

# LEGISLATIVE COUNCIL

Thursday 21 June 2001

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

**The President** offered the Prayers.

## SYDNEY OLYMPIC PARK AUTHORITY BILL

**Bill received and read a first time.**

**Motion by the Hon. John Della Bosca agreed to:**

That, pursuant to contingent notice, standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

## M5 EAST TUNNEL VENTILATION

### Claim of Privilege: Tabling of Documents

**Motion by the Hon. Richard Jones agreed to:**

1. That this House, having considered the report of the Independent Legal Arbiter, Sir Laurence Street, dated 27 April 2001, on the disputed claim of privilege by Mr Richard Jones on papers on the M5 East ventilation stack, orders that the documents considered by the Independent Legal Arbiter not to be privileged, be laid on the table by the Clerk.
2. That, on tabling, the documents are authorised to be published.

## GENERAL PURPOSE STANDING COMMITTEE No. 3

### Report: Special Report on Possible Breaches of Privilege Arising from the Inquiry into Cabramatta Policing

**The Hon. Helen Sham-Ho**, as Chairman, tabled the report of General Purpose Standing Committee No. 3 entitled "Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing", dated June 2001.

**Ordered to be printed.**

**The Hon. HELEN SHAM-HO** [11.05 a.m.], by leave: This brief report deals with two possible breaches of privilege arising from the inquiry into police resources in Cabramatta being undertaken by General Purpose Standing Committee No. 3: (a) the unauthorised publication in the *Sydney Morning Herald* of 24 April 2001 of extracts from a confidential submission that had been received by the committee but had not been made public at the time; and (b) the issue by the Police Service of "directive memoranda" to officers who had given evidence before the committee on 23 April 2001 and the subsequent actions of the Police Service in respect of those officers following their having given evidence before the committee. This report was adopted by resolution of a majority of the members of the committee on 20 June 2001. The report concludes that the unauthorised disclosure of the submission was a serious matter that potentially interfered with the committee's functions. Despite this, the committee does not believe further inquiry will be able to identify the source of the disclosure.

The report concludes that the actions of the Police Service with regards to the four officers who gave evidence to the committee on 23 April 2001 also potentially constituted interference with the committee's functions and may have jeopardised the integrity of the committee system. The committee considers this issue of the treatment of the four officers as sufficiently serious as might constitute a possible breach of privilege or contempt which warrants the matter being reported to the House for possible reference to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report. As I am also the chair of the Parliamentary Privilege and Ethics Committee, it is recommended that another member chair the proposed inquiry.

**The Hon. JOHN HATZISTERGOS** [11.10 a.m.], by leave: Government members of General Purpose Standing Committee No. 3 dissented from the recommendations outlined in the report that has been referred to the Standing Committee on Parliamentary Privileges and Ethics. I take this opportunity to indicate briefly why I believe that the reference is not only inappropriate but, in the end, when the Standing Committee on Parliamentary Privileges and Ethics has to consider this matter and resolve some of the recommendations of this House, it will reflect poorly not only on General Purpose Standing Committee No. 3 but also on the Standing Committee on Parliamentary Privileges and Ethics that has to resolve the matter.

First, this issue arose because of two actions that were taken that facilitated that directive memorandum. On 23 April, when the police officers in question came before the committee to give evidence, a request was made by the Police Service to be present, to be able to at least find out what was occurring, to be in a position to assist the committee and to be able to respond. The majority of members of the committee refused that request. Second, notwithstanding the fact that the proceedings of that committee were confidential, on the afternoon in question after evidence had been given, the media had already obtained some foresight into what had occurred at that committee hearing and reported it the following day in breach of the privilege of the committee.

The committee resolved not to refer that issue to the Standing Committee on Parliamentary Privileges and Ethics. So two actions contributed to it. First, there was the action of the committee in ensuring that its confidentiality was not maintained and, second, there was the refusal by the majority to allow police representatives to participate, at least as observers, to find out what happened at that committee hearing. Police officers gave their evidence. The following day the media reported the fact that evidence had been given that drug criminals were recruiting school students—one would think a fairly serious allegation. The following day Commander Hansen issued directives to the four officers seeking information and assistance as to how it was that this was occurring and what evidence they had to support the allegations. Committee members can sit around and moralise as much as they like about issues of contempt, but the fact is that this reference is doing only one thing, that is—

**The Hon. Michael Gallacher:** It is keeping this issue alive.

**The Hon. JOHN HATZISTERGOS:** I will tell the Leader of the Opposition what it is doing. It is actually interfering in operational policing. Moreover, it is exposing the community to the risk of continual criminal activity, which will be unchecked because the majority do not want it investigated. In other words, what we are saying in this report is, "People can come along. They can make an allegation that there is drug recruitment in schools. But if the police investigate it that is terrible; that is a breach of the privilege of this House." In other words, we are not interested in finding out whether this is occurring and stopping it. All we are interested in doing is taking the high moral ground. However, this committee facilitated the breach of privilege by refusing to allow the police to be present and by not ensuring that confidentiality was maintained. All I can say is that this reference is a joke. It highlights the fact that Opposition members are not really interested in resolving the issue and ensuring that the community is protected. All that they are interested in is putting on a stunt.

**The Hon. Michael Gallacher:** Leave for the member to speak is withdrawn.

**The PRESIDENT:** Order! The honourable member's leave is withdrawn.

## **CONSUMER CREDIT (NEW SOUTH WALES) AMENDMENT (PAY DAY LENDERS) BILL**

### **Second Reading**

**Debate resumed from 20 June.**

**Reverend the Hon. FRED NILE** [11.17 a.m.]: I spoke briefly last night before debate was adjourned on the Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Bill. The Christian Democratic Party supports the bill, the overview of which is as follows:

The object of this Bill is to amend the Consumer Credit (New South Wales) Act 1995:

- (a) to apply the provisions of the Consumer Credit (New South Wales) Code (the Code) to certain providers of short term credit (known as "pay day lenders"), who are currently unregulated, by restricting current exemptions from the Code to short term lenders whose charges are below a stipulated amount, and

- (b) to make it clear that the provision of credit without express prior agreement is exempt from the Code, and
- (c) to require providers of credit who are regulated to disclose the cost of credit provided by them in terms of an annual percentage rate of interest, being a rate that is calculated by reference to charges in the nature of interest (whether or not described as such in the contract), and
- (d) to enable regulation to be made to provide that the maximum annual percentage rate of interest that may be charged by a regulated pay day lender is to be calculated on the basis of interest charges and all credit fees and charges under the credit contract, and
- (e) to make other consequential and savings and transitional amendments.

The Christian Democratic Party is concerned about paragraph (d) of the objects of the bill, which includes the words "to be calculated on the basis of interest charges". Obviously, that is an important and essential part of the legislation. However, paragraph (d) goes on to include the words "all credit fees and charges under the credit contract". That object becomes part of the bill. New section 11 (1A) states:

In the case of a short term credit contract, the regulations may require interest charges and all credit fees and charges under the contract to be included for the purpose of calculating the maximum annual percentage rate under the contract for the purposes of subsection (1).

According to the advice I have, the addition of the words "and all credit fees and charges" has changed the impact of the legislation beyond what I believe the Government intended. It also goes beyond the original agreement to have uniform legislation in Australia, the uniform consumer credit code legislation, which was initiated in Queensland by agreement of the State Ministers. I have been advised that the words "and all credit fees and charges" are not part of the uniform credit code legislation introduced by the Queensland Labor Government. The question is, why has the New South Wales Government included the words "and all credit fees and charges"? According to the advice I have received from the industry—the short-term, small amount loan industry—if those words remain in the bill they will close down the industry. I do not believe that is the purpose of the bill.

For that reason, I have given notice of an amendment, which has been circulated, that I will move in Committee to remove the words "and all credit fees and charges" from page 5, schedule 1, line 4. It is only a small change but it is a critical change to the legislation and will enable the industry to continue. If those words remain in the bill they will close down the industry in New South Wales. That will have the opposite effect to what the Government wants to achieve, which we all support, to protect vulnerable consumers who are facing a difficult financial position and need a small amount of money to pay a particular bill—maybe an electricity account or water rates, perhaps some payment overdue on a car or some other loan—and it is just an emergency loan to assist them.

If we destroy the payday lenders industry, we will force those vulnerable people straight into the hands of loan sharks. Usually the loan sharks are, in my view, perhaps not all of them but many of them, operating virtually in a criminal world. They are usually part of organised crime. Anyone who fails to pay back money to a loan shark will be physically dealt with—that is, have their arms or legs broken, or worse. None of us want to do anything to push people into the hands of loan sharks. We know they are ruthless and are operating on the edge of society. If my amendment is accepted, the payday lenders industry can continue. It will be monitored, it will be covered by the consumer credit legislation and by the code, and if any payday lenders violate the code, obviously action will be taken against them under the legislation by the Department of Fair Trading and by whatever other avenues are open to the Government.

The bill as it is currently worded, together with this State's 48 per cent maximum interest provision, allows an opportunity to introduce a regulation that would restrict payday lenders to a maximum fee of \$4 per \$100 on a one-month loan. This would make short-term lending economically unviable, because payday loans are for relatively small amounts of money and for a relatively short time. It is essential that this amendment be carried to enable the industry to continue and, as banks do, be able to charge a range of fees and charges. I strongly support the proposition that all fees and charges should be notified to the borrower, that they cannot be a hidden part of the loan. We know that bank establishment fees and account keeping, transaction and service fees are never included in their calculation of the published interest rates. Adding credit fees and charges as part of the interest rate increases the interest rate.

We also know that banks view small loans as an uneconomic business activity. Most banks will not provide a small loan, under \$5,000, and currently the St George Bank is the only bank, as far as I have been advised, that provides an unsecured loan facility for a minimum amount of \$2,000. That is the key aspect of this

payday lenders scheme—unsecured loans. Banks are very happy to lend money if they have security—a house or car—so if the borrower fails to pay back the loan the banks can take action to confiscate the property or at least have it sold to repay the loan. The payday lenders scheme operates without security. Lenders in the industry have to develop the skill of assessing clients, because without security there is no way they can get money out of clients in a real sense. They have to make an assessment whether the person they are lending the money to, even if it is only a small amount, will repay. It is part of the skill of industry participants decisions about whether a particular person will keep faith with the agreement.

Payday lenders provide an opportunity for people needing small amounts of money for a period usually of up to four weeks, and usually for emergencies. These amounts are almost always between \$100 and \$1,000. Only in very isolated cases is the borrowed amount in excess of this. Low income earners cannot be denied legitimate sources of credit. Both Federal Government and welfare agency reports make this clear. In 1975 Professor Sackville's Federal Government commission of inquiry into poverty noted at page 104:

For a poor person credit is often a necessity. Even basic goods and services may be beyond the immediate reach of low income earners, especially those suffering unexpected misfortune such as illness or unemployment.

Further, a study by Dr B. Hahn entitled "Just Credit—Should Access to Credit be a Citizenship Right?", published in March 1997 under the auspices of the Good Shepherd Youth and Family Service, stated at page 15:

Access to some form of credit is a prerequisite in enabling many individuals to exercise their right to basic household goods and other necessities. The use of credit for the low income earner is governed by need rather than choice.

Payday lenders offer an approval process of 30 to 60 minutes for most applications. Banks take two to three days for existing customers and up to 10 days for previous non-customers. Emergency medical treatment, rental deposit, emergency repair by tradesmen, such as emergency plumbing repairs, or travel expenses in a family crisis are just some examples of reasons that people cannot wait days for approval. The industry does not hide its fees and charges. It recognises they must be clearly published and advised to the borrower. They are higher than the interest rates charged by banks and credit card companies but the dollar amounts—given the staff costs, administrative time and overheads involved, as well as the risk that the loan may not be repaid—are not substantial.

Legitimate payday lenders lend on the following basis. Money Centre charges \$25 per \$100 borrowed on a 28-day cycle, plus a one-off photo identification application fee of \$5. No further fees are charged unless the customer defaults. Should the customer still be in default at the end of 60 days, all interest charges cease and the matter may be placed in the hands of a mercantile agency for collection. Another payday lender, Cash Stop, charges 10 per cent interest on loans up to \$100, plus \$15 for each direct debit transaction, and 15 per cent interest on loans from \$101 to \$2,000, plus \$15 for each direct debit transaction. There are no other charges unless the customer defaults, in which case an additional charge of 33 per cent interest is charged on all defaults in excess of 60 days.

Money Plus companies charge a once-only application fee of \$5 and a loan fee of \$24.45 for each \$100 for one month. A \$20 fee for dishonour and change of date and a \$70 monthly administration fee should the loan not be paid after two months can also be charged. However, these fees are rarely enforced and are clearly indicated to customers to discourage the need for their application. With 15 per cent to 20 per cent of customers taking their funds out of the bank prior to the direct debit being processed by the bank, one group of lenders charges a \$50 insufficient funds fee—equivalent to a bank's dishonour fee—in an attempt to discourage this practice, and another member of the group reserves the right, only occasionally exercised, to charge \$20 for all dishonoured cheques due to lack of funds.

I emphasise that the establishment fee and other charges are clearly indicated and fully explained to the customers of legitimate payday lenders. In no way do we want crooked operators in this area. Many payday lenders are recognised as being approved to operate in this industry. Any payday lenders who, by their actions, abuse or seek to abuse the code should be prevented from operating in the industry. Payday lending is not a licence to print money. In Western Australia 19 outlets opened over the past 18 months and only eight remain in business. So payday lending is not as profitable as some people perhaps believe.

Honourable members may be aware that the National Australia Bank has established a community consultation forum chaired by Reverend Tim Costello. He called on all the banks to make a one-off capital grant to a loan scheme for struggling low-income earners who find it difficult to obtain small emergency loans. As far as we are aware, the banks have not moved into this area or met that request at all. However, payday lenders have provided an opportunity. I urge the Government to accept the amendment and to monitor operation of this

bill. If the amendment is accepted, we can revisit the legislation if it is found that abuse is occurring. The Government can achieve its objectives even if the amendment is carried. However, it will enable needy persons in low economic situations to access emergency loans. I support the bill, and trust that the Government will accept the amendment.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [11.32 a.m.], in reply: I thank honourable 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 3 agreed to.**

### **Schedule 1**

**Reverend the Hon. FRED NILE** [11.34 a.m.]: I move the Christian Democratic Party amendment as circulated:

Page 5, schedule 1 [2], line 4. Omit "and all credit fees and charges".

During my contribution to the second reading debate I explained why this amendment is important. Deleting the words "and all credit fees and charges" will make the bill consistent with the National Consumer Credit Code, which originated from the Labor Government in Queensland with the agreement of State Ministers. If those words remain in the bill the New South Wales legislation will be inconsistent with that in other States. Other States will still have controlled and regulated payday lenders, but payday lenders in New South Wales will be closed down. As I said, all that will do is push vulnerable people into the hands of loan sharks. The Government's objective, in this bill, is to prevent that from happening. The addition of what appear to be innocent words, "and all fees and charges", will have a much more dramatic impact than I believe the Government intended. Therefore, I urge the Government and other members to support the amendment.

**The Hon. RICHARD JONES** [11.36 a.m.]: I support the amendment moved by Reverend the Hon. Fred Nile. What he said is perfectly true, and the Hon. David Oldfield said the same thing yesterday. If the legislation goes through unamended, these organisations will effectively go out of business. That will drive the borrowers, of whom there are tens of thousands, into the hands of the real loan sharks, who are completely uncontrolled by this Government or anyone else. Loan sharks are not covered by legislation and they can charge whatever they want. One might ask: Why does the Government not ban pawnshops? Pawnshops are much worse than payday lenders; they charge higher rates and they take stolen goods. After I was burgled they took my stolen goods from the people who were pawning them. Pawnshops are completely out of control; the Government should ban them. It is the same argument.

The people who become payday lenders are ordinary people. For example, Rob Bryant was involved in agriculture for many years. He spent 26 years in agriculture, dairy farming and cropping. He might even be a member of Country Labor. Recently he joined his daughter and her partner in purchasing two payday lending organisations. He is just an ordinary person; he is not a shark. Paul Barrel worked in the finest lending institutions in Canada. He was involved in the development of the payday lending industry in Canada. Brian Knap of Money Stop was the owner of the Grand Hotel in Mt Morgan, and was involved in wholesale milk distribution in Queensland and in the Northern Territory. He may well be a member of Country Labor as well.

David Prosser, the Executive Director of Money Plus, was involved in his family's wheat and sheep farm for seven years, and spent 10 years in management and marketing with Coles supermarkets. He is not a shark; he is an ordinary businessperson. John Thompson, Director of Money Stop, graduated from the University of Adelaide with honours in electrical engineering and science. He worked as a chief engineer with BHP and served in several executive roles in television and the defence industry. He is not a shark; he is an ordinary businessperson. The Government is putting these people, and many others, out of business without even a glance. It strikes me as extraordinary that the Opposition supports putting these people out of business and losing all these jobs when payday lending is a legitimate business.

Honourable members agree that payday lending needs to be controlled and that interest rates need to be reduced. However, we know that with the cap of 48 per cent payday lending companies will go out of business.

People will not be able to borrow \$200, \$300 or \$400 for two weeks or a month because they will not be able to borrow that money. They will have to go to the banks, pawn their goods, rob people or go to loan sharks to get \$2,000 or \$4,000. If the Government puts payday lenders out of business we will go back to the bad old days when the mafia controlled money loans; it will be the heavies lending the money at huge interest rates without any control whatever. That is exactly what will happen. That is why I support the amendment moved by Reverend the Hon. Fred Nile.

**The CHAIRMAN:** Order! I acknowledge the presence in the gallery of visitors from Taree High School.

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [11.40 a.m.]: The Government does not support the amendment. If passed, the amendment would ensure that the payday lending industry will in effect be able to operate outside the credit code with its existing 48 per cent interest cap. All payday lenders have different fees and charges. However, the lowest interest rate that can be calculated is 350 per cent and it can go as high as 1,300 per cent per annum. Section 11 of the Consumer Credit (New South Wales) Act permits a maximum annual percentage rate to be prescribed for credit contracts or classes of credit contracts to which the consumer credit code applies. The 48 per cent maximum interest rate was set as a result of an inquiry into high interest loans in 1992. This cap was put in place so that excessive interest rates could not be charged on loans.

It is not the Government's responsibility to guarantee the profits of any industry at the expense of the consumers whose interests it should protect. Financial counsellors routinely include fees and charges when determining an annual interest rate. The clients are usually surprised by the cost of credit. If the fees and charges are included as part of the interest rate, consumers will be aware up front of how expensive this avenue of credit is. The Australian Consumers Association, the New South Wales Financial Counselling Association, the New South Wales Consumer Credit Legal Centre and the Wesley Mission credit line are all in support of the original the drafting of the bill as they see at the coalface the effect that these excessive charges have had on consumers. I urge all honourable members not to support the amendment.

**Reverend the Hon. FRED NILE** [11.41 a.m.]: I wish to clarify an aspect of this amendment. In no way is this an attempt to change the interest rate. The Christian Democratic Party supports the maintenance of the interest rate and there is no problem with the interest rate which is stated in the legislation. The Deputy Leader of the Opposition interjected to ask why there would be a need to have extra money and to say that it is exorbitant for a person to pay \$4 for a loan of \$100. I think all honourable members would realise that an organisation that employs a person to work in an office for the purpose of facilitating discussions with people who are seeking a \$100 loan, even without security, entails time being spent on interviewing the applicant.

It is arguable that it would not be economical for a company to provide a \$100 loan in return for a \$4 fee. The point is that \$4 may be the interest but it may be necessary to charge another small fee to cover costs of administration and procedures to agree to provide the loan. For that reason, the fees and charges should not be part of the 48 per cent rate, and that is the problem. The amendment is not intended to lower, change or in any way affect the interest rate but it does seem that it would be impossible to operate without a separate fee. Everyone knows the costs involved in the payment of wages, rent and other charges involved in operating a business. A fee of \$4 would not be sufficient to cover administration costs as well as the interest rate itself.

**The Hon. IAN COHEN** [11.43 a.m.]: I place on the record the fact that the Greens do not support the amendment that has been moved by Reverend the Hon. Fred Nile. If a business cannot operate effectively on the rates that have been decreed by the bill, there is really something wrong. I do not think that the assertion that payday lenders are in some way reasonable operatives because they have an office front and expenses is relevant to the debate. We have seen the usurious rates of such businesses across the State that have adversely affected extremely vulnerable people who are at the lower end of the socioeconomic scale. I think that the Government is being somewhat generous to payday lending organisations by allowing them to operate under the auspices and the provisions of this bill. The Greens feel rather saddened that the amendment would wind back some of the control provisions. This is an important piece of legislation which will protect those in our community who need support.

**Amendment negatived.**

**Schedule 1 agreed to.**

**Title agreed to.**

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

**CRIMES LEGISLATION AMENDMENT (EXISTING LIFE SENTENCES) BILL****In Committee****Clauses 1 to 4 agreed to.****Schedule 1**

**The Hon. PETER BREEN** [11.47 a.m.]: I move Reform the Legal System amendment No. 1:

No. 1 Page 3, schedule 1. Insert after line 5:

*juvenile offender* means an offender who was under the age of 18 years at the time of the offence by virtue of which the offender is serving an existing life sentence.

The purpose of this amendment is to exclude juvenile offenders from the operation of the Crimes Legislation Amendment (Existing Life Sentences) Bill. I wrote to the Attorney General on 14 June about the ages of offenders who are likely to fall within the ambit of the bill. The Attorney kindly replied to me by letter dated 20 June. As I indicated to the House during the second reading debate on the bill, my amendment seeks to exclude two offenders, Bronson Blessington and Matthew Elliott, who were aged 14 and 16 years respectively at the time they committed the murder of Janine Balding. The Attorney has confirmed their ages. If honourable members were to agree to my amendment, both offenders would be entitled to a review of their sentences after 20 years.

I remind honourable members that my amendment seeks to do no more than preserve the status quo at the time that these two juveniles were sentenced. Although their files were marked by the sentencing judge "Never to be released", at the time they could reasonably have been expected to receive a review of their life sentences after 20 years. That was the law prior to the 1989 truth in sentencing legislation. My amendment says, in effect, that it is not fair to shift the sentencing goal posts on two juveniles who played a secondary role in a crime for which life meant a review of sentence after 20 years. Life did not mean life when they committed their offences.

The legislation, in so far as it shifts the sentencing goal posts on these two juveniles, breaches every principle of due process in the human rights statute books. By way of example, article 15 of the Universal Declaration of Human Rights, which Australia played a significant role in formulating, provides:

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.

This law flagrantly breaches that provision of the Universal Declaration of Human Rights. I will not repeat the remarks I made about those two offenders during the second reading debate, except to say that the Chief Justice of the High Court, Justice Murray Gleeson, when he was head of the New South Wales Court of Appeal, made the observation that because of their young age at the time of their offences, Blessington and Elliott should never have had their files marked "Never to be released". If this legislation is to be appealed—and Premier Carr, who knows everything, says it will be challenged in the High Court—the same Justice Murray Gleeson, who is now head of the High Court, will have no difficulty striking it down simply by referring to his remarks in the Court of Appeal.

As I said on another occasion, the intention behind the legislation is to be commended—namely, to keep the killers of Virginia Morse in gaol. But to do so in a sweeping bill such as this is foolhardy in the extreme. If Bronson Blessington, aged 14, and Matthew Elliott, aged 16 at the time of their offences, are to be treated in the same way as Kevin Crump and Allan Baker, the killers of Virginia Morse, the legal system is terminally ill. Blessington and Elliott were frightened children who took police to the body of Janine Balding on the day after her murder. They were not the main perpetrators of the offence. Crump and Baker, on the other hand, were ruthless, heartless killers whose treatment of Virginia Morse will see them forever condemned by the citizens of New South Wales.

