

LEGISLATIVE COUNCIL

Tuesday 26 June 2001

The President (The Hon. Dr Meredith Burgmann) took the chair at 2.30 p.m.

The President offered the Prayers.

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

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL (No 2)

HEALTH CARE LIABILITY BILL

**WESTERN SYDNEY REGIONAL PARK (REVOCATION FOR WESTERN SYDNEY ORBITAL)
BILL**

FREIGHT RAIL CORPORATION (SALE) BILL

CHILD PROTECTION (OFFENDERS REGISTRATION) AMENDMENT BILL

PHYSIOTHERAPISTS BILL

INDUSTRIAL RELATIONS AMENDMENT (CASUAL EMPLOYEES PARENTAL LEAVE) BILL

HERITAGE AMENDMENT BILL

**LOCAL GOVERNMENT AND ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT
(TRANSFER OF FUNCTIONS) BILL**

CORPORATIONS (ANCILLARY PROVISIONS) BILL

CORPORATIONS (CONSEQUENTIAL AMENDMENTS) BILL

CORPORATIONS (ADMINISTRATIVE ACTIONS) BILL

AGRICULTURAL AND VETERINARY CHEMICALS (NEW SOUTH WALES) AMENDMENT BILL

CO-OPERATIVE SCHEMES (ADMINISTRATIVE ACTIONS) BILL

Bills received.

Leave granted for procedural matters to be dealt with on one motion without formality.

Motion by the Hon. M. R. Egan agreed to:

That these bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages and the second reading of the bills stand as orders of the day for a later hour of the sitting.

Bills read a first time.

BILL RETURNED

The following bill was returned from the Legislative Assembly without amendment:

Long Service Leave Legislation Amendment Bill

STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS**Membership**

The PRESIDENT: According to resolution of the House of 25 May 1999 I inform the House that on 21 June 2001 the Leader of the Opposition nominated the Hon. Patricia Forsythe as Deputy Chair of the Standing Committee on Parliamentary Privilege and Ethics.

TABLING OF PAPERS

The Hon. Carmel Tebbutt tabled the following reports:

State Owned Corporations Act 1989—Reports for the six months ended 31 December 2000:

Newcastle Port Corporation
Port Kembla Port Corporation
Sydney Ports Corporation

Ordered to be printed.

PETITIONS**Cannabis Sniffer Dogs**

Petition praying that the Minister for Police intervene to prevent the use of cannabis sniffer dogs in the Northern Rivers area, received from the **Hon. Richard Jones**.

Woy Woy Policing

Petition expressing concern about the proposed loss of general duties police officers from Woy Woy Police Station and praying that the House seeks the assistance of the Minister for Police to reinstate those police officers, received from the **Hon. Michael Gallacher**.

Wildlife as Pets

Petition praying that the House rejects any proposal to legalise the keeping of native wildlife as pets, received from the **Hon. Richard Jones**.

Podiatrists Act Review

Petition praying that the House includes a definition of "podiatrist" in the review of the Podiatrists Act 1989 and includes restrictions to practice so that quality of care and the safety of the public are maintained, received from the **Hon. Greg Pearce**.

Council Pounds Animal Protection

Petition praying that the House introduce legislation to ensure that high standards of care are provided for all animals held in council pounds, received from the **Hon. Richard Jones**.

REGULATION REVIEW COMMITTEE**Report**

The Hon. Janelle Saffin, on behalf of the Chairman, tabled report No. 15/52 entitled "Report on the Harness Racing New South Wales (Appeals) Regulation 1999", dated June 2001.

Ordered to be printed.

The Hon. JANELLE SAFFIN [2.42 p.m.], by leave: This report is a product of a recently completed review by the Regulation Review Committee of the New South Wales Harness Racing Appeal Regulations. The review was conducted because the regulations had sunsetted, and they had been remade under the Subordinate

Legislation Act. The committee conducted these reviews as part of its functions under the Regulation Review Act to report from time to time on the progress of the staged repeal provisions. These reviews are invariably productive because they disclose the strengths and weaknesses of particular regulatory controls.

I had the pleasure of chairing the review, and I would again like to thank the Minister for Gaming and Racing, his staff and the staff of Harness Racing New South Wales for their complete support, and productive evidence and submissions. I would also like to thank the President of the Australian Harness Racing Council for giving evidence that assisted the inquiry. We had many useful submissions from the harness racing industry, and we took evidence from interested parties over two days. We also carried out a site inspection at the Australian Racing Forensic Laboratory at Randwick. I would like to thank all its expert staff who took time to explain the drug testing procedures to committee members.

The committee's inquiry shows a need for some changes to the supporting rules and regulations of harness racing. The review disclosed a major inconsistency in the Harness Racing Act, one provision of which appears to prohibit exercise of the rule-making power and puts in doubt the legal effect of existing rules. I understand that the committee's concern is supported by recent advice from the Crown Solicitor to the Department of Racing, and the committee's recommendations address this issue. The committee also recommended that, in common with many other regulations and codes that are part of a national scheme, the Parliament be permitted to disallow harness racing rules. Lack of parliamentary oversight is a weakness in the current scheme.

Australian Harness Racing Rule 190 makes the trainer liable if a horse is presented for a race with more than a prescribed level of a prohibited substance. This applies regardless of the circumstances, except if there was a major flaw in the testing procedures. Evidence to the committee revealed that there is strong industry grievance about this rule, and the complaint generally is that it denies the trainer the right to prove that he or she is innocent of any intent or negligent behaviour. Justification for the rule is put down to the need to promote drug-free racing. A different situation operates under the thoroughbred rules of racing and under the Australian greyhound rules. Under these rules a person is not guilty of an offence if he or she is able to satisfy the stewards that he or she took proper precautions to prevent the administration of the prohibited substance. The report recommends a change in the interests of natural justice.

At present the harness racing rules prohibit representation at stewards inquiries without the authority of the stewards—and this is permitted in exceptional circumstances only. The issue at stake is whether this situation provides an adequate balance between the need to expedite the stewards inquiry and the rights of a person to get proper representation to protect his or her livelihood. The current balance seems to favour the expedition of the inquiry. The most recent bodies set up, such as the Court of Arbitration for Sport, which regulate disputes and infringements during Olympic events, allow a person assistance or representation by persons of his or her choice, including legal representation. The recommendation is for a review in light of the practices in other jurisdictions.

The committee recommends that Harness Racing New South Wales review the rules with a view to meeting the concerns expressed by Mr Justice Young in *Gleeson v Harness Racing Authority of New South Wales* that it was unsatisfactory that rules were made to give the same people the power to both adjudicate and investigate. The committee recommends that the person performing the role of adjudicator be legally qualified and at arm's length from the panel of stewards. The committee's report appropriately recognises the impressive changes that have been made in recent years in the administration of harness racing, and in placing greater responsibility in the hands of the industry. I thank members of the committee, particularly my colleagues the Hon. Don Harwin and the Hon. Malcolm Jones. I commend the report.

HOME BUILDING LEGISLATION AMENDMENT BILL

Second Reading

The Hon. EDDIE OBEID (Minister for Mineral Resources, and Minister for Fisheries) [2.48 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

I am extremely pleased to be able to introduce this important consumer protection legislation into the House today.

It is the culmination of more than 18 months of work to improve the regulation of home building in NSW.

Over the first 12 months, specific problems were identified and a range of proposals were put together. We talked to everyone from home owners, to builders to building industry associations to insurers.

Then, at the end of last year, I released a draft set of reforms to promote further consultation and discussion. In March, I released a draft Bill based on those reforms. And, I'm delighted to say that the Bill I introduce today has been modified and improved as a result of this exhaustive process.

This has been a mammoth task and, I'd like to start this speech—rather than finish it—by expressing my profound thanks to all of those people and organisations who have participated to date.

In this regard, I'd like to acknowledge the outstanding assistance from:

The Housing Industry Association, the Master Builders Association, the Master Painters Association, the Master Plumbers and Electrical Contractors Association, the National Electrical and Communications Association, the Swimming Pool and Spa Association, the Landscape Contractors Association and the Building Industry Skills Centre.

