reinstate it if the offender has served at least three months of the sentence by way of full-time detention. It increases the number of members of the Serious Offenders Review Council to at least eight and not more than 14. It also provides that a non-member of the council may represent the review council at meetings of the Parole Board and makes a number of minor amendments to the administration of community service orders, et cetera.

Many of these changes are designed to facilitate the practical operation of the Act and at the recommendation of the Parole Board. The bill rectifies a number of deficiencies in the Crimes (Administration of Sentences) Act 1999. Arguments against the bill might be considered to be the fact that $100 as compensation payable for damage to correctional centre property is inadequate and that the penalty should be increased at least tenfold. The riot in Goulburn gaol earlier this year cost up to $500,000. Taxpayers should not have to bear this cost alone. Significant financial contribution should be made by those responsible.

The proposal to allow offenders to serve the last 18 months of a sentence of periodic detention by way of home detention undermines the concept of truth in sentencing. The whole sentence set by a court should be served, not part thereof. The Opposition proposes to move three major amendments in Committee regarding new section 37, which deals with home detention orders and enables the Parole Board to vary the level of sentencing by effectively changing the sentence set by the court, and new section 10, which deals with compensation for property damage to correctional centres. The Opposition acknowledges that there are pros and cons associated with home detention orders, and will move a number of amendments in Committee regarding those matters.

The Hon. Dr P. WONG [5.37 p.m.]: The Unity party will support the Government's Crimes (Administration of Sentences) Amendment Bill. It is important that courts have a range of sentencing options available to them, so that they can apply the most appropriate sentence in each case, taking into account the individual circumstances of each case. It is important that courts are able to impose full-time sentences in a correctional centre and that they have the options of periodic detention, home detention and community orders where appropriate.

It is important that the Parole Board be able to also make the most appropriate decisions with regard to home detention and periodic detention. The legislation will, among other things, allow the Parole Board the flexibility it needs in particular circumstances to make decisions relating to home detention. I note that the Parole Board does not have the authority to convert full-time sentences to periodic detention, and that that will not be changed by the bill. I will also support an amendment to be moved by the Hon. R. S. L. Jones for the Corrections Health Service to have proper regard for the culture and religion of an inmate when ordering compulsory medical treatment.

The Hon. R. S. L. JONES [5.38 p.m.]: I congratulate the Government on this legislation, which goes a considerable way towards eliminating many of the administrative and procedural problems that the Parole Board and the Department of Corrective Services have faced since the commencement of the Crimes (Administration

of Sentences) Act 1999. There is nothing particularly contentious in the bill. However, I will be moving an amendment in Committee to a section of the bill. I thank the Government and the Coalition for their support on this issue.

The effect of my amendment will be to ensure that the Chief Executive Officer of the Corrections Health Service must have regard to the cultural background and religious beliefs of inmates when ordering compulsory medical treatment. This will ensure that the right to freedom of religious and cultural beliefs which a person may hold in the general community cannot be lightly dismissed within the prison system. For example, a Jehovah's Witness may be prohibited by virtue of his or her religion from having a blood transfusion. Regardless of whether that person is in prison or in the general community, this religious or cultural objection should be respected. I thank Kath McFarlane, my adviser, for raising this matter and for all her work on this legislation and previous bills that we have debated today. I am glad that we are dealing with this issue, which has the support of both sides of Parliament. It is about time this provision was in the legislation. With a bit of luck and the support of both sides of the House it will now become law.

Reverend the Hon. F. J. NILE [5.40 p.m.]: The Christian Democratic Party supports the Crimes (Administration of Sentences) Bill. This bill will consolidate sentence administration legislation into one Act. Since the commencement of the original Act in 1999, a number of minor deficiencies have come to light. This bill will rectify those deficiencies. We particularly support item [2] of schedule 1, which amends section 3 of the Crimes (Administration of Sentences) Act 1999 to expand the definition of "law enforcement agency" to include certain specified agencies, such as the National Crime Authority, the Independent Commission Against Corruption and other agencies prescribed by the regulations. In the war against crime, it is vital that there be total co-operation between all these organisations at a national and State level and with Interpol on an international level.

The bill will also amend section 6 of the Act to clarify that inmates may be ordered by a governor of a correctional centre to perform work inside the correctional centre for the Department of Corrective Services. One matter that always seems to be raised in the public arena is whether the inmates of a correctional centre or prison are required or can be made to work. People often have the impression that inmates are lounging around or overexercising and developing muscles, which may assist them to commit crimes when they are released from prison. Rather than prisoners sitting around, if that happens, they should be given constructive work and, particularly, retraining and education. In that way, they will have the ability to improve themselves and will leave prison with a new occupation rather than getting involved in crime.

We also note that the bill provides police and correctional officers the power to arrest an inmate. Item [9] of schedule 1 sets out conditions in which the power to arrest can be exercised. We support the provision that enables the Parole Board to make a home detention order that replaces a periodic detention order. We also support the amendment foreshadowed by the Hon. R. S. L. Jones. One would assume that in the past the spirit of the amendment has been carried out by responsible, caring officers. The proposed amendment will make it clear that officers are now required to take those matters into consideration. We support the bill.

The Hon. Dr A. CHESTERFIELD-EVANS [5.43 p.m.]: The Australian Democrats support this bill. I note that the Law Society supports the bill. We also support the amendment foreshadowed by the Hon. R. S. L. Jones. I confess that as a doctor I do not like the idea that people die because of their religious beliefs—for example, by refusing a blood transfusion. We support this bill, which corrects a number of anomalies.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [5.44 p.m.], in reply: I thank all honourable members for their contributions. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Schedule 1

The Hon. J. M. SAMIOS [5.45 p.m.], by leave: I move Opposition amendments Nos 1 to 3 in globo:

No. 1 Page 5, schedule 1 [10], line 28. Omit "$100". Insert instead "$1,000".

No. 2 Page 11, schedule 1 [37], lines 5-24. Omit all words on those lines. Insert instead:

[37] Section 165 Parole Board may order home detention

Omit the section.

No. 3 Page 18, schedule 1. Insert after line 18:

[54] Section 274

Insert after section 273:

274 Review of home detention

(1) The Minister is to review the making, administration and operation of home detention orders to determine whether the policy objectives of this Act and the *Crimes (Sentencing Procedure) Act 1999* in relation to those orders remain valid and whether the terms of those Acts remain appropriate for securing those objectives and to determine the impact of home detention orders on families.

(2) The review is to be undertaken as soon as possible after the date of assent to the *Crimes (Administration of Sentences) Amendment Act 2000*.

(3) A report on the outcome of the review is to be tabled in each House of Parliament before 31 March 2001.

(4) The Minister is to continue to monitor, and report to both Houses of Parliament on, the impact of home detention orders on families. Such a report must be tabled in 2002 and at least once in each calendar year thereafter.

Amendment No. 1 increases the maximum penalty applicable to inmates who vandalise prison property from $100 to $1,000. The riots in Goulburn Correctional Centre in March 2000, which cost approximately half a million dollars, involved 40 inmates who destroyed their cells. The riot was described by the Corrective Services Commissioner as a minor disturbance. The Minister for Corrective Services refused to answer a question as to whether any penalty was applied by the governor. Those criminals have not been required to pay compensation for the damage, and are unlikely to, despite charges being laid. The Minister stated that $1,000 is an enormous amount of money to an inmate. Inmates earn a maximum of $60 per week, which means that an inmate could pay off the Government's proposed $100 maximum fine in less than two weeks.

The Opposition is concerned that the Carr Government is using this bill as the next step in its home early pre-release policy, which was revealed in August. Under this approach, which was described by the Minister for Corrective Services as good for both the offenders and society, criminals would ultimately serve their last 18 months of a non-parole period in home detention. Clearly, this violates the truth-in-sentencing principle that a court-issued minimum sentence should not be diluted. We express concern at the increased reliance on home detention in light of the high breach rate and the Government's failure to release an annual report on home detention, as required in the original legislation. The Opposition supports the principle of home detention for appropriate minor offenders, with adequate supervision. However, it seems that the Government is driven by cost savings and is putting more reliance on home detention. Home detention is not regarded by the Opposition as an equivalent form of punishment to full-time gaol. Clearly, it does not deprive most offenders of liberties, social contact and lifestyle. Many citizens are confined to their homes due to illness or infirmity.