The final matter I raise relates to Leslie Murphy, who was one of the offenders in the murder of Anita Cobby. I referred to him at some length in my contribution to the second reading debate, when I anticipated that my amendment would also encompass him. At the time I believed that Leslie Murphy was under 18 at the time of the offence, and I also believed that he was not one of the principal perpetrators. I now know, thanks to advice from the Attorney General's Office, that he was actually aged 22 at the time of the offence, and therefore he would not be covered by my amendment to the bill.

Leslie Murphy raises another problem with regard to the bill. I am reliably informed that although he was not a juvenile, he played a secondary role in the rape and murder of Anita Cobby, and that he is now a model prisoner. Honourable members may not be aware that Leslie Murphy had a retrial as a result of an appeal to the High Court. On retrial his papers were not marked "Never to be released". Nevertheless, he will be cemented in—to use the Premier's expression—under this legislation because of the legislation's definition of "sentencing court". Leslie Murphy's case means that the High Court has one more reason to toss this legislation into Lake Burley Griffin, where it belongs.

**The Hon. RICHARD JONES** [11.54 a.m.]: I support the amendment moved by the Hon. Peter Breen. The honourable member spoke about the Universal Declaration of Human Rights, and he is perfectly correct. However, I do not think that declaration applies in New South Wales, as we move inexorably towards a police State under the conservative Labor Government. The effect of this amendment is to exclude juveniles from the operation of the bill on the basis that courts, when sentencing, have always treated juveniles differently from adults. The amendment would have the practical effect of excluding two prisoners whose files were marked "Never to be released" from the effect of the bill. They are now categorised as having an existing life sentence. It is important to remember that these two people were juveniles when sentenced; they were 14 and 16. In addition, both have been the subject of comments by the Supreme Court that the "Never to be released" recommendations should not have been made, primarily because they were juveniles at the time of the offence.

The Hon. Peter Breen's amendment will not affect any of the other persons currently under the "Never to be released" provision. This is where my greatest concerns lie, in that if the other offenders had had their cases reviewed and their sentences had been changed, perhaps we would be talking about them right now as well. Once again, the retrospective nature of this legislation will undoubtedly mean that it will be subject to a High Court challenge. My foreshadowed amendment No. 2 would provide the opportunity for a juvenile offender to apply for parole after 20 years, as currently exists, as opposed to the 30 years that the Government has proposed. These amendments have merit in that they seek to uphold the essence of the sentence as handed down by the Supreme Court.

**The Hon. IAN COHEN** [11.56 a.m.]: The Greens strongly support the amendment moved by the Hon. Peter Breen and commend him for his consistent attention to these matters since he has been a member of this place. The amendment seeks to remove the two juveniles, who were 14 and 16 years of age at the time of their offences, from the provisions of the bill. It must be brought to the attention of both the Parliament and the courts of this land that a degree of leniency and exemption from the issues raised in this bill should be extended to offenders who are under the age of 18 years. The Greens have consistently said we do not agree with the "Never to be released" endorsement. As the Hon. Peter Breen said, the two criminals took the police to the scene of the crime shortly after the offence was committed. They could not be considered at this time to be hardened criminals.

Whilst that does not take away from the obscenity of the actions undertaken by these two youths and does not excuse them, nevertheless it is important that we ensure that on sentencing juveniles are treated differently from adults. Previous speakers have referred to the United Nations Human Rights sentencing principles. Despite the fact that we lurch somewhat to the right with a flurry of legislation that, in the view of the Greens, is extremely regressive, nevertheless it is important that we maintain an awareness that the international eye is watching us with this type of legislation, and it is therefore important that leniency be extended to juvenile offenders. Both offenders have been subject to a lifting of the "Never to be released" recommendation of the Supreme Court. It is important that we acknowledge that by supporting this very reasonable amendment. The Greens therefore support the Hon. Peter Breen's efforts and his amendment.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.58 a.m.]: It amazes me that the Hon. Peter Breen has referred to these juveniles by name. If we are to have any respect for the separation of powers, we should not try to usurp the role of the courts. But, of course, this legislation applies to so few people that we are in fact acting as judges. I believe that that is a very bad aspect of this legislation. The Hon. Peter Breen, who has followed this legislation more closely than many members of this House—and I commend him for his attention to these matters—made the point that the legislation changes the law with regard to juvenile sentencing and that juveniles have always been treated differently. The Australian Democrats support and hope that the Government will accept this amendment in the interests of the principle that juveniles should be treated differently. This Government should pay more attention to having the possibility of reform.

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

**The Committee divided.**



**Ayes, 9**

Mr Breen  
 Mr Cohen  
 Mr M. I. Jones  
 Mr R. S. L. Jones  
 Mrs Sham-Ho  
 Mr Tingle  
 Dr Wong  
*Tellers,*  
 Dr Chesterfield-Evans  
 Ms Rhiannon

**Noes, 29**

Ms Burnswoods	Mr Harwin	Mr Pearce
Mr Colless	Mr Hatzistergos	Dr Pezzutti
Mr Della Bosca	Mr Johnson	Mr Ryan
Mr Dyer	Mr Lynn	Mr Samios
Mr Egan	Mr Macdonald	Ms Tebbutt
Ms Fazio	Mr Moppett	Mr Tsang
Mrs Forsythe	Mrs Nile	Mr West
Mr Gallacher	Reverend Nile	<i>Tellers,</i>
Miss Gardiner	Mr Obeid	Mr Jobling
Mr Gay	Mr Oldfield	Mr Primrose

**Question resolved in the negative.**

**Amendment negatived.**

**Pursuant to sessional orders progress reported and leave granted to sit again.**

## QUESTIONS WITHOUT NOTICE

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### KINGS CROSS MEDICALLY SUPERVISED INJECTING ROOM

**The Hon. MICHAEL GALLACHER:** My question is to the Special Minister of State. Of the 46 users of the Kings Cross injecting facility who have been referred to other services, including counselling and detoxification programs, is any information available to show whether those users actually attended any of the other services? Have any of the 46 users who have been referred to other services returned to the injecting facility?

**The Hon. JOHN DELLA BOSCA:** The Leader of the Opposition has asked for more details based on my response to a question by Reverend the Hon. Fred Nile at last night's estimates committee to which I gave a lengthy and comprehensive answer. The answer is in two parts. Last night I foreshadowed that I would shortly have the final form of the preliminary first month evaluation from the Chief Medical Officer. I indicated to the committee that I would be prepared to make that document public in the near future. I have not yet reviewed the document. I believe that some of the matters canvassed in the question of the Leader of the Opposition would be covered in that report but I cannot give a guarantee as I have not seen that level of detail yet. His question is valid. The evaluation methodology that has been tabled is quite comprehensive and would cover information along the lines that he requires. Obviously the information is useful and I will make inquiries to see when such information, if it is being collected, will be available.

### DISADVANTAGED YOUNG PEOPLE SUPPORT

**The Hon. TONY KELLY:** I ask a question of the Minister for Juvenile Justice, and Minister Assisting the Premier on Youth. What action has been taken to assist local communities in providing support for disadvantaged young people?

**The Hon. CARMEL TEBBUTT:** I thank the Hon. Tony Kelly for his interest in how the Government is delivering for young people in New South Wales. There are approximately 1.2 million young people between the ages of 12 and 24 in New South Wales. The general contribution of young people to our State is often underrated. Most young people in New South Wales enjoy the support of loving families and communities. That support is one of the most important factors that allow them to make a successful transition to adulthood and to take their place as independent citizens within our communities.

However, it is unfortunate that some young people find themselves without the support they need to make a successful transition to adulthood. This can be for a range of reasons. The honourable member asked what action has been taken to support this group of young people to make that successful transition. In addition to the important work of schools, TAFE organisations and community services, the Government is supporting innovative projects that encourage young people, in partnership with business and their local community, to develop strategic and sustainable local projects. The important part of these projects is that they build partnerships at the local level. The partnerships can involve joint support, both financial and in kind, of a variety of organisations, government agencies, individuals and young people. These partnerships are both more likely to endure and to embed themselves in the life of the community.

Through the Government's Youth Partnerships initiative, at least 18 projects have been undertaken. Those projects focus on activities that prepare young people for work, provide young people with access to safe community space and facilities, and assist young people to address issues such as rights, responsibilities and self-esteem. In keeping with the Government's commitment to including young people in decisions that affect their lives, every project supported by the Youth Partnerships initiative has involved young people. Some programs have included the Unemployed Early School Leaver Project, in Mount Druitt, and the Mount Druitt Youth Enterprise Futures Project, which is a partnership between the GROW Employment Council and the Department of Education and Training, the Australian Student Traineeship Foundation and the Blacktown Council to improve early school leavers and senior high school students' transition from school to further education, training and work.

The Machismo project is an initiative that works with young men within the school setting to enable them to remain connected with the school through the development of skills in the performing arts. This program allows young men to express themselves in non-aggressive ways, and operates in Kogarah, Barham, which is near Deniliquin, Salamander Bay, Picton and Granville. A partnership with the Hunter Star Foundation—and its sponsors, the Newcastle and Hunter Business Chamber, the Hunter Business Centre, the NRMA and BHP—the Broadmeadow Police and Community Youth Club and the Department of Juvenile Justice supports the Living IN Communities [LINCS] program. The LINCS program is an initiative providing literacy, numeracy and self-esteem development as a diversionary option for magistrates dealing with young offenders before the Worrima Children's Court.

The last project to which I refer is one with which honourable members of this House may well be familiar, because some of the portraits done as part of the Big *h*ART project were displayed recently in the foyer of the Parliament. The Big *h*ART program was a partnership with the Moree Plains Council, a Moree cotton company, the New South Wales Department of Aboriginal Affairs and the Commonwealth Department of Education, Training and Youth Affairs. It enabled 10 disadvantaged and marginalised young people to develop the Big *h*ART performance piece, which was then performed at the Adelaide Festival. That initiative and its performance received quite a bit of media coverage, focusing particularly on the importance of a range of government and non-government agencies working together and on the role that the performance played in developing self-esteem. [*Time expired.*]

#### DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT WEB SITE

**The Hon. DUNCAN GAY:** My question is to the Minister for State Development. Can the Minister explain why visitors to his Department of State and Regional Development's public Internet site who enter the word "electricity" in the search facility on that site are presented with a link to a document stored on that site that lists more than 1,200 audio files, such as tracks like Ray Charles' "Born to Lose", Garbage's "I think I'm Paranoid", John Lennon's "Power to the People", Pearl Jam's "Rats", Pink Floyd's "Us & Them", and Fleetwood Mac's "Rhiannon"?

**The Hon. MICHAEL EGAN:** I thank the Deputy Leader of the Opposition for that very interesting question. I have no idea. I have never visited the site.

**The Hon. John Jobling:** You will now.

**The Hon. MICHAEL EGAN:** I will now. I am just as intrigued as is the Deputy Leader of the Opposition.

**The Hon. John Ryan:** The music is good, even if the lyrics are lousy.

**The Hon. MICHAEL EGAN:** I am going through the list; there is not much that appeals to me. But I will give it a go. I do not know the answer to the honourable member's question, but I will soon find out.

**The Hon. DUNCAN GAY:** I ask a supplementary question. What action will the Minister take to ascertain whether this government-owned, taxpayer-funded computer equipment is being used to establish and run what amounts to an Internet jukebox?

**The Hon. John Ryan:** What is the web site?

**The Hon. DUNCAN GAY:** It is *www.business.gov.au* within the department's media section, under "electricity".

**The Hon. MICHAEL EGAN:** As I indicated in my earlier answer, I am not aware of the matter that the honourable member raised, but I will be fully aware of it by the end of the day, I can assure him.

### ILLEGAL LAND CLEARING PROSECUTIONS

**The Hon. HELEN SHAM-HO:** I ask a question without notice of the Special Minister of State, representing the Minister for Agriculture, and Minister for Land and Water Conservation. Are more than 100,000 hectares of land being cleared without permission in New South Wales each year? If so, can the Minister advise how many prosecutions against illegal land clearing were instituted by the department over the past 12 months under the New South Wales Native Vegetation Conservation Act 1997? Can the Minister further advise what action the department will be taking to strengthen and improve native vegetation conservation in New South Wales?

**The Hon. Doug Moppett:** No action, because the assertion is false.

**The Hon. JOHN DELLA BOSCA:** I note interjections from the other side of the Chamber. The observation I would make is that I am very surprised by the figures referred to by the Hon. Helen Sham-Ho. I am unaware of that extent of illegal land clearing occurring in New South Wales. However, I am not in a position to categorically deny that. As for the other two elements in the honourable member's question—how many people have been prosecuted for illegal land clearing, and what is the Government doing about its obligations under the native vegetation legislation—I will get answers to those questions from the Minister and make them available as soon as practicable.

### FAMILY-FRIENDLY WORKPLACES

**The Hon. RON DYER:** My question without notice is addressed to the Special Minister of State, and Minister for Industrial Relations. Can the Minister inform the House how the Government has helped businesses provide family-friendly arrangements at the workplace level?

**The Hon. JOHN DELLA BOSCA:** Helping businesses provide family-friendly arrangements that meet both business imperatives and work and family needs is the centrepiece of the New South Wales Work and Family Strategy 2001-2003, "Making it Work". One such initiative in the strategy is the rostering and shiftwork project in residential care facilities. The residential care sector was chosen for this work because those organisations run a 24-hour 7-days-a-week service for the most frail and vulnerable members of our community. Residential care staff are often women with family responsibilities, working shifts, and usually either part time or casual. Seven residential care facilities volunteered to participate in the project. Those facilities cover four regional centres and three from the metropolitan area.

The project will develop a model of rostering and shift work arrangements in the residential care sector that is both cost effective and enables employees to balance their work and family responsibilities. A model of effective rostering and work and family practices will be developed from the specific workplace experiences of both nursing and general staff. The model will then be looked at with a view to assessing the feasibility of applying the lessons learned from the rostering study to other industries. I look forward to informing the House of further examples of how this Government continues to assist organisations in implementing family-friendly arrangements at the workplace level.

## GUNS AND AMMUNITION IN SCHOOLS

**The Hon. JOHN TINGLE:** My question without notice is addressed to the Treasurer, representing the Minister for Police. Have there been several recent incidents of guns and ammunition being found in Sydney schools? Can the Minister assure the House that full investigations are being made to trace the source of the guns and ammunition and, in the spirit of the recent Firearms (Trafficking) Amendment Bill, can the Minister assure the House that not only the young people involved but also any person who allowed access to the firearms—even inadvertently—will be dealt with under that Act to the full extent of the law?

**The Hon. MICHAEL EGAN:** I will certainly refer the honourable member's question to the Minister for Police and obtain a response as soon as I can. I indicate to the House that I have to leave question time at 12.30 p.m. because of a prior engagement to open the Reuters Asia Customer Relationship Management Centre.

## SYDNEY INTERNATIONAL EQUESTRIAN CENTRE

**The Hon. JOHN RYAN:** My question without notice is directed to the Treasurer. How much does it cost the Government each year to maintain the Sydney International Equestrian Centre at Horsley Park? How many community events and exhibitions, as promised by the Minister for the Olympics, have been held at the centre since the conclusion of the Paralympic Games?

**The Hon. MICHAEL EGAN:** I do not have those details to hand, but I will ascertain them as quickly as I can and provide that information to the House.

## RESTAURANT AND CATERING INDUSTRY INFORMATION GUIDE

**The Hon. HENRY TSANG:** My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House about the activities that have taken place to assist employers and employees in the restaurant and catering industry?

**The Hon. JOHN DELLA BOSCA:** The honourable member has an interest in the restaurant and catering industry and I know that he has many friends and supporters who are restaurateurs. The honourable member and I share a love of the Sussex Street precinct where some of the best Asian cuisine is available in this State, indeed probably in this nation. In May this year the Department of Industrial Relations launched a new guide to employing staff in New South Wales restaurants, cafes and catering venues. The guide provides information about employment rights and obligations in New South Wales, with specific reference to the major awards applying in restaurant, cafe and catering venues in New South Wales.

The department identified restaurants, cafes and catering venues as a major area of concern for industry compliance, given the profile of the work force, which is often made up of young, casual and part-time workers. It is an important initiative designed to assist employers in this industry and to ensure that they understand their legal obligations under New South Wales industrial laws. The guide is the result of the collaborative effort co-ordinated by the department. The involvement of the Liquor, Hospitality and Miscellaneous Workers Union and the New South Wales Restaurant and Catering Industry Association has ensured that the guide is relevant and appropriate for all parties.

The launch of the guide was attended by representatives from the New South Wales Restaurant and Catering Industry Association, the Liquor, Hospitality and Miscellaneous Workers Union, as well as restaurant employers. In the morning representatives celebrated the consultative approach to developing the guide and generated feedback that the guide was identified as a valuable resource for both union and employer associations. This is exactly the sort of relationship that the department wants to encourage with other employer associations and unions. The ultimate beneficiaries are the employers and employees who then work in a fairer and more productive environment. An indication of the success of the new publication was a request by the Restaurant and Catering Industry Association for reprints to fulfil large orders for the guide. The department was also approached after the launch of the guide by other unions seeking the opportunity to develop guides specific to their industry.

Another project currently under way is the translation of five key industrial relations brochures on employment rights and obligations. In recognising the fact that many workers are at risk of underpayment and are working in relatively unsafe and unregulated work environments, the department will print several brochures in Chinese and Vietnamese community languages. That is in addition to the popular "Your Rights at Work" brochure, which was recently reviewed and reprinted in six languages.

Part of the problem with non-compliance workplaces stems from a lack of access to necessary information and assistance. In addition to providing industrial information in a variety of community languages, the department has a number of staff able to assist customers from non-English speaking backgrounds. My department will continue to work in close association with representative bodies to achieve positive results for both employers and workers.

### **METROSHelf WORKERS PROTECTION**

**The Hon. Dr PETER WONG:** My question without notice is directed to the Minister for Industrial Relations. Is the Minister aware that 50 workers at a factory called Metroshelf in Revesby were stood down simply for changing union membership? Workers changed membership only when the previous union advised them that they had to keep working even though the factory temperature reached 46 degrees Celsius last summer. Will the Minister investigate this matter urgently and take appropriate action to protect these workers?

**The Hon. JOHN DELLA BOSCA:** I am not aware of the specific incident. I will investigate the matter and provide the honourable member with the information that he requires.

### **SYDNEY INTERNATIONAL EQUESTRIAN CENTRE**

**The Hon. Dr BRIAN PEZZUTTI:** My question without notice is directed to the Treasurer, and Vice-President of the Executive Council. Were any proposals put to the Government for the use of the Sydney International Equestrian Centre at Horsley Park before the Olympic Games? What action did the Government take to evaluate those proposals? Were those proposals accepted or rejected? If they were rejected, for what reason were they rejected?

**The Hon. MICHAEL EGAN:** I am not aware of any proposals. That is not to say that there were not any. I became the Minister responsible for Sydney Olympic Park only in recent times. Of course, the Government is also looking at the future management of those Olympic venues that are not part of Sydney Olympic Park. A task force is looking at the future management of those venues. I will certainly ascertain the facts pertaining to the honourable member's question and provide them to him as soon as I am in a position to do so.

### **GLENNIES CREEK COALMINE**

**The Hon. IAN WEST:** My question without notice is directed to the Minister for Mineral Resources. What action has been taken to ensure that the community in the Hunter region benefits from Glennies Creek coal deposits?

**The Hon. EDDIE OBEID:** I am pleased to inform the House that the development of the Glennies Creek underground coalmine near Singleton has taken a major step forward. Overnight, the New York Stock Exchange was advised that one of America's largest underground mining companies intends to purchase a 50 per cent interest in the project. Consol Energy, a major United States coal and coal bed methane producer intends to jointly develop the project with Namoi Hunter Pty Ltd. Consol Energy currently provides jobs for nearly 7,000 workers in the United States. Its American holdings include 22 coalmining complexes producing nearly 70 million tonnes of coal a year. I welcome Consol Energy to New South Wales, both as a joint coal venturer and for its expertise in coal bed methane production.

Glennies Creek is particularly significant to me. In May 1999 one of my first duties as Minister was to visit the start of the trial project. I also congratulate Namoi Hunter, a subsidiary of American Metals and Coal International, on its commitment to this project. The company, which recently officially opened its Whitehaven open cut mine, operates 10 mines in Australia and the United States of America. At a time when coal prices were depressed, Namoi forged ahead and continued work on the Glennies Creek site, providing jobs for local families. At present, the mine has 70 workers and it injects up to \$25 million into the local economy.

This could double to nearly \$50 million when the mine is in full production in 2004. It is anticipated that the mine will be capable of producing 2.5 million tonnes of high fluidity coking coal a year. This type of coal is keenly sought by steelmakers in the Asia-Pacific area. This is great news for the Hunter region and is very welcome news for mine workers and their families. When the mine is fully operational it is expected that a further 50 jobs will be created. The venture will make good use of existing infrastructure. Coal will be washed at the adjacent Camberwell mine and railed to Newcastle using that mine's infrastructure. Initial underground work

has been completed and today's announcement is a green light for further development. I welcome Consol Energy's entry into the New South Wales coal industry as further evidence of the bright prospects for this important industry. I congratulate Namoi Hunter on its commitment to this significant project, which creates jobs and supports local businesses in New South Wales.

**The Hon. Dr Arthur Chesterfield-Evans:** Madam President—

**The Hon. Duncan Gay:** Point of order: I draw your attention to rulings of former Presidents, and a ruling of yours, that members should not wear badges larger than the Legislative Council members badge.

**The PRESIDENT:** Order! I recall a ruling by Deputy-President Gay to the effect that badges worn by members should not be larger than the lapel pin indicating that the wearer is a member of the Legislative Council. I ask members to remove any badges they are wearing that are larger than the members' badge.

### INDUSTRIAL ARBITRATION

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** My question is to the Minister for Industrial Relations. Has the Law Society of New South Wales provided to the Minister an alternative model for arbitration that it says will aim to dispose of 90 per cent of matters in the arbitration system, saving the scheme money and safeguarding workers rights? Has the Minister met with representatives of the Law Society, and if not, why not?

**The Hon. JOHN DELLA BOSCA:** I met with representatives of the Law Society some time ago during the consultations I was having with the two key stakeholders. I have explained that on a number of occasions. I do not want to go over that ground again; I have referred to that matter a couple of times now. The Law Society has not presented such a model to me. I have discussed the form of an alternative dispute resolution package with both employer and employee organisations. I understand many aspects of the model presented to me as the basis for the discussions with the Labor Council of New South Wales, which has also formed the basis for discussions I have had with employer organisations, represent the views of a large number of solicitors practising in the workers compensation jurisdiction. I have been working on that basis. If another model is being presented, I am as yet unaware of it. But, being an open-minded person and interested in these matters, I would be interested to see that model and compare it with the one presented in the bill before the other place.

### KINGS CROSS MEDICALLY SUPERVISED INJECTING ROOM

**The Hon. JAMES SAMIOS:** My question is to the Special Minister of State. Now that the operating cost of the Kings Cross injecting room has blown out by \$2.5 million, can the Minister explain to the House what the expected total cost will be? Can he also explain what projects will suffer as a result of having to divert funding to support the operation of the injecting room? Has he blamed the cost blow-out on objectors to the injecting room?

**The Hon. JOHN DELLA BOSCA:** I do not tend to scapegoat any particular group of people or explanation. I said last night to the estimates committee, and I think I have said on a number of occasions in the media today, that the additional cost is \$2.5 million. The arithmetic of the Hon. James Samios is right. Given the way the honourable member's question was framed, I think he may not understand that that represents the estimated increase across the entire life of the trial. So, the amount he is talking about is correct in that context. The reasons relate to delays in the establishment of the trial, the fact that the licensee of the trial, the Uniting Church, brought a social responsibility to it and went to a great effort to satisfy—

**The Hon. Ian Cohen:** How many lives saved?

**The Hon. JOHN DELLA BOSCA:** I thank the honourable member for his interjection. I might get to that point if I have time.