I'd also like to thank all the Members of the Home Building Advisory Council who have actively and enthusiastically participated in the debates which have helped shape this Bill. The Council includes everyone from small business people to unions. It is more than ably chaired by Mr Phil Marchionni—whom I'd like to specially thank.

A special mention also to the Building Action Review Group (BARG) and its tireless leader—Mrs Irene Onorati. Although debates with Irene are always vigorous, I want to take this opportunity to assure her and the other members of BARG that your input is most valued and has assisted me in bringing the Bill this far.

In addition to face-to-face discussions, a total of 47 written submissions have been received since the draft Bill was released. Thank you to all of those people and organisations who took the time and effort to make a contribution to the development of this legislation.

Before I leave this aspect of my speech, I should stress that I am not claiming that every organisation or person I have mentioned will endorse every clause of every Part of this Bill.

For example, there will certainly be aspects of the Bill that some builders or the insurers may see as too tough. But, I cannot stress enough that the object of this Bill is to protect consumers—protect families—better.

Despite this very necessary "consumer focus", the simple fact is that there is something for everyone in this Bill. Everyone has some "wins".

But, home owners are the big winners—and rightly so.

I'm confident that the Bill will improve the delicate balance between better regulation of the building industry, a better deal for consumers and a fair go for builders, no end.

And, I want to make it clear right at the start that the introduction of this Bill is not, in my mind, the end of the consultation and improvement process. I am more than willing to adopt any sensible suggestions, which further improve the Bill, as it passes through this Parliament.

The current system of consumer protection for the home building industry was established in May 1997. The reforms introduced at the time represented a new era for the industry with major changes to the system which had previously operated for 25 years.

While the fundamental components of the regulatory framework, namely licensing, insurance, dispute resolution and discipline are still seen as essential and have widespread support, it has, as I mentioned above become patently clear that the system needs to operate more fairly and effectively.

Consumers and builders alike have expressed dissatisfaction with aspects of the current legislative regime. Complaints which have been received range from delays in having matters heard in the Tribunal; delay in having insurance claims finalised; the lack of a clear path for consumers with building problems and the absence of expert guidance and assistance.

One of my major concerns has been the apparent ability of shonks to continue to operate in the industry or, if they are disqualified, their ability to reappear with another licence as another entity.

The Government acknowledges these shortcomings and is committed to overcoming them.

The reforms in the Bill are intended to significantly improve the level of protection for consumers by:

Strengthening licensing requirements by enabling the exclusion of bankrupt traders and persons with unsatisfied insurance claims against them;

Speeding up the disciplinary process to allow for the removal of incompetent or otherwise unfit persons from the licensing system, and allowing the Director-General to make orders for completion of work where an authority is suspended or cancelled;

Increasing penalties for non-compliance with the Act in order to crack down on unlicensed and uninsured work and for other offences;

Making the insurance scheme fairer and more accountable;

Establishing an early intervention dispute resolution system. Experience shows that many building disputes can be resolved if the parties can sit down and discuss the problems with the assistance of an independent expert; and

Raising consumer awareness of remedies which are available when things go wrong.

While the Bill focuses on consumer protection members of the building industry will also benefit through these reforms, especially those relating to dispute resolution and continuing education.

The approved insurers will benefit through an expected reduction in insurance claims, while the Fair Trading Tribunals should see a considerable drop in the number of disputes which are required to be dealt with by way of hearing.

I will now take the opportunity to outline in more detail the main provisions of Bill.

Licensing

As foreshadowed, the Bill contains a number of reforms aimed at enhancing the licensing scheme and removing unscrupulous or insolvent contractors from the industry.

The requirements for renewal or restoration of a contractor licence will be strengthened. The Director-General will be able to reject an application for renewal or restoration of a licence in certain additional circumstances. These will include where the applicant:

- has in the last 5 years been bankrupt;
- is or has been a director or person concerned in the management of a company that is subject to winding up order or has had a controller or administrator appointed;
- has any unsatisfied Fair Trading Tribunal orders; or
- has an unreasonable number of formal cautions, penalty notices or insurance claims.

It will also be a condition of licence renewal that a licensee must undertake a minimum amount of continuing professional development each year.

In recent years there has been repeated calls from consumer groups and industry associations for the introduction of some form of continuing professional development as a condition of licence renewal. This will raise the level of knowledge and expertise within the industry. The Home Building Advisory Council is already working on the development of this further education requirement. Consultation with industry and training providers will also be undertaken as part of putting the "meat on the bones" as outlined in the Bill.

At present a contractor licence is automatically cancelled if one of a number of circumstances set out in the Act occurs. However, automatic cancellation creates uncertainty in the licensing scheme as the Director-General may not become aware of the relevant event until some time after it occurs.

In other words a licence might by operation of the Act be cancelled but will remain on the licence register as a current licence until the Director-General becomes aware of the event. This could have serious consequences for consumers who may unknowingly deal with an unlicensed contractor.

Schedule 1 to the Bill provides instead for the Director-General to serve a notice on the licensee setting out the reasons for the cancellation, and for the cancellation to take effect on the date specified in the notice.

The Bill also adds to the list of circumstances in which a contractor licence may be cancelled, including where the contractor becomes bankrupt or becomes the subject of a winding up order.

This will prevent insolvent contractors from trading and give consumers greater confidence in the licensing system.

As an additional measure to protect consumers from insolvent traders, the Bill provides for the suspension of a corporation licence if a controller or administrator of the corporation is appointed under the Corporations Law. The imposition of a suspension would be discretionary based on the Director-General's assessment of the risk to the public. The suspension will be able to be lifted by the Director-General if the administration is finalised and the company is otherwise able to trade. The decision of the Director-General to suspend a licence will also be reviewable by the Administrative Decisions Tribunal.

The position of consumers where a licence has been suspended cancelled or surrendered has not been overlooked. In such cases existing clients of the licensee may be affected because the licensee is not able to complete the work in progress. To overcome this problem the Director-General will be able to make orders to assist the continuation of projects. This might include allowing the suspended licensee to complete work under the supervision of the insurer or allowing another contractor, with the approval of the owners, to complete the job.

To better protect consumers it is also proposed to give them more information about licensees when they are deciding whether to engage them.

In this respect, it is proposed to include on the Register of Licences, details of a contractor's non-compliance with orders of the Fair Trading Tribunal. The Register will also include details of disciplinary action taken, results of any prosecutions, the number of penalty notices issued, the number of insurance claims paid, formal cautions issued to the licensee, details of any public warnings and cancellation or suspension imposed under the Home Building Act or any other Act.

So that consumers can be further protected the Bill provides that the Director-General may give a warning to the public without having to give the contractor 48 hours notice as currently applies. Such urgent warnings will be able to be made where in the opinion of the Director-General there is an immediate risk to the public.

The building licensing scheme will also be rationalised by reducing the number of existing licence categories. There are currently around 420 categories of licences under the Act.

This encourages a too narrow specialisation of skills and is confusing for consumers. For example, in the roofing area, sub-categories of licences include roof carpentry, roof construction and roof strengthening. There will be further consultation with industry bodies and other relevant groups to determine the final list of categories to be covered by Regulation.

The Bill also ensures that refrigeration and air-conditioning work will continue to be regulated. The Regulatory Reduction Act 1996 contained provisions which removed from the definition of "specialist work" in the Home Building Act "refrigeration and air-conditioning work". The effect of these amendments was to remove the need for people to have a contractor licence to do refrigeration work or air-conditioning work. However these provisions were not commenced.

Following representations by the industry and having regard to health and safety issues involved, the Government has decided that the licensing of contractors who do such work should be retained.

A further initiative contained in the Bill is the introduction of a new requirement for owner-builders to include a notice in the contract for sale indicating that an owner-builder permit was issued in relation to the dwelling and the work done under the contract was required to be insured.

This amendment is in response to concerns raised by purchasers of owner-built dwellings which contained defective work not covered by insurance. These purchasers said they were not aware that insurance should have been taken out. These complaints showed the need for a mechanism to alert purchasers that owner-builder work has been done to the dwelling and to inform them of the insurance requirement.