Amendment No. 2 seeks to remove the powers of the Parole Board to redirect prisoners who have been revoked from periodic detention into either home detention or released indefinitely pending a decision of the board. The Opposition believes that the Parole Board should not have the power to transfer criminals from periodic detention to home detention. The decision of the sentencing judge should be adhered to and the Parole Board should not be second-guessing or diluting the court's original decision. As to amendment No. 3, the original review provision in the Home Detention Act 1996 should be reinserted so as to ensure an annual report to Parliament on home detention and its effectiveness with regard to the policy objectives and the impact on families. This provision was deleted by the Carr Government when combining several Acts into the Crimes (Sentencing Procedure) Act 1999. I am informed that the number of inmates in periodic detention is 1,244 as at 2 July 2000 and the number of inmates in home detention for 1998-99 was 158. Home detention costs per inmate per year are said to be $18,000 and imprisonment costs per inmate per year are $58,000

A study conducted in February 1999 showed that from February 1997 to August 1998, 158 breaches occurred out of 208 completed home detention orders [HDOs]. The majority of offences were positive tests for drugs and alcohol; failing to be at home; family conflict; and tampering with equipment. Of home detainees

guilty of drug or alcohol offences, 60 per cent tested positive during their home detention sentence. Of the 61 HDOs revoked between February 1997 and August 1998, 17, or 28 per cent, were charged with new offences, which included property offences, assault, driving offences, armed robbery and stealing.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [5.50 p.m.]: The Government opposes the three amendments moved by the Opposition. In regard to amendment No. 1, I point out that the amount of $100 is adequate for a governor to require an inmate to pay as compensation for damage to property. Most damage to property falls into the range of a few dollars to a hundred dollars. An inmate may deliberately rip a shirt or write graffiti on a cell wall and such damage would not amount to more than a few dollars. In such a case, the governor would find an inmate guilty of a correctional centre offence, impose a penalty for that offence—for example, no contact visits for one month—and then require the inmate to pay compensation to the value of the property damaged.

The payment is not a fine or a penalty; it is compensation for the damages caused. It should be noted that a governor may order an inmate to pay compensation not only for damage to the department's property but also for damage to another inmate's property. If an inmate extensively damages property, a governor may refer the matter to a visiting justice, that is, a magistrate, who may order any amount of compensation to be paid. In rare cases, the damage caused is so great that the inmate commits a criminal offence and in such a case, the governor calls in the police, who charge the inmate with a crime and the matter is heard before a court.

In regard to amendment No. 2, I point out that since 1 February 1999, if a periodic detainee has failed to comply with the requirements of a periodic detention order, the Parole Board has been able to order periodic detainees to complete the sentence under a home detention order. The only alternative to the Parole Board making a home detention order in such a case is for the Parole Board to send a periodic detainee to full-time imprisonment. As home detention is a genuine and tough alternative to full-time imprisonment, it is logical that the Parole Board should have the power, in appropriate cases, to send a failed periodic detainee to home detention rather than full-time imprisonment.

People from a middle-class background may think that home detention is a soft option. A middle-class person may imagine an offender putting up his or her feet, reading a book or watching the cricket on television. But home detention is not like that. A home detainee must live a strictly regimented lifestyle, must always be where he or she is supposed to be and must always do what he or she is supposed to do, which may mean attendance at an education course or a counselling session. A home detainee cannot drink alcohol, unlike a periodic detainee who, being completely free for five days each week, may drink alcohol during those five days. In short, a home detainee must adopt a lifestyle which is self-denying and alien to much of what he or she has done in life up to that point. Some home detainees have found the going so tough that they have asked to go to full-time imprisonment rather than continue with home detention.

In relation to amendment No. 3, I point out that there is no need for a special review of the home detention scheme. The first 18 months of the scheme, that is, the period from February 1997 to August 1998, was the only review period selected by the Department of Corrective Services. A copy of the department's report was tabled in Parliament in May 1999. The report contains 145 pages and includes as part of its findings that during its first 18 months of operation, the New South Wales home detention scheme was a well-maintained, reliable and efficient program that fulfilled the requirements of the Home Detention Act. This was referred to on page 8 of the executive summary of the report.

It can be anticipated, given the generally favourable comments received by the department from magistrates, home detainees, the families of home detainees and staff of the department, that a further special review would make a similar finding. In any event, the department refers in some detail to the home detention scheme in its annual reports. If people want to know how the scheme is operating, they need only to refer to the department's annual report. When the Home Detention Act 1996 was incorporated into the new Crimes (Administration of Sentences) Act, section 30 of the repealed Act, which required special annual reports on home detention, was not included in the new Act. It must be remembered that the new Act is a consolidation statute, which has consolidated several existing Acts.

The new Act contains a standard review provision that is now incorporated into many Acts, but section 273 of the Crimes (Administration of Sentences) Act 1999 requires the Minister to review the Act as soon as possible five years after the date of assent. The review will cover not only home detention but also periodic detention, full-time imprisonment, community service orders—in fact, all aspects of the Crimes (Administration of Sentences) Act 1999. In short, the Opposition's proposal that a special review of the home detention scheme be conducted annually is unnecessary. It is a case of overkill. For those reasons, the Government opposes the three amendments moved by the Opposition.

The Hon. R. S. L. JONES [5.55 p.m.]: I regret that I cannot support the Opposition's amendments. In actual fact, they are a thinly veiled attack on home detention. The proof of whether home detention works can be obtained by an examination of the scheme. Honourable members should examine how many recidivists there are in the home detention scheme compared to the number of full-time detainees in prison. I think that an examination would reveal that an offender is rehabilitated much more easily if kept at home rather than in a prison where that person may mix with other criminals and actually learn how to commit worse offences than those for which he or she has been imprisoned.

Surely logic would dictate that home detention would be a better way of detaining people, provided that it is as strict as the Government maintains it is. It would be better than having people mix with other criminals in the full-time correctional system or prison. The point that the Opposition seems to forget is that people in the home detention scheme complete their sentences. They return to society at some point—perhaps after a year, two years or three years. It is very important for them to be rehabilitated as quickly and as effectively as possible so that they may resume a normal life. One of the best ways of doing that is through the home detention scheme.

Reverend the Hon. F. J. NILE [5.56 p.m.]: I have a question relating to the amendment that refers to the amount of $100 being increased to $1,000. I am glad that the Minister made it clear that the amount is compensation and not a penalty. I think the Hon. J. M. Samios may have referred to that amount as a penalty at some stage. My question is: Would there not be situations in which $100 would not be sufficient, such as the smashing of a toilet bowl in a prison or even setting the prison alight which, sadly, has occurred in some prisons?

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [5.57 p.m.]: I understand that such a matter would be referred to a visiting magistrate, who can order an offender to pay any amount to recover the whole cost of the damage.

The CHAIRMAN: Order! I propose to put seriatim the questions on the amendments, which were moved in globo.

Question—That amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 14

Mr Colless	Mr Lynn	Mr Ryan
Mrs Forsythe	Mrs Nile	Mr Samios
Miss Gardiner	Revd Nile	*Tellers,*
Mr Gay	Mr Oldfield	Mr Jobling
Mr M. I. Jones	Dr Pezzutti	Mr Pearce

Noes, 19

Dr Chesterfield-Evans	Mr Johnson	Mr Tsang
Mr Cohen	Mr R. S. L. Jones	Mr West
Mr Corbett	Mr Macdonald	Dr Wong
Mr Della Bosca	Mr Obeid	
Mr Dyer	Ms Rhiannon	*Tellers,*
Mr Egan	Ms Saffin	Ms Burnswoods
Ms Fazio	Mr Tingle	Mr Primrose

Pairs

Mr Gallacher	Dr Burgmann
Mr Harwin	Mr Hatzistergos
Mr Moppett	Ms Tebbutt

Question resolved in the negative.

Amendment No. 1 negatived.

Question—That amendment No. 2 be agreed to—put.

The Committee divided.