**The Hon. Charlie Lynn:** It is not important?

**The Hon. JOHN DELLA BOSCA:** It is extremely important. That is the point. I wanted to make the general point that the licensee has had to go through a costly exercise to ensure that the trial proceeded to the letter of the requirements of Parliament. Of course, I make the other general point that any new activity, whether it be a business or organisational activity, is always very hard to budget for. As I said, estimates become guesses in the case of new activities.

To answer the Hon. Ian Cohen's very sensible interjection, unlike those that the Opposition is making today, from the early one month only evaluation we have had a report of four overdoses inside the facility during its first month of operation. Those four overdoses were managed by staff at the centre without resort to ambulance services. They were managed with oxygen only, so no other toxins or drugs were required to revive and preserve the people who overdosed. That would indicate that had some of those people overdosed in other circumstances they may well have died.

As the Leader of the Opposition has pointed out by reference to the figures I gave him last night, more than 40 individuals have gone into alternative counselling, detoxification and other health services that can assist with these individuals' drug habits and addiction. I take the opportunity to repeat the obvious point: this is a trial only. It is to proceed on the basis that it will be evaluated by scientific methodology that was tabled in the estimates committee last night and is available through that committee, as I understand, to all members of Parliament. On the preliminary evidence, the trial is proceeding in a satisfactory way.

### **SYDNEY ON SALE TRADE EXPO**

**The Hon. PETER PRIMROSE:** My question without notice is to the Acting Treasurer. Will the Minister update the House on the details of the recent Sydney on Sale Trade Expo?

**The Hon. JOHN DELLA BOSCA:** The Sydney on Sale Trade Expo had the biggest ever display of meetings and conference locations for regional New South Wales. The conventions industry is not only one of the most lucrative; it is also one of the most competitive. It is only through participating at events like Sydney on Sale that regional communities are able to present themselves as convention and conference destinations to industry planners and organisers. Regional New South Wales has some excellent meetings infrastructure and tourism offices.

[*Interruption*]

The Deputy Leader of the Opposition, in his torrent of abuse, used a key line that was developed by me when my party was in opposition. I thank him, as imitation is the highest form of flattery that the Deputy Leader of the Opposition would be capable of. The economic benefits that flow to regional communities involved in hosting these events can be significant. Sydney on Sale featured a diverse range of conference and convention-related products and services. The expo itself spread across two walls of the Darling Harbour complex. One of those walls was dedicated entirely to regional New South Wales exhibitors. This year, Sydney on Sale gave visitors access to the largest number of regional New South Wales exhibitions. Thirteen exhibitors, including Port Stephens, Thredbo and Broken Hill, highlighted the diversity, professionalism and affordability of regional meetings and events.

**The Hon. Michael Gallacher:** What about Wee Waa?

**The Hon. JOHN DELLA BOSCA:** The Leader of the Opposition asks about the venus of the South Pacific, Wee Waa. The Central Coast is one region that the Government would like to see benefit from the sorts of business I am referring to in my answer. Under the Government's regional conferencing strategy, the Sydney Convention and Visitors Bureau is working to help the regions get a bigger share of the most lucrative section of the tourism business—the conferences and meetings market. The Government remains committed to helping regional New South Wales increase its share of the \$2.2 billion conventions and meetings market through initiatives such as Sydney on Sale, the biggest events expo held in New South Wales.

### **HAWKESBURY-NEPEAN CATCHMENT MANAGEMENT TRUST**

**The Hon. IAN COHEN:** My question is directed to the Special Minister of State, representing the Minister for Land and Water Conservation. The *Daily Telegraph* of 9 June reported a 1999 UTS study which concluded that hormones and sewage waste could be changing the morphology of fish in South Creek, which flows to the Hawkesbury River, and that gender bender substances, including birth control pills, antibiotics, industrial chemicals and agricultural pesticides, are present in our waterways. As South Creek flows through the Australian Defence Industries site, with proposed development compounding the problem, will the Minister consider reinstituting the Hawkesbury-Nepean Catchment Management Trust?

**The Hon. JOHN DELLA BOSCA:** I do not know how I would determine a gender bent fish. I would have to rely on the Hon. Eddie Obeid in his capacity as Minister for Fisheries for advice on that. No doubt the Hon. Ian Cohen's question is serious as I understand it deals with toxic or potentially toxic material in the food chain. Therefore, I will refer the question to the Minister and get an answer as soon as possible.

**RICHMOND RIVER BEACH HAUL LICENSEES**

**The Hon. JENNIFER GARDINER:** My question is addressed to the Minister for Fisheries. Why has the Minister not acted on the recommendation of the Richmond River recovery working group to allow beach haul licensees, who have been unable to fish for much of this year due to the floods, to make some money before the end of the season? Will the Minister reconsider his decision to close off the livelihood of these Tweed fishers?

**The Hon. EDDIE OBEID:** To the best of my knowledge, the issue about the resumption of fishing in the Richmond River is in the hands of the local community. A committee comprising commercial fishers, recreational fishers, conservationists and fisheries scientists is preparing a report. I am eagerly awaiting that report and indications to me that the river is sufficiently healthy to resume the type of fishing the honourable member is talking about. This is not a political matter; it is a matter for the community to judge, with scientific evidence. I note that the Coalition Government in Canberra was not keen to help these fishers when they most needed help. The Hon. Jennifer Gardiner can ask when these fishers will be able to resume fishing, but they have been without income probably for the past four months.

**The Hon. Jennifer Gardiner:** So you will close them off.

**The Hon. EDDIE OBEID:** They were closed off essentially because of the natural disaster that occurred, and the honourable member is aware of that. When I asked the Federal Government for income support for the fishers I drew a blank, and I did not hear a word from the Hon. Jennifer Gardiner or the Opposition in support of these fishing families. Members opposite now want to politicise a scientific issue. When the working group has considered the evidence relating to sustainable fishing in these waterways it will make a decision, and I am more than prepared to consider whatever the group recommends. The real issue is that the Federal Government went into hiding when the natural disaster occurred. It would not even reply to my three letters, and the Hon. John Howard did not reply to the Premier's request to help these families, who have mortgages but no income. The Hon. John Howard went around the countryside telling us that he was listening, but he did not listen to these fishers.

**The Hon. Jennifer Gardiner:** Why don't you listen to your own working group on the Tweed River?

**The Hon. EDDIE OBEID:** The honourable member cannot pass judgment on a situation when the Government has allowed the community and all stakeholders to participate. When I receive the report I will be prepared to accept the recommendation and the scientific evidence. As far as I am concerned, members opposite should approach their colleagues in Canberra and tell them that they have done the wrong thing by those who fish in the Clarence, the Richmond and the Maclean. All those people have been without income since the natural disaster occurred in February, and Federal Coalition members have sat on their hands.

**The Hon. Jennifer Gardiner:** Where is Neville Newell on this issue?

**The Hon. EDDIE OBEID:** I wonder how Larry Anthony will get re-elected to the Federal Parliament. He will certainly be asking those who have had no income for months for their support. Senator Vanstone did not even have the courtesy to reply to our letters. It is an absolute disgrace. And members opposite ask when I will act on the community's report. When I see the report and the recommendations I will act. This Government has always acted in the best interests of the fishing people.

**KINGS CROSS MEDICALLY SUPERVISED INJECTING ROOM**

**The Hon. RICK COLLESS:** My question is directed to the Special Minister of State. Of the total budget for the Kings Cross injecting room, how much has been spent on hiring a public relations consultant to promote the injecting room, prepare public relations material and handle media inquiries?

**The Hon. JOHN DELLA BOSCA:** I do not have that detail at hand, but I am happy to provide the answer—

**The Hon. Michael Gallacher:** Yes or no? Have you hired a public relations consultant?

**The Hon. JOHN DELLA BOSCA:** I have not hired a public relations consultant. The licensees handle the arrangements for managing the trial according to their own intentions. As I have indicated, the trial



has required extensive community liaison and an extensive public explanation. No responsible licensees would have proceeded without ensuring that they could satisfy those requirements. As I said, I cannot answer the Hon. Rick Colless's question in dollar terms; I can only speculate. Therefore, I will provide the honourable member with an answer in the near future.

### NEW SOUTH WALES FISHERIES VESSEL

**The Hon. AMANDA FAZIO:** My question is addressed to the Minister for Fisheries. What action has been taken to ensure that our marine waters and estuaries are effectively patrolled?

**The Hon. EDDIE OBEID:** I thank my colleague the Hon. Amanda Fazio for an important question that relates to more jobs for and more investment in country New South Wales. One of the most important aspects of managing our State's coastal waters is the ability to patrol them effectively. The New South Wales Fisheries fleet is currently being updated. Recently, a number of ex-Olympic inflatable boats were bought to give New South Wales Fisheries staff more flexibility. Today I signed a contract for the construction of a new state-of-the-art patrol vessel. This new boat is an investment in the future of our fisheries. And it is an investment in jobs.

**The Hon. Rick Colless:** The HMAS *Obeid*?

**The Hon. EDDIE OBEID:** Here we go—the smart alocs of the Opposition, especially the National Party members, are not interested in knowing when this vessel will be built. I can understand why the Liberals want to see the demise of the National Party, but I cannot understand why four Opposition members are laughing at investment in country New South Wales.

The New South Wales Government is providing approximately \$500,000 for the new boat, which will mean better patrolling of our inshore and immediate coastal waters. The winning tenderer is the New South Wales regional boat-building company Stebercraft, which is based in Taree and employs 33 workers. Creating and maintaining jobs in regional areas is one of this Government's most important priorities. Stebercraft makes products for the domestic and export markets. The company manufactures fibreglass vessels and industrial fibreglass components which are exported to Japan, the Middle East, New Zealand, Papua New Guinea and South-East Asia. When completed, the new New South Wales Fisheries boat will be nearly 12 metres long. Twin 420-horsepower diesel engines will power the new boat, which will be able to reach a top speed of more than 29 knots. It will have a range of 220 nautical miles, which is more than 400 kilometres.

The new boat will be able to carry eight people and will have the capacity to operate up to 30 nautical miles from shore. When completed, the new boat will replace the Fisheries patrol vessel FVP *Hunter*, which is based at Coffs Harbour. It is anticipated that the boat will patrol waters between Tweed Heads and Port Stephens. The new boat will provide a safer working environment for offshore operations and will carry the latest equipment. The design specifications will help New South Wales Fisheries staff to board other vessels. The boat will be more flexible for work around rocky areas, during shore landings and for approaching divers. In addition to its compliance role, it will also be used to conduct research in the Solitary Islands Marine Park.

The commissioning of this vessel means that the New South Wales Government will be better able to protect the sustainability of this State's fisheries resource for future generations. The boat's design and equipment will mean that we are matching the capacity of commercial and recreational boats that are operating in our offshore waters. I look forward to updating the House about the naming of the vessel and the operational success of the new New South Wales Fisheries patrol boat. The trivial comments being made by members of the Opposition are in contrast to the Government's attempts to obtain every contract possible for regional New South Wales. This Government encourages employment, creates wonderful industries and maintains the viability of those industries. The Government supports those industries, but all we get from the Opposition is—

**The Hon. John Della Bosca:** Smart-alec comments.

**The Hon. EDDIE OBEID:** —comments not befitting members of the Opposition. They do not deserve to occupy the Opposition benches. [*Time expired.*]

### KOSCIUSZKO REGION PIG HUNTING

**The Hon. MALCOLM JONES:** My question is directed to the Minister for Juvenile Justice, representing the Minister for the Environment. Is she aware of the serious clashes that have occurred between pig hunters and National Parks and Wildlife Service rangers in the Kosciuszko region? If so, what have been the outcomes of these conflicts?

**The Hon. CARMEL TEBBUTT:** I am aware that clashes have occurred in the Kosciuszko area, but I am not particularly aware of the matters to which the Hon. Malcolm Jones has referred. I will take the question on notice, refer it to the Minister in the other place and undertake to obtain response for the honourable member.

#### **HILLSTON CENTRAL SCHOOL TEACHERS ACCOMMODATION**

**The Hon. PATRICIA FORSYTHE:** My question without notice is to the Special Minister of State, representing the Minister for Education and Training. Is the appointment of a teacher to the Hillston Central School in jeopardy because no suitable accommodation for the teacher is available in the local community? What action has the Teacher Housing Authority taken to address the problem of inadequate teacher accommodation in country New South Wales?

**The Hon. JOHN DELLA BOSCA:** I thank the honourable member for her question. The question goes into quite a specific level of detail about the Minister's administration. I will ask him to provide an answer to the question about Hillston although—

**The Hon. Duncan Gay:** He never provides answers.

**The Hon. Patricia Forsythe:** I am waiting for some answers.

**The Hon. JOHN DELLA BOSCA:** —I will be going out to Hillston, if I have the opportunity, on a private holiday in the near future, so perhaps I can inspect the situation myself. But I will not promise that and I will not undertake to do that. I will say, however, that because the honourable member's question seems to include a general policy matter that no doubt the Minister may answer in his discretion, I will also seek an answer to the specific question relating to Hillston and report back to the House as soon as possible.

#### **BARWON RIVER CONTAMINATION**

**The Hon. RICHARD JONES:** I ask the Special Minister of State, representing the Minister for Agriculture, and Minister for Land and Water Conservation: Is the Barwon River now a dead river with the loss of even invertebrates and water spiders, thanks to the cotton industry and its excessive use of pesticides? Is the recent fish kill, with fish dying with lesions all over their bodies and discoloured gills, just another example of the environmental disaster that has been wreaked on the northern rivers systems by the cotton industries? Is it also a fact that a report into pesticide contamination in rainwater tanks was suppressed for several years by New England Health and the Environment Protection Authority and that the report showed pesticide contamination in rainwater tanks up to 3.6 kilometres from the nearest cotton crop? What is the Minister doing to stop this disastrous contamination by the cotton industry and other pesticide-using industries and to bring our dead rivers back to life to protect the health of the community from the cotton fields?

**The Hon. JOHN DELLA BOSCA:** The honourable member has asked a series of questions and obviously they are all very good questions. Members opposite are suggesting that the underlying assumptions are not accurate; I do not know whether they are or not. I will ask the Minister in the other place to respond and provide me with an answer to the honourable members questions as soon as possible.

#### **SMALL BUSINESS MONTH**

**The Hon. JAN BURNSWOODS:** My question without notice is to the Acting Treasurer, and Minister for State Development. Will he update the House on the New South Wales small business exports?

**The Hon. Amanda Fazio:** Point of order: Madam President, I draw your attention to the fact that while the Hon. Jan Burnswoods was asking the question, various members—and I think they were male members on the Opposition benches—were making very stupid noises. I have noticed that they do that quite often when the Hon. Jan Burnswoods addresses the House. I ask you to rule that they should keep quiet and desist from making those noises.

**The PRESIDENT:** Order! I ask honourable members on the Opposition benches who were making cat-like noises while the Hon. Jan Burnswoods was asking her question to desist because it is sexist and offensive.

**The Hon. JOHN DELLA BOSCA:** I thank the honourable member for her question. More than 300 events, lectures and workshops were held throughout the State during Small Business Month in May. Small

Business Month is a Government initiative that is dedicated to assisting and highlighting the work of small enterprises. It is all about helping small businesses to increase their bottom line so that they can grow and employ more people. Many of the seminars and workshops that were held during the month were free and were held in hundreds of venues throughout the State. This year's theme, "Small Business Month—Make It Your Business", included seminars from the experts on the latest trends in the small business sector.

The seminars ranged from the boom in home based businesses as a result of the increase in the number of women who own and operate small businesses to the growing number of companies that conduct business on the Internet. The importance of small business in regional New South Wales along with new export market opportunities were an important focus of Small Business Month. Six out of 10 New South Wales exporters now believe that their businesses could not succeed without exporting. A report compiled by the New South Wales Department of State and Regional Development [DSRD] also shows that New South Wales firms account for almost 40 per cent of all Australian exporters—and approximately 80 per cent of these are small businesses. The culture of exporting is taking hold in the State's small business sector and it is paying dividends, not only for those businesses but also for the State.

*[Interruption]*

I thank the honourable members for their interjections of encouragement, although I am not sure of their significance. In any event, during the 1990s exporters experienced much greater sales growth than was experienced by non-exporters, and that trend is expected to continue. On 9 May, the Government established an Internet-based New South Wales exporters network to support the sector's export push to grow their businesses and to create new jobs. The network provides a secure site for exporters to communicate with each other and with the department, and also provides access to export-related information and services. The DSRD report also shows that small business is leading the way in New South Wales' growing services export sector. New South Wales now accounts for 43 per cent of Australia's total services exports and has dominated national services exports in computer and information services, professional and other business services.

**The Hon. Patricia Forsythe:** We started late, though.

**The Hon. JOHN DELLA BOSCA:** Is the honourable member trying to get a bit of hedging going? I am proud that the New South Wales Government is creating jobs and generating investment by assisting the small business sector in regional New South Wales. I also congratulate the small business sector for making the month a huge success.

#### **WORKCOVER OCCUPATIONAL HEALTH AND SAFETY REGULATION DEVELOPMENT UNIT**

**The Hon. CHARLIE LYNN:** My question is to the Minister for Industrial Relations. Is it a fact that the staff of the occupational health and safety regulation development unit at the WorkCover Authority are not currently working on any projects, given that the Minister's new occupational health and safety regulations are stalled? Can the Minister inform the House why these WorkCover staff are inactive at a time when the Minister is attempting to introduce major reforms to workers compensation in this State?

**The Hon. JOHN DELLA BOSCA:** I think the Hon. Charlie Lynn's question is based on a false premise: that in some way officers of WorkCover are working in a division that is not occupied by the normal course of their business. As the honourable member knows, and I think the House knows, well and truly before my time as Minister many discussions and a long period of consultation took place regarding the introduction of a new occupational health and safety regulatory regime to replace the factories, shops and industries regime that has served New South Wales law for a long time but in many respects has now become an outmoded method of regulating health and safety in industry.

As I have pointed out to many of the stakeholders, almost 60 per cent of the work force in modern New South Wales is excluded from the protection of a regulated code under the current factories, shops and industries regulatory framework. We have been anxious to ensure that that new regulatory framework is put in place, but we have been very patient. The previous Minister, the Hon. Jeff Shaw, told all the stakeholders that the consultation process would be exhaustive, and that is a matter that I have confirmed.

The Hon. Charlie Lynn asked what projects are being undertaken by the occupational health and safety regulation development unit of the WorkCover Authority. I think that was one of the 20 questions I took on

notice last night at the estimates committee hearing. If it was not exactly the same question, it was certainly a question very similar to that. The chairman of the estimates committee, Reverend the Hon. Fred Nile, indicated to me that under the rules relating to estimates committees I had 25 days in which to answer the questions taken on notice. Therefore, rather than take the question on notice again, I will check the record to see whether the Hon. Charlie Lynn's question is identical to the question I was asked last night, and will provide a response to the honourable member within the period specified by the chairman of the estimates committee.

**The Hon. CHARLIE LYNN:** I ask the Minister a supplementary question. When the Minister obtains that information, will he advise the House exactly what the staff of the unit are doing at this time?

**The Hon. JOHN DELLA BOSCA:** The honourable member's earlier question sought a specific response in relation to what the staff of the unit are doing. I assume that I will be able to provide him with that information.

#### **MAGISTRATE PAT O'SHANE PUBLIC COMMENTS**

**The Hon. ELAINE NILE:** I address my question to the Special Minister of State, representing the Attorney General. Is it a fact that Magistrate Pat O'Shane told radio 2GB that she was considering lodging a complaint about a Supreme Court judge for allegedly racist, sexist and homophobic remarks, mainly to expose the sheer hypocrisy of the State's politicians? What action is the Attorney planning to take to investigate comments by Magistrate O'Shane about members of Parliament and New South Wales police officers, and her obvious bias against women who have been sexually assaulted? What action will be taken to ensure Magistrate O'Shane does not hear cases involving sexual assault and allegations against police officers? I assure the Minister I am not a bleeding-heart feminist.

**The Hon. JOHN DELLA BOSCA:** I was not about to accuse the Hon. Elaine Nile of being a bleeding-heart feminist. I have resorted to a lot of things in my time, but I do not think I would come at that. The honourable member's question is a very good one. Like all members of the House, I have been watching with some concern the publicity in relation to some of Magistrate Pat O'Shane's comments. However, I think we need to be careful not to speculate about public comments of magistrates and the judiciary. I think it would be prudent and appropriate for me to refer the honourable member's question to the Attorney General, and I am sure he will provide an appropriate response for the honourable member as soon as possible.

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

#### **DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT WEB SITE**

**The Hon. JOHN DELLA BOSCA:** Earlier during question time the Deputy Leader of the Opposition asked the Leader of the Government about the Department of State and Regional Development web site. The department is looking into the matter that the Deputy Leader of the Opposition raised. I am advised that there have been some instances of sabotage in relation to the department's web site. The Treasurer will report to the House on the findings, and I am sure the Deputy Leader of the Opposition will look forward to that.

#### **Questions without notice concluded.**

*[The President left the chair at 1.06 p.m. The House resumed at 2.30 p.m.]*

#### **M5 EAST TUNNEL VENTILATION**

##### **Claim of Privilege: Tabling of Documents**

**The Clerk** tabled, in accordance with the resolution of the House this day, documents on the M5 East ventilation stack, the subject of a disputed claim of privilege by the Hon. Richard Jones, and identified in the report of the Independent Legal Arbiter, Sir Laurence Street, dated 27 April 2001, as not privileged.

#### **CRIMES LEGISLATION AMENDMENT (EXISTING LIFE SENTENCES) BILL**

##### **In Committee**

##### **Consideration resumed from an earlier hour.**

#### **Schedule 1**

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [2.33 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1, lines 12-24. Omit all words on those lines. Insert instead:

**[2] Schedule 1, clause 2**

Insert after clause 2 (3):

- (4) The provisions of subclauses (2) (b) and (3) cease to have effect on the commencement of the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*.

**[3] Schedule 1, clause 9**

Insert after clause 8:

**9 Barring of applications for offenders subject to non-release recommendations**

- (1) On and from the commencement of the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*:
- (a) a disqualified person is no longer eligible to apply to the Supreme Court for a determination under clause 4 (1), and
- (b) the Supreme Court no longer has jurisdiction to make a determination under clause 4 (1) in respect of a disqualified person.
- (2) Subclause (1) (b) applies to and in respect of a disqualified person even if an application for a determination under clause 4 (1) was made, but not determined, in respect of the person before the commencement of the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*.
- (3) In this clause, *disqualified person* means an offender:
- (a) who is serving an existing life sentence for an offence, and
- (b) who is the subject of a non-release recommendation in respect of that offence.

No. 2 Page 4, schedule 1, lines 1-18. Omit all words on those lines.

These are probably the most important amendments that one could move. As I explained in my contribution to the debate, these amendments basically seek to reinstate the provisions of the bill introduced by the Leader of the Opposition in the Legislative Assembly last year and by me in this Chamber. The amendments will bar an offender who is subject to non-release recommendations from ever applying for a redetermination of their sentence. These amendments will close the loophole in the current legislation and which remains in the Government's proposed legislation. The proposed legislation would allow offenders with their file marked "Never to be released" to apply to the Parole Board for a redetermination of their sentence. Honourable members should remember that in 1994 the Premier criticised boards such as the Serious Offenders Review Board and said that to refer these sorts of decisions to those boards was not a substitute for making policy decisions. He said:

All this is a substitute for government just making hard decisions. The governments are there to make hard decisions.

The Government has to make a hard decision about this matter. I am sure that honourable members do not want people like the Bakers, the Cobby murderers and the Janine Balding murderers of this world to be able to go back to the Supreme Court every three years wasting the time of the court and the time of the victim's family's after the Supreme Court has given them a determination. We do not want them to go before the Parole Board time and again, however hopeless their cases might be. Of course the answer is no: The Government keeps trotting out the line on legal advice that what the Opposition seeks to do is unconstitutional. I said in my contribution to the second reading debate that if the Government has legal advice which states to that effect it should table the advice, and so far it has not been tabled. I see a flurry opposite which may indicate that the Government might do what the people have asked.