Furthermore, the Bill makes it a requirement for the grant of an owner permit that the applicant has completed an approved course of education. This will ensure that owner-builders are fully informed of their legal obligations relating to the work and assist them to better understand the building process.

An important licensing reform initiative is the proposal to include within the licensing framework persons who do building consultancy work. In recent years there has been an increase in the use of "building consultants" by consumers in the home building industry. Such persons are usually retained to carry out "pre-purchase inspections" for consumers buying property. And, increasingly, since the introduction of the current home warranty insurance scheme, building consultants are engaged by consumers in dispute with their builder or preparing to lodge an insurance claim.

While many of the persons operating in this field are professionals, for example architects and building certifiers, or are accredited through industry associations, many others are not. This has caused a rise in the level of complaint from consumers who believe they are getting reports from qualified persons.

Persons required to hold a building consultant's licence will be those who, for fee or reward, undertake inspections of dwellings or specialist work (such as electrical, plumbing or air-conditioning work) and provide reports to their clients. Building consultants will be subject to similar requirements relating to contracts, discipline, and licence application and renewal as apply to other licensees under the Act. These requirements are set out in Schedule 3 of the Bill.

As with the case of existing licence holders the Director-General will set the qualifications and level of experience. Building consultants will also be required to hold professional indemnity insurance.

The Bill also provides for a new system of photo licences for builders. The Director-General will be able to require an applicant for a licence to have his or her photograph taken or to provide a photograph.

Disciplinary proceedings

Schedule 5 to the Bill reforms the manner in which disciplinary action can be taken against contractors who have been guilty of improper conduct or other unsatisfactory behaviour.

Currently disciplinary action for improper conduct is initiated by the Director-General by serving notice to show cause on the contractor. The allegations contained in the notice are heard before the Fair Trading Tribunal.

This process has been criticised for not facilitating the speedy consideration of disciplinary matters. These criticisms are valid. Show cause action may take months to complete. Such proceedings also "tie-up" valuable Tribunal resources.

It is instead proposed that disciplinary action be the responsibility of the Director-General. The proposed model is consistent with that which applies to a number of other occupations licensed by the Department of Fair Trading. Where, at any time, the Director-General is of the opinion that there are reasonable grounds for believing that certain events have occurred the Director-General may, by notice in writing call upon the licensee to show cause within such period, being not less than 14 days, why the licensee should not be dealt with under the Act.

The licence holder may within the specified time make submissions orally or in writing and adduce evidence with respect to matters in the notice to show cause. The Director-General may conduct such inquiry and investigation into the matters covered by the notice as the Director-General thinks fit. However, the Director-General will be able to take immediate action if the Director-General believes that it is in the public interest. The range of determinations which might be made include no further action, caution or reprimand, a penalty of up to \$11,000, suspension or cancellation of the licence. The Director-General will also be able to impose a condition on the licence requiring the holder to undertake a course of training relating to particular work or business practice.

There will be a right of review to the Administrative Decisions Tribunal against the determination of the Director-General.

These reforms will provide greater protection to the public by enabling a quicker, more flexible and cost effective response to misconduct on the part of licensees.

Penalties

To support the enhancements to the disciplinary regime and to crack down on those attempting to operate outside the regulatory system, the Bill doubles the maximum monetary penalty for all offences under the Act.

For example, the maximum penalty for unlicensed or uninsured contracting will rise from \$11,000 to \$22,000 while the penalty for taking excessive deposits or non-compliance with the contractual requirements will rise from \$2,200 to \$4,400. These rises will send a clear message about the seriousness of these breaches.

Insurance reforms

Since the introduction of the home warranty insurance scheme four years ago a number of concerns have been raised about the scheme's operation. I hasten to add that these issues arose prior to the HIH collapse, which was in no way linked to the company's provision of home warranty insurance in NSW.

A number of reforms are proposed to address the problems arising out of the scheme.

Firstly, some consumers have suffered difficulties as a result of the activities of a licensed contractor who was licensed in his or her own right as an individual and who was also a director of a company which was licensed. The difficulties arose because the contract for the building work was in the name of the company whereas the certificate of insurance was issued in the individual builder's name. In some cases where this has occurred the insurer declined cover on the basis that it had not issued insurance to the company.

The most infamous of these instances related to a former builder, Gary Cohen. He left a trail of consumers in his wake after setting his contracts up in this way. I'm pleased to say, by the way, that last year Fair Trading was successful in having Mr Cohen banned for 10 years.

To address this issue it is proposed that the Act be amended to require the contractor to inform the insurer of the identity of the parties to the contract, the address of the premises where the work is to be done and such other matters as may be prescribed. If the insurer issues a certificate of insurance covering the work the consumer will be covered whether or not the contractor's name shown in the building contract is different to that shown in the certificate of insurance. If a claim is paid the insurer will be entitled to recover from the contractor shown in the building contract or the person nominated to the insurer as the builder.

Consumers will also receive protection in circumstances where the builder's annual insurance policy commenced after the date of the building contract, provided the building work has not commenced.

The Bill also extends insurance cover to building work where the reasonable market cost of the labour and materials involved exceeds \$5,000 (whether or not part of the work or materials is to be provided by the other party to the contract).

This proposal is to overcome avoidance by contractors of the insurance requirements by structuring the cost of the work to be done to fall below the \$5,000 threshold. For example, in a case where the contract amount is less than \$5,000 but the owner is supplying materials or some work bringing the total project cost to over \$5,000 no insurance is required. In this situation the consumer is disadvantaged compared to a consumer under a building contract where the contractor supplies the materials.

The Bill also contains various provisions to improve the monitoring of the Home Warranty Insurance Scheme and to stop fraudulent traders.

Firstly, the Director-General will be given the power to require an insurer to provide information to the Department of Fair Trading relating to the insurance scheme, including information about claims handling, the settlement of claims as well as particular claimants and licensees.

It is further proposed that Director-General may, with the consent of the insurer, pass some of this information to other insurers, particularly in relation to the misconduct of licensees. This will help reduce fraudulent conduct by licensees.

The Bill also contains mechanisms to improve compliance by insurers with the conditions of their approval. In this respect, the Bill includes a range of penalties which could be imposed on insurers who fail to comply with their conditions of approval for the home warranty scheme.

The Minister for Fair Trading will be able to suspend or cancel the approval, impose a civil penalty on the insurer of up to \$50,000 or issue a letter of censure. Notice of claim forms may also be required to be in a form approved by the Director-General.

Another reform will allow the Minister to approve a reduction in insurance cover for certain work such as landscaping and painting where the Minister is satisfied that the general seven-year cover under the insurance scheme is inappropriate. Obviously, such reductions will only be approved in a very limited class of case.

The Bill also makes clear that purchasers buying dwellings in development projects are able to rescind the contract for sale if the required insurance is not taken out. This will particularly help purchasers buying "off the plan".

To ensure the Act does not operate unjustly, courts will be given discretion to enable a contractor who has failed to take out insurance to recover money for work done.

When the home warranty scheme was first established it was a requirement to take out insurance at the date of the contract. To deter uninsured work the Act provided that a licensee who enters into a building contract, without having insurance in force at that time was not entitled to any payment.

This requirement had an unintended result in that a licence holder was barred from recovering any money even if insurance was taken out after the contract was signed. As a result the Act was amended in 1999 to provide that a licence holder who contracts to do residential building work must take out the insurance prior to commencement of the work. If the contractor starts work without insurance he or she cannot ask for payment. But if insurance is subsequently taken out the contractor is no longer barred from seeking recovery.

While these 1999 amendments allow a licence holder to recover moneys once insurance is in place, there may be other cases where insurance simply cannot be obtained. For example, if the licence holder, acting on a mistaken belief that insurance is not necessary goes ahead and builds the project he or she may be unable to get insurance. This leaves the licence holder in the position of being unable to obtain any payment even though the work may be satisfactory. In such cases the Act could operate unjustly.