Ayes, 14

Mr Colless	Mr Lynn	Mr Ryan
Mrs Forsythe	Mrs Nile	Mr Samios
Miss Gardiner	Revd Nile	*Tellers,*
Mr Gay	Mr Oldfield	Mr Jobling
Mr M. I. Jones	Dr Pezzutti	Mr Pearce

Noes, 19

Dr Chesterfield-Evans	Mr Johnson	Mr Tsang
Mr Cohen	Mr R. S. L. Jones	Mr West
Mr Corbett	Mr Macdonald	Dr Wong
Mr Della Bosca	Mr Obeid	
Mr Dyer	Ms Rhiannon	*Tellers,*
Mr Egan	Ms Saffin	Ms Burnswoods
Ms Fazio	Mr Tingle	Mr Primrose

Pairs

Mr Gallacher	Dr Burgmann
Mr Harwin	Mr Hatzistergos
Mr Moppett	Ms Tebbutt

Question resolved in the negative.

Amendment No. 2 negatived.

Question—That amendment No. 3 be agreed to—put.

The Committee divided.

Ayes, 14

Mr Colless	Mr Lynn	Mr Ryan
Mrs Forsythe	Mrs Nile	Mr Samios
Miss Gardiner	Revd Nile	*Tellers,*
Mr Gay	Mr Oldfield	Mr Jobling
Mr M. I. Jones	Dr Pezzutti	Mr Pearce

Noes, 19

Dr Chesterfield-Evans	Mr Johnson	Mr Tsang
Mr Cohen	Mr R. S. L. Jones	Mr West
Mr Corbett	Mr Macdonald	Dr Wong
Mr Della Bosca	Mr Obeid	
Mr Dyer	Ms Rhiannon	*Tellers,*
Mr Egan	Ms Saffin	Ms Burnswoods
Ms Fazio	Mr Tingle	Mr Primrose

Pairs

Mr Gallacher	Dr Burgmann
Mr Harwin	Mr Hatzistergos
Mr Moppett	Ms Tebbutt

Question resolved in the negative.

Amendment No. 3 negatived.

The Hon. R. S. L. JONES [6.09 p.m.]: I move my amendment on sheet C-107A circulated in my name:

> Page 6, schedule 1 [12], proposed section 73, line 14. Insert ", having taken into account the cultural background and religious views of the inmate," after "opinion".

Jehovah's Witnesses can receive transfusions, as long as it is their blood, not other people's blood. The amendment takes into account not only the concerns of Jehovah's Witnesses but Muslims and people from other different cultural and religious backgrounds who, concomitant with an increasingly multicultural society, are in gaol in increasing numbers. It is important that their background and religion is taken into account when they are forced to have medical treatment. It is clear that Australia is very different to what it was 20 or 30 years ago, with many people from different backgrounds and with varying religions. We are a mixed society and it is important to have these provisions in the legislation.

The Hon. J. M. SAMIOS [6.10 p.m.]: The Opposition supports this amendment.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [6.10 p.m.]: The Government also supports this amendment.

Amendment agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Title agreed to.

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

RACING AND TOTALIZATOR LEGISLATION AMENDMENT BILL

Second Reading

Debate resumed from 30 November.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [6.12 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 the legislation before us is to amend: the Racing Administration Act 1998; and the Totalizator Act 1997. I will deal with the proposed amendments to each Act in turn. The proposed amendments to the Racing Administration Act will simply extend the exemption given last year for the probable dividends from interstate totalizators to be displayed or published, to also include specified overseas totalizator probable dividends. The relevant exemption was introduced last year as it was recognised that betting information from interstate totalizators was of interest to betting consumers to facilitate comparison of totalizator betting markets, and to make informed assessments in relation to the value of betting strategies. The proposed amendment would enable prescribed bodies such as TAB Ltd, Sky Channel, 2KY Broadcasters, the Australian Broadcasting Corporation and the major free-to-air television broadcasters to publish both interstate and overseas probable or approximate dividends on racing and sporting events, provided that they relate to a class of operators and events approved by the Minister.
>
> Currently, TAB Ltd offers a totalizator betting service together with Sky Channel coverage on New Zealand racing events. The proposed amendment would enable TAB Ltd to approach the Minister to seek approval for New Zealand TAB probable or approximate dividends to be published or displayed by the prescribed bodies alongside TAB Ltd probable dividends. The proposed amendments to the Totalizator Act would remove the 12-month time limit that currently exists on the duration of orders made by the Minister declaring a State, Territory or country to be a participating jurisdiction for the purposes of providing betting tax exemptions in conjunction with pooling arrangements with such other jurisdictions. Licensed totalizator operators in Australia have, from time to time, made arrangements to combine certain totalizator pools. Such arrangements take advantage of the economies of scale that apply to totalizator pools. A larger betting pool is likely to have less volatile dividend fluctuations, and therefore be more attractive to betting consumers because the totalizator pools are more robust.
>
> Currently, the Act has a 12-month limit on such participating jurisdiction orders. That restriction is a remnant of the regulatory framework that applied to TAB Ltd prior to its privatisation. The proposed amendment would provide the Minister with greater

flexibility when making an order, including taking into account whether there are any business certainty and commercial considerations that might apply in relation to the duration of the order. The proposed amendments are largely a consequence of the changing operational environment of TAB Ltd. TAB Ltd changed in status from a statutory authority to a public company in March 1998. That change involves an ongoing process of reviewing the laws which regulate TAB Ltd to ensure that there is an appropriate balance between the regulation of gambling, and TAB Limited's objectives as a public company. I commend the bill to the House.

The Hon. G. S. PEARCE [6.12 p.m.]: Racing in Australia has had a long and fascinating history. The first horses arrived in Australia with the first fleet in 1788, and 10 years later the horse population had grown to 44 stallions and 73 mares. Australia's thoroughbred industry began in 1799 when the blood stallion Rockingham arrived from Cape Colony. Australia's first official, organised race meeting was held in October 1810 in Hyde Park, only a few hundred metres from this place. Although racing started at Randwick Racecourse in 1833, it was not until 1840 that true recognition was given to the need to establish a system of racing worthy of the colony. In May of that year the Australian Racing Committee, which subsequently changed its name to the Australian Jockey Club, was formed. I seek leave to have the remainder of my speech incorporated in *Hansard.*

Leave granted.

_____

In 1900, the register with rules and regulations of New South Wales racing was first issued by the AJC. Since then, of course, three strong codes of racing in this State have grown—horse racing, greyhound racing and the trots. And it is clear by the affection and attention given to the Melbourne Cup every year, that racing has a real place in the heart of the people of New South Wales and Australia. The Coalition is not opposed to this bill. It is legislation which is primarily operational and mechanical in nature and is largely brought about because of the changing nature of TAB Limited's operating environment. In March of 1998 the status of the TAB changed from a statutory authority to a public company. A necessary result of that change is the need to review the laws regulating the company on an ongoing basis. The amendments to these two Acts, the Racing Administration Act 1998 and the Totalizator Act 1997 are an important part of that process. With regard to the Racing Administration Act 1998, the Racing and Totalizator Amendment bill extends the exemption from the restrictions on publication and advertising, to authorised totalizator operations conducted in another country. This means that bodies such as television stations, can publish dividends from racing events interstate and overseas as long as they fulfil the requirements regarding class of operator and event.

This will be particularly important in providing access to interstate investment opportunities for New South Wales racing. The amendment will allow, subsequent to the Minister's approval, the New Zealand TAB to display their probable or approximate dividends alongside those of TAB Ltd. With regard to the amendments concerning the Totalizator Act 1997, the Racing and Totalizator Legislation Amendment Bill proposes to replace section 71, which will have the effect of removing the maximum 12 month time limit on the Minister's orders regarding participating jurisdictions. To this end, another State, Territory or country may be declared a participating jurisdiction if it is lawful to conduct totalizators of that class or description in that State, Territory or country, or totalizators of that class or description are conducted under the Totalizator Act. But, under the bill, both the circumstances and the period for which a State, Territory or country are deemed to be a participating jurisdiction can be limited.

The current 12 month limit on participating jurisdiction orders is archaic and a relic of the pre-privatisation regulatory framework which was originally applied to TAB Ltd. This amendment is important in giving the Minister flexibility to consider business certainty and other commercial considerations when assessing the duration of the order. This bill is important for the ongoing strength and viability of New South Wales racing. I would now like to make a few general comments on issues concerning racing in New South Wales. The State of Victoria invests $50 million more in racing than we do in our State, and this is having a very detrimental effect on racing in New South Wales. In an effort to achieve a higher quality of racing in this State, the quantity of racing is being dramatically decreased. Last week, for example, the members for Port Macquarie and Upper Hunter in the other place, drew attention to the summary action of the Greyhound Racing Authority in revoking the licences to race of the Mudgee Greyhound Racing Club and the Coonabarabran Greyhound Club and six other clubs in country New South Wales.