The Government also says that it has been trying to do something about this matter since October. I remind honourable members that this determination started in June and the Government should have done something about it then if it were so concerned. Why should offenders with files marked "Never to be released" be given a chance? Why should they have an opportunity to stand in open court and ask for a redetermination? They should not have that opportunity. They should have their life sentences of never to be released set by the court in the first of instance. Today the Opposition asks the Parliament to be accountable and to pass our amendments to ensure that heinous criminals do not have the opportunity to appeal to a court.

The Premier and the Attorney General have said that they expect the legislation to be challenged. The Opposition has also received legal advice. I cannot understand how the Government can contend that its

legislation will probably not be challenged but the Opposition's legislation almost certainly will be. Given the Government's concern we have redrafted our previous amendments and have now moved them to ensure that they are consistent with the wording in the bill. That will further minimise the risk of challenge. The Parliamentary Counsel has said:

Note that we allow the Govt's proposed insertion of a definition of *sentencing court* to continue, which ensures that all non-release recommendations are covered, whether declared by the original court of trial, by a new court of trial (in the case of a re-trial) or by a court of appeal (where the offender's sentence is varied on appeal).

The Opposition has incorporated the philosophy of the Government's legislation in its amendments. There is no more reason for a legal challenge to our amendments if they are passed than there is to the Government's original legislation. It is absolute humbug if today the Government opposes these amendments on the grounds that they would make this legislation more susceptible to legal challenge.

The Government really means to indicate—but is not game to say—that it is opposing the amendment because it does not have the will, the ticker or leadership to support it. Those who saw the antics on Tuesday of the Leader of the House in this place and the Leader of the Government in the other place know that they asked their troops to storm the barricades while they both came through the secret tunnel. That showed their lack of leadership. I hope that the Government will show some leadership and willingness to be counted in admitting that the Opposition amendment is no different from the bill currently before the House. The opinion of Peter Garland, SC, is that there is very little chance of these matters being rolled by the courts. The changes have occurred.

I was here in the House, as was the Leader of the Government, when the Hon. John Hannaford, for the very best reasons in the world, introduced the truth in sentencing legislation. That enabled the Parliament to alter sentences. The bill before the Committee does not propose such a change; it takes us back to the previous position under the law, to reflect what the judges said in the first place. This amendment will not change the sentences that the judges arrived at after deliberation; it actually reflects what the judges said in the first place.

I would hope that crossbenchers would carefully examine the amendment—I know many of them have—and would consider supporting the Opposition amendment, because the Coalition does not believe there is even a scintilla of a chance that the changes that we seek to put in place—changes which most right-thinking people in the Chamber would accept as the proper way to go—will change sentences, whether this legislation is to be challenged or is not to be challenged.

**The CHAIRMAN:** Order! There is a conflict between the amendment to be moved by the Hon. Peter Breen and those moved by the Opposition. I understand it is in order for the Opposition to move its amendments 1 and 2 in globo. Before I put those questions, with the consent of the Committee the Hon. Peter Breen will move his amendment, so that both sets of amendments will have been moved before I put the questions.

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [2.45 p.m.]: The Government opposes the amendments moved by the Deputy Leader of the Opposition. There are numerous problems with the approach taken by the Opposition parties to this legislation. Let us not make any mistake about that. The first problem is clarity. These amendments are a redraft of amendments which the Government spoke against in the other place, where we pointed out the drafting flaws. Yet the amendments remain flawed. Obviously, honourable members opposite have listened to the Government's argument that the previous draft, which described "never to be released" recommendations as "in force", had no meaning. Frankly, these amendments have been drafted on the run, and they jeopardise the clarity and integrity of this legislation with messy first drafts then redrafts of flawed amendments.

The Government understands that the Leader of the Opposition in the other place was previously of the view that "in force" meant it excluded the offenders that the Hon. Peter Breen sought to exclude by his amendment. Obviously, they cannot continue if that is the effect. Just this morning Opposition members voted with the Government to oppose the Hon. Peter Breen's amendment, so we are discovering only by a process of attrition as this debate proceeds what the Opposition approach is to these offenders.

The other, and the most significant, problem with these amendments is that the cutting off of the ability to apply for a redetermination is potentially setting the bill up to fail if it is construed as an attempt by the Parliament to resentence those offenders. The decision not to support the amendments is based on clear reasoning concerning the principles established under the law of this country regarding Parliament attempting to resentence prisoners. On their face, the amendments seek to eliminate the redetermination process. This in effect

leaves offenders in a category of people being sentenced for a term longer than could be expected at the time they were sentenced. When they were sentenced, the average life term lasted 12 years. This has been commented upon in debate. By eliminating redetermination, the Parliament could be exercising the role of the judiciary and effectively resentencing the offenders. It is a risk. It is a risk that the Government prefers honourable members not to take.

The Government's proposal is aimed at achieving the effect of keeping those offenders in prison on the least-risk basis. This matter has been canvassed in some detail in debate. Some honourable members may not agree, but I sincerely hope that they have considered the possible consequences. Let us be sure of the path we tread here. Let us be as sure as we can be in this difficult territory. As the Attorney pointed out in the other place, caution does not appear to have been exercised in the drafting of the Opposition's previous version of the amendments. Maybe they understood finally that if the Opposition's previous wording had the effect of eliminating those persons who have been redefined or appealed, then that intent was in direct conflict with schedule 1 [1] to the bill as drafted. This point is very important. It is a demonstration of just how careful we have to be here: drafting is critical, and hasty amendments could provide a fatal flaw in the legislation if carried.

The Government is aiming for legislation that will successfully implement the intention of the majority of members of this place. That is to keep these life offenders with a "never to be released" recommendation in gaol for life. The Opposition amendment is too risky, and the Government urges all honourable members to consider the consequences that support for the amendments could have, and to oppose the amendments.

**The Hon. PETER BREEN** [2.46 p.m.]: My opposition to the bill and to the Opposition amendments is the same opposition that I had originally when Mrs Kerry Chikarovski introduced her ill-fated Baker bill, which now technically is a Government bill. My initial objections have remained the same: that is, that the original bill and the current bill, even with the Government amendments, skate on a constitutional precipice and may do more harm to the victims' families in the long run and achieve the opposite of the stated intention—if, as I believe, this legislation is ultimately challenged in the High Court.

Advice from representatives of the Bar Association indicate, contrary to what the Leader of the Government has said, that the Opposition amendments will not make the bill any more vulnerable to attack in the High Court. In that sense, I support the Opposition amendments. When the bill is challenged—which it will be, according to both the Premier and the Leader of the Opposition Mrs Kerry Chikarovski—the Opposition amendments will make no difference to the constitutionality of the bill. I note, however, that the Coalition has altered its original amendment by removing the words "in force", so that the amendment now reflects the Government's bill more accurately.

Ironically, the Opposition made alterations in order to remove any possibility that the bill might exclude the three offenders that I mentioned earlier—Blessington, Elliott and Les Murphy. Their files are no longer marked "never to be released". That appears to have been forgotten by everyone. Under the Government's bill and the Opposition amendments, those three prisoners, two of them juveniles at the time of their offences, had a superior court look at the question of whether or not their files should have been marked "never to be released". That recommendation has been reviewed by a superior court in all three cases. Nonetheless, this bill will cement them in.

In so doing both the Government's bill and the Opposition's amendments overturn the basic principles that I referred to earlier about human rights and the right of appeal. They ignore the fundamental rule that the review of the superior court, that is, the court that reviewed that endorsement "Never to be released", should carry more weight than that of the lower court. That is a fundamental principle in the justice system. It is of real concern to me that the bill will be overturned in the High Court. On that basis alone I cannot support the first of the Opposition's amendments. The second of the Opposition's amendments covers what the Opposition sees as a loophole in the Government's bill in relation to the Parole Board. But it is not strictly accurate.

According to the Opposition's briefing note, criminals such as Allan Baker are currently entitled to apply to the Supreme Court every three years for redetermination of their sentence. If that redetermination is granted they can apply to the Parole Board for parole. But it is not strictly accurate. It is possible that what happens in practice is that serious offenders make an application on several occasions but the Parole Board, because of public concerns and the anguish that it creates in the victims' families, does not consider their applications. The Parole Board has the power to refuse to entertain a parole application for a substantial period. It is not bound to hear the application every three years, no matter what the prisoner's intentions or wishes might be.

The Parole Board does not have to trouble the victims' families every three years unless it decides that there is a significant reason or a real likelihood that the prisoner in question will be released. The Parole Board will not do this in respect of these prisoners, given their records and, with the exception of the three prisoners that I have mentioned, their current situations. The Opposition's second amendment is well-intentioned in that it seeks to protect the victims' families from additional trauma every three years, but this amendment is not the way to go about it. Unfortunately, the Opposition's amendment will not allow the possibility that people can be rehabilitated.

I agree that deterrents, punishment and even retribution are all part of society's response to crime. All these aspects are important in the sentencing of an offender. However, a key part of the equation has been left out—that of rehabilitation. Prisons exist to punish and protect the community but they should also be in the business of rehabilitation. The Opposition's amendment allows no possibility of rehabilitation despite anything the prisoner might have achieved and despite all attempts to redeem himself in the 30 years that he has spent in prison. I cannot accept this argument as two of the 10 or so prisoners to which this bill applies are juveniles, especially as Chief Justice Gleeson has stated that the "Never to be released" recommendation should not have been made in their cases.

It would be wrong to deny at least these two the possibility of redemption through rehabilitation. In any event, they must both satisfy the Supreme Court and then the Parole Board that they warrant the opportunity to put their case for release on parole. However inconceivable it may be to us in Parliament that these prisoners are to be released, it is more inconceivable to me that we should seek to deny the Supreme Court the exercise of its judicial functions by denying these prisoners the ability to apply for redetermination. I believe that the Opposition's second amendment actually increases the likelihood that a High Court challenge to the legislation will succeed. I cannot support it. Instead, by leave, I move Reform the Legal System amendments Nos 2 and 3 in globo:

No. 2 Page 3, schedule 1. Insert after line 13:

**[3] Schedule 1, clause 2**

Insert "(or, in the case of a juvenile offender, 20 years)" after "years" in clause 2 (2) (b).

No. 3 Page 3, schedule 1, line 16. Insert "(other than a juvenile offender)" after "offender".

These amendments are inconsistent with the Opposition's amendments. The effect of my amendments will be to preserve the status quo in the case of the juvenile offenders Blessington and Elliott so that after 20 years they are entitled to a redetermination of their sentences. This is no different from the situation that existed at the time that they were sentenced. It is my contention that juvenile offenders should not be included in this bill for the reasons that I mentioned earlier. I ask honourable members to support my amendments.

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [2.55 p.m.]: The intention of the amendments is to exclude from the operation of the legislation persons who were under the age of 18 when they committed offences and who were subsequently the subject of comments by a sentencing court that they were never to be released. This intention goes specifically against the drafting that the Parliamentary Counsel provided, on government instruction, to cover all offenders who have ever been the subject of such a sentencing remark, as the comments were made only in the context of a serious and disgraceful crime.

Item [1] of schedule 1 to the Government's bill is clear. Even if there has been a retrial or the matter has been considered by another court, so long as the sentence remains a life sentence the sentencing remarks will apply. Members of this place usually support legislation differentiating the acts of younger offenders in the hope that they can rehabilitate themselves. In these special circumstances, the Government will not make such a distinction. The terrible crimes of these offenders speak for themselves and I will not detail them again in this Chamber. Suffice it to say that the Government cannot support the intention to exclude the operation of the legislation from two of the offenders who are in this category, because we believe that is where they should stay.

**The Hon. RICHARD JONES** [2.56 p.m.]: Legal advice received by me and by other members on the crossbenches states that, in relation to the Government's bill as it is and in relation to the bill as modified by the Opposition's amendments, the odds are weighted as to whether they would either survive or be knocked down following a High Court challenge. I am advised that there is a higher risk of a successful High Court challenge if the amendments are inserted in the legislation. The Opposition's amendments seek to include the provisions of the Crimes (Sentencing Procedure) Amendment (Life Sentence Confirmation) Bill. That means that killers whose files are marked "Never to be released" do not have an opportunity to seek a redetermination of their sentences in the Supreme Court.



Concerns have been raised in relation to the two prisoners whose files were marked "Never to be released" and whose files are now not marked in that way. Legal advice states that these two people are unlikely to be excluded from this legislation and that that is fundamentally wrong, given that they will be cemented in their cells after the Chief Justice of the Supreme Court and the Criminal Court of Appeal have said that they disagree with the "Never to be released" recommendation. The actual definition of "never to be released" is as follows:

Non-release recommendation in relation to an offender serving an existing life sentence means a recommendation or observation or expression of opinion by the sentencing court that or to the effect that the offender should never be released from imprisonment.

Honourable members should note that that includes any expression of opinion on observation. Justice Gleeson said on 17 February 1992 in the Court of Criminal Appeal in the case of Jamison, Elliott and Blessington:

With respect to the learned sentencing judge, however, I have a problem concerning his recommendation that the appellant should never be released.

He was obviously referring to Elliott and Blessington. He also said:

Counsel were agreed that this would have no legal effect if and when an application to fix or determine the sentence is made. There does not appear to have been any statutory basis for the making of the recommendation, nor for that matter does there seem to be any statutory basis for appealing against it. Even so, I think it is appropriate to express the view that especially where the offender is a young person there are so many different possibilities as to what might happen in the future that it is normally not appropriate for a sentencing judge to seek to anticipate decisions that might fall to be made by other persons in another proceedings or under other legislation over the ensuing decades. For that reason I shall indicate that I do not support the recommendation made by Newman J. This is not intended to be a recommendation by me that either applicant should be released at some time in the future. It is simply intended as an expression of my view that the making of any recommendation on that subject in these circumstances is not appropriate.

The web site of the Public Defender's Office has this to say in relation to the Supreme Court:

In that context it is important that this court recognises the value of life when sentencing. It is easy enough for the court to place great value on the lost life of the murdered victims. That is, of course, as it should be. However, the life of the offender is also important. To forever confine that life to the inside parameters of a prison is to come as close as this State's sentencing laws permit to take the offender's life from him entirely. That this court has done so on 21 prior occasions speaks significantly to other jurisdictions about this court's approach to the administration of criminal justice. With respect, it is not an approach that should be reinforced or extended by imposition of life, meaning natural life imprisonment, in the case involving a young man who was a teenager at the time of his offences.

We are now giving the comment "Never to be released" very severe legal effect. This bill will retrospectively instil these words with tremendous power. These words will be given their literal meaning, and this was never foreseen or intended at that time. My legal advice also states:

There is no possibility of any of these offenders being released in the near future. If the legislation were passed, these people would not be out on the streets immediately.

I understand that the families of the victims wish to see an end to these matters, and I totally agree and empathise with them. However, I am unconvinced that supporting the bill containing these amendments will see justice done to the persons it will affect. I am also not convinced that passing this legislation will provide the much longed for end to these matters. If the legislation is passed it will undoubtedly be subject to a High Court challenge. I do not think that challenge should be made any easier by putting in these amendments.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [3.00 p.m.]: I am interested in the contribution of the Hon. Richard Jones. If my memory serves me well, and I think it does, he did not say who was the author of this legal advice. I would have thought that we deserve to know the author of such an extensive body of legal advice in such an important bill. I also asked the honourable member by way of interjection where he received his legal advice. That is not to say who the author was. Did he actually go and obtain this legal advice himself, did someone send it to him, or did the Government give it to him? They are all valid questions that deserve an answer, because I believe I received an undertaking from the Government during the second reading debate that it would provide the Opposition with legal advice.

The Government was quite up-front in saying that our amendment would make the bill more challengeable. On issues of philosophy the Hon. Peter Breen and I sometimes step slightly apart, and this is one of those occasions, but on the legal interpretation that we have been given and he used, he does not believe that our original amendment, let alone our second amendment, which is more in line with the philosophy of the bill,

would make the bill challengeable. In a matter as important as this, I would be very disappointed to find that that advice, which the Opposition asked for in good faith, had been circulated to the crossbenches but not to the Opposition. I hope the Treasurer will enlighten us.

I totally concur with the Minister's comment regarding those people who were under-age at the time of the offence. When it comes to a vote, the Opposition will be following those lines. The Minister made a comment about policy on the run because we took the time to listen to concerns that were raised and took them into account in modifying our amendment. That can hardly be described as policy on the run. Whether those were the Minister's words or whether someone else wrote them for him, they were fairly ordinary comments to say the least. I respect the contribution of the Hon. Peter Breen. He made the point that a decision can be made only every three years, and a decision can be made not to review a sentence. I understand the point he is making, but that is not good enough for the peace of mind of the families of the victims, because they have to wait for three years to find out whether there will be a review and what the decision of the review will be.

Unfortunately, we cannot agree with that. I reinforce once again that if the Government and members of the crossbench oppose the amendment we put forward, they are not opposing us because our amendment is out of order, as they say. It is not out of order. We have been up-front about this. We asked the Government whether it had advice and, if so, to table it in the House. We read out our advice and tabled it for the House. There was no sneaky, secretive hiding in corridors, as members of the Government seem to want to do on a regular basis. This is an important issue and it should be treated openly by all parties. The Government appears to have given its advice only to the crossbenches. I asked the Hon. Richard Jones on numerous occasions during his contribution who wrote the advice and where he got it. He is many things, but he is not deaf. He could have replied. Given the importance of this debate and the fact that they were legal opinions, he should have sourced them.

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.06 p.m.]: I am advised that the Premier has previously tabled advice prepared by the Solicitor General dated 5 October 2000: a legal opinion concerning the validity of the Crimes Legislation Amendment (Existing Life Sentences) Bill, which the Government introduced. The principles encapsulated by the Opposition's amendments have been the subject of previous consideration by the Government. The Government considered these principles in the context of the Crimes (Sentencing Procedure) Amendment (Life Sentence Confirmation) Bill, which was introduced into this House by the Deputy Leader of the Opposition in August last year.

Of course, the Attorney General receives advice on all private members' bills that fall within his portfolio responsibility so he can brief members of Cabinet and the Government can make a decision on its approach to the bill. This advice forms part of the Cabinet papers, and the Government is not prepared to set a precedent for severing sections of Cabinet minutes and releasing advice that forms part of the Cabinet process. No government would be prepared to go down that path. Last year advice was received from the Director of the Criminal Law Review Division of the Attorney General's Department dated 27 June 2000 advising the Government that debating a bill aimed at affecting criminal proceedings on foot should not be supported. Honourable members will recall that last year the Government declined to debate the Crimes (Sentencing Procedure) Amendment (Existing Life Sentence) Confirmation Bill in the Legislative Assembly on this basis. The Government also urged members of this place not to debate the bill. Debate ensued, but the bill itself was voted down as the majority of members accepted that it was unwise to take that approach while proceedings were on foot.

The memorandum of advice from the Director of the Criminal Law Review Division of the Attorney General's Department was made public on 25 May this year in a package of information released by the Premier and which included the Solicitor General's advice. This package was distributed to members of the crossbench of this House on Tuesday 29 May as a result of a request from members at a crossbench briefing that same day. The Government has advice on the Opposition proposal contained in the previous bill and in the amendment it has now proposed to the Government's bill.

The Government is clear in its advice given to both Houses of Parliament in this debate concerning the views the Government has formed as a result of the ongoing process, with the Attorney being privy to a range of meetings with some of the bright legal minds in government who provided advice on these issues. The Attorney's comments in the Legislative Assembly make it quite clear that the Government has a view that differs from that of the Opposition. The rationale was clearly explained there as well as in debate in this place. I am advised by the Attorney General's office that the Attorney, unlike members of the Opposition, does not go to

a Phillip Street silk and pay \$1,000 for an opinion. I understand in this situation, as in other situations when preparing for Cabinet consideration, he has the benefit of considering the advice of the Government's legal advisers.

**The Hon. Duncan Gay:** Point of order: The Minister indicated that a number of documents were provided to the crossbenchers by way of briefings for this debate. Given that the Minister has now quoted from those documents—and I suspect that other members have also quoted from them—I ask the Minister to make those documents available to be tabled in the Committee immediately.

**The Hon. MICHAEL EGAN:** I do not see any problem with that. My understanding is that the package of documents distributed to crossbench members on Tuesday 29 May was the same package of documents that was made public by the Premier on 25 May.

**The Hon. Duncan Gay:** We don't know because we haven't seen them.

**The Hon. MICHAEL EGAN:** I am sure you have seen the documents released by the Premier on 25 May.

**The Hon. Duncan Gay:** Yes, but we haven't seen the documents released on 29 May.

**The Hon. MICHAEL EGAN:** No, because they are the same documents that were released—

**The Hon. Duncan Gay:** Unfortunately, no-one can take your word any more.

**The Hon. MICHAEL EGAN:** You will just have to take my word for it, because I am advised that the documents given to the crossbenchers on 29 May were the same documents that were made public by the Premier on 25 May.

**The Hon. John Jobling:** To the point of order—

**The CHAIRMAN:** There is no point of order.

**The Hon. John Jobling:** You had not ruled that. I understand we were still discussing my colleague's request.

**The CHAIRMAN:** My point is that I do not think a point of order has been taken.

**The Hon. Duncan Gay:** I did take a point of order.

**The CHAIRMAN:** I thought you made a request.

**The Hon. Duncan Gay:** It was a request by way of a point of order.

**The Hon. MICHAEL EGAN:** If it was taken by the Deputy Leader of the Opposition, clearly it was not a point of order; it was just the honourable member participating in the debate.

**The Hon. John Jobling:** No, my colleague took a point of order. The Minister has continued to refer to and make comments about a package of documents which may or may not have been made available in the other place and may or may not have been tabled by the Premier. I draw your attention to the fact that what happens in the other place is not relevant to the proceedings in this Chamber. Therefore, if the documents have been made public, and if the Minister is quoting from those documents, it is in order to source and validate those documents in this place. It is reasonable for my colleague to seek the tabling of those documents so that we can ascertain whether they were given to crossbench members during a briefing. The documents may have been made available in the other place. When members quote from legal opinions it is imperative that they reveal their source.

**The Hon. MICHAEL EGAN:** I am not quoting from a legal opinion, you silly man.

**The Hon. John Jobling:** I am sorry, but the Minister referred to the Solicitor General and a number of other persons, and he referred to what might or might not have been tabled in the other place. We are simply asking the Minister to accede to our request and to source and table the documents in Committee.

**The CHAIRMAN:** Order! There is no point of order. It is reasonable that a member should ask about the source of a document being referred to. Standing Order 77 states:

It shall be competent for Members to read extracts from books, newspapers or other publications or documents, subject, however, to such limitations and restrictions as may be in force in analogous cases in the Imperial Parliament.

President Willis ruled:

For the purpose of Hansard, members should source the documents which they are quoting and identify the beginning and ending of quotes.

In 1980 President Johnson ruled that no point of order is involved in a member failing to reveal the nature of a document from which he or she seeks to quote. Therefore, while it does not assist to establish the validity of a document, a member is not forced to reveal its source.

**The Hon. John Jobling:** Will the Minister table the documents?

**The Hon. MICHAEL EGAN:** I am happy to table the package of documents.

**The CHAIRMAN:** Order! Documents cannot be tabled in the Committee of the Whole.

**The Hon. MICHAEL EGAN:** In that case I will make them available anyway.

**The Hon. Duncan Gay:** Getting information out of the Minister is like strangling chooks.

**The Hon. MICHAEL EGAN:** The Deputy Leader of the Opposition is just being silly and trifling with the Committee. As for his colleague the Hon. John Jobling, that was the greatest lot of gobbledygook I have ever heard from the old blowhard. The fact is that the package of documents given to the crossbenchers on 29 May was the same package of documents as that released by the Premier on 25 May. That is the way things happen. One releases documents publicly, then from time to time has meetings with people about the documents and says, "Here are the documents I made public the other day." There is nothing wrong with that. There is nothing sinister about it. The blowhard opposite is simply trying to make himself sound even more pompous and self-important.