Accordingly, a court or the Fair Trading Tribunal will, if it considers it just and equitable, be able to allow a contractor to recover money for the work on a quantum meruit basis. In considering this matter the court or tribunal may have regard to the impact on the resale price of the dwelling if there is no contract of insurance. This discretion available to a court or the Fair Trading Tribunal will apply to contracts entered into before 30 July 1999.

These new provisions respond to well-founded concerns expressed to me by building industry representatives during the development of this Bill.

New Dispute Resolution Scheme

Perhaps the centrepiece of these reforms is a new dispute resolution process which will help everyone in the building game—home owners, builders and insurers.

The improvements in dispute resolution the 1997 Act was meant to bring, have not eventuated.

Instead, it is clear many home building disputes are being referred directly to the Fair Trading Tribunal for adjudication. This has resulted in a sharp increase in the number of building matters before the Tribunal.

It has also led to consumers being confused as to when they are eligible to lodge an insurance claim and the course of action they should take in attempting to resolve a building dispute.

Taking legal action against a builder can be an emotional strain as well as a financial burden for many consumers.

Families undertaking building work, particularly larger works, usually have most of their available funds tied up in the project and are often not in a position to pay for lawyers to represent them.

The establishment of a new dispute resolution process will operate as an early intervention mechanism and should significantly reduce the number of disputes requiring a hearing and alleviate the cost burden on consumers.

The new dispute resolution scheme will, in effect, be "the front end" of the Fair Trading Tribunal and, in summary, will work as follows:

Consumers will be able to contact the Department of Fair Trading for preliminary information in relation to options for dispute resolution.

They then may wish to notify the Fair Trading Tribunal of the dispute.

The dispute will be assessed by the Fair Trading Tribunal for the purpose of determining whether the matter is appropriate for resolution by an independent expert.

An independent expert will be selected from a panel of experts approved by the Chairperson of the Tribunal. The intention is that the expert will quickly make contact with the parties and if possible attend the site.

If the work is covered by home warranty insurance the insurer will be notified of the dispute. This will allow the insurer to participate in the discussions.

Irrespective of whether the insurer becomes involved it will not be able to claim that the consumer's rights under the policy are prejudiced by any agreement which might be reached with the builder.

The independent expert will be required to prepare a written report on the dispute and provide it to the parties within a time limit specified by the Tribunal.

If the parties reach an agreement during an assessment by the independent expert, that agreement must be put in writing by the expert, signed by the parties and filed with the Tribunal.

If the dispute cannot be resolved through this early intervention dispute resolution system, a building claim can be lodged with the Tribunal in order to have the matter heard and determined.

The Bill caps the Tribunal's monetary jurisdiction for the hearing of building claims for amounts of up to \$500,000 or such other amount specified by the regulations. At present the monetary jurisdiction of the Tribunal in respect of building claims is unlimited.

The Tribunal receives around 4,800 building claims a year. Although the majority of these involve disputed amounts of less than \$50,000, there have been cases where the amount in dispute has been several million dollars. Such claims have involved considerable resources of the Tribunal to the detriment of smaller consumers. Imposing a monetary limit will ensure that large cases do not consume the Tribunal's resources and delay the listing of other cases.

While the monetary jurisdiction for building claims will be capped at \$500,000 it is proposed the Tribunal be given primary responsibility for hearing building claims.

This will ensure that persons are not denied the benefit of having their case heard in the Tribunal because the other party has initiated proceedings in a court. I'm afraid this has been a too-common tactic in the past, where builder's have tried to avoid the Tribunal's jurisdiction. They have done this to try and tie consumers up in the civil courts—often at considerable expense and after a considerable delay.

In such case if the defendant—which will invariably be the consumer—makes an application to have the proceedings transferred to the Tribunal, the proceedings must be transferred and continued in the Tribunal.

The Tribunal will also be given the power to adjourn proceedings when what is known as an "insurable event" arises and join parties to proceedings. If at any time before or during proceedings the Tribunal is of the opinion that a person should be joined as a party, it may give notice or a direction joining that person as a party.

Where an order is made against a licensee as a result of Tribunal proceedings, the Tribunal will be required to warn the licensee that a failure to comply with the order will be recorded on the Register of Licences kept by the Director-General of the Department of Fair Trading.

Again, this will overcome an all too common problem we have encountered—a consumer wins in the Tribunal and then the builder refuses to comply with the Tribunal's orders.

The builder will now have two major incentives to comply with the Tribunal's orders. Firstly, other potential customers will be told about non-compliance when they ring Fair Trading and, perhaps even more important, the Director-General will not reissue or renew licences when Tribunal orders have not been satisfied.

In this regard, the Tribunal must inform the Director-General of any order made and the time limit for compliance with the order. It will be incumbent on the licensee to advise the Director-General when that order has been complied with.

If the Director-General is satisfied that an order has been complied with, the Director-General must ensure that the register does not record non-compliance with the order. If the Director-General has not been informed that an order has been complied with by the time limit for compliance, the order will be taken to have not been complied with and will be recorded on the Register as such. A penalty of \$22,000 will apply if a licensee knowingly makes a false statement that the order has been complied with.

The Tribunal will also be given the power to convert a work order into a monetary order where there has been non-compliance with the work order.

Contracts

The Bill contains measures designed to ensure that consumers are better able to make informed decisions before entering into a contract with a builder.

Before entering a contract a licensed contractor will be required to provide the consumer with information, in a form approved by the Director-General, that explains:

the operation of the Home Building Act,

the procedure for the resolution of disputes under the contract for work, and

the procedure for resolution of disputes relating to insurance.

Failure by the contractor to provide the information will be an offence.

Lack of information about rights, responsibilities and remedies in the building industry is one of the biggest problems we face.

Better information, before a contract is signed, will assist consumers to make sound decisions and will clarify when they can make an insurance claim, how they can proceed in the event of a dispute, who they can contact and how to lodge a claim.

Another major consumer reform will be a new cooling-off period of five (5) business days after a building contract is signed. Where a contract is rescinded during the cooling-off period the contractor will be able to retain the amount of any reasonable out of pocket expenses. The balance of money received from the consumer will have to be refunded.

Consumer groups and others have raised the need for a cooling-off period because of the potential for unscrupulous traders to coerce or use misleading statements to induce consumers to sign contracts. The cooling-off period will be able to be waived by the consumer if the consumer provides the contractor with a certificate signed by the consumer's legal representative. The provision is modelled on the existing provisions relating to the sale of land.

To further safeguard consumers' contractual rights the Act will allow the regulations to make provision for matters which should be included or excluded from home building contracts.

I'm afraid that another common tactic, of unscrupulous contractors, has been to include "get out of gaol free" clauses in their building contracts. In effect, this has meant that a consumer who has not obtained legal advice prior to signing a building contract, has found, when things turn bad, that their rights under the contract are severely curtailed.

Under this new provision, the Director-General will effectively outlaw such provisions.

As I announced in November last year, these important reforms will be funded by a one-off increase in building licence fees of 10 per cent. This rise will not be implemented until the new processes are ready to go.

The fee for owner-builder permits will also be raised.

The total additional revenue, estimated at approximately \$3 million, will be paid into the Home Building Administration Fund which is provided for in the Bill. I need to stress that these funds will be hypothecated in this way and expended on the new scheme.

Money in the Fund will be used for meeting the costs of operating the scheme for resolving building disputes, meeting the costs of administering the Home Building Act or any other Act as prescribed in the Regulation and the making of any investments approved by the Treasurer.

I turn now to additional provisions included as a result of the devastating HIH collapse.

The Bill contains a savings and transitional provision which places beyond doubt that certificates of insurance issued by contractors on or before the provisional liquidation of HIH on 15 March 2001 are valid.

This should address the widespread confusion which has arisen on the part of builders, developers and consumers as to whether they could continue to rely on these certificates and whether they were in breach of the Act.

In the case of consumers who had HIH home warranty insurance in place as at 15 March 2001 they will be covered by the NSW Government's rescue package. HIH home warranty insurance holders will be placed in the same position as they would have been if HIH had not collapsed.