The deleterious effect on regional communities that this form of rationalisation will have cannot be underestimated. Of course commercial realities must be taken into account, but the Government must also ensure that regional centres are not substantively weakened by the policy. Another very concerning issue to impact upon regional centres in particular, and all of New South Wales in general, is that of the negative impacts of the explosion of gambling. And this is not just a horse racing issue. Nor even casinos or lotteries. It is particularly the human consequences to the addiction to poker machines, which are growing numbers like cancer in many areas. Ever since the Government imposed its moratorium on poker machines six months ago, the number of poker machines in New South Wales has grown by 1,500. The Government refused to do anything about this problem, or even treat it seriously. Indeed, last week we had the spectacle in the other place, of the Premier including the Opposition's desire to cut poker machine numbers. The Government has no policy to address these problems. Encouragement of the racing industry is vital for the health of the New South Wales economy, but the destructive underbelly that is gambling must be genuinely addressed at the same time.

Racing in New South Wales is undergoing a turbulent time with both the distribution of funding and the relationship between the TAB and New South Wales racing in need of review. The differences of opinion regarding the three racing codes need to be addressed now, and not when the industry reaches breaking point. In Victoria, incentive packages for owners and breeders are available, and significant resources are re-invested into racing in that State. In New South Wales, on the other hand, the number of starters in many metropolitan races is declining and incentive packages are predominantly absent. The community and the industry do not want to see a decline in both the quantity and the quality of racing in our State. This bill is a first step in placing the focus back on how to bolster the racing industry in New South Wales. We cannot rely solely on the success or otherwise of the TAB and the distribution of funds accrued. Long term product certainty is needed. Increased prize money is needed. Financial

incentives are needed. The racing industry is under massive pressure. In particular, the relationship between the New South Wales racing industry and the TAB must undergo a thorough review. These are significant issues which will not be solved by the legislation currently before us. The Racing and Totalizator Legislation Amendment Bill makes operational alterations which are supported by the Opposition. I commend the bill to the House.

The Hon. Dr P. WONG [6.13 p.m.]: Unity opposes this bill, even though that will be only symbolic opposition, as the bill is supported by the Government and Opposition. While at first this legislation appears sensible, it will in fact create even greater opportunities for betting in New South Wales. This is definitely the very last thing that people in New South Wales need at this time. Problem gambling is addictive and impulsive behaviour. The most effective way to reduce the incidence and harm of problem gambling is to reduce the opportunities for gambling. For this reason, and to make this point, I will vote against this legislation and the additional gambling opportunities it will create. As many commentators have pointed out, the New South Wales Government has also become addicted to gambling revenue, which has become an easy source of revenue. The Government has expanded that revenue base and the level of gambling in this State. This revenue is being collected disproportionately from lower income people, and so gambling revenue is in practice a highly regressive tax.

The Government has expanded gambling activity without regard to the increasing damage that problem gambling causes in the general community. Problem gambling frequently leads to financial hardship and the breakdown of families and marriages. Problem gambling is particularly damaging for some ethnic communities that are vulnerable to addiction. Many people have lost their family homes and businesses. By profiting from problem gambling, the New South Wales Government is behaving like a loan shark. Do we have a Treasurer or a bookie? I will welcome the day when a bill is introduced in this House to reduce the opportunities for gambling: a bill that provides for a massive decrease in poker machines and a range of measures to reduce the damage of problem gambling, such as limiting the amount that can be bet in a given time on gaming machines.

Reverend the Hon. F. J. NILE [6.15 p.m.]: The Christian Democratic Party expresses its concern about and opposition to the bill in principle. Obviously the purpose of the bill is to expand the opportunities for gambling in this State. This bill will permit access by New South Wales racing and the TAB to gambling in other countries such as New Zealand. It will also provide opportunities for investments on betting from other States. It seems that the Government is concerned that New South Wales is losing out to other States and that Victoria is more aggressive in its promotion of gambling. In fact, it seems that racing in New South Wales is suffering. It is a pity that we cannot separate sport from gambling, but obviously gambling is the force that drives horseracing. We are concerned, as the Hon. Dr P. Wong said, about an Australiawide gambling craze. Gambling is out of control in this State, which in my opinion is now the worst place in the world for gambling, whether on poker machines or other forms of gambling. I know that the Premier unsuccessfully sought to bring in a freeze on poker machines and that the Government is examining other measures. I am concerned that this legislation seems to be designed only to facilitate and encourage more gambling. Therefore we oppose it.

The Hon. I. COHEN [6.17 p.m.]: The Greens have certain misgivings about this bill, similar to those expressed by Reverend the Hon. F. J. Nile, because it will further encourage and extend gambling. It will give people further access to information to enable them to gamble. The Racing Administration Act 1998 prohibits the provision of betting information to a location other than a racecourse during the course of a race meeting, with a specific exemption for the provision of information relating to TAB Ltd dividends and betting odds and the probable odds, or dividends in respect of TABs licensed and operating in other States or Territories.

The Greens support current information being provided to potential gamblers as it may reduce gambling. However, it is important to draw a distinction between information designed to alleviate gambling, that is, displaying odds on machines, and specifying where a gambler can get help, and information that is designed to increase the pool of gamblers. The bill intends to allow TAB, Sky Channel, 2KY broadcasters, the ABC and the major free-to-air television broadcasters, to provide consumers—gamblers—with betting information from the New Zealand TAB and other overseas TAB operators. This will encourage individuals in New South Wales to gamble on overseas products.

The amendment to the Totalizator Act covers another issue. Licensed TAB operators in Australia sometimes make arrangements to combine certain TAB pools. As was said in the second reading speech, this is attractive to punters because a larger betting pool is likely to have less volatile dividend fluctuations and therefore be more attractive to betting consumers because the totalisator pools are more robust. However, these arrangements can only last up to 12 months at a time. The bill intends to dispose of the 12-month period.

All in all, the bill will further encourage gambling and will give punters more access to information so they can bet on more products. It will also increase the attraction of some products to gamblers. This State has the highest rate of gambling in the world. Although the Greens do not want to cut out gambling per se, the encouragement of it at the rate at which this Government is encouraging it is an unfortunate and alarming direction to take.

The Hon. E. M. OBEID (Minister for Mineral Resources, and Minister for Fisheries) [6.19 p.m.], in reply: I thank all honourable members for their contributions to the debate and I commend the bill to the House.

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

The House divided.

Ayes, 21

Ms Burnswoods	Mr Lynn	Mr Samios
Mr Della Bosca	Mr Macdonald	Mr Tingle
Mr Dyer	Mr Obeid	Mr Tsang
Mr Egan	Mr Pearce	Mr West
Ms Fazio	Dr Pezzutti	
Miss Gardiner	Mr Primrose	*Tellers,*
Mr Gay	Mr Ryan	Mr Jobling
Mr Johnson	Ms Saffin	Mr Primrose

Noes, 8

Mr Cohen	Revd Nile	*Tellers,*
Mr Corbett	Ms Rhiannon	Dr Chesterfield-Evans
Mrs Nile	Dr Wong	Mr M. I. Jones

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time and passed through remaining stages.

SPECIAL ADJOURNMENT

Seasonal Felicitations

The Hon. M. R. EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [6.27 p.m.]: I move:

> That this House at its rising today do adjourn until Tuesday 27 February 2001 at 2.30 p.m., unless the President, or if the President is unable to act on account of illness or other cause, the Chairman of Committees, prior to that date, by communication addressed to each member of the House, fixes an alternative day or hour of meeting.

I take this opportunity on behalf of all my ministerial and Government colleagues, and I am sure I speak for everyone in the House, to express appreciation to everyone in the Parliament who has worked so hard to assist with the seamless running of the Chamber throughout the year. In particular I thank the Clerks, particularly John Evans, and their staff, the Legislative Council Procedure Office, the Parliamentary Attendants, Hansard, the Parliamentary Library, the Parliamentary Dining Room and catering staff, and all staff of members of this Chamber, including my ministerial staff. I thank also the President and the Chairman of Committees, for the excellent manner in which they have presided over the Chamber. I wish all honourable members a safe and happy Christmas and New Year break. I look forward to seeing everyone back here well refreshed in February next year.