**Reverend the Hon. FRED NILE** [3.16 p.m.]: The Christian Democratic Party supports the Opposition's objectives in these amendments. The purpose is clear: to prevent prisoners from having their sentences redetermined every three years for the rest of their lives. The problem is not so much what the Opposition is trying to achieve—that is not what is at stake—but whether the amendments will result in a greater risk of the bill being overturned by the High Court. According to the Hon. Peter Breen, the bill as it is currently worded may be struck down by the High Court. However, it is more likely to be struck down if the Opposition's amendments are accepted.

**The Hon. Duncan Gay:** That is not what the Hon. Peter Breen said.

**Reverend the Hon. FRED NILE:** Did you say that the Opposition's amendments will make it worse?

**The Hon. Peter Breen:** Opposition amendment No. 1 will not make it worse, according to the Bar Association's advice to the crossbench.

**Reverend the Hon. FRED NILE:** That is the impression I got from what you were saying. I am not supporting the Hon. Peter Breen's remarks; I am simply quoting them to indicate that we are in an area of academic debate. The whole issue is academic. Despite receiving advice, those of us who are not lawyers are having difficulty knowing what to do. I may have asked this question during my contribution to the second reading debate but I ask the Government again: If the Opposition's amendments are carried, is it possible for the High Court to strike down part of the bill, rather than the whole bill? I received no clear answer from the Minister. The High Court may have no option but to strike down the bill.

**The Hon. John Hatzistergos:** Do you mean whether it is severable?

**Reverend the Hon. FRED NILE:** Yes. I am simply asking whether the High Court can strike down only part of the bill. Obviously we do not want the High Court to reject the whole bill. Although the members who oppose the bill spoke as if a challenge to the High Court is automatic, can the Government explain, for those of us who are laymen—

**The Hon. John Hatzistergos:** Of course it is automatic. If you take away the power to appeal, what do they have to lose?

**Reverend the Hon. FRED NILE:** My next question is: How do they get there?

**The Hon. John Hatzistergos:** They just go there.

**Reverend the Hon. FRED NILE:** If a person is sitting in gaol how does he get to the High Court? In other words, will the Government be aiding and abetting a prisoner's appeal by providing legal aid funds? Will the Government be assisting prisoners who are never to be released by using government funding to overturn its own bill?

**The Hon. Peter Breen:** We can't have that! That's terrible.

**The Hon. Michael Egan:** It happens all the time, I am told.

**The Hon. John Hatzistergos:** All the time. The Legal Aid Commission is independent.

**Reverend the Hon. FRED NILE:** Even in this situation?

**The Hon. Michael Egan:** Yes, definitely.

**The Hon. Peter Breen:** The Legal Aid Commission is separate from the Government, in spite of its efforts!

**The Hon. Michael Egan:** I am very unhappy sometimes about the challenges that are made against the Government that are actually funded by public moneys. It infuriates me.

**Reverend the Hon. FRED NILE:** I did not know that. Many people come to me complaining that they cannot get legal aid and they ask how a prisoner whose file is stamped "Never to be released" can obtain such easy access to it.

**The Hon. Rick Colless:** They are too honest, and honest people do not get it.

**Reverend the Hon. FRED NILE:** That is what I am saying. If honest people cannot get it, how do these murderers get it?

**The Hon. Michael Egan:** The Government cannot direct the Legal Aid Commission.

**Reverend the Hon. FRED NILE:** Perhaps we need to amend the rules that govern the Legal Aid Commission.

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.20 p.m]: Reverend the Hon. Fred Nile asked whether it is possible for the High Court to sever part of an Act from the rest of an Act—

**The Hon. John Hatzistergos:** It is.

**The Hon. MICHAEL EGAN:** I am told that it is, but that creates another problem. If the High Court strikes down the part of the bill concerning redetermination, that may mean that this category of offender could get a non-life sentence. That is the advice I have received from the Government's advisers.

**Reverend the Hon. Fred Nile:** That happens because of the loophole?

**The Hon. MICHAEL EGAN:** Yes. That opens up that possibility.

**The Hon. MALCOLM JONES** [3.21 p.m.]: Owing to the very esoteric nature of the bill and the importance of the bill, I can really only pass an opinion based on not having available meaningful and appropriate legal advice. My comments will be made in that vein and I will not try, unlike some of my colleagues, to be an absolute expert on everything. I understand the objective of the Opposition's amendment

and I believe the amendments to be virtuous, given the nature of the offences, the offenders and the pain and suffering that has been caused, particularly to Brian Morse as a result of continuing redeterminations. I agree with the Treasurer's comments regarding the sentencing nature of these amendments, the problems they could pose and the jeopardy in which the bill could be placed.

I really do wish that the opinion sought by the Government could be made available to honourable members to achieve clarity. I note the comments made by the Hon. Peter Breen, particularly his comments relating to "skirting" the Constitution which would make the bill when it becomes an Act extremely vulnerable. When a court marks a file "Never to be released", I do not believe that the endorsement really deserves the weight of importance that has been placed on that term during this debate. My understanding is that the term "Never to be released" is more of a guide to Corrective Services in organising and controlling the overall management of prisoners of the type referred to in the bill. The term "Never to be released" is used virtually in direct relationship to the regime under which the comment is made.

The regime has changed, particularly from the point of view of the prisoners, because this bill addresses their futures. I make those comments in the absence of legal opinion. From my exposure to the law, I have learned not to accept third party summaries of legal opinions. I believe that to be dangerous, and now I am sceptical about the watertight nature of this bill. In order to achieve the objectives as outlined in the Premier's second reading speech, I will support the main thrust of the bill, but the Opposition's amendments regarding parole and resentencing will jeopardise the overall objectives of the bill. I endorse that comments made, and amendments moved, by the Hon. Peter Breen regarding young offenders who are sentenced as minors during a different sentencing regime, and I reject the Government's comments about non-differentiation of age categories of those offenders. I will not support the Opposition's amendments, but I will support the amendments moved by the Hon. Peter Breen.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [3.25 p.m.]: First I draw the attention of the Committee to the document tabled by the Government. It was circulated to the crossbenches, but not to the Opposition. Nowhere in the document is there the opinion that the Opposition asked for, and that other honourable members would need, on the Opposition amendments. The document contains an opinion of the Government's own legislation. Second, the Opposition asked for an opinion on our amendments. The Government says that it has an opinion which suggests that the Opposition's amendments will make this legislation more susceptible to a High Court challenge.

The Opposition has asked for that opinion on numerous occasions but is yet to see it. I suggest to the Committee that if the Government actually had an opinion that creamed the Opposition, do honourable members think that they would see it? The Government would not be hiding away an opinion of that type.

**The Hon. John Hatzistergos:** No-one asked for it.

**The Hon. DUNCAN GAY:** The Hon. John Hatzistergos should be quiet. He will have his chance to speak in a moment. Third, the Government has said that this legislation will go to the High Court, where it will be challenged because the Opposition has moved amendments. Honourable members who are legally trained have indicated that there is no more reason to believe that the legislation will be challenged because of the Opposition's amendments than there is to believe that a challenge would be based on the Government's legislation. If this legislation is reviewed in the High Court, the High Court can choose which part it wants to review, but who can say that it will be the Opposition's part that the High Court will want to review?

There is no reason why the High Court would choose the Opposition's amendments ahead of any of the parts of the Government's legislation for severance. The bill contains many pages of provisions. Moreover, the advice which has been relayed by the Treasurer is that if one of the provisions were amended by the Opposition, the legislation would be susceptible. That advice is no more valid when applied to the Opposition's amendments than when applied to the Government's provisions. If honourable members are to believe the Government, its legislation is flawed and susceptible. The good news for the Government is that I do not believe that. I do not believe that honourable members should believe it either. I believe that this legislation is not susceptible, nor is the amendment that the Opposition is moving.

Let us cut to the chase. There are two aspects to consider. There is the Government's legislation and the Opposition has moved an amendment that honourable members in this Chamber believe is a good and proper amendment. It is no worse than the legislation. The amendment has had only one change to bring it more in line with the legislation that it is complementing. That being the case, honourable members should vote in favour of

the amendment because there is no valid reason why honourable members should vote against it. The amendment moved by the Opposition is no more vulnerable to challenge than is any provision proposed by the Government's legislation. The High Court can choose. If part of the legislation is severable, the amendment will be on equal footing with the legislation.

Unlike the Government, the Opposition has come forward with a legal opinion and has been willing to table that. The Government asks honourable members to believe that it has obtained an opinion to the effect that the Opposition's amendment is wrong, but the Government will not produce that opinion. I believe that the arguments that have been advanced in the Committee by non-lawyers—therefore people may be able to understand it—is a valid argument backed up by definite legal opinion that the Opposition, unlike the Government, has disclosed. I urge honourable members to support the Opposition's amendment.

**Question—That Opposition amendments be agreed to—put.**

**The Committee divided.**

**Ayes, 14**

Mr Colless  
Mrs Forsythe  
Miss Gardiner  
Mr Gay  
Mr Harwin

Mr Lynn  
Mrs Nile  
Reverend Nile  
Mr Pearce  
Dr Pezzutti

Mr Ryan  
Mr Samios  
*Tellers,*  
Mr Jobling  
Mr Moppett

**Noes, 23**

Mr Breen  
Dr Burgmann  
Ms Burnswoods  
Mr Cohen  
Mr Della Bosca  
Mr Dyer  
Mr Egan  
Ms Fazio

Mr Hatzistergos  
Mr Johnson  
Mr M. I. Jones  
Mr R. S. L. Jones  
Mr Macdonald  
Mr Obeid  
Ms Rhiannon  
Mrs Sham-Ho

Ms Tebbutt  
Mr Tingle  
Mr Tsang  
Mr West  
Dr Wong  
*Tellers,*  
Dr Chesterfield-Evans  
Mr Primrose

**Question resolved in the negative.**

**Opposition amendments negated.**

**Amendments of the Hon. Peter Breen negated.**

**Schedule 1 agreed to.**

**Schedule 2**

**The Hon. PETER BREEN** [3.37 p.m.]: I move Reform the Legal System amendment No. 4:

No. 4 Page 6, schedule 2, line 5. Omit "Schedule.". Insert instead:

Schedule, and

- (c) who was of or above the age of 18 years at the time of the offence in respect of which the offender is serving the sentence referred to in paragraph (a).

The purpose of this amendment is to add paragraph (c) to what I would call the "cement" part of the bill. The legislation provides that an offender cannot make an application to the Parole Board for release unless the offender is in imminent danger of dying or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person and has demonstrated that he or she does not pose a risk to the community. Presumably this refers to a person who is totally incapacitated. I cannot imagine any other person being able to be released from gaol under that provision. My amendment simply seeks to exclude from the provisions of the legislation the two offenders I referred to earlier, Blessington and Elliott, who were juveniles at the time of their offences. The amendment seeks to amend the relevant section by providing that persons under 18 years of age will not be the subject of that provision.

I would like to clarify a matter raised by the Hon. Malcolm Jones in relation to prisoners whose files have been marked "Never to be released". It is true that the files of Blessington and Elliott were marked "Never to be released" and that subsequently, on review, the Chief Justice of the Court of Appeal said that that notation on their file by the trial judge was inappropriate. In the case of the prisoner Les Murphy, he appealed for a retrial as a result of a decision of the High Court, and the question of whether the "Never to be released" notation on his file was to be changed was not actually considered. In other words the judge at retrial did not make any comment about that one way or the other. Reverend the Hon. Fred Nile asked whether Corrective Services was able to make that kind of notation on a prisoner's file. I wrote to the Attorney General about that. In a response dated 20 June he addressed that specific point in relation to Mr Murphy. When explaining the role of Corrective Services in relation to the "Never to be released" notation the Attorney General said:

Advice from the Department of Corrective Services is that the "never to be released" notation alleged to be imprinted upon Departmental file was metaphoric rather than actual; such a stamp never actually existed. The Department advises that it does not endorse or remove comments from the files of offenders. The advice you have been given that such notations have been removed in the case of particular offenders is therefore incorrect.

In practical terms, you will appreciate that the status of a "never to be released" recommendation is not a matter for the Department of Corrective Services to determine. Whether or not any of these inmates will actually ever be released is a question to be determined by the sentence imposed by a court and legislation applicable at the time and any interpretation by a court of that legislation.

To the extent that there might have been left in the minds of honourable members a question about whether the Department of Corrective Services could note a file "Never to be released" or in fact remove that notation, that information was incorrect, and Reverend the Hon. Fred Nile was quite correct in drawing attention to it. In relation to the role of the Parole Board, given that the legislation now cements these people in gaol and they literally have to be infirm or incapacitated before there is any prospect of their getting out of gaol, I would suggest again, for the reasons I mentioned before, that such an unseemly provision, in my opinion, should not apply to two people who were aged 14 and 16 years at the time of their offence. They were secondary to the murder in the sense that they were not the principal perpetrator and they were also instrumental the very next day in taking police to the murder scene and telling the police what had happened. Their reactions were not reactions of hardened criminals but of frightened children. This Parliament should take that into account, and the amendment ought to be supported.

**The Hon. MICHAEL EGAN** (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [3.42 p.m.]: The Government opposes the amendment.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [3.42 p.m.]: The Opposition also opposes the amendment. As this is the last amendment to be moved, I draw the attention of honourable members to the presence in the gallery of Brian Morse. He has sat through the debate on the various bills before in Houses. On behalf of all honourable members, no matter their stance, I wish Brian well. He has shown great dignity and sincerity during a time that cannot have been easy for him. He has indicated that people such as himself are not after revenge but surety of justice.

**Amendment negatived.**

**Schedule 2 agreed to.**

**Title agreed to.**

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

## **POLICE POWERS (DRUG PREMISES) BILL**

### **POLICE POWERS (INTERNALLY CONCEALED DRUGS) BILL**

#### **In Committee**

**The CHAIRMAN:** Order! The Committee will deal first with the Police Powers (Drug Premises) Bill.

**Clauses 1 and 2 agreed to.**



**Clause 3**

**The Hon. RICHARD JONES** [3.47 p.m.]: I move my amendment No. 1:

No. 1 Page 2, clause 3 (1). Insert after line 16:

*lookout*, in relation to premises, means a person who is in the vicinity of the premises for the purpose of communicating to any person on the premises to warn the person of impending police action.

This amendment includes a definition of "lookout". It is important that the legislation clearly defines the characteristics of a person considered to be a lookout. Given that the term is used flippantly by shock jocks and various other right-wing commentators, it is essential that the term be defined. If it is not there will be potential for the matter to be left open to abuse. The police undoubtedly have a meaning in mind when they refer to such persons. Therefore, there is no reason not to include the definition to ensure that there is no confusion. I am aware that the Government supports this amendment. I commend the amendment to the Committee.

**The Hon. JOHN HATZISTERGOS** [3.47 p.m.]: The Government supports the amendment.

**Amendment agreed to.**

**Clause 3 as amended agreed to.**

**Clauses 4 and 5 agreed to.**

**Clause 6**

**The Hon. RICHARD JONES** [3.48 p.m.]: I move my amendment No. 2:

No. 2 Page 4, clause 6. Insert after line 17:

- (2) The owner of any premises damaged in the exercise of a power under this section is entitled to payment from the Crown of a reasonable amount of compensation for that damage if a court finds in proceedings for an offence against Part 3 in respect of the premises that the premises were not, at the time the power was exercised, drug premises.

This amendment provides that the owner of any premises damaged by a police officer is entitled to compensation for the necessary repairs when it is subsequently determined that the premises were not drug premises and that damage was done to the premises in the execution of a search warrant under the terms of this section. It is important that legislation makes allowance for errors when a warrant is executed—for example, if doors, windows or walls are damaged and subsequent investigation reveals that the premises are not drug premises. The owner, of course, should be reimbursed within a reasonable timeframe for the cost of necessary repairs. I am grateful and pleased that the Opposition has stated that it will support this amendment, which will afford protection to people treated unfairly under the legislation generally.

**The Hon. IAN COHEN** [3.49 p.m.]: On behalf of the Greens I support the amendment. In the past there have been instances of mistakes being made in the heat of a police raid. On another matter, I once saw police smashing down the front door of a terrace house in Glebe. That involved an illegal occupancy issue, but the house involved turned out to be the house next door. These mistakes do happen, and it is important that there be the opportunity to compensate the innocent.

**The Hon. JOHN HATZISTERGOS** [3.49 p.m.]: The Government does not support the amendment. The common law has always allowed for compensation for persons who suffer civil law consequences or actions that are wrongful. There is no reason, in every case where new criminal laws are created, to specify some civil remedy that may be available.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [3.50 p.m.]: I support the amendment. It is necessary that it be specifically written in this case. A friend of mine lived at a certain number in Glebe Lane, Glebe, as opposed to Glebe Street, Glebe. The Housing Commission had orders, due to problems with squatters, to wreck a house in Glebe Street such that it would be uninhabitable. It proceeded to wreck a house in Glebe Lane rather than in Glebe Street. My friend is a very fussy fellow. The next door neighbour said to the wreckers, "You must not wreck his house because he is painstakingly restoring it." He was restoring it historically with magnificent wood finishes to kitchen benches and so on. Later, he sought compensation. Though the Minister

was embarrassed and apologised, the costing was made on the basis that the restoration was in chipboard, when he had in fact restored the house magnificently—a fact apparently not noticed by those who were smashing the house to pieces. So the issue of compensation is important, and it needs to be specified.

**The Hon. JAMES SAMIOS** [3.51 p.m.]: The Opposition supports the amendment.

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

**The Committee divided.**

**Ayes, 21**

Mr Breen	Mr Harwin	Ms Rhiannon
Dr Chesterfield-Evans	Mr M. I. Jones	Mr Ryan
Mr Cohen	Mr R. S. L. Jones	Mr Samios
Mr Colless	Mr Lynn	Dr Wong
Mrs Forsythe	Mr Oldfield	<i>Tellers,</i>
Mr Gallacher	Mr Pearce	Mr Jobling
Miss Gardiner	Dr Pezzutti	Mr Moppett

**Noes, 17**

Dr Burgmann	Mr Johnson	Mr Tingle
Mr Della Bosca	Mr Macdonald	Mr Tsang
Mr Dyer	Mrs Nile	Mr West
Mr Egan	Reverend Nile	<i>Tellers,</i>
Ms Fazio	Mr Obeid	Ms Burnswoods
Mr Hatzistergos	Ms Tebbutt	Mr Primrose

**Pair**

Mr Gay

Ms Saffin

**Question resolved in the affirmative.**

**Amendment agreed to.**

**Clause 6 as amended agreed to.**

**Clause 7**

**The Hon. RICHARD JONES** [3.58 p.m.]: I move my amendment No. 3:

No. 3 Page 4, clause 7 (1) (b), line 21. Insert "whom the police officer has reasonable grounds for believing is or has committed an offence" after "premises".

As the bill currently stands, police officers may arrest or otherwise proceed against any persons on the subject premises. My amendment stipulates that this may be done only when the police officer has reasonable grounds for believing that the person is committing, or has committed, an offence. It is unreasonable to assume that everyone in a drug house is guilty. Many legal commentators, civil libertarians, academics, parliamentarians and members of the broader community have expressed concern about changing the basic principle of common law that any person is presumed innocent until proved guilty. As I have said, this conservative Labor Government is turning New South Wales into a police state. Ken Horler, QC, said that making crime suspects responsible for proving their innocence would not lead to more arrests or any reduction in drug trafficking.

**The Hon. IAN COHEN** [3.59 p.m.]: On behalf of the Greens I support the amendment moved by the Hon. Richard Jones. It is quite clear that the presumption of innocence must apply under this proposed legislation. Different family situations are involved. Often, relatives, children and wives of those who may be involved in the drug trade will be living in the premises under extremely difficult circumstances, perhaps under duress. The provisions of the bill do not take into account the many different types of family circumstances and arrangements, or for that matter ethnic arrangements, that may apply in these matters. It is important that those

who are innocent of the subject activities in drug houses have a degree of protection under the law. This is a worthy amendment that was moved by the Hon. Richard Jones.

**The Hon. JOHN HATZISTERGOS** [4.00 p.m.] The Government does not support this amendment. Being present on premises is an offence under this bill. A police officer will suspect someone of having committed an offence under this bill if that person is on premises where indicia are present, which indicates that the premises are being used as drug premises. So the clause is actually not required.

**Reverend the Hon. FRED NILE** [4.01 p.m.]: The Christian Democratic Party does not support the amendment, for the same reasons given by the Government. We are concerned about any amendment that might undermine the purpose of the bill. We want action taken against drug fortresses. Any individuals living in a so-called drug fortress where drugs are being sold would know that, once this bill was passed, they would have to move. No innocent people should be present in these drug fortresses.

**The Hon. RICHARD JONES** [4.02 p.m.]: Imagine an 89-year-old granny, who is half blind and deaf, living on the top floor of an apartment block. Under this bill she could be dragged away by the police and charged. I have moved my amendment in an attempt to assist people like that. Under this legislation cats, dogs and even a 12-month-old baby could be charged because they would all be presumed guilty.

**Amendment negatived.**

**Clause 7 agreed to.**

**Clause 8 agreed to.**

#### **Clauses 9 to 12**

**The Hon. IAN COHEN** [4.03 p.m.], by leave: I move Greens amendments Nos 1, 4, 5 and 6 in globo:

No. 1 Page 5, clause 9 (1), line 23. Omit "12". Insert instead "6".

No. 4 Page 7, clause 12 (1) (a), line 17. Omit "12". Insert instead "6".

No. 5 Page 7, clause 12 (1) (b), line 19. Omit "500". Insert instead "200".

No. 6 Page 7, clause 12 (1) (b), line 20. Omit "5". Insert instead "2".

These amendments will reduce the penalties with regard to certain offences provided for in the bill. The Greens are of the view that the penalties contained in the bill are extremely harsh. Many of the provisions do not discriminate between those who may be committing offences due to their drug addiction and drug use and those who are organisers or large-scale drug suppliers. Clause 9 of the Police Powers (Drug Premises) Bill relates to obstructing police officers executing search warrants. This offence relates to stopping police from entering drug premises either physically or by giving or causing an alarm to be given so that when the police enter the drug premises individuals within those premises may have escaped. These are known as the so-called cockatoo offences.

Amendment No. 1 will reduce the maximum term of imprisonment from 12 months to six months. The Greens are of the view that the penalties are far too harsh for this kind of offence. The kinds of people likely to commit these offences are not likely to be organisers or large-scale drug dealers; they are likely to be drug users, vulnerable and exploited people and young people. A maximum of 12 months imprisonment is far too harsh for these kinds of people who are caught up in the drug-use environment.

Clause 12 provides penalties for those who are found on, entering or leaving the premises. The kinds of people who are likely to be found on drug premises are drug users obtaining drugs and individuals working for the main organisers of the drug premises. Organisers and drug suppliers are hardly likely to be found on the premises. This clause also contains some extremely harsh provisions. The clause will undoubtedly target drug users, vulnerable and exploited people, young people, perhaps innocent families and the friends of those people, and the main organisers. Amendments Nos 4, 5 and 6 will reduce the penalties contained in this provision. I commend Greens amendments Nos 1, 4 5 and 6 to the Committee.

**The Hon. JOHN HATZISTERGOS** [4.04 p.m.]: The Government does not support the Greens amendments. The first amendment involves a reduction in the penalties in the bill for obstructing a police officer

during a search. It is appropriate that that offence carry a penalty of 12 months. Police must be able to carry out their duties in the lawful circumstances of a search. When the package of fighting drug crime in the Cabramatta region was announced by the Premier earlier this year the Government also announced proposed penalties.