The various reforms contained in the Bill which I have outlined will address many of the complaints about the current system for consumers protection. However, they are only part of the Government's overall reform package. In addition to these legislative changes a number of regulatory and administrative actions are proposed.

Changes to the Home Building Regulation which will be made include:

- to provide that the Director-General must be satisfied before a licence is issued that the applicant has not been a director or person concerned in the management of a company which has had its licence cancelled or suspended;
- Reduce the period after which an insurance claim is deemed refused from 60 to 45 days;
- Clarify the losses covered under the insurance scheme in order to remove any doubt as to when a claim can be made and therefore reduce costly litigation;
- Clarify when a consumer has reasonable grounds to refuse access to the contractor who did the work without prejudicing their insurance claim; and
- Strengthen the conditions of approval for insurers by making the reporting requirements more relevant to the monitoring of the insurance scheme.

Administrative steps, which either have or will be taken, include:

- Adjusting the \$200,000 minimum cover under the insurance scheme to reflect the increase in the "Price Index of Materials Used in House Building, Six Capital Cities" (as published by the Australian Bureau of Statistics).
- Playing a central role in the provision of information and guidance to consumers affected by the insolvency of a contractor, including liaising with the insurer and the administrator or liquidator;
- Developing a licence renewal policy which will be linked to the number of complaints and other criteria;
- Cross referencing the electronic licensing record to disclose builders and contractors licensed as individuals and through a company structure; and
- Establishing a new Special Building Investigations Unit to provide greater focus on taking action against persons who wilfully flout the law.

In closing, there are a few people I would like to mention and thank. Certain officers of the Department of Fair Trading have worked diligently over the past 18 months to bring these reforms to fruition. Among them are John Schmidt, Lyn Baker, Mary Louise Battilana, Peter Smith and Steve Jones. I'd particularly like to thank Chris Aird, who has lived with this Bill since we started this process.

I'd also like to thank my caucus colleagues who have made useful suggestions along the way. Finally, I'd like to thank—and this one is unusual—the Honourable John Ryan, in another place, who has also significantly contributed to the development of this legislation and has participated—most of the time!—in a non-partisan fashion.

As I said at the beginning the fundamental components of the regulatory framework for the home building industry are sound and have overall public support.

But there are problems which need to be overcome and improvements which need to be made. This package makes more than 50 changes in total and in its entirety, comprises a radical overhaul of home building regulation in this State.

It means the difficulties which have been encountered will be addressed by the Government's reforms and both consumers and honest competent building contractors will be given a fairer deal in future. I commend the Bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.48 p.m.]: In 1996 the Parliament passed significant legislation to reform the home building industry. The bill that is now before the House has the general support of consumers, builders and their industry associations. Any reform to the home building industry must be to the benefit of consumers and builders, improve on the protection of consumers, and increase professionalism within the building industry.

As with most legislation, some issues are not supported by all parties. The Coalition has given a commitment not to oppose the legislation, and not to oppose some of the positive changes that have the support of all parties. However, some areas need to be highlighted. On 1 May 1997 the Carr Labor Government introduced the Compulsory Home Warranty Insurance scheme, which was hailed by the then Minister for Fair Trading as the beginning of a new era for consumer protection in the home building industry. The scheme requires that any home building contract for more than \$5,000 have insurance against faulty workmanship or the insolvency of the builder.

Now, just four years after its introduction, the scheme is in crisis. The collapse of HIH on 15 March this year resulted in only two insurers still providing insurance under the scheme to builders—just two insurers to provide insurance for more than 150,000 builders throughout the State. The builders and related contractors who found themselves no longer covered by HIH policies and unable to work in the meantime were forced to seek alternative cover from one of the two remaining insurers. Needless to say these insurers struggled to cope with the massive influx of applications. Delays of six, eight or even 10 weeks to obtain replacement insurance are not uncommon. Every day the Coalition receives letters, telephone calls and emails of complaint about excessive delays in waiting for new insurance.

Whilst this bill addresses some of the problems with the insurance scheme that the collapse of HIH highlighted, the main problem—a lack of insurance providers—remains. The 1999-2000 Annual Report of the Department of Fair Trading lists five approved providers of insurance. Less than two months later only two providers are still offering insurance to building contractors, and one to owner-builders. This bill will reform the Home Building Act in a number of respects and whilst I do not intend to raise all of the issues, I propose to outline a couple of aspects that have been brought to my attention. However, I urge the Minister to consider and respond to the submissions that he has received.

My colleague the Hon. John Ryan will speak to the bill in detail on behalf of the Opposition. There is probably no other member of either House of this Parliament with a more thorough appreciation of the finer points of this legislation, particularly the defects in the legislation that have allowed so many victims to fall through the net. Honourable members are well aware of his commitment to the victims of unscrupulous people in the building industry. I look forward to hearing his contribution to the debate.

However, I want to place on the record some points that have been raised directly with me. This bill leaves many of the decisions in the hands of the director-general, with the details to be worked out by way of regulation. There is always a danger of taking away the transparency of accountability to Parliament when decisions are left to departmental officials and to regulations.

The director-general is given the power to take both disciplinary action and impose penalties. The likelihood of decisions being disputed and ultimately ending up in the Administrative Decisions Tribunal would appear to be fairly well assured. I have noted the industry's concern that the inability to obtain a stay of a decision of the director-general pending a review by the Administrative Decisions Tribunal may represent a denial of fundamental legal rights. The Minister's comment on this aspect in his reply would be appreciated.

The amendments in the bill relating to cancellation or suspension of contractor licences have probably proved to be the most controversial of all of the changes. Their scope and the powers vested in the director-general as a result of these changes are substantial. What impact will the ability of the director-general to have another contractor complete work in the event of the cancellation of a builder's licence have on the warranty insurance covering that work? How long will entries appear on the Department of Fair Trading's public register, as provided for under section 120?

The need to resolve disputes between home owners and builders or contractors quickly, efficiently and at the least cost is probably one of the most important issues for our consideration in this bill. The Coalition is still being contacted by home owners and builders who are frustrated at the delays in getting a dispute settled by either a home warranty insurance provider—that is, the insurance companies—or the Fair Trading Tribunal. Delays of months and even years are regularly experienced by far too many people. When disputes are settled quickly, the cost to the parties and the system is far less than when extended delays are experienced. Classic examples are the numerous cases under the old Building Services Corporation that are still to be concluded.

In a speech to the House in March I outlined the case of a St Clair resident who contracted in April 1997 to add a family room to his home at a cost of \$28,205. Following extensive and protracted correspondence, meetings and hearings, in December 2000—more than two years later—the department finally approved a \$77,153 quote from his builder. The cost had risen from \$28,205 to \$77,153 during a dispute that lasted 44 months! In its submission to the Department of Fair Trading on 15 June the Master Builders Association noted a number of amendments to build upon the dispute resolution processes contained in the bill. I must say that some of the points appear to have merit. Perhaps the Minister in his address in reply could respond to those suggestions, specifically those that relate to sections 48D and 48J.

The introduction of a five-day cooling-off period has created a deal of debate within the industry. I seek the Minister's comments on concerns raised with me, including the implication for insurance if a contract is rescinded ab initio. How does this cooling-off period affect building consultants who will now come under the control of the Home Building Act? A great deal of the work of building consultants is pre-purchase inspections, where time is of the essence for home purchasers. There is usually little notice between the time a building consultant is asked to conduct a pre-purchase inspection and when it needs to be conducted. I have noted that the legislation does not exclude the cooling-off period where the parties have previously signed a contract on substantially the same terms for substantially the same work, as Victoria allows.

The Housing Industry Association [HIA] has also sought to have the right to waive the cooling-off period extended to repair contracts, as is the case in Queensland. I also note that, unlike in Queensland and Victoria, the builder is entitled to only out-of-pocket expenses. In those other States the builder also receives \$100, and in South Australia the builder is paid for the work performed. This requirement works to ensure that builders are entitled to a reasonable margin for work carried out.