The Hon. D. J. GAY (Deputy Leader of the Opposition) [6.29 p.m.]: I thank the Ministers, other members and staff. I thank you, Mr Chairman of Committees. I served in that position for a long time. For many years during Christmas felicitations I would think of all the hours I was in that seat.

The Hon. Dr A. Chesterfield-Evans: Nobody thanked you.

The Hon. D. J. GAY: Nobody thanked me! I thought I deserved to be thanked. Certainly you, Mr Chairman, deserve to be thanked.

The Hon. M. R. Egan: I always used to thank you.

The Hon. D. J. GAY: No you did not, but I accept it now. Mr Chairman, you deserve thanks for the job you do. Seasonal felicitations also to the Clerks and the Legislative Council Procedure Office: John Evans, Lynn Lovelock, who is overseas serving our country at the moment, Mike Wilkinson, Stuart Lowe, Warren Cahill, Jovy Cano, Janet Williams, Russell Keith, Malvyne Jong Wah, Kate Cadell, Elizabeth Robertson, Jillian Harding, Ashley Nguyen, Sandra Vella, Tim Growden, Anne Livingston, Judy Bartlett, Victoria Pymm and Jacqueline Mead.

Our thanks to the Committee staff, especially Anna McNicol and Phaedra Parkins, who were terrific but have left this place now, Steven Carr, David Blunt and Tony Davies. I thank the Principal Attendant, Ian Pringle, and all the Legislative Council attendants—Lucy, Katrina, George, Charles, Michael, Mark and Erin. Special thanks to David Draper and all on the Parliamentary Food and Beverage staff. They do a terrific job. Thanks to the people in Parliamentary Building Services.

Thanks also to the staff of Information Technology Services. They sometimes fix our computers, but they are always pleasant when dealing with our problems—and we have more than enough of those problems! Seasonal felicitations to Parliamentary Security Services and to *Hansard*—Judith Somogyi, Mark Faulkner and Greg Thomas and all the reporting staff, who make our contributions a lot better than they were in the actual delivery. Our thanks also to Printing Services.

I thank National Party and Liberal Party members, who have been so helpful to me. I appreciate their assistance to enable me to discharge my new role. I extend seasonal felicitations to Government members and their staff—especially the ministerial staff whom I shadow—and in particular Craig Munnings from Harry Woods' office, Kellie Field from Eddie Obeid's office, who is very helpful, Leisl Baumgarter from Kim Yeadon's office, and Virginia Knox from the Treasurer's office. A special mention to Ben Hamilton and Susan Toft from my own office, whose commitment was well beyond what they are paid to do.

To my parliamentary colleagues, I must say I am not going to miss you over the next few weeks. I am looking forward to getting away from you! But I would be very sad if you are not all back here next year. So, look after yourselves, and be very careful when you are driving over the Christmas break. I look forward to seeing you back here next year.

The Hon. J. H. JOBLING [6.32 p.m.], by leave: I move:

That the question be amended by the addition, at the end, of the following paragraphs:

2. Notwithstanding the above, the President, on receipt of a request by a majority of the members of the House that the House meet at an earlier time, must by communication addressed to each member of the House, fix a day and hour of meeting in accordance with the request.

3. For the purposes of paragraph 2, a request by the recognised party or group is to be deemed to be a request by each member of that party or group.

4. A request may be made to the President by delivery to the Clerk of the House, who must notify the President as soon as practicable.

5. In the event of the absence of the President, the Clerk must notify the Deputy-President, or if the Deputy-President be absent, any one of the Temporary Chairmen of Committees, who must summon the House on behalf of the President, in accordance with this resolution.

I convey to all members my best wishes for the Christmas season. On behalf of the Leader of the Opposition, the Hon. Michael Gallacher, who is unable to be present for this debate, might I seek the leave of the House to incorporate his Christmas felicitations.

Leave granted.

As we approach the festive season it is a time for reflection and a time to take stock of the blessings and reflect on the tragedies that have come our way throughout the year. Tonight we pay tribute to the people who help us, as members, represent the citizens of this great State. My deepest thanks and appreciation go to my colleagues on this side of the House. To my Deputy, the Hon. Duncan Gay, who was elected as Leader of the National Party in this House in February, I would like to express my thanks for

his support and hard work. To my Deputy Leader of the Liberal Party, the Hon. Jim Samios, thank you for your wise counsel throughout the past 18 months.

No parliamentary party can operate without its Whip. The Coalition is blessed with the services of the Hon. John Jobling and Deputy Whip, the Hon. Doug Moppett. For their dedication and work both in this House and out I would like to express my personal thanks. To all of my other parliamentary colleagues in this House I express my appreciation for their hard work and dedication throughout this year. I thank all members of the crossbench who have worked with the Coalition throughout this year as we continue to develop what I consider to be a better working relationship.

Dealing with so many micro-parties and Independents is always going to be difficult. However, what was pleasing to see was that we were all prepared to discuss issues and, at least, understand each other's point of view, even if we did not agree with it. I hope next year to continue to build on this recognition of each other's point of view, but at the same time improve upon our co-operation on making the Government accountable.

Tonight my thoughts go out to Carmel Tebbutt and her husband, Anthony, on the impending birth of their first child. I wish Carmel and Anthony the best of luck and the warmest of wishes for their upcoming new addition. I know that it is an overdue addition. Like so many first-time parents I am sure they are looking forward to the big day finally coming.

I thank the Clerk of the Parliaments, John Evans. John has provided my colleagues and me with invaluable advice. His wise counsel on all things parliamentary is deeply appreciated. During the year his deputy, Lynn Lovelock, left for East Timor to aid in the establishment of a democratic government, an important role in this fledgling nation. During this festive season our best wishes go to Lynn. Lynn's position was ably filled by Michael Wilkinson during her absence. Mike probably did not expect to be Deputy Clerk at this time,. However, he has done an outstanding job.

My thanks also go to the other members of the Legislative Council official staff. Warren Cahill continues to excel himself as Usher of the Black Rod; Russell Keith, who works hard as his deputy; Jovy and Janet are always happy voices on the other end of the phone when my staff or I have a query, no matter how small; Stuart Lowe, who keeps us in computers and office equipment and quietly handles all that entails in that job; Tim, Glenda, Malvyne, Kate, Elizabeth, Jillian, Ashley, Judy Anne, Jacki, Velia and Craig, thank you for all of your assistance during the year.

During the year we lost a number of senior, not in years but certainly experience, members of this Chamber. On Tuesday night we paid tribute to John Hannaford. John was, as you know, a former Leader of the Opposition in this House and Minister. He made a great contribution to the Liberal Party and this place prior to his departure. Richard Bull, who was Deputy Leader of the Opposition in the Legislative Council and a former Parliamentary Secretary, also retired. Rick has gone on to bigger and, I am sure, better things since he left this House. Earlier this year this House lost a serving Minister following the resignation of Jeff Shaw, who has returned to his first love: the law. In addition, Andrew Manson, a Government member, also announced his retirement.

Whilst it is always disappointing to see voices of experience retire, this year we also saw the election of new members with a great deal to offer this House. Figuratively, thrown in at the deep end, I think they have shown that although they may not yet be Ian Thorpes or Susie O'Neills, they can certainly swim. I am sure all honourable members join me in welcoming all of you at this time.

During the year we also lost a much-loved former member of the Chamber, Dr Marlene Goldsmith. She was a complex individual, thoroughly progressive yet traditional; intelligent, educated, compassionate and graceful. Marlene is sadly missed by the Liberal Party and all members on this side. The year also marked the passing of other former members, including Sir Eric Willis, Keith Enderbury, Otway Falkiner, Stanley Eskell and William Sandwith.

Thank you to the professional team of Legislative Council attendants, without whom this Chamber would not operate. Ian, Maurice, Michael Jarrett, Charles, Lucy, George, Katrina, John and Erin. This year Michael Santiago left to join the ministerial car pool and Erin has joined the Legislative Council official staff on level 8 on a temporary basis. We cannot forget to thank some of the hardest working people in this building—the Committee Secretariat. Committees are so much a part of what the Legislative Council is about—scrutinising the actions and functions of government—to create a better democracy. Fortunately, whilst the workload on the Committee Secretariat continues to grow, the staff continue to provide outstanding support to all of us.

Our thanks also go to all the managers and staff of the Parliamentary Accounts Section, Archives, Building Services, Education and Community Relations, Food and Beverage Services, Hansard, Information Technology Services, the Library, Printing and Security.