The Premier had extensive talks with the Commissioner of Police and he visited Cabramatta to look at the problems first-hand. The Government is of the view that the penalties are appropriate for the criminal activity they are designed to deter and penalise. Amendments Nos 4, 5 and 6 will restrict the penalties that might apply to the offence under the bill of entering or being on drug premises. They will reduce the penalties under the bill. For those reasons the Greens amendments are not supported by the Government.

**The Hon. JAMES SAMIOS** [4.05 p.m.]: The Opposition does not support the Greens amendments.

**Amendments negatived.**

**The Hon. PETER BREEN** [4.06 p.m.], by leave: I move Reform the Legal System amendments Nos 1 and 2 in globo:

No. 1 Page 6, clause 10, line 5. Omit "not".

No. 2 Page 6, clause 10, line 7. Omit "any". Insert instead "the".

I deal first with amendment No. 1. Clause 10, as it stands, requires the prosecution to prove either that a person had a prohibited drug in his or her possession or that a prohibited drug was found on the premises. As the bill is currently worded there is no requirement that the prosecution be put to the test to prove its case. In fact, the opposite is true. The prosecution is not required to prove the charge as the clause is currently worded. This is unprecedented. Maintaining the current wording effectively lowers the burden of proof beyond a reasonable doubt, as is the case in criminal matters, and even below the standard in civil matters where a matter must be proved on the balance of probabilities.

In this case the prosecution is not required to prove anything at all. Without my amendment the clause will lead to situations of doubt regarding the amount of prohibited drugs that the prosecution claims was present. We will end up with the ridiculous and unfair situation of a person being unable to challenge the amount of drugs that he or she is said to have had because the prosecution no longer needs to prove this basic element of the case, that is, that the drugs exist and that they were in the person's possession. Amendment No. 2 will substitute the words "any premises" with the words "the premises" in an endeavour to ensure that only the premises the suspect was at or in is used in proceedings against that person.

**The Hon. JOHN HATZISTERGOS** [4.07 p.m.]: The Government cannot accept these amendments. Amendment No. 1 will totally change the whole purpose of the legislation. It will mean that it will be necessary to find drugs on the premises before they can be considered to be drug premises. The bill requires a range of indicia to be located on premises for them to be considered drug premises. If the drugs are there, there is no need for the legislation; the Drugs Misuse and Trafficking Act will apply. It is clear that the purpose of this bill concerns the ability to prove the location of drug premises if no drugs are found based on other reasonable evidence.

The bill will assist prosecutions where offenders have the ability to thwart appropriate investigations and dispose of drugs. It might be said that police can get a warrant and block the toilet pipes. That is so. In apartment blocks, locating the right connection can be tricky. Letting dealers flush away drugs and hoping that the police can locate the right pipe and sift through the waste is not the appropriate answer. Amendment No. 2 attempts to limit the meaning of drug premises. Premises involved in an offence are only premises that are found, for the purposes of the Act, to be drug premises. The amendment is unnecessary.

**Amendments negatived.**

**The Hon. RICHARD JONES** [4.09 p.m.]: I do not intend moving amendment No. 4 circulated in my name. I move my amendment No. 5:

No. 5 Page 6, clause 11 (2) (b), line 30. Insert "and evidence that those security arrangements are significantly excessive when compared with normal security requirements of premises in the locality" after "re-entry".

As the bill currently stands, when considering evidence that the premises are drug premises one has to take into account the construction of the premises. It refers to such things as a bolt, bar, chain or alarm. This amendment

will ensure that the legislation takes into account the location of the premises. It will add the provision that there must be evidence that the security arrangements of the premises are significantly excessive compared with the normal security arrangements of premises in the locality. Policies offered by insurance agents reflect the changing security requirements for the locality of premises.

Certain security requirements are necessary for premises in some areas such as Cabramatta but are not required in other areas more fortunate, such as Lane Cove. For example, in Cabramatta double key deadlocks on all doors and key window locks are a necessity. However, if the premises has bars on the windows, this is considered a suitable replacement for key window locks. If the premises has an alarm system with certain characteristics it will override other security requirements. A house in Cabramatta may have bars on its windows and some sort of an alarm system simply to be eligible for insurance.

**The Hon. JOHN HATZISTERGOS** [4.10 p.m.]: The prosecution bears the onus of proof in finding the premise is a drug premise for the purposes of the Act. If in a particular suburb, for insurance, commonsense requires certain security arrangements, that will be considered in evidence by the court hearing the matter before deciding whether the premises are drug premises for the purposes of the bill.

**Amendment negatived.**

**The Hon. IAN COHEN** [4.13 p.m.]: I move Greens amendment No. 2:

No. 2 Page 6, clause 11 (2) (d), lines 33-36. Omit all words on those lines.

Clause 11 deals with evidence that demonstrates that a premise is likely to be a drug premise. Subclause (2) (d) specifies that if a syringe is found on a premise or in the possession of a person on a particular premise and that syringe is being used in the supply, manufacture or use of a prohibited drug, this is one factor the judicial officer can have regard to when he or she determines whether the place is a drug premise being used for the unlawful supply or manufacture of any prohibited drug. The Greens are concerned that this provision will work against the policy of trying to encourage as many drug users as possible to use clean syringes, which is the policy behind the needle exchange program.

Possession and use of syringes should not form part of the evidence to determine whether a premise is a drug premise. Otherwise, it is likely to have a negative health effect. Drug users in particular may be reluctant to take clean syringes to a drug premise because of this provision. Legislation should not discourage individuals from carrying and using clean syringes. Legislation that discourages the use of clean syringes may result in a higher incidence of HIV-AIDS, hepatitis and many other diseases being transmitted through the use of dirty and shared needles. I commend Greens amendment No. 2 to the Committee.

**The Hon. JOHN HATZISTERGOS** [4.14 p.m.]: The Government cannot support this amendment. It is important to note that the indicia of prohibited drug supply or manufacture are one of the matters taken into account in determining whether a premise is a drug premise for the purposes of the bill. Sometimes these houses have piles of syringes in them, but by the time the police have gained entry the prohibited drugs are flushed away and destroyed. The indicia of supply or manufacture is a vital ingredient in the nature and effect of the bill. It is very unlikely that piles of syringes alone will satisfy the police that they happen to be on drug premises. In a vacuum syringes are not indicators of drug supply but in context they may very well be a vital ingredient.

**Amendment negatived.**

**The Hon. RICHARD JONES** [4.15 p.m.]: I move my amendment No. 6:

No. 6 Page 7, clause 11 (2) (h), line 12. Omit "appeared to be". Insert instead "were".

Currently, evidence that premises are drug premises includes persons on the premises who appeared to be affected by a prohibited drug. The term "appeared to be" is subjective and may be open to abuse by the attending officer. Replacing the term with the word "were" takes away this subjectivity. People could appear to be affected by a prohibited drug if, for example, they displayed a lack of co-operation, had red eyes or failed to respond to questions. They could be affected by a legal drug, for instance. They could have a condition being treated by a doctor. A multitude of explanations could be given for any of these conditions. If police suspect a person is affected by a prohibited drug, let them prove it before it is used as evidence that the premises were drug premises.

**The Hon. JOHN HATZISTERGOS** [4.16 p.m.]: The Government opposes this amendment. The amendment requires the prosecution to prove that a person is actually intoxicated on premises before that may

be used to prove that the premises are drug premises. This would be a significant imposition on the courts and police which is unjustified in the circumstances. It would possibly require a blood test or some other medical procedure to prove that a person is intoxicated in cases where it is alleged that a drug premise exists. Intoxication of persons is one of the criteria under the bill to prove that a drug premise exists and the onus is on the prosecution to prove beyond reasonable doubt that the premises are drug premises to make out the offences under the bill. It is a sufficient onus, in the view of the Government, that the location of apparently intoxicated persons can be proved beyond a reasonable doubt in court. The elements of evidence are that persons are present on the premises and they appear to be intoxicated. The appearance of intoxication is a matter of evidence beyond reasonable doubt. In many circumstances this will lead to police taking blood samples from persons on the premises to prove their case. The court should not be entirely restricted by this proposed amendment.

**Amendment negatived.**

**The CHAIRMAN:** Order! Three conflicting amendments are proposed to clause 12: Greens amendment No. 3, Australian Democrats amendment No. 1 and the Hon. Richard Jones' amendment No. 7. I propose to allow all three amendments to be moved concurrently but they will be put to the Committee separately.

**The Hon. IAN COHEN** [4.18 p.m.]: I move Greens amendment No. 3:

No. 3 Page 7, clause 12 (1), lines 14 and 15. Omit all words on those lines. Insert instead:

- (1) A person who is found on, or who is found entering or leaving, drug premises for an unlawful purpose is guilty of an offence.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [4.19 p.m.]: I move the Democrats amendment:

Page 7, clause 12 (1), lines 14 and 15. Omit "drug premises". Insert instead "premises that the person knows are drug premises".

This amendment is quite modest; indeed, it could have gone a great deal further. In the Select Committee on the Increase in Prisoner Population it became clear that a large number of people in women's prisons were there because they had been convicted of being accessories. That meant they were either doing cockatoo duties for their boyfriends or husbands, or they were an associate in a major crime. In some cases they were drug addicted and in other cases they were frightened not to participate. My amendment does not cover people who are aware that drugs are being traded but are too frightened to resist being involved. In a sense, my amendment has not gone as far as it might go, and I probably should stand criticised for that. I note that the changes proposed by the Hon. Richard Jones and the Hon. Ian Cohen go some way to addressing that.

The key to my amendment is the reversal of the onus of proof. Basically, if someone is on drug premises, that is sufficient evidence, even if that person did not know what was happening. For example, a person living in an upstairs flat, a person delivering pizza or a person collecting money for the Salvation Army may not know that drugs are being traded on the premises, depending on the definition of "drug premises". It is not uncommon for people living in shared accommodation to have no money and to trade in drugs to live. I asked the Law Society for its opinion. In a letter dated 20 June the President of the Law Society, Nicholas Meagher, said:

**Re: Police Powers (Drug Premises) Bill 2001**

As you are aware, the Law Society's Criminal Law Committee is opposed to the provisions of the above Bill. The legislation expands police powers and remove protections for the purpose of obtaining convictions more easily ...

I note that you will move an amendment to clause 12 of the Bill (offence of entering, or being on, drug premises) so that the offence will read:

"A person who is found on, or who is found entering or leaving, *premises that the person knows are drug premises* is guilty of an offence."

... Accordingly, the amendment as sought by you is supported.

People who practise in this area are concerned about civil liberties and about the reversal of proof. I ask for support for this very modest amendment.

**The Hon. RICHARD JONES** [4.22 p.m.]: I move amendment No. 7 standing in my name:

No. 7 Page 7, clause 12, line 15. Insert "and who there are reasonable grounds to believe has engaged in the unlawful supply or manufacture of a prohibited drug" after "premises".

As clause 12 currently stands, the onus is on defendants to prove that they had a lawful purpose or excuse for being found on or entering or leaving drug premises. The clause will be amended to put the onus of proof on the prosecution, not on defendants. Provisions will be added that stipulate that a person will be guilty of an offence only when there are reasonable grounds to believe that person has engaged in the unlawful supply or manufacture of a prohibited drug. Nicholas Cowdery, in his initial response to the proposed legislation, referred to the importance of making clear what is regarded as a sufficient legal reason for entering or leaving drug premises. As the legislation currently stands, persons are automatically guilty until they have proved their innocence. For example, if a mother trying to counsel her son or daughter to get off drugs is leaving the premises she will be arrested, charged and taken to court. A mother or grandmother could well be charged. It could be anybody—it could be a gas person leaving the premises.

*[Interruption]*

The Hon. Doug Moppett laughs, but he has not read the legislation. Under the legislation, all persons entering or leaving drug premises will be guilty of an offence. They will be taken to court, where they must prove their innocence. It could be a gas person, an electricity person, a person laying carpet, a cleaner, a mother who is trying to get her child off drugs—any person is automatically guilty. Innocent people will be guilty until they can prove their innocence. The honourable member should read the legislation before he laughs about it, because he is conniving with the conservative Labor Government to turn New South Wales into a police state.

**Amendment of the Hon. Ian Cohen, by leave, withdrawn.**

**The Hon. JOHN HATZISTERGOS** [4.24 p.m.]: The Government does not think the amendment moved by the Hon. Dr Arthur Chesterfield-Evans is necessary. The purpose of the amendment is to state that a person found on or entering or leaving premises that the person knows are drug premises will be guilty of an offence. This is unnecessary. If a person has no actual knowledge that the premises are drug premises he or she will have a lawful excuse. The amendment moved by the Hon. Peter Breen has the same intent and, as with the previous amendment, it is a matter for the courts to determine the knowledge of an accused person from the evidence before the court.

The amendment moved by the Hon. Richard Jones is also not supported by the Government. The bill is aimed at targeting persons on drug premises because only persons on such premises are there for the purposes of supply, manufacture, use or purchase of prohibited drugs. People with a lawful excuse for being on the premises should be able to show why they are there, and it is appropriate that the offences remain as they are in the bill.

**Question—That the amendment of the Hon. Dr Arthur Chesterfield Evans be agreed to—put.**

**The Committee divided.**

**Ayes, 6**

Mr Breen  
Mr Cohen  
Ms Rhiannon  
Dr Wong  
*Tellers,*  
Dr Chesterfield-Evans  
Mr R. S. L. Jones

**Noes, 26**

Ms Burnswoods	Mr Johnson	Mr Ryan
Mr Colless	Mr M. I. Jones	Mr Samios
Mr Dyer	Mr Moppett	Mrs Sham-Ho
Ms Fazio	Mrs Nile	Ms Tebbutt
Mrs Forsythe	Reverend Nile	Mr Tingle
Miss Gardiner	Mr Obeid	Mr Tsang
Mr Gay	Mr Oldfield	<i>Tellers,</i>
Mr Harwin	Mr Pearce	Mr Jobling
Mr Hatzistergos	Dr Pezzutti	Mr Primrose

**Question resolved in the negative.**

**Amendment negatived.**

**Amendments of the Hon. Richard Jones negatived.**

**The Hon. RICHARD JONES** [4.33 p.m.]: I move my amendment No. 8:

No. 8 Page 7, clause 12 (2), lines 21-23. Omit all words on those lines.

**The CHAIRMAN:** The Hon. Richard Jones' amendment No. 8, the Hon. Ian Cohen's amendment No. 7 and the Hon. Peter Breen's amendment No. 3 all conflict. Provided there is no objection, I propose to allow all three members to move those amendments.

**The Hon. RICHARD JONES:** My amendment No. 8 is part and parcel of Greens amendment No. 7.

**The Hon. IAN COHEN** [4.34 p.m.]: I will not move circulated Greens amendment No. 7. In support of amendment No. 8 moved by the Hon. Richard Jones, I point out that the bill reverses the onus of proof in relation to drug house offences. This provision goes against one of the golden threads or principles of criminal law, namely, that a person charged with an offence is innocent until proven guilty—the so-called Woolmington principle. The bill provides that those who are charged with an offence are guilty until proven innocent. The amendment moved by the Hon. Richard Jones simply resists the reversal of the onus of proof. It is to be commended and supported.

**The Hon. PETER BREEN** [4.34 p.m.]: I move my amendment No. 3:

No. 3 Page 7, clause 12 (2), lines 21-23. Omit all words on those lines. Insert instead:

- (2) A person is not guilty of an offence under this section if the person satisfies the court that:
  - (a) he or she was on, or was entering or leaving, the drug premises for a lawful purpose or with a lawful excuse, or
  - (b) he or she did not know, and could not reasonably be expected to have known, that the premises were drug premises.

This amendment would insert an additional defence under subclause (2) (b) so that by virtue of this provision an accused person has a defence if he or she can satisfy the court that he or she did not know, and could not reasonably be expected to know, that the premises in question was a drug house. I was interested to note that one of the honourable members of the Opposition interjected to suggest that there might be no reason why anyone would want to go into a drug house. A person may not know that a house is a drug house and that person may go in to make a telephone call, the person's car might have broken down, or the person might have needed to use the lavatory. There are any number of reasons why a person would go into a house.

**Reverend the Hon. Fred Nile:** They don't have to go in to get some help.

**The Hon. PETER BREEN:** But people do not have to go in; they need only approach the house. This amendment parallels the defence that is already available in clause 14 (3) and redresses the inequity whereby the defence would apply to one class of citizens but not another.

**Reverend the Hon. Fred Nile:** He treats them like a CWA hall—go in and use the toilet. You don't use the toilet in a drug fortress.

**The Hon. PETER BREEN:** I am glad to hear that Reverend the Hon. Fred Nile is an expert on toilets. A person is still required to be able to satisfy the court before the defence will be accepted. It is quite wrong to reverse the onus of proof. I urge honourable members to support the amendment.

**The Hon. IAN COHEN** [4.36 p.m.]: I support the amendment that has been moved by the Hon. Peter Breen. The provision reflects a cultural difference between people. I know of young people who, in all innocence, have gone into various dwellings and people have been there dealing in drugs or there have been drugs on the premises. There have been occasions when that has happened to me as well. Use of the term "drug fortress" indicates, obviously, that Reverend the Hon. Fred Nile envisages an inquisitional-type door bolted with huge steel sections across it like something out of a Hollywood ghoulish movie. But the fact of the matter is that a lot of these premises are where people deal in drugs and where people come and go.



**Reverend the Hon. Fred Nile:** They are drug fortresses with bars on the windows and steel doors.

**The Hon. IAN COHEN:** There may be instances of that, but there are also many instances of premises where people deal in drugs. The police know that that is occurring and they also know that there are innocent people who go into those premises, such as friends, or friends of friends. The house does not involve a cut-and-dried criminal activity. The house is actually part of a social milieu with which many honourable members disagree. The provision as it is proposed will capture people who are innocent of what is going on in those houses.

**The Hon. JOHN HATZISTERGOS** [4.37 p.m.]: The Government does not support either amendment. In relation to the amendment moved by the Hon. Richard Jones, I point out that this bill requires that a person found on or entering premises that a court has decided are drug premises, and the court is satisfied that the drug premises, on a beyond reasonable doubt onus, provide a lawful excuse for his or her presence. A person needs to show on the balance of probabilities, which is a civil test, that he or she has a lawful reason for being on the premises. If there were, for example, a delivery person on the premises to deliver a legitimate product, there would be a lawful excuse. Let us be clear that the bill is not aimed at normal domestic dwellings. It would only apply to domestic dwellings in certain circumstances. It applies to premises whose main purpose is to supply drugs.

The Government also cannot support the amendment moved by the Hon. Peter Breen. The wording that has been proposed is superfluous. It is a matter for the courts to ascertain the level of knowledge of a particular accused person. The Government takes the view that if the court is satisfied that a person who has been accused was not likely to know that a place was a drug premises, that is a classic case of a lawful excuse: All the person has to do is show that he or she had no knowledge that the premises were drug premises. The bill in its current state provides that a person is not guilty of an offence if that person has a lawful excuse, and that is sufficient for the purposes of the bill.

In answer to the matter raised by the Hon. Ian Cohen, if drugs are on the premises, then the Drug Misuse and Trafficking Act applies and the bill currently being considered by the Committee does not actually apply. If there is a visit to drug premises, there is a lawful excuse and that can be raised. The court will be satisfied that that has appropriately been raised.

**Amendment of the Hon. Richard Jones negatived.**

**The CHAIRMAN:** Order! The amendment of the Hon. Richard Jones having been negatived, the amendment of the Hon. Peter Breen cannot proceed.

**Clauses 9 to 12 agreed to.**

#### **Clause 14**

**The Hon. RICHARD JONES** [4.40 p.m.]: I move my amendment No. 9:

No. 9 Page 8, clause 14. Insert after line 8:

- (2) For the purposes of this section, a person organises or conducts drug premises if, for example, the person finances or makes arrangements for the establishment or operation of the drug premises.

This amendment clearly states that a person "organises or conducts drug premises" if he or she finances or makes arrangements for the establishment or operation of the drug premises. The current legislation clearly defines what is meant by persons who assist in organising or conducting drug premises—such as persons acting as a lookout, door attendant or guard. Similarly, it is important that the persons with the money behind the operations are clearly referred to.

**The Hon. JOHN HATZISTERGOS** [4.40 p.m.]: The Government does not support this amendment. The courts have given indicators as to who may be assisting in organising drug premises under existing clause 14 (2). This amendment seeks to replace that with criteria restricted to the person who organises—for example, a financier of the premises—but ignores assisting in organising the premises. These people would be covered under subclause (1) as those who organise or conduct drug premises. The replacement of the current clause describing those who assist in organising drug premises criteria with a section on those who organise duplicates subclause (1) and creates a hole as to what may constitute assisting it.

**Amendment negatived.**

**The Hon. IAN COHEN** [4.42 p.m.]: I move Greens amendment No. 8:

No. 8 Page 8, clause 14 (2), lines 9-12. Omit all words on those lines.

Clause 14 (2) specifies that a person is an organiser if he or she acts as a lookout, door attendant or guard in respect of a drug premise. Cockatoos are considered to be organisers. The penalties are extremely harsh.

**The Hon. John Johnson:** Fred used to be a cockatoo.

**The Hon. IAN COHEN:** And he was not a wealthy man at the time, as I understand it. He was doing a job running around for someone who was making a lot more money. There is therefore that parallel. Cockatoos, door attendants and guards are hardly likely to be organisers.

**Reverend the Hon. Fred Nile:** I was a runner.

**The Hon. IAN COHEN:** As Reverend the Hon. Fred Nile interjects, he was a runner. Similarly, in many circumstances these people are also runners. The organisers will be safely occupying other premises while drug users, vulnerable and exploited people, and young people—the small fish—are on or around the premise. The amendment deletes clause 14 (2). I commend the amendment to the House.

**The Hon. JOHN HATZISTERGOS** [4.42 p.m.]: The Government does not support the amendment. The proposal as the bill stands assists the court and police to have direction as to what constitutes assisting in and organising drug premises for the purposes of the bill, and for that reason it should be supported.

**Amendment negatived.**

**The Hon. RICHARD JONES** [4.43 p.m.]: I move my amendment No. 10:

No. 10 Page 8, clause 14 (3), line 13. Insert "of organising or conducting drug premises or" after "section ".

This amendment makes it clear that a person is not guilty of an offence in relation to organising or conducting drug premises if he or she did not know, or could not reasonably be expected to know, that the premises were drug premises. This provision reflects the provision made in relation to persons assisting in organising and conducting drug premises. It thus ensures that persons who do not know, or could not reasonably be expected to know, that the premises was a drug premises is not guilty of an offence. I am aware that the Government supports this amendment, and I am most delighted that that is the case because it is a very sensible amendment. I hope that the Opposition will also support it.

**The Hon. JOHN HATZISTERGOS** [4.43 p.m.]: The Government supports the amendment. It is appropriate that this clause should refer to the offences of organising or conducting drug premises, as well as assisting in the organising or conducting of a drug premises, and it is therefore a useful amendment.

**The Hon. IAN COHEN** [4.43 p.m.]: The Greens support the amendment and congratulate the Hon. Richard Jones and the Government on their support.