The Master Builders Association has questioned the measurement of the seven-day period from becoming aware of the cooling-off period within which the contract can be terminated. The HIA and the Master Builders Association have raised a number of other issues with the Minister that I am sure they and the House would like to have clarified.

The status of owner builders within the home building sector remains a matter of concern. For most people a home purchase is the biggest investment they will ever make. The added responsibility of building one's own home is enormous. The need to educate owner builders and monitor the standard of construction has been advocated for a long time. The intention of these changes is to be commended. Sections 7E and 16DE allow the department, by way of regulation, to state what a contract must and must not contain.

The Minister spoke in another place about how another common tactic of unscrupulous contractors has been to include get-out-of-gaol-free clauses in their building contracts. However, these sections go beyond reforms in other States. Western Australia and South Australia allow a court or tribunal to strike out harsh or unconscionable clauses in contracts. In Queensland and Victoria a person can apply to the tribunal to have an unjust contract deemed ineffective.

In conclusion, I thank the members of the Building Action Review Group [BARG] and, in particular, Irene Onarati for that group's support of my motion to inquire into the Home Warranty Insurance Scheme. I was extremely disappointed when the Minister last Thursday, in the presence of Irene and many other members of BARG, refused to support this inquiry. However, that will not deter me from bringing the motion on for debate when we resume for the spring session.

The Hon. JOHN RYAN [2.59 p.m.]: I should like first to thank the shadow Minister, the Hon. Michael Gallacher, for the support he has given me in my pursuit of these issues and for the support I have enjoyed generally from the Opposition. I also thank the Minister, Mr Watkins, and his staff for their assistance to me in providing a couple of briefings during the past week to enable me to better understand the bill. Also, in a spirit of co-operation, I thank him warmly for the notice he has taken of the concerns I have expressed about the need to strengthen consumer protection for home building customers.

As the Minister has been gracious enough to acknowledge my interest, I also acknowledge that he shares many of the concerns that I have expressed and that he is genuinely attempting to do something about them in a number of areas. However, I do not think members will be surprised that there are a number of things I wish to say about the Home Building Legislation Amendment Bill, given previous speeches I have made in the House about the regulation of the home building industry. I am therefore somewhat disappointed to be delivering a speech of this length when I have laryngitis.

This bill is something of an admission that the previous attempt by the Government in 1997 to introduce a "new era" in consumer protection was a miserable failure. The bill contains a number of measures that represent an improvement, but there are some critical issues affecting the home building industry that are not dealt with by the bill. The provisions of the bill are extremely complex and require intense examination by all critical stakeholders. The Government informs us that this has occurred, but it has not published the results of these consultations or any of the reports on which the measures contained in the bill are based.

We note that the bill has been circulated since November last year and that it has been changed since then, on being introduced into Parliament. There has not been an explanation for the changes, but they appear to be in the nature of drafting improvements rather than policy changes. However, I note the Minister's comments in another place that some changes were made in response to submissions from building industry associations.

Understanding the full extent of the changes is complex because the home building industry is regulated by a complex web of legislation. Included in this matrix are the Home Building Act 1989, the Home Building Regulation 1997, the Fair Trading Tribunal Act 1998 and its regulations, and the Fair Trading Act 1987 and its regulations. In addition, there have been a number of important court decisions. The issues are made more complex by the fact that the building industry and the insurance industry have well-established peak organisations to scrutinise the legislation on behalf of their representatives. Home building consumers do not.

I have evidence that home building consumers are only just coming to grips with the provisions of the bill, and they have not been kept as well informed of changes to the bill during the consultation phases as other stakeholders. For example, the consumer group known as the Building Action Review Group [BARG] has stated that it did not even receive a copy of the bill when it was tabled and passed through the Legislative Assembly. I have seen extensive correspondence between the Master Builders Association [MBA] and the Department of Fair Trading that has resulted in a number of specific amendments to the bill.

I might take this opportunity to remind the Government that it promised to fund a building advocacy group while Labor was in opposition in the lead-up to the 1995 State election. I think it is high time that promise was fulfilled. This bill, as I have already stated, represents the second attempt by the Carr Government to regulate the home building industry. The previous failure establishes an even greater need to rigorously scrutinise this bill. Consequently, there is a strong case for sending this bill to a legislation committee of this House, as occurs almost routinely in the Commonwealth Parliament.

The Opposition was prepared to support referring this bill to a select or standing committee for a brief review. However, we are unlikely to have the support of the House to do that. At the very least the motion in the name of the Leader of the Opposition for an inquiry by General Purpose Standing Committee No. 3 into the home warranty insurance scheme should be supported. It should take place even if this bill does pass through the Chamber. This inquiry would enable the provisions of the bill to be scrutinised in more detail and enable further amendments if appropriate. It would also enable us to hear more from the public.

In 1996 the Carr Government introduced a package of changes to consumer protection laws that regulated the home building and home renovation industry in New South Wales. The centrepiece of the package, based on a report by Commissioner Peter Dodd in 1993, was the replacement of the former government-owned insurance scheme with a private scheme. There were also measures to tighten up the form and content of home building contracts, reform the system of builders licensing, and change the agency responsible for resolving intractable disputes between customers and builders.

The agency then known as the Building Disputes Tribunal was disbanded and replaced with what we now call the Fair Trading Tribunal. The package also renamed the Act that regulated the home building industry, from the Building Corporation Services Act to the Home Building Act. In launching the new Act in the other place on 30 October 1996 the Minister for Fair Trading, the Hon. Faye Lo Po', said:

The Government believes that the reforms ... will see the beginning of a new era for consumer protection in the home building industry. Consumers will benefit by fairer contracts, the improved cover provided under the private insurance scheme and the new powers of the tribunals. Contractors will have greater confidence in the new system, which will provide incentives for those who supply quality cost-efficient work. Taxpayers of New South Wales will no longer bear the risk of having to underwrite a government-run scheme.

Sadly for some, the new arrangements have been a disaster. There was some hint of the disaster to come by the obvious crowing that came from the building industry after the new legislation was enacted in 1997. A newsletter published by the MBA entitled "Executive Newsbrief" explained to its readers in the building industry that they had nothing to worry about from the new scheme because, they explained, "Private insurance companies will not be driven by a consumer imperative and in the manner of all insurance companies [they] will fight tooth and nail over every claim."

They soothed their readers a bit more by telling them that the insurance product that was to be sold to consumers as protection, MBA MasterCover insurance, would help build a "fighting fund of \$25,000 to fight any claim that goes to the Building Disputes Tribunal". How cute was that? The MBA was going to build a fighting fund to attack consumers with the profits they were to make by selling consumers the new, privatised home warranty insurance.

This bill introduces a tranche of significant changes to the 1997 scheme. It is very much an admission of failure on the part of the Government. One has only to read the astonishing speeches given by Government members in the other place to see further how much the existing scheme has failed. They report dozens of stories of how consumers in their electorates have continued to suffer under their own scheme since it was introduced three years ago. However, I for one welcome the chance to put things right for some very distressed home building consumers.

Before I speak about the specific features of the legislation, I should make some preliminary observations about what happens to people who become trapped by a bad builder. In my experience, bad builders appear to be able to do things to people that most petty criminals cannot do. Over the last two years I have visited many building sites and spoken to hundreds of consumers who are the victims of shonky builders. As a class of people they are among life's most wretched.

Their assets are tied up in failed construction work. Often they are living on the site or in some form of cramped alternative accommodation. Every morning when they wake, their problem is there to confront them. Life becomes an endless routine, in fact an obsession, of seeing building consultants, preparing documents and chewing over submissions to some form of legal agency such as the Fair Trading Tribunal or an insurance company. Dreams are wrecked, marriages fail and lives are put on hold. Often this goes on for years, and many never recover.