Finally, I thank all Coalition Legislative Council staff members. They are truly underappreciated in their dedication and hard work. Being in Opposition is not easy; being the only staff member to a member of the Opposition is even harder. With four shadow Ministers in the Legislative Council and the extra responsibilities of each of our 13 members leading on bills on behalf of the Opposition, our staff members display outstanding dedication above and beyond the call of duty.

During the year we have lost a number of our long-serving researchers—Flavio Romano, Lee Findlay, Edwina Pearce, Cinty Blaney and Angela Maguire. Katrina Hadjimichael is currently on maternity leave. Noel and Katrina are expecting their second child in 13 days time—one of the best Christmas presents a family can receive. I wish Katrina a safe delivery.

We have also welcomed a number of new additions to the Coalition fold—Sam Giddings, Susan Toft, Tricia Callaghan, Melanie Gibbons, Christine Wang and Ben Franklin. They have all settled in well. My wishes to everyone for a very merry Christmas and a safe and happy new year.

Reverend the Hon. F. J. NILE [6.34 p.m.], by leave: On behalf of the Christian Democratic Party, and particularly my wife, the Hon. Elaine Nile, I join the Leader of the Government in extending Christmas greetings to all members. I thank everyone for their co-operation and assistance. I thank Ministers, the Clerks

and the staff. I have appreciated the co-operation and harmony among the crossbench, which is a widely representative group that has worked very efficiently, perhaps more efficiently than the two major parties. The crossbenchers have made a positive contribution to this House during the past 12 months. We wish you all a joyful Christmas and a blessed new year as we adjourn to celebrate the birth of Jesus Christ, of whom the heavenly angel of the Lord spoke to Joseph and said:

> Joseph, thou son of David, fear not to take unto thee Mary thy wife: for that which is conceived in her is of the Holy Ghost.
>
> And she shall bring forth a son, and thou shalt call his name JESUS: for he shall save his people from their sins.

That was from St Matthew's gospel, chapter 1, verses 20 and 21. Next year, may we all celebrate the Centenary of Federation by supporting the parade on 1 January organised by Barrie Unsworth. Give thanks to God for all his blessings upon our nation over the past 100 years.

The Hon. Dr P. Wong: Mr Deputy-President, I seek leave—

Leave not granted.

Amendment agreed to.

Motion as amended agreed to.

ADJOURNMENT

The Hon. I. M. MACDONALD (Parliamentary Secretary) [6.36 p.m.]: I move:

> That this House do now adjourn.

AUSTRALIAN BROADCASTING CORPORATION FUNDING

The Hon. I. COHEN [6.36 p.m.]: I express support for the groundswell of community outrage at the current changes to our national public broadcaster, the ABC. The ABC has withstood ongoing cuts and changes from successive Labor and Liberal governments, and the community has repeatedly made it clear that an assault on the independence and the integrity of the ABC is unacceptable. Repeated polls illustrate this point. For example, a Newspoll survey in December 1998 found that 86 per cent of respondents rated ABC television to be good, compared with 44 per cent for commercial television; and 88 per cent of respondents rated ABC radio to be good, compared with 66 per cent for commercial radio.

More recently, in March this year, a national social service poll for ANU Research in public policy found that 40 per cent of respondents thought that more funding should be provided to the ABC, and only 14 per cent of respondents thought that the ABC needed less funding. The remaining 46 per cent supported the then level of funding. The people who thought more funding was required would have been willing to contribute up to $48 per year per person or 12.6 cents per day. The current expenditure is only $38 a year per person or 9¢ per day. Another recent poll asking Australians which institutions they believed were good for Australia found that the proportion citing the ABC had increased since the last poll from 85 per cent to 92 per cent.

The Federal Government's campaign against a healthy, viable ABC is yet another example of its disregard for the wishes of the Australian public and the health of our society. The ABC is good value compared with the commercial broadcasters, particularly given the difference in program quality. ABC radio service's cost per broadcast hour is only 40 per cent of that of comparable commercial radio broadcasters. ABC television service's cost per broadcast hour is only 36 per cent of that of comparable commercial television broadcasters. The value of this Australian icon transcends the commercial marketplace because of its positive contribution to the social, intellectual and cultural capital of Australia. In the *Sydney Morning Herald* Cynthia Banham quoted the director of television, Gail Jarvis, as saying that other units within the ABC would follow the path of the science unit, with more programs being co-produced and outsourced. It will be a tragedy to lose such programs.

The current changes have implications for public debate and democracy. Early yesterday morning the Hon. I. W. West, the Hon. Janelle Saffin and I attended a rally of a group of people concerned about that pillar of our society, the ABC, and the right to get commercial-free quality programming and quality information across our airwaves. The ABC provides scope for journalists to act independently and to be prepared, as one journalist on the day said, to bite the hand that feeds them. It makes for quality journalism. The current plans of

ABC managing director Jonathon Shier for commercialisation is a direct threat to the quality that makes the broadcaster so important to our society and so revered by the Australian community. The idea that the ABC should aggressively pursue commercial opportunities as suggested by its marketing consultant Keith Bales—that the name of the ABC and Friends of the ABC should become commercial brands and adopt Disney style merchandising—is appalling. The Greens and many people in the community would have a great deal of concern about this and will campaign strongly against it.

On election night in 1996 Senator Alston confirmed the Coalition's election promise that there would not be further cuts to ABC funding, yet here we are here again with the most serious cuts to date. The figures cited by staff-elected directors such as Ian Henschke are very telling. He cited figures adjusted for inflation, which clearly illustrate this point. In 1985-86 the ABC received over $666 million in funding. In 1998-99 it received only $507 million. Today's *Sydney Morning Herald* quotes the Prime Minister as rejecting claims in question time yesterday that the ABC is underfunded. So far as I am concerned that is inappropriate. The public has shown clearly that extra funding for the ABC is appropriate. The ABC, a very lean organisation, comprises many dedicated people who do excellent work for the concept of communication in our society.

In that same article in today's *Sydney Morning Herald* the Opposition's communications spokesperson said that Labor would be more receptive than the Coalition to the broadcaster's demands. It will be interesting to see whether Labor restores funding to pre-1996 levels if it wins government next year. In marginal seats like Richmond where I live—it has a margin of 0.06 per cent—the extremely important issue of ABC funding will determine the way in which the Greens' preferences flow. I have spoken to friends and I have asked them to join a campaign to conduct rallies in support of the ABC. I know that I speak for many Australians when I say that the ABC, an important institution, is vital to our survival as a democracy. I hope that we are able to maintain a commercial-free ABC.

AUSTRALIAN WORKERS UNION CAMPAIGN 2001

Ms LEE RHIANNON [6.41 p.m.]: Yesterday thousands of manufacturing workers and supporters participated in rallies around Australia as part of Campaign 2001 organised by the Australian Manufacturing Workers Union. I attended the rally in Sydney, along with many other Green members, to lend support to this critical campaign. Campaign 2001 is for job security and a better way of life for working Australians. Sixty thousand jobs have been lost from the Australian manufacturing industry in the last few years. Of even greater concern is the fact that most of these jobs have moved to countries with lower labour and environmental standards.

The Campaign 2001 industry claim contains a number of ground-breaking measures. These include: a casual contractor clause with a 30 per cent loading and a minimum of eight hours per day; a trust fund to protect employee entitlements; special measures to encourage women to enter the manufacturing industry; 12 weeks paid maternity leave; and reimbursement of a percentage of child care costs. Perhaps the most important component of the campaign is the protection of core labour standards in Australia and overseas. This is to be achieved by companies working only with businesses that abide by basic human rights and standards as set down by the International Labour Organisation.

The Greens have been encouraging many organisations with whom we work to sign a statement of support for Campaign 2001. We are pleased that, to date, the organisations that have signed include: Aid Watch, Animal Liberation, Community Aid Abroad, Earth Repair Foundation, Mineral Policy Institute, People for Nuclear Disarmament and the Rainforest Information Centre. The Greens New South Wales have also signed this statement of support. The Greens are proud to support Campaign 2001, as we were proud to support the recent S11 protests. We will continue to support efforts to highlight the damaging impacts of corporate globalisation.