**Amendment agreed to.**

**Clause 14 as amended agreed to.**

**Clauses 15 to 20 agreed to.**

## **Clause 21**

**The Hon. PETER BREEN** [4.44 p.m.]: I move Reform the Legal System amendment No. 4:

No. 4 Page 11. Insert after line 5:

### **21 Register of drug premises**

- (1) The Commissioner of Police is to keep a register of drug premises.
- (2) The following information is to be recorded in the register:

- (a) the address of any premises found by a court to be drug premises in proceedings for an offence under this Act, the date of the finding and the grounds on which the court found the premises to be drug premises,
  - (b) the address of any premises that the Commissioner of Police has reasonable grounds to suspect are drug premises, the date when that suspicion was formed and the grounds for that suspicion,
  - (c) code details of any person arrested for an offence in respect of the premises referred to in paragraph (a) or (b) and of the outcome of any subsequent proceedings taken against the person in respect of the offence,
  - (d) the date (if known) on which any premises recorded in the register ceased to be a drug premises and whether or not the Commissioner of Police considers the premises ceased to be drug premises because of action taken in respect of the premises under this Act.
- (3) The register may be kept in the form of, or as part of, a computer database or in such other form as the Commissioner of Police considers appropriate.
  - (4) Access to the register is not to be made available to members of the public (except as provided by this section and section 22).
  - (5) Access to the register must, on request by a member of Parliament or parliamentary committee, be given to the member or committee.
  - (6) In this section:

*code details*, in relation to a person arrested for an offence, means a code name or code number that can be matched to the person's identity by reference to documentation kept by the Commissioner of Police.

The object of the amendment is to create a register of drug premises conducted by the Commissioner of Police. The register would be a record of all declared or suspected drug houses, the reasons why the premises came to police attention, and information on arrests arising out of a person's connection with the drug premises. Personal details of suspects or arrested persons are not disclosed. The information is to be accessed only by the Ombudsman as part of its two-year monitoring of the Act. This provision in the legislation requires the Ombudsman to oversee the implementation and operation of the legislation for a period of two years, which is a positive measure.

In conjunction with that, the legislation should require police to hold a register so that there is a record to show the kinds of patterns involved in drug premises, the kinds of characteristics that drug premises have in common, and so on. The aim of the amendment is to ensure that appropriate oversight is exercised by the authorities so as to determine the efficacy of the legislation and whether it fulfils its intended purpose. I am not sure what support the amendment might receive, but I urge members to consider it as being a reasonable and appropriate amendment in conjunction with the Ombudsman's duties under the legislation.

**The Hon. JOHN HATZISTERGOS** [4.46 p.m.]: The Government cannot support the amendment, nor foreshadowed amendment No. 5. The amendments do not significantly add to the requirements of clause 21. All they do is attempt to dictate to the police commissioner how he should maintain the information that he should, if requested, pass on to the Ombudsman in terms of the Ombudsman's role to keep the exercise of the functions of the Act under scrutiny. That scrutiny is already required. The Ombudsman can require the police commissioner to provide any information about the exercise of functions under the Act.

The Government will move amendments to provide that the Ombudsman can seek the information from any authority that exercises any function under the Act. That is a very broad and appropriate review mechanism. The police are accountable, they retain records, they have processes to follow, and it is not appropriate for this legislation to specify a particular method of record keeping that would differentiate this police power from the existing police powers, when they are already required to provide more than adequate information as to the exercise of the powers under this bill.

#### **Amendment negatived.**

**The Hon. JOHN HATZISTERGOS** [4.48 p.m.], by leave: I move Government amendments Nos 1 to 4 in globo:

- No. 1 Page 11, clause 21 (1), lines 8 and 9. Omit "the exercise of the functions conferred on police officers under this Act". Insert instead "the operation of the provisions of this Act and the regulations".
- No. 2 Page 11, clause 21 (2), lines 10 and 11. Omit all words on those lines. Insert instead:

- (2) For that purpose, the Ombudsman may require any public authority to provide information concerning the authority's participation in the operation of this Act and the regulations.
- No. 3 Page 11, clause 21 (4), lines 18 and 19. Omit "the exercise of functions conferred on police officers under this Act". Insert instead "the operation of this Act and the regulations".
- No. 4 Page 11, clause 21 (5), line 21. Insert "and the regulations" after "Act".

These amendments mirror the amendments the Government is moving to the internally concealed drugs bill with regard to the ability of the Ombudsman to seek information from a wider source than just the exercise of functions conferred on police officers under the Act. It extends those sources to any authority engaged in the operation of the Act per se. This change was instigated by the Ombudsman contacting the Government to ensure that his office has the appropriate power to require any public authority to provide information as to the authority's participation in the operation of the Act.

**The Hon. JAMES SAMIOS** [4.49 p.m.]: The Opposition supports the amendments.

**Amendments agreed to.**

**The Hon. PETER BREEN** [4.49 p.m.]: I move Reform the Legal System amendment No. 5:

No. 5 Page 11, clause 21. Insert after line 11:

- (3) For that purpose, the Police Commissioner must, on the request of the Ombudsman, give the Ombudsman access to the register of drug premises kept under section 21.

This amendment provides that for the purpose of the legislation the police commissioner must, on the request of the Ombudsman, give the Ombudsman access to the register of drug premises kept under clause 21. I urge members to support the amendment.

**The Hon. JOHN HATZISTERGOS** [4.50 p.m.]: I am not sure that the register is actually provided for in clause 21. The Government opposes this amendment for the reasons I previously gave. It was somehow predicated on the previous amendment being successful. That amendment was defeated and technically it would make no sense to incorporate this amendment in the bill in any event.

**Amendment negatived.**

**The Hon. IAN COHEN** [4.50 p.m.]: I move Greens amendment No. 9:

No. 9 Page 11, clause 21. Insert after line 15:

- (4) The report is to include an evaluation of the social and economic costs and benefits arising out of the operation of this Act. For the purpose of making that evaluation, the Ombudsman may require the Minister or the Commissioner of Police, or both, to provide any information necessary to analyse those costs and benefits.

This amendment ensures that when the Ombudsman carries out a review of the Act, as required by clause 22, the Ombudsman must also include a valuation of the social and economic costs and benefits arising out of the operations of the Act. During the past few years this Parliament has increased police powers significantly—for example, with the introduction of the parental responsibility legislation and the move-on and search powers, to name just a few. At no time has an overall analysis been done of the social and economic costs and benefits arising from legislation or whether they do indeed reduce crime rates. The Greens are of the view that now is the time to start looking at the legislation as a whole and to analyse whether it achieves what it is meant to achieve. As part of that analysis, the social and economic costs and benefits should be included.

**The Hon. JOHN HATZISTERGOS** [4.51 p.m.]: The Government does not support this amendment. The Ombudsman may conduct a review of the Act at the end of two years, and when conducting that review the Ombudsman will be provided with the power to obtain information from a range of parties. The content of the final report is a matter for the Ombudsman. The Government's review of the Act will adequately examine the social and costs benefits of the legislation.

**Amendment negatived.**

**Clause 21 as amended agreed to.**

**Clause 22 agreed to.**

**Schedules 1 and 2 agreed to.**

**Schedule 3**

**The Hon. JOHN HATZISTERGOS** [4.51 p.m.]: I move Government amendment No. 5:

No. 5 Page 15, schedule 3, line 8. Omit "possession". Insert instead "disposition".

This amendment will correct a typographical error that was identified in the early draft of the bill. The Government thanks the Law Society for bringing it to its attention.

**The Hon. JAMES SAMIOS** [4.51 p.m.]: The Opposition supports the amendment.

**Amendment agreed to.**

**Schedule 3 as amended agreed to.**

**Schedule 4**

**The Hon. IAN COHEN** [4.52 p.m.]: The Greens are of the view that the drug use issue should be dealt with as a health and social issue, not a criminal issue. Schedule 4 increases the power of police to give a direction to a person in a public place to move on. That power sweeps a health and social issue under the carpet. It will not help the street drugs problem. Experience has shown that the move-on power is almost exclusively used on young people, Aboriginal people and disadvantaged people. This provision is a knee-jerk reaction to a very complex problem. It will not reduce drug use; it will simply ensure that the previously mentioned groups are continually harassed by the police for what is essentially a health and social issue. Again, this provision will not deter organisers or principal drug dealers as they are hardly likely to be dealing drugs in public places. That is left to the drug users and small fish.

**Schedules 4 and 5 agreed to.**

**Title agreed to.**

**The CHAIRMAN:** Order! The Committee will now deal with the Police Powers (Internally Concealed Drugs) Bill.

**Part 1**

**The Hon. RICHARD JONES** [4.54 p.m.]: I move my amendment No. 1:

No. 1 Page 2, clause 3 (1). Insert after line 28:

*hospital* does not include a hospital that is, or forms part of, a correctional centre or correctional complex.

This amendment provides that a suspect can only be detained at a hospital that is not part of a correctional centre or correctional complex. Hospitals and correctional facilities do not always have the necessary staff or facilities required to perform life-saving operations that may be required under this legislation, for example, when a person has swallowed a large quantity of prohibited drugs. It is important to ensure that the person subjected to an internal search under the legislation will be afforded the best possible treatment.

**The Hon. JOHN HATZISTERGOS** [4.55 p.m.]: The Government does not support this amendment, the effect of which will be to limit the definition of a hospital to exclude a hospital that is part of a correctional centre or correctional complex. The significance of the reference to a hospital is that an internal search is to be carried out at a hospital, or the surgery or other practising rooms of a practitioner under clause 15 (3) of the bill. There may be circumstances in which an internal search is to be sought in relation to an inmate suspected of internally concealing a prohibited drug for the purpose of supplying other inmates. In that case the hospital in the correctional facility may be the most appropriate place to carry out the search, provided, of course, that facilities and an appropriately qualified person are available. It is not intended that suspects who are not inmates be searched in hospitals at correctional centres.

**The Hon. IAN COHEN** [4.55 p.m.]: The Greens support this reasonable amendment. I am concerned that in certain circumstances very young people, when patients or suspects, could be taken to various institutions and placed in danger. It is reasonable to acknowledge that if internal searches are undertaken, they should be

undertaken in a hospital situation where there is adequate backup. The amendment of the Hon. Richard Jones is a reasonable course of action.

**Amendment negatived.**

**Part 1 agreed to.**

## **Part 2**

**The Hon. IAN COHEN** [4.57 p.m.]: I move Greens amendment No. 1:

No. 1 Page 7, clause 6, lines 2 and 4. Omit "10" wherever occurring. Insert instead "14".

This amendment increases from 10 to 14 years the age at which a young person can be subjected to an internal search. That age is significant in that it is the age of *doli incapax*, the old common law principle that presumes a child aged between 10 and 14 years is incapable of knowing that his or her criminal conduct is wrong. Young people of that age are said to be incapable of committing a crime because they lack the relevant *mens rea* or criminal intent. That is a rebuttable presumption. The Greens believe that the most appropriate way to deal with juveniles under the age of 14 years who may be internally concealing drugs is not by way of the criminal justice system but through the care and protection system. Those young people may lack the relevant *mens rea* to fully understand what they are doing when they internally conceal drugs.

There is a real possibility that children in this category can be exploited by relatives, drug addicts and dealers, and unscrupulous individuals. These young children may be placed in an extremely high-risk situation by concealing prohibited drugs. They may not know what they are doing. They are almost certain to be under the control of relatives or other individuals. For that reason, the age should be lifted to 14 years, an age when young people have the ability and the necessary *mens rea* or understanding of their conduct. Otherwise, very young people could find themselves dragged through the juvenile justice system for doing something, the consequences of which they were too young to know about. There is also a real concern that very young children may be harmed by multiple internal searches involving electromagnetic radiation or radiography for non-therapeutic purposes. Limiting the age to 14 years would significantly decrease the risks.

Many honourable members of this Chamber may not be aware that X-rays, particularly for people who are so young, are potentially very dangerous. It is important that honourable members acknowledge that fact. It appears that we are reverting to an *Oliver Twist* mentality in allowing the legislation to be passed without this type of amendment.

**The Hon. RICHARD JONES** [4.59 p.m.]: As the bill currently stands, internal searches may not be carried out on children under 10 years of age. The amendment will change that age to 14 years. The unanimous report of the New South Wales Parliament's Standing Committee on Social Issues on its inquiry into children of imprisoned parents said that even fingerprinting could have a distressing effect on a child, and that to fingerprint children is to treat them in a manner suggesting they are potential or actual victims. Obviously, such measures as are proposed in this legislation, such as ultrasound, X-ray, CAT scan and other forms of medical imaging could have an even more severe effect on the child. It is fit and proper to increase the age limit to make allowances for the fact that children's understanding, knowledge and ability to reason are still developing. In assessing the Police and Public Safety Act in the first 12 months of its operation, the Ombudsman noted that:

... people from 15 to 19 years of age are much more likely to be stopped and searched for knives than any other group ... 42% of those searched were 17 or younger ... Of concern, however, is why so many knife searches of young people lead to no knife being found.

One can see from that that there is discrimination. If this is a precedent to go by, children as young as 10 will be frequently searched, and this will not lead to arrests but rather to psychological trauma for children. This is totally unacceptable.

**The Hon. JOHN HATZISTERGOS** [5.01 p.m.]: This proposal is to raise the minimum age of a suspect to 14 years. Currently, the provisions may apply to children between the ages of 10 and 18 years. This is consistent with the provisions of the Crimes (Forensic Procedure) Act 2000 and the age of criminal responsibility under section 5 of the Children (Criminal Procedures) Act 1987. It should be noted that the bill sets out significant safeguards for children. A child cannot be asked to consent to an internal search. Nor can a parent or guardian give consent on behalf of a child or incapable person. An internal search may only be carried out on a child with the authorisation of an eligible judicial officer. An eligible judicial officer would be a Supreme Court or District Court judge or a magistrate nominated by the Attorney General.

Before issuing an order in respect of a child, an eligible judicial officer must be satisfied that: the child is suspected on reasonable grounds to have swallowed or internally concealed a prohibited drug for the purpose of committing an offence involving the supply of prohibited drugs; that there are reasonable grounds to believe that the search is likely to produce evidence confirming that the suspect has committed or is committing such an offence; and that the making of the order is justified in all the circumstances. Furthermore, the eligible judicial officer must not order an internal search if satisfied that the search cannot be carried out safely. The concern with raising the minimum age is that adult dealers may have a further incentive to use young children as couriers in an attempt to bypass the provisions, thereby putting more children in danger. The Government is convinced that this consideration, as well as the safeguards contained in the bill, justifies its opposition to this proposal.

**Amendment negatived.**

**Part 2 agreed to.**

### **Part 3**

**The Hon. IAN COHEN** [5.03 p.m.]: I move Greens amendment No. 2:

No. 2 Page 12, clause 14. Insert after line 30:

- (4) Without limiting subsection (3), an eligible judicial officer must not make an order for an internal search of a child involving electromagnetic radiation or radiography if satisfied that such a procedure has been carried out on the child under this Act on 2 or more occasions in the previous 2 years unless the eligible judicial officer considers that exceptional circumstances exist that otherwise justify the making of the order.

This amendment sets a limit on the number of times a child can be internally searched if the search involves electromagnetic radiation or radiography for non-therapeutic purposes. It could be extremely damaging from a health perspective for a child to be subjected to electromagnetic radiation or radiography for non-therapeutic purposes. Children's bones and tissues are still growing and forming, and multiple X-rays and CAT scans over a short or long period could be very harmful. The amendment limits the number of times a child can be subjected to these procedures for non-therapeutic purposes to two in two years. In the second reading speeches there was some discussion of the threat hanging over people like drug dealers. It is as if we are going back to the days of *Oliver Twist* if we suggest that this provision will somehow be preventative. In actual fact, I dare say that drug dealers who are unscrupulous enough to use children as young as 10 years of age to do their running and carrying of drugs certainly will not be concerned about a child having to have X-rays if caught. It is important that the child who really is an innocent victim in these circumstances be afforded some degree of protection.

**The Hon. JOHN HATZISTERGOS** [5.04 p.m.]: The Government supports the amendment.

**Amendment agreed to.**

**Part 3 as amended agreed to.**

### **Part 4**

**The Hon. IAN COHEN** [5.05 p.m.]: I move Greens amendment No. 3:

No. 3 Page 16, clause 22. Insert after line 5:

- (2) The report must indicate whether the internal search involved the use of electromagnetic radiation or radiography.

This amendment ensures that when a person is subjected to an internal search, and the search involves the use of electromagnetic radiation or radiography, a record must be kept of this process. This will enable a database to be built up of the frequency and extent of such searches. This will be useful from a public policy perspective as statistical information will be kept of such searches and will help the Ombudsman when he or she conducts his or her report under section 43. I commend the amendment.

**The Hon. JOHN HATZISTERGOS** [5.06 p.m.]: The Government supports the amendment.

**Amendment agreed to.**

**The Hon. RICHARD JONES** [5.06 p.m.]: I move amendment No. 3:

No. 3 Page 16, clause 23 (2), line 17. Omit ", if reasonably practicable,".

The legislation should require a police officer to arrange for a detained person to consult a legal practitioner if that is the person's choice. The bill currently states that that may be able to be done only "if reasonably practicable". Such a term may be open to abuse. Legal representation is a cornerstone of our criminal justice system. It should not be disregarded so easily.

**The Hon. JOHN HATZISTERGOS** [5.06 p.m.]: Under clause 23 of the bill the detained suspect may consult a legal practitioner at any time. Subclause (2) provides that if the suspect wishes to consult a legal practitioner the police officer must, if reasonably satisfied, arrange for the person to consult a legal practitioner of the person's choice. The proposed amendment is to remove the words "if reasonably practicable" from this provision, making it mandatory for a police officer to arrange for a person to consult a legal practitioner of the person's choice. This could have ridiculous consequences. What if the suspect demands access to a high-profile barrister? What if the police are unable to arrange for the suspect to consult with the barrister? Technically, the police would not be complying with the Act. The Government believes the "if reasonably practicable" provision makes the provisions workable without removing the safeguard of access to a legal practitioner. Therefore the Government does not support the amendment.

**Amendment negatived.**

**The Hon. Dr PETER WONG** [5.07 p.m.], by leave: I move Unity amendments Nos 1 and 2 in globo:

No. 1 Page 16, clause 24 (1)(b), line 30. Omit "suspect is". Insert instead "suspect or the suspect's search friend, or both, is or are".

No. 2 Page 17, clause 24 (1)(c), line 1. Insert "or suspect's friend, or both," after "suspect".

As was discussed earlier, the bill has the potential to affect children as young as 10 years of age. Bear in mind the multicultural nature of Cabramatta, where seven of 10 speak a language other than English. The bill makes it mandatory for police to provide translation services if they believe a suspect under the provisions of this bill does not have an adequate command of English. However, under the bill children will be able to have access to a search friend to assist and advise them through this search process. The Unity amendment will give access to translation services to search friends when police suspect they do not have an adequate command of the English language.

The amendments are important especially in those cases where children who may speak English request a parent as a search friend. Often the parents of children who live in Cabramatta do not speak English. Clearly, a search friend cannot provide useful advice unless he or she knows what is going on. The Unity party urges every honourable member to support these reasonable amendments.

**The Hon. IAN COHEN** [5.10 p.m.]: I am pleased to support the amendments moved by the Hon. Dr Peter Wong. Young people who are under threat from authorities must be given every protection and they must receive our full support. Confusion will only add to a tense situation when people are arrested or held by authorities. People must have access to translation services, and their rights must not be trammelled.

**The Hon. RICHARD JONES** [5.11 p.m.]: I am sure that the Government will support these important amendments. It would be discriminatory if it did not support these amendments. The Hon. Peter Wong should be confident in the belief that the Government will support his amendments. Interpretive services should be made available to suspects and to their interview friends if they are unable to communicate orally with reasonable fluency in English.

Currently, interpretive services are available only for suspects. However, on occasions a child may wish to have his or her parent or guardian present during negotiations with police officers. In such circumstances, if a parent's language skills are inadequate it is important that interpreters be made available for the parent, just as they would have been made available for the child. If the Government does not support these amendments, I hope that they are supported by the Opposition.

**The Hon. JOHN HATZISTERGOS** [5.12 p.m.]: The Government does not support these amendments. Clause 24 of the Police Powers (Internally Concealed Drugs) Bill provides for interpreters for suspects who are unable to communicate orally with reasonable fluency in English. The proposed amendments will extend this provision to the suspect's search friend. A search friend is defined in clause 3 of the bill as not only a suspect's parent, guardian or legal representative but any other person chosen by or acceptable to the suspect.



Conceivably, there may be situations in which a suspect chooses a search friend who needs an interpreter, even if the suspect does not need one. However, that would be appropriately dealt with in police standard operating procedures rather than being prescribed in legislation with sufficient flexibility to deal with such issues as they arise. In any event, as an interpreter will be supplied to the suspect it is unlikely that the search friend would need a separate interpreter from that provided the suspect.

**The Hon. Dr PETER WONG** [5.13 p.m.]: That is not quite true. We are assuming that, in most instances, teenagers speak English. It is a difficulty that is hard to define. I am sure that the Hon. Henry Tsang will verify that children will get a parent, an uncle, or an aunt to help them. These amendments are not designed to try to delay this process or to hinder government legislation, which I fully support. It is only a matter of the provision of services. This Government is committed to providing an interpreter service for our multicultural community. I think that is a reasonable request.

**Amendments negatived.**

**Part 4 as amended agreed to.**

## **Part 5**

**The Hon. RICHARD JONES** [5.14 p.m.], by leave: I move my amendments Nos 4 and 5 in globo:

No. 4 Page 22, clause 38 (2), line 12. Insert "(not exceeding 48 hours)" after "period".

No. 5 Page 22, clause 38. Insert after line 16:

- (4) The maximum period must not be extended a second time unless an eligible judicial officer is satisfied that there are exceptional circumstances that justify the extension.
- (5) The maximum period cannot in any circumstances be extended more than twice.

The period for which a person may have his or her detention extended is not qualified. It is therefore indefinite. If a time limit is not incorporated, it may be possible for the eligible judicial officer to extend the period in an inappropriate manner. This amendment stipulates that the maximum period may not be extended by a period of more than 48 hours. After that the period cannot be extended again, unless an eligible judicial officer is satisfied that there are exceptional circumstances for allowing such an extension. However, the maximum period can never be extended more than twice under my amendment. I am aware that the Government supports these amendments as it does not want South African style legislation—South African legislation being indeterminate detention.

**The Hon. JOHN HATZISTERGOS** [5.15 p.m.]: Clause 38 provides for an extension of the period in which a suspect may be detained under the legislation. Amendment No. 4, which was moved by the Hon. Richard Jones, proposes that any extension should not exceed 48 hours. The Government supports that amendment. The Government also supports amendment No. 5, whereby the maximum period is not to be extended more than once unless the eligible judicial officer is satisfied that there are exceptional circumstances to justify the extension. The maximum period cannot be extended more than twice.

**Amendments agreed to.**

**The Hon. IAN COHEN** [5.16 p.m.]: I move Greens amendment No. 4:

No. 4 Page 24, clause 43. Insert after line 25:

- (4) The report is to include an evaluation of the social and economic costs and benefits arising out of the operation of this Act. For the purpose of making that evaluation, the Ombudsman may require the Minister or the Commissioner of Police, or both, to provide any information necessary to analyse those costs and benefits.

This amendment will ensure that, when the Ombudsman carries out his or her review of the Act, as required by section 43, he or she must also include an evaluation of the social and economic costs and benefits arising out of the operation of the Act. I commend Greens amendment No. 4 to the Committee.

**The Hon. JOHN HATZISTERGOS** [5.16 p.m.]: The Government does not support this amendment. Clause 43 already gives the Ombudsman broad powers in relation to monitoring the operation of the legislation.

**Amendment negatived.**

**The Hon. RICHARD JONES** [5.17 p.m.]: I move my amendment No. 6:

No. 6 Page 25. Insert after line 14:

**44 Data to be provided to public**

The Commissioner of Police is to publish within one month after the end of each year, for the information of the public, a report setting out the following details:

- (a) the number of persons who were internally searched during the year preceding the report,
- (b) the type of internal searches carried out on those persons,
- (c) the number of those persons internally searched more than once and the intervals between those searches.

Concerns have been raised in relation to the risks associated with frequent exposure to X-rays, MRI and other medical practices which have a radiation threat. It may be prudent to keep a thorough watching brief on the frequency of internal searches carried out on persons under this legislation and the intervals between such searches, as there may be medical consequences when someone is being continually X-rayed.