Another thing that never fails to astonish me is how ineffective the legal remedies are against what appear to be such obvious problems. I have visited many building sites to meet the owners of many seriously defective homes. I recall standing in what could only be called the wreckage of the home where Mr and Mrs Paul and Georgia Vogel used to live at Eastlakes, until they hired the builder Malik Drift of A1 Constructions. I can also remember last year inspecting the dump that constituted the house being constructed for Mr Juchan Chen and his family at Wentworthville by building company Vico. More recently I visited a home that was being constructed by Westfield Concrete for Mrs Lucy Trang and her family at Cecil Hills.

One did not have to be a construction expert to see that there was something obviously wrong with these buildings: dreadful and unsightly brickwork, broken frames, sloping floors, windows obviously out of alignment, and so on. All of them were covered by home warranty insurance. Every one of them was in dispute at the Fair Trading Tribunal and had been so for months. Yet the remedies that were supposed to help the consumers were grinding on endlessly, seemingly blind to the bleeding obvious. Seeing this sort of suffering has made me determined to do something about it.

The legislation introduces new provisions to ensure that the Director-General of the Department of Fair Trading has sufficient power to protect consumers by cancelling building licences in various circumstances that are well justified. There appears to be objection to new section 22, which affects these changes, by either building industry or consumer groups. I, however, am concerned a little about the new wording of the section and, unfortunately, I am going to have to become a bit technical and detailed. The director-general already has the power to cancel a licence if a building company continues operating without a properly qualified person to supervise the building work, referred to as the "nominated supervisor" in current section 22 of the Home Building Act. The "nominated supervisor" is the individual with relevant experience in construction who ensures that the residential building work is done in a professional and what the Act calls a workmanlike manner, in accordance with applicable building codes and standards, by competent tradespeople.

The Home Building Act regulations provide for the nominated supervisor to have certain limited qualifications or appropriate industry experience. For example, clause 20 of the regulation provides that the

director-general must not accept an applicant for the nominated supervisor unless they are over the age of 18, or if they do not have the relevant qualifications deemed necessary to carry out the task of supervising building work. It is obvious why such a person is a critical requirement to a building company carrying out residential building work. In the event that a contractor loses a nominated supervisor for a period of more than 30 days, under the current Act his licence is automatically cancelled. Accordingly, the company or the contractor are no longer able to start or even continue residential building work because they will contravene section 123 and section 136 of the Home Building Act.

For example, section 12 states that a person must not do any residential building work without a contractor licence. Doing so puts them at risk of a penalty in excess of \$10,000 now, and in excess of \$20,000 after the commencement of this bill. This is the provision that is commonly used by the Department of Fair Trading to cancel the building licences of shonky building companies. They do so because it is so effective and quick. Once the licence has been cancelled it is difficult for the company to get its licence back. It saves the department a lot of legal wrangling and it provides consumers affected by the shonky builder with some certainty that they can immediately lodge a successful insurance claim. The bill provides that the director-general may cancel a licence only when there has been no supervisor for 30 days. I ask: What else should happen to a company conducting building work without at least one qualified supervisor to ensure the quality of the building work?

I recommend accordingly that the word "may" in this section should be changed to "must". I note that the Government will introduce an amendment to that effect. The new section also extends the powers of the director-general to cancel a licence if the home building contractors have been bankrupt in the recent past or if they are subject to receivership or winding up. Consumers usually borrow large sums of money to finance their building project. The transaction is often one of the largest investments most people make in their lives. In the case of home renovators, consumers are also opening up their homes and families to strangers, sometimes for months. If something goes wrong, they have much to lose. Builders, therefore, have to be people who can be trusted. What has also been astonishing is how many shonky builders have been able to recycle themselves through bankruptcies and building licences that were cancelled, resurrecting themselves phoenix-like in new companies with different names, able to trap new victims. The new powers for the director-general are designed to deal with these types of contractors. A later section, which inserts new provisions into section 20 of the Home Building Act, applies similar standards on the discretion of the director-general to renew contractor licences.

Both the Housing Industry Association [HIA] and the Master Builders Association [MBA] have said that this proposed section is not in conformity with Commonwealth law in relation to the bankruptcy. Commonwealth bankruptcy laws disqualify a person from holding office as a company director for three years, whereas the bill imposes a five-year period of disqualification. As Commonwealth law overrides inconsistent State law, the bill may need amendment to reduce the period to three years. I note that the Government proposes to do that by amendment later in this debate. The HIA said that it is concerned that the director-general has been given unfettered discretion to determine what constitutes a reasonable number of complaints, penalty notices and insurance claims. It further claims that this power is unnecessary because there is power to cancel or suspend a building licence if the contractor fails to get insurance. It claims that this is a sufficient control measure. Sadly, it is wrong. It would seem to be commonsense that insurance companies would not place themselves at financial risk by offering insurance to builders with a dubious history of building complaints.

However, there are many instances of home warranty insurers giving insurance to obviously shonky builders. The infamous Rocco Vitalone, of Vital Homes from the Macarthur area, whom I have spoken about before, was given insurance by the company Home Owners Warranty for three jobs late in 1999. This occurred after his insurer had at first refused him as a bad risk after a succession of complaints. Mr Vitalone received insurance, abandoned every one of those three jobs and left a trail of defective work. The insurer has now paid out claims in excess of \$200,000. It is fair to ask: Why would an insurer take a risk on a bad builder? The answer appears to be that home warranty insurers regard builders and not consumers as their customers. There are two reasons for this. First, in most cases it is the builder and not the home owner who actually purchases the insurance policy. If insurers are too hard on builders they are not likely to get much return business. Second, two of the largest home warranty insurers are subsidiaries of building industry associations. I think that is still the case now. Things have become more complex and have changed since the collapse of the insurer HIH, but before May 2001 the HIA operated the company known as Home Owners Warranty and the MBA had an association with one other.

Section 23 warning notices are changed by the bill. The new legislation provides for the abolition of the 48-hour warning period, which previously had to elapse before a notice could be published. They can now,

when necessary, be issued quickly when it is necessary to protect the public from a continuing threat from a shonky trader. These warning notices issued from the director-general can be useful in protecting consumers. Although the director-general is required to carry out an investigation before the issue of a warning notice, they are not subject to any sort of appeal. They have been available to the director-general since 1997, but until the budget estimates hearings last year the Department of Fair Trading hardly used them at all. I recall asking how many of these notices had been issued against bad builders. At the time I was thinking of obvious suspects such as Mr Vitalone and Mr Tomasetti, of Westfield Concrete, to whom I referred earlier. I was told that in the previous two years only one warning notice had been issued against a builder, and it was not one of the two that I have mentioned. I believe that their use has been boosted significantly since.

The legislation includes changes to what I refer to as the register. I cannot count the number of times that I have been told by constituents complaining about a shonky builder that before they signed the contract they first made the effort to check the builder's history with the Department of Fair Trading. In every case they told me that the builder had a clean record. Of course, at the moment, there is so little information on this register. The better question to ask is: Why would they not have a clean record? Other than the builder's name and address, the register only tells consumers whether they have ever been subject to some form of prosecution from the Department of Fair Trading—such as the so-called show cause action. As I explained earlier, there has been only one of them since May 1997. One can also find out whether any of the builder's customers have ever successfully made an insurance claim. There are not many of those either. From information given to me at the previous estimates there were about 600 of them last year.

Under the new Act consumers will now find out whether a builder's licence has ever been cancelled, whether the builder has not complied with an order of the Fair Trading Tribunal or whether the builder has ever received any public warnings issued under section 23 of the Home Building Act. This list sounds extensive. However, I point out that some of this State's most infamous builders—such as Mr Drift, who built the home owned by Mr and Mrs Vogel, a case described by the Minister in the media as the worst case in years; such as Mr Tomasetti, who built Mrs Trang's home at Cecil Hills; and such as Mr Vitalone, who had 17 matters before the tribunal; and dozens of others—up until the end of last year would not have had one blemish recorded against them on the new register.

Contracting with a builder is something like buying shares in a public company on the stock market. In my opinion, like shareholders, home building investors are entitled to know something about the trading history of the builder before they take risks with amounts of money of the order of \$100,000 or \$200,000. People are entitled to more information than even this bill gives them. For example, let us imagine that a customer was about to contract with a company such as Henley Properties Ltd to build a home worth around \$175,000. This large company has been the subject of much sensational television, radio and print media exposure in recent times. Potential customers are entitled to know that the company has built at least three houses, possibly more, during the last two years where the brickwork has been so faulty that all of it has had to be demolished.