This is not a protectionist or an isolationist stance; it is an articulation of the need for fair trade rather than free trade. Fair trade supports and raises environmental and labour standards around the world. Free trade, on the other hand, simply means a lowest common denominator approach with business activity moving to wherever environmental and labour standards and, therefore, costs, are lowest. Today, an important book *The Case for Fair Trade: a Citizen's Guide to the World Trade Organisation* was launched in Parliament House. I know that it will greatly assist people participating in Campaign 2001.

The book, which was published by the Australian Fair Trade and Investment Network, a group of 40 community organisations, was launched by Ms Sharan Burrow, President of the Australian Council of Trade

Unions. It explains how the World Trade Organisation [WTO] impacts on our lives. The WTO sets global rules for trade and investment between countries, yet WTO meetings are held behind closed doors and often there is no public debate before governments sign its agreements. Indeed, it is not properly representative of governments.

In November 1999 a WTO meeting in Seattle failed to reach agreement on a new round of negotiations. It was derailed by massive street protests and the refusal by 70 low-income country governments to agree to an agenda in which they had no voice. A year later there has been little change. Governments of the wealthy nations, including Australia, have failed to respond to these global concerns. Almost half the world's people live in poverty, with no access to running water, and the gap between rich and poor countries is increasing. Corporate globalisation is forcing down labour and environmental standards worldwide. There has never been a better time for Campaign 2001 or a greater need for the book *The Case For Fair Trade: a Citizen's Guide to the World Trade Organisation.* I recommend this book to everybody.

In my remaining time I join with my colleagues to thank everybody who works in this place. I understand that on sitting days about 390 people are employed in Parliament House. I personally greatly appreciate them, as I know all honourable members do. Without their dedication, commitment and objective assistance our work would be very much more difficult. I find that dedication inspiring and look forward to returning next year. I agree with the Deputy Leader of the Opposition in hoping everybody travels safely and returns in one piece.

AUSTRALIAN LABOR PARTY ELECTORAL TACTICS

The Hon. C. J. S. LYNN [6.46 p.m.]: I wish to speak about a speech by Mr Laurie Ferguson in Federal Parliament earlier today about an article that appeared in the *Sydney Morning Herald*. Mr Ferguson said:

> Ms Hamilton was employed by my office for a total of 41¾ hours over a two-year period.

Ms Hamilton stated that she worked for Mr Ferguson for only a short time. She also advised me that Mr Ferguson did not mention that for the 41¾ hours she was employed she was paid by the Government, or the Department of Administrative Services, but she was also employed by Mr Ferguson and received a personal cheque from him for the work she did as well as two or three cheques from his electorate office. I want to put that on the record. Mr Ferguson said:

> A check of the records has shown that Ms Angela Tosha has not been enrolled anywhere except in Carlingford in the electorate of Mitchell.

Again I spoke with Ms Hamilton, who disputes that. Mr Ferguson also mentioned a Ms Basher and said:

> … and a search of the record shows that Ms Basher has been enrolled in Belmore … since September 1995 …

Again, Ms Hamilton disputes that and says she was enrolled—

The Hon. P. T. Primrose: Point of order: Again the honourable member is seeking to make allegations against a Federal member of Parliament.

The Hon. C. J. S. LYNN: This is on the record.

The Hon. P. T. Primrose: I am having difficulty, because of the speed at which he is reading, to understand what allegation he is making. Is the member seeking to use a particular source of information to justify his claims? I am having real difficulty understanding the member. Which of the claims he is making are his and which are those of other people? What are the sources of information he is using to support his allegations?

The Hon. J. H. Jobling: To the point of order: The honourable member is making what is akin to a personal explanation. If he is permitted to proceed, it will all become quite clear.

The DEPUTY-PRESIDENT (The Hon. A. B. Kelly): There is no point of order, but I take the point raised by the Hon. P. T. Primrose that the Hon. C. J. S. Lynn must know the source of the information he is referring to. The honourable member may proceed.

The Hon. C. J. S. LYNN: Ms Hamilton wrote the following in a letter to the Joint Standing Committee on Electoral Matters yesterday:

> I'm worried as to what Mr Ferguson might do. Please assist me.

She wrote the letter out of desperation because of a chilling phone call she received the night before from Mr Ferguson's stepson, Mr David Voltz. Her former employer, Paul Matters, received a similar call. The caller referred to both Ms Hamilton and Mr Matters as "looney" and told them that there would be "severe retribution". This letter is a desperate call for help. I would hope that Mr Ferguson would call off his troops and desist from this sort of intimidation.

Ms Janice Hamilton also says that she signed an ALP clearance card with a notice to transfer her branch in July 1999, but Mr Ferguson today claimed that he had a personal letter from her, in her own handwriting, transferring her membership from Harris Park to the Bulli-Woonona branch, making it impossible for her to take part in preselection for Parramatta. I spoke again with Ms Janice Hamilton today and she denies ever writing that letter. I want to place that on the record as well.

WATERFRONT PRODUCTIVITY GAINS

The Hon. I. W. WEST [6.50 p.m.]: I wish to address recent radio and print media attention given to the so-called productivity gains on our waterfront, which relate to crane movements. First let me say that what shipowners require is not crane movements; it is reliability in their "windows". If a ship has a non-urgent window, stevedores will use one crane instead of three. Asia looks to guaranteed time slots in ports. Time slots were in place prior to the 1996 election. Singapore alone has more than 100 cranes but there are fewer than 50 cranes in the whole of Australia. The industrial relations barrister for Patrick Stevedores, Stuart Wood, wrote an article which appeared in the *Australian Financial Review* yesterday. Wood attributed supposed productivity gains to better management and better workplace agreements. This has supposedly occurred without massive expenditure of taxpayers money.

The article is merely an attempt to talk up the possibility of conflict during the enterprise bargaining negotiations next year, and to deflect attention from freedom of information (FOI) action taken by Federal ALP parliamentarian Lindsay Tanner. Reith waited until the last day available to lodge an appeal to the High Court on the FOI action. The freedom of information action will come before the High Court of Australia next March. Reith has only one last move in his attempt to suppress the truth about the 1998 waterfront conspiracy. The Federal Government will argue that the information should not be released because it will destroy the supposed benefits—or extra profits—on the waterfront. The secret reports concern the Government's role in Dubai. They hold yet another piece of the puzzle of Reith's waterfront conspiracy.

The FOI documents will not be good news for Howard and Reith in the Federal election campaign next year. The public will be reminded of the Federal Government's knowledge of, and role in, approving and financing the Dubai debacle, the use of SAS militia and industrial mercenaries with balaclavas and dogs coming into workplaces in the dead of night; the $20 training company Fynwest; the illegal sacking of the entire waterfront workforce; massive casualisation of the waterfront; ongoing sackings of union delegates; and the so-called right of management to manage—a return to the "bull" system.

Piers Akerman's *Daily Telegraph* article today opens with the statement, "At last the truly fraudulent nature of the bitter wharfies' dispute stands revealed" before continuing with a predictable antiworker rant. All I can say to Piers is that it is not over yet, there's plenty more to come. In a speech made on 19 May this year whilst opening the Australian Centre for Field Robotics, Patrick Stevedores Executive Chairman Chris Corrigan said, "It has to be remembered that companies are in business to make returns for shareholders"—that is, profits.

That is what this is all about, so far as Corrigan is concerned, while for Reith it is an ideological attack on workers. Let us not be deceived by the dodgy figures and emotive language used. This continuing campaign by Reith has nothing to do with individual worker productivity. Peter Reith was all over the radio last Tuesday, opening the batting for his partners in crime. When referring to the latest Bureau of Transport Economics *Waterline* magazine series and its figures on crane lifts of just under 25 per hour, on radio 6PR he said, "I think it's better for the employees on the stevedoring operations. It's certainly much better for business."