This may feasibly happen under this bill when police believe that a person has swallowed or is internally concealing a prohibited drug. They may detain that same person on many occasions and, each time they carry out an internal search, they may find nothing. Thus the person may be the subject of many internal searches. This amendment is a good way of keeping track of the internal searches carried out without limiting or impinging in any way on the right of police to detain and search persons.

**The Hon. JOHN HATZISTERGOS** [5.18 p.m.]: The Government does not support this amendment. There is a requirement that one month after the end of each year the Commissioner of Police publish a report setting out certain information. Such information would more appropriately be collected and published by the Ombudsman and is covered by the Ombudsman's general reporting requirements in clause 43 of the bill.

**Amendment negated.**

**Part 5 as amended agreed to.**

**Title agreed to.**

**Bills reported from Committee with amendments.**

**Adoption of Report**

**The Hon. JOHN HATZISTERGOS** [5.22 p.m.]: I move:

That the report be now adopted.

**Amendment by the Hon. Peter Primrose agreed to:**

That the motion be amended by omitting all words after "That" and inserting instead "the Police Powers (Internally Concealed Drugs) Bill be now recommitted with a view to further consideration of clause 43."

**Motion as amended agreed to.**

**In Committee (Recommittal)**

**Recommitted clause 43**

**The Hon. JOHN HATZISTERGOS** [5.23 p.m.]: by leave, I move Government amendments Nos 1 to 4 in globo:

- No. 1 Page 24, clause 43 (1), lines 14 and 15. Omit "the exercise of the functions conferred on police officers under this Act". Insert instead "the operation of the provisions of this Act and the regulations".
- No. 2 Page 24, clause 43 (2), lines 16 and 17. Omit all words on those lines. Insert instead:

- (2) For that purpose, the Ombudsman may require any public authority to provide information concerning the authority's participation in the operation of this Act and the regulations.
- No. 3 Page 24, clause 43 (4), lines 24 and 25. Omit "the exercise of functions conferred on police officers under this Act". Insert instead "the operation of this Act and the regulations".
- No. 4 Page 24, clause 43 (5), line 27. Insert "and the regulations" after "Act".

These amendments make it clear that the Ombudsman may require information about the operation of legislation not only from the police commissioner but also from any public authority. This was sought by the Ombudsman in light of the fact that information may be required from other agencies such as the courts, the Community Relations Commission and health services. The effect of these amendments is to enhance the effectiveness and the role of the Ombudsman in monitoring the legislation.

**Amendments agreed to.**

**Recommitted clause as amended agreed to.**

**Police Powers (Internally Concealed Drugs) Bill reported from Committee secundo with further amendments, and bills passed through remaining stages.**

### **SPECIAL ADJOURNMENT**

**Motion by the Hon. Eddie Obeid agreed to:**

That this House at its rising today do adjourn until Tuesday 26 June at 2.30 p.m.

### **ADJOURNMENT**

**The Hon. EDDIE OBEID** (Minister for Mineral Resources, and Minister for Fisheries) [5.26 p.m.]: I move:

That this House do now adjourn.

### **BONDS OF FRIENDSHIP SCULPTURE**

**The Hon. GREG PEARCE** [5.26 p.m.]: Tonight I note the disappearance of the Bonds of Friendship sculpture, so symbolic of Sydney's heritage. The sculpture was once outside Customs House, Circular Quay. This monument celebrated the journey of the First Fleet and the bond of friendship between Australia and Britain. But the monument was removed and it now appears that it may not be returned. Why has the Lord Mayor and the Premier refused to restore this symbol of Australia's heritage? It is appalling that the Carr Government has such scant regard for both Australia's and Sydney's heritage. This is a significant monument to Australia. The Premier may call himself an historian, but his Government is showing great disregard for history.

The Bonds of Friendship sculpture once stood outside Customs House on the site of the landing of the First Fleet in 1788. It was financed by the Bank of New South Wales and was unveiled in 1980 by Sir Zelman Cowan, when he was Governor General. The sculpture was created by John Robinson. He says of the sculpture that he wanted to show the gift of trust between friends. Mr Robinson described the sculpture as follows:

These are the feelings I wanted to express with a symbol. I found it by creating the strongest chain possible ... a chain with only two links, locked so tightly together it is inseparable, thus able to withstand the pressures of life.

This led to its use by the Britain Australia Society to mark the site from which the first settlers left Portsmouth in England and the site of their landing at Sydney Cove. Consequently there are two Bonds of Friendship sculptures, one in Portsmouth England, and one in Sydney. They celebrate the journey of the First Fleet from England to Australia and particularly from the point of departure in Portsmouth to the landing site in Sydney. The English sculpture is placed at the gates of Sally Port, Portsmouth. The rings of this sculpture were made dull in appearance, while the ones in Sydney were shiny, signifying a new start—a new beginning. This shows their relationship to each other. The Australian Bonds of Friendship sculpture was removed from Circular Quay area in 1997 prior to the upgrading of Alfred Street Square. But what has happened to the sculpture since then? The Lord Mayor has informed the 1788-1820 Pioneer Association that it:

... is currently in storage at the city's Bay Street depot.

The Lord Mayor further said:

The city recently requested that the sculpture be relocated to a site adjacent to the Australian Maritime Museum, however this request was not agreed to.

That is the answer the Lord Mayor sent to the Secretary of the 1788-1820 Pioneer Association, Mrs Marjorie Raven, to whom I am grateful for bringing this issue to my attention. At a Sydney City Council meeting on 26 February 2001 the Lord Mayor said:

Consideration is currently being given to alternative site options ... As you know, we only commission works of art on a site specific basis. Context is critical.

For once I agree with the Lord Mayor: context is critical. This monument must be put back in its context—the site of the First Fleet landing, which is outside Customs House. Its context is the site of the birth of this city; it represents our heritage. Visitors to Sydney should be able to see this sculpture and be reminded of the arrival of the First Fleet. We should be proud of our humble beginnings. The grit and determination of the pioneers led to our system of government and founded our way of life in Sydney and, indeed, in all of Australia, which is unique in the Western World. The British have not pulled down their sculpture and put it in a store room. It is appalling that we have been so offhand with this symbol of the friendship between our two countries. I call on the Premier to get the sculpture returned to its appropriate place, particularly in this year of the Centenary of our Federation, when the development of Australia's history has been so prominent in every Australian's mind.

### CASUAL TEACHERS AWARD

**The Hon. PATRICIA FORSYTHE** [5.31 p.m.]: I draw the attention of honourable members to the casual teachers award. Honourable members will recall that at the time of the protracted dispute over the teachers award, which was settled early last year, one issue that caused considerable problem was the casual teachers award. Indeed, it was one of the grounds for the lengthy delay in resolving the dispute. I understand that a compromise was reached in the end. While I did not receive much information from casual teachers during 2000, the full impact of the changes to the award, not so much for casual teachers who work only occasionally but for what we used to call casual supply teachers or, as they are now known, temporary teachers, has resulted in a flood of letters.

I raise this issue in the House because at the same time that it is emerging, not only in country areas but also in parts of Sydney, schools are having difficulty engaging teachers on either a permanent or casual basis. Therefore, it is important to have in place conditions that will maintain the positive morale of teachers and provide teachers with a reason to stay in the system. We need our teachers. This issue must be put back on the agenda for the Government's consideration, although I am well aware that major budget implications are involved. As there is a shortage of teachers, we simply cannot have teachers, who are a significant group, becoming disgruntled. What was an occasional piece of correspondence or a chance comment from a teacher is starting to become a significant torrent of correspondence. I received a letter from a teacher on the North Coast. Indeed, I referred to this letter during another debate a few months ago. In the letter the teacher said:

I am a 3 year trained teacher and as such have been put on Step 7 of the salary scale, which is the maximum I have been told I can reach. I thought the new status was to remove barriers for people like us, giving us parity for doing an equal job.

I have been on the maximum 3 year trained scale for almost 9 years, during which I have worked more than 1300 days ... I would have advanced further than Step 7 by now.

... a colleague who is Permanent Part-time for 4 days a week, and on Temporary Status for 1 day per week, is paid at the maximum salary level of \$52,000 for the permanent work and Step 7 of \$40,000 for the one temporary day!

She is referring to two entirely different pay scales. In the second letter another teacher on the North Coast referred to the impact of the change on her. She wrote:

... the lack of information regarding pay rates was surprising, as was the need to wait until Week 4 of Term 1 before receiving any payment.

She said that she had been assured by a variety of people that she:

... would be paid a weekly salary equivalent to a permanent teacher on Step 9 of the pay scale.

She further wrote that she is on a step 7 equivalency. Casual teachers have moved from being paid a daily rate to being paid on a concept of 52 weeks. She further wrote:

It takes a major budgetary adjustment when a person's fortnightly income is reduced from \$1 980<sup>00</sup> (gross) to \$1 545<sup>00</sup> ...

On a casual salary I would have earned \$10 890<sup>00</sup> (gross) to the end of Term 1 (an 11-week period), yet I have received \$8 497<sup>00</sup> (gross) with \$1 545<sup>00</sup> due at the end of the holiday period (a 13-week period), a total of \$10 042<sup>00</sup>.

In other words, she is behind. She further wrote:

As the situation obviously compounds each school term, you can see the financial predicament facing some Temporary Teachers ...

She points out that this is creating ill feeling and resentment within the ranks, and has demeaned her position within the school. Another teacher, who has worked in numerous temporary positions in a school, wrote to me stating:

During term one of this year I averaged a sixty five hour working week, however this year I will turn \$8 000 less than my full time colleagues ... Is this fair?

It is not fair. The award charges are creating difficulties for teachers who believed that they would receive benefits as a result of the variation in the award last year. However, many of them have gone back, and the promise that as temporary supply teachers or part-time teachers they would get some parity with their permanent colleagues has not been achieved. Many teachers are questioning whether they can afford or want to stay in the system. We cannot afford to lose teachers with status of nine years or 10 years. One teacher is saying that his salary level went down by five years. He said that he should have had credit for six years as a supply casual but, unfortunately, it will take him another five years to work his way back to a full salary. We cannot afford that impact, and I urge the Government to review the situation.

#### **Ms KRISTIE-LEE SASSIN MOTOR VEHICLE ACCIDENT COMPENSATION**

**The Hon. IAN WEST** [5.36 p.m.]: Kristie-Lee Sassin of Concord was, at the age of 18 years, severely injured in a car accident while on her way to work as an apprentice hairdresser. She suffered horrific head and internal injuries in the car accident in late December last year and is unable to walk. She had three blood transfusions and lay in a deep coma until this year, when she recently gained the ability to open her eyes and whisper basic words. The Sassin family's house needs to be modified to allow Kristie-Lee to come home. Kristie-Lee may receive up to \$50,000 for pain and suffering and a small lump sum, and receives 80 per cent of her apprentice hairdresser's wage, which is 70 per cent of \$196.90, a grand total of approximately \$110 a week before tax on which to live.

Kristie-Lee will probably need a lifetime of care, and that amount is inadequate to cater for her lifetime needs. What makes it worse for Kristie-Lee and her family is that it is much harder for Kristie-Lee to be eligible for compensation under the third party insurance scheme because of the onus of proof that occurs when the police do not charge a specific driver with negligence. This situation arises on many occasions. In this case the Sassin family has been forced to make public appeals for assistance and donations, as well as organising charity auctions and fundraising nights.

I read about the situation in my local paper and was concerned that such a problem could be left in the hands of the community to deal with. However, the call for community assistance has not gone unanswered. I have visited the Sassins on two occasions and have found the family to be tremendously brave and caring. They are standing up well under very difficult circumstances. The New South Wales Division of the Construction, Forestry, Mining and Energy Union [CFMEU] answered the call for assistance by rallying support from the building industry, labourers and tradesmen in the area to assist with free labour.

The union approached contractors to do the work on the house, and over 50 contractors, concreters, bricklayers, plasterers, floor and wall tilers, plumbers, carpenters and electricians from throughout Sydney have come to the assistance of the Sassin family by donating their time to rebuild the rear of the home. In addition, union organisers contributed a day's wages amounting to approximately \$11,000 to help Leonie and Anthony Sassin with Kristie-Lee's care and attention.

A charity auction and fundraising sports night will be held for Kristie-Lee at Concord RSL on 4 July. The collective spirit and aspirations of the community in rallying behind this brave young woman and her family is something which fills me with hope and belief in the community as well as in the future. These people are not dealing with this tragedy on their own. There are people in the community of Concord and elsewhere who are feeling an affinity with the pain and hardship of the Sassin family.

**MAGISTRATE PAT O'SHANE PUBLIC COMMENTS**

**The Hon. DAVID OLDFIELD** [5.40 p.m.]: Like many, I watched and listened with some surprise at the content of Pat O'Shane's statements last week on *Lateline*. One particular statement was the type of generalisation that one would expect to offend not only feminists but anyone concerned with the perception held by many women of how they would be judged if they reported being raped. Pat O'Shane, a lawyer, barrister, affirmative action feminist; and magistrate—hence reasonably expected to be a fair-minded person in every sense of that description—when commenting on the women making a series of rape allegations against the Aboriginal and Torres Strait Islander Commission [ATSIC] Chairman, Geoff Clark, said:

I can tell you on the basis of my experience that a lot of women manufacture a lot of stories against men.

No doubt there are women who, for a variety of reasons, manufacture dreadfully destructive and dishonest stories about men, just as there are men who are equally dishonest in their stories about women. But Pat O'Shane's shameful generalisation that the number of women involved in lying about being raped, or who were otherwise dealt with in a non-consensual and violent sexual manner, was "a lot" revealed more about her than about the victims she accused. Pat O'Shane did not say "a couple", "a few", "some"; she did not remark that she was aware that sometimes women told lies. Rather, she tarred a large number of women who have suffered the horrible crime of rape as merely self-seeking fabricators of lies. In the same interview, supposedly fair-minded Magistrate O'Shane stated:

I don't know these women—I haven't heard their stories, apart from what is reported in the newspaper and I've just made my comments about those.

It is clear that when it suits Pat O'Shane's own agenda, she will not only slur a large number of women who have been raped but cast that slur on the basis of what she reads in the newspaper. Should this be something that society tolerates from one who is placed to sit in judgment? O'Shane even spoke of witnesses and further demeaned the reputation of the women who accused Clark by asking:

What happened to the other witnesses who were alleged to have been present at the time?

In asking this, O'Shane either did not know, or did not care, that the witnesses of whom she spoke were actually those who had been alleged to have been Clark's accomplices. These characters are unlikely to come forward as witnesses to their own alleged crime. Magistrate Pat O'Shane's unnecessary public judgment of the credibility of the women who accuse Geoff Clark exposes her willingness to be biased.

**The Hon. Patricia Forsythe:** Point of order: I contend that the honourable member is making a substantive attack on a member of the magistracy, and that the only way that the member can do so is by a motion.

**The Hon. DAVID OLDFIELD:** To the point of order: I contend that I am not doing that. I am making a particular observation of what is well understood to be an issue in the press relating to sexism and an issue relating to women who have been accused of being liars with regard to rape. I am simply making a comment on a person who has in fact passed those judgments in public.

**The Hon. Peter Primrose:** To the point of order: I concur with the views and the point made by the Hon. Patricia Forsythe. Regardless of an individual's own views on this matter, there are standing orders and conventions which apply to this place. Mr Deputy-President, as the speech involves a member of the judiciary, I urge you to direct the honourable member's attention to that and ask him to desist.

**The DEPUTY-PRESIDENT (The Hon. Henry Tsang):** Order! I remind honourable members that it is not permissible to criticise a member of the judiciary except in debate on a substantive motion relating to the conduct of that member of the judiciary. I ask the honourable member to rephrase.

**The Hon. DAVID OLDFIELD:** I will attempt to rephrase. O'Shane's actions could be likened to the thought of blood being thicker than water, though in this instance it is a matter of race being thicker than gender.

**The Hon. Patricia Forsythe:** Point of order: Mr Deputy-President, I believe that the member is now transgressing your ruling.

**The Hon. Peter Primrose:** To the point of order: Unfortunately and reluctantly, I do again concur. Mr Deputy-President, as I said previously, regardless of any member's views on the substantive issues involved, I

believe it is inappropriate to flout your ruling. Again I ask you to ask the member to desist—not to stop him from expressing his views, but to make it very clear that he should not be flouting your ruling and flouting the sessional and standing orders.

**The DEPUTY-PRESIDENT:** Order! I rule as I did previously. I ask the honourable member to rephrase his remarks.

**The Hon. DAVID OLDFIELD:** Mr Deputy-President, it is impossible for me to express my views if in fact I do not have the ability to do so by virtue of saying in this Chamber what I think, and that ability is clearly being taken from me, regardless of the rulings that might be made. And my time is up. [*Time expired.*]

### SALT ASH WEAPONS RANGE

**Ms LEE RHIANNON** [5.45 p.m.]: I inform the House of a trip I recently undertook to the Hunter where I met people who live in the Williamtown area. They are suffering great distress because of the location of a bombing and testing range close to where they live. They actually formed a blockade of the Royal Australian Air Force [RAAF] site on 22 February. It was evident from the blockade that occurred outside Parliament House a couple of days ago that people take action to form a blockade when the ability to achieve a rightful and fair outcome is not provided to them, and that is what is happening in Williamtown. The Williamtown community is simply not able to get a satisfactory answer to their problems at Federal, State or local area. The problems that they face are indeed extraordinary.

The people to whom I refer live around the Salt Ash area which is quite near Williamtown. The people whom I met described their circumstances as similar to living in a war zone. They complain that there are low-flying aircraft dropping bombs approximately 1,000 metres from their homes. Because of the extreme noise, extreme pollution and overall stress, people are suffering in a number of different ways. The planes are supersonic RAAF aircraft that fly at very low altitudes—often less than 500 feet above the homes of the people to whom I refer. The pilots practise coming in low and practise their bombing and strafing exercises on the Salt Ash weapons range, which is, as I said earlier, located a mere 1 kilometre from residences.

The Williamtown community has documented information concerning the expansion of the range, which devolved in 1953. The range has still not been legally gazetted and 400 homes in the immediate area are affected. As I said earlier, a major concern of these people is pollution. Noise pollution has been measured at 120 decibels. The extraordinary feature of this problem is that Australian standards have been set to ensure that people should not have to experience noise above 25 Australian noise exposure forecast [ANEF] zones. However, buy-outs have only been offered for homes that experience noise levels above 30 ANEF. It is extraordinary that the standards provide that people should not have to experience noise levels above 25 ANEF, yet people can only be offered a buyout if the noise levels exceed 30 ANEF.

The people have explained to me that during the day when these bombing exercises are being carried out and the noise level is extreme, they cannot employ a person to repair their roof, for example, because of the occupational health and safety issue. They also have the severe problem of pollution. When the planes go over there is considerable fuel fallout, and there is much toxic material in that fuel. I have been told that protective clothing is even supplied to the RAAF staff when they refuel these planes. These people are concerned not only about the effect of the fuel emissions on their homes and the immediate environment but also about the severe implications for the surrounding community because the emissions go into the surrounding water.

They also have a real concerns about contaminated water in the Tomago sand beds, which supply water for 8,000 people in the Tillegerry peninsula. It is estimated that about 30 per cent of that water is supplied to the people of Newcastle. They therefore see this as a very serious problem, and they are appealing for it to be urgently investigated. Although an environmental impact study was conducted, the study was done in the early 1980s and it was only done on the Williamtown base. No adequate studies have been conducted at Salt Ash, where the testing range is located. There is therefore an urgent need to ensure that the pollution of the water supply does not continue so that these people are able to have an undisturbed lifestyle.

### CAUSES OF CRIME

**The Hon. PETER PRIMROSE** [5.50 p.m.]: In the short time available to me I will briefly summarise some of the items I raised recently during the adjournment debate and to draw the attention of the House to a recent research paper entitled "What Causes Crime?", which was prepared by Dr Don Weatherburn. I previously

spoke about some of the facts about crime that are important to developing an understanding of its causes. As outlined in the research paper, those factors include age and gender, and criminal careers. I also spoke about the identification of crime-prone individuals from the research that Dr Don Weatherburn has been able to bring together.

Those factors are biological factors. I will not refer to them in detail but will simply list them. They include family factors, school performance and intelligence, truancy, the influence of delinquent peers, poverty and unemployment, substance abuse, and public tolerance of crime. The research paper also goes on to identify a wealth of research in relation to crime-prone places and crime-prone times, all of which I believe is eminently worth studying. The research paper's summary and conclusion reads in part:

There is no single factor or set of factors which causes an individual to become involved in crime. Being criminal is not like having a disease. Most people at some stage in their lives commit crime of some sort, even if it involves nothing more serious than driving above the speed limit. A significant proportion of teenagers will commit relatively serious offences (e.g. break and enter) yet most of them will desist from crime without the need for any formal intervention ...

Because crime is not the result of any single factor or combination of factors, it makes no sense to seek to control crime by any single strategy or set of strategies. A mix of strategies will always be appropriate. The emphasis on particular strategies should vary according to the nature of the crime problem at hand, the available options for influencing the problem and the urgency with which change is required.

I urge honourable members who are interested in this topic to avail themselves of this very valuable research paper by Dr Weatherburn.

### **INTERNATIONAL DAY OF ACTION AGAINST EXXONMOBIL**

**The Hon. IAN COHEN** [5.53 p.m.]: The International Day of Action Against ExxonMobil, which is Mobil in Australia, will be held on 11 July. ExxonMobil lobbied the United States of America Government to pull out of the Kyoto protocol, and has an appalling record with regard to climate change, environmental issues and human rights. Mobil also has an appalling record here in Australia, with communities campaigning over refineries in Williamstown and trying to achieve justice for the workers injured in the Esso Longford gas explosion.

Australia's environment minister, Senator Robert Hill, like many oil companies, has supported the United States of America in its attempts to scuttle the Kyoto protocol. Grassroots climate activism will play a vital role in moving the Australian position on the issue of climate change. This is the first event on the Season of Climate Action. In April the President of the United States of America, George Bush, crushed worldwide hopes for reducing global warming by rejecting the Kyoto climate change treaty. Coming from the country that produces 25 per cent of the world's carbon dioxide emissions but only houses 4 per cent of the population, the American position has outraged the international community.

The protests are in support of the call for an international boycott of all American oil companies, and will take place in the lead-up to the mid-July climate negotiations in Germany. Targeting ExxonMobil, the biggest United States corporation and its highest profile oil company, will spearhead the boycott campaign and send a message to Bush and all oil companies that the United States of America has to take climate justice seriously. ExxonMobil continues to fund greenhouse sceptics, has spent millions on greenwash advertisements, was one of the top contributors to Bush's election, has been active in lobbying the United States of America Government to reject the Kyoto protocol, and invests virtually nothing in renewable energy. It is also one of the major proponents behind drilling in the Arctic Refuge in Alaska. It also has a terrible human rights and environmental record and is an unabashed supporter of free trade.

Organisers in at least 15 countries are mobilising around targeting ExxonMobil. The International Day of Action is part of a major global campaign on climate and fossil fuels, and is a campaign that will send a message to Bush, the oil industry's number one supporter. The organisation is supported by Friends of the Earth, Australia, Greenpeace, Australia, the Wilderness Society, the Australian Conservation Foundation, OzGreen, Environment Victoria, the Environment Centre of the Northern Territory and the Greens. Our demands for ExxonMobil support the Kyoto protocol, which would reduce CO<sub>2</sub> emission levels; stop pushing for drilling in the Arctic Refuge and on other public lands; agree to an investigation by an international human rights tribunal and abide by its findings; and cease all new exploration and invest that money in renewable resources. ExxonMobil is the eighth largest economy in the world.

**Motion agreed to.**

**House adjourned at 5.56 p.m. until Tuesday 26 June 2001 at 2.30 p.m.**

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