The company's figures on productivity are highly dubious. The simple fact is that at Botany one in four workers had been injured while using the cranes. The injuries result from labour cutbacks which force straddle operators to work day after day while twisted sideways in cramped, poorly designed cabins. The Sydney branch

of the Maritime Union of Australia is now prosecuting Patricks under section 15 (1) of the New South Wales Occupational Health and Safety Act on behalf of six Sydney straddle drivers. Mr Corrigan is actually nervous about a third stevedoring company about to set up operations in Melbourne. In next year's bargaining process Patrick Stevedores will be putting up more labour cutbacks. Automated ports do exist— [*Time expired*]

GREEK ORTHODOX CHURCH ASSISTANT BISHOPS

The Hon. J. M. SAMIOS [6.55 p.m.]: I inform the House that by February of next year the Greek Orthodox Archdiocese of Australia will have two new assistant bishops: Bishop Seraphim, who will serve in Adelaide, and Bishop Nikandros, who will serve in Perth. Currently, there are three assistant bishops who assist His Eminence Archbishop Stylianos in various States. The new appointments will now take the total number to five. In this regard, the Ecumenical Patriarchate of Constantinople, honouring Archbishop Stylianos' thirtieth year in the rank of Bishop—of these, 26 have been as Archbishop of the Greek Orthodox Church in Australia—immediately agreed to his proposal that the two young clergymen be made assistant bishops. This signifies a new era for the archdiocese at the beginning of the new millennium.

I am pleased also to inform the House that the archdiocese is organising an inter-Orthodox divine liturgy service at Sydney Superdome on 10 December 2000. The purpose of this combined service, which will be celebrated by Orthodox Christians of other jurisdictions as well, will be to celebrate the 2000 years since the birth of Christ and our entry into the third millennium of Christianity. On such an important occasion, following the announcement from the patriarchate, it is good to note the important role that the Greek Orthodox Church plays in our multicultural society, ministering to more than 700,000 Australians of the Greek Orthodox faith. The church provides for the needs of the community through more than 120 parishes, the maintenance of Greek welfare centres, St Basil's nursing homes, the theological college in Sydney and other organisations such as the millennium choir.

Honourable members will recall that the millennium choir played an important role during the Sydney Olympic Games. At the service on Sunday His Eminence Archbishop Stylianos, Primate of the Greek Orthodox Church of Australia, will officiate in a concelebration by the bishops with all the priests, accompanied by the chanting of the millennium choir at Sydney Superdome, Olympic Boulevard, Homebush Bay from 8:30 a.m. to 12 noon. It is significant also because none of the Greek Orthodox churches in Sydney will liturgise on that day so that they can all come together at the Superdome. It is an important occasion. It is anticipated that people from throughout the Sydney basin and outside will attend this important event.

OLYMPIC GAMES EQUIPMENT SALE

The Hon. Dr A. CHESTERFIELD-EVANS [6.59 p.m.]: Over the next few weeks or months thousands of Olympic items are expected to be cleared through various public and trade sales and auctions. I ask: Why is this gear being sold through trade and public auctions when State schools are struggling to procure sports equipment? Schoolchildren had a fantastic time during the Olympics and the Paralympics. The children would be inspired and amateur sport would be given a fillip if that equipment could be used in schools. Imagine how happy the kids would be if the high jump they were jumping over or the uniform they were wearing had been used by Olympians.

There must be warehouses or shipping containers full of Olympic gear that the Government is selling to make a quick buck. It is worrying that schoolchildren have to rely on sponsorship by McDonald's and other enterprises for their equipment, because schools cannot afford to buy it. It is a great shame that Olympic material is being sold without first being offered to schools. I recommend that the Minister for Education and Training call in the schools to pick over what they can use. If the equipment is sold there is no guarantee that the money raised will find its way into the public school system. Basketballs, high jump mats and office furniture is to be offered to the highest bidder. Some of that equipment will be sold to the schools, with a large profit being made in the middle.

Money from the auction, which will go into the Government's coffers, may then disappear never to be seen again—it would be much better to hand the equipment over to the schools. The Olympic equipment was paid for out of the Government's coffers and we want our kids to get the maximum benefit from it, both for use in sport and psychologically. It would be a great morale boost for the kids to know that they are benefiting from it. Perhaps the Minister can find a better use for this equipment before it goes to auction.

AUSTRALIAN LABOR PARTY ELECTORAL TACTICS

The Hon. JAN BURNSWOODS [7.02 p.m.]: I advise that today Mr Laurie Ferguson, a member of the Federal Parliament, made a number of important statements in response to allegations that were made in this House on Tuesday night. I stress that Mr Ferguson has responded to a number of those allegations and has given considerable detail about a check of various records that has been carried out. That check showed that some of

the people named by the Hon. C. J. S. Lynn have never been incorrectly enrolled, as he suggested. For instance, Miss Angela Tocher has been enrolled only in Carlingford and Joanne Basher has been enrolled in Belmore, not Parramatta, since September 1995. I will not detail Mr Ferguson's speech, because members can obtain it elsewhere. However, I will address a couple of important points raised by the Hon. C. J. S. Lynn.

Honourable members will remember that he spoke very fast and quietly. It was exceedingly difficult for honourable members to know whether he was making a speech or reading a letter. Eventually, he said that he was reading a letter. Copies of that letter have been circulated and they contain his handwriting. Serious issues are involved because the Hon. C. J. S. Lynn said that he was reading a letter, but when that letter was hawked around the media and widely distributed it was obvious that it contained extra information, personal annotations, in his handwriting. That is an important matter should future action be involved, and because of the possible misleading of the House. I record my concern at the nature of the allegations made in this House and the fact that they have been addressed comprehensively. Members of the Legislative Council should be concerned if a member purports to read a letter from another person but the letter contains the member's interpolations, particularly when the interpolations purport to apportion blame to Mr Ferguson and others by name.

PALESTINIAN-ISRAELI CONFLICT

CONDUCT OF Ms LEE RHIANNON

The Hon. I. M. MACDONALD (Parliamentary Secretary) [7.05 p.m.]: Like many honourable members, I sincerely hope that a more peaceful situation prevails in Palestine over the Christmas period. I am sure that the Hon. J. M. Samios would join me in urging all sides to the conflict to try to find a way back to the peace table as soon as possible, and in hoping that the attack on the people of the villages and towns of Palestine will cease. I hope that the Israeli army will pull back and stop shooting the people in those villages.

On another issue, like most honourable members I am becoming increasingly concerned about the activities of the secretive Stalinist takeover of the Greens, led by Ms Lee Rhiannon. The latest trick of these clapped-out, old Stalinists is to change the rules to ensure that the dedicated environmentalist—the Hon. I. Cohen—is thrown out of Parliament at the next election. All honourable members will be aware of Ms Lee Rhiannon's background with the Socialist Party of Australia. Since the disintegration of the Soviet Union, Ms Lee Rhiannon has led an absolute takeover of the New South Wales Greens. This attack is aimed at consigning the legitimate environmentalists to political limbo. Ms Lee Rhiannon and her fellow authoritarians are attempting to abolish the rank-and-file preselection system. They want the Greens executive—or, should I say, the politburo—to appoint the candidates.

Ms Lee Rhiannon wants to deny the rank-and-file greenies—the ones who stand in front of bulldozers and protest in the forests—a say in who their candidates will be. They are the people who have given the Greens their public profile—not the remnants of the Socialist Party of Australia. Ms Lee Rhiannon made her stance on democracy within the Greens pretty clear. Honourable members will also be aware of Ms Lee Rhiannon's hypocritical campaign on the entitlements of members of Parliament. In the leaflet entitled "Pollies Perks", distributed by her staff, she lambasts the Parliamentary Superannuation Scheme. This is all part of her pandering to base populism in a desperate attempt to get into the media. The challenge for Ms Lee Rhiannon is quite simple: make a statement that she will not accept her superannuation and donate it instead to a legitimate charity.

Ms Lee Rhiannon does not only complain about superannuation. We all remember Ms Lee Rhiannon's first actions on entering this House. She complained about how small her office was and how she wanted an office bigger than the Niles' office. If Ms Lee Rhiannon is so concerned about parliamentary entitlements, why does she use the dining room like all other members? She is one of the biggest consumers of the most expensive parliamentary catering service—that is, room service. Of course, what Ms Lee Rhiannon fails to make plain in her anti-Parliament tirades is that the entitlements of members of Parliament are set by an independent tribunal. She supports independent tribunals setting the wages and conditions of workers—but not for members of Parliament, it seems. She ignores the fact that independent tribunals were designed to take the setting of the entitlements of members of Parliament out of the hands of members of Parliament. As to her claims that parliamentary salaries are grossly exaggerated, thousands of public servants in the State earn the same or more than most members of Parliament. We do not hear her complaining too vigorously about that. Instead, we get grandstanding and hypocrisy.

Motion agreed to.

House adjourned at 7.08 p.m. until Tuesday 27 February 2001 at 2.30 p.m.