Potential customers should also know that that company has spent two years in court fighting the requests of aggrieved customers to fix this same work. We need to find some means of recording such events when a company has not only built structurally defective houses but when it has also flatly refused to do anything about the defects unless and until an agency such as the Fair Trading Tribunal has ordered the company to do it, often after months, and sometimes years, of legal wrangling. I do not have an immediate suggestion as to how this might be done. However, I was hopeful that if this bill were the subject of an inquiry by a parliamentary committee, someone by way of a submission, might suggest a way during a public hearing.

I now refer to what the bill does to home building contracts. Currently, the Home Building Act 1989 provides that the contract for residential building work must be in writing and must be signed and dated by the parties to it. The Act also provides limits for deposits—a maximum of 10 per cent is allowed for building work with a contract price that is under \$20,000, and a maximum of 5 per cent if the work costs more. A contract must also contain the names of the contracting parties and the licence number of the builder; a sufficient description of the work to which the contract relates, together with relevant plans and specifications; the contract price, if known, and this must be stated in a prominent position on the first page of the contract and must include a warning if it is subject to change; and details of certain minimum guarantees of work quality or statutory warranties which are set out in section 18 of the Home Building Act and some others that may appear in the regulations—although there have not been any. The contractor must give the client a copy of the contract within five clear business days after entering into the contract. In the new Act this will be subject to an additional five-day cooling-off period.

Under section 18 of the Act the builder is required to ensure that all work is to be performed in a proper and competent workmanlike manner in accordance with the building plans attached to the contract. The

materials used by the builder are to be good and suitable for the purpose for which they are used and, unless stated otherwise, they must be new. The work is to be completed within the time stated in the contract or, if the contract does not specify a time, it is to be completed within what the Act calls a reasonable time. The dwelling, when completed, must be reasonably fit for occupation as a dwelling. The above guarantees—or, more accurately, warranties—cannot be excluded by any provision of the contract and must last for seven years from the completion of the work.

Section 89D of the Act also gives the Fair Trading Tribunal the same powers exercised by the Supreme Court under the Contracts Review Act 1980 to void any clauses in a contract that are considered to be unjust. I point out to my colleague the shadow Minister, who said this provision should be in the bill, that it is already there. Most people who contract to build a standard project home or to undertake fairly uncomplicated home renovations use what is known as the plain English home building contract. These contracts were developed by organisations representing the home building industry, such as the Housing Industry Association, the Master Builders Association and the New South Wales Department of Fair Trading. Few customers who use the plain English contracts ever seek the advice of a solicitor.

Some of the common provisions in the plain English contracts appear to favour builders over the home building customer. One of the model clauses usually provides monetary compensation for the home owner if the builder fails to complete the work within the time frame specified by the contract. This money is intended to compensate the customer for additional expenses or lost income that may arise if the building work is delayed. This may be for lost rent if the home is to be used for investment income or for the costs associated with extending a rental lease during the time the customer is not able to live in his or her new home. The words used in the contract to describe this payment are "liquidated damages". The standard time for the completion of a project home is usually 26 weeks from the date building work commences. Home building contracts normally also provide for building work to commence within 15 days after the owner has provided a written consent from a lending authority for the work to proceed. The amount for liquidated damages is usually detailed in a schedule attached to the contract.

It is rare for a home building contract to provide for more than \$20 per day in liquidated damages if a house is not completed on time. This amount is modest when compared to the costs most home building customers would actually incur as a result of any delay. Home owners are frequently paying both rent and mortgage interest on amounts that have already been paid to the builder for works completed in earlier stages of construction. A typical rent for a modest three-bedroom home in outer metropolitan Sydney is between \$200 and \$250 a week. The expenses can be even greater if the home owner is faced with the additional cost of extending a residential lease for a minimum period of six months although he or she may need it for only a few weeks.

Clauses to cover liquidated damages have not been put into building contracts in order to be generous to consumers. They have been put into the contract in order to limit the potential exposure a builder may face if building works are late. Other features included in the standard industry-endorsed, plain English agreement that appear to be generous to building contractors include fairly loose provisions that allow builders to extend when they have to complete building works, often without the need to seek agreement from the home owner if written notice is provided. A home owner may receive a letter stating that the building contract is extended and it is hard luck if it is inconvenient or the home owner disagrees.

Another feature is a common provision which states that when the owner accepts keys to the building the owner is not only accepting that the building works have been completed and that the owner is responsible for payment of the full final progress payment, but that the home owner is also responsible for obtaining the appropriate certificate of practical completion from the local council. Without the council certificate the owner has no way of knowing that the building is complete, and the builder may yet have works to complete or rectify on the building which may make withholding part of the final progress payment entirely appropriate. Also, there are no provisions to penalise builders who fail to properly rectify faults covered by the statutory warranties or to compensate owners for any losses arising from them.

Finally, there are provisions in standard contracts that allow builders to substantially increase the contract price for the home and add a margin for profit if work is delayed or if certain costs increase after the contract is signed. But not only do builders have a wide level of flexibility as to what they can include in the building contract, they also appear to have enormous scope to vary the conditions of the plain English contract to seriously and very unfairly disadvantage their customers. I would like to give the House an example. The following is an example of a clause that was added to a real home building contract as a special condition in addition to the standard provisions of the plain English contract. The clause reads as follows:

If the owner/s defaults in terms of this contract, or prematurely ends this contract because of any variation exceeding 5 per cent of the contract price, or if a dispute arises in which the works cannot be resumed within 28 days, then the owner/s is liable as per the following:

- (a) 20% of total contract price be paid to (the Builder) plus
- (b) All material supplied by (the Builder) fixed or on site plus
- (c) All contractors labour and material fixed or on site plus
- (d) All (the Builder's) out of pocket expenses

This clause supersedes any other clause in this contract.

The above clause appears to have the effect of making home owners liable to pay the builder his profit margin for the project and all incurred building costs if the two parties are ever in dispute about the building work, even if the dispute is about defective work and the work is seriously defective. One of the statutory warranties provided in section 18 of the Home Building Act is that building shall be completed within a "reasonable time". As stated earlier, the plain English home building contract for project homes usually provides for a home to be built in 26 weeks. Even though this provision is in the Home Building Act, it is very easy to render it ineffective by inserting a tricky clause in the building contract. In one case, the Fair Trading Tribunal refused to award liquidated damages to an owner who had to meet the cost of finding six weeks alternative accommodation for his rental tenants after a construction ran over time because his contract with the builder included the following provisions:

Automatic extension of time without notice to the owner/s from date of contract to date of excavation

(The Builder) cannot be held responsible for shortage of trade contractors (eg concreters, carpenters, Bricklayers etc) if a shortage occurs an automatic extension of time will apply to the completion date ...

That means that builders do not even have to write to home owners to inform them of any changes. The contract continued:

Liquidated damages as per (the relevant clause of the contract), no further claims can be made against (the builder) to be reimbursed for loss of rent paid, any accommodation lost or paid, any interest paid or payable.

Because provisions like these have appeared in home building contracts, the Minister has decided to include a means of removing them or rendering them of no effect by making regulations. Builders have also confused consumers by misusing logos belonging to the Housing Industry Association or the Master Builders Association. The intention of using these logos is to convey the impression that the form of the contract being signed for a project is the same as, or similar to, the forms of contracts that have been endorsed by those associations or by the Department of Fair Trading. This misleading practice should also be outlawed by the regulations. I make these comments in response to objections that have been raised by the building industry that the director-general should not have the right to make regulations relating to contracts. It is arguable that the bill does not greatly expand the Minister's existing powers to make regulations. The current Home Building Act already provides that:

The contract must comply with any requirements of the regulations.

As I said earlier, it is significant that no regulations have been made to control building contracts. However, one useful effect of the new provisions is that the Act will now define the consequences if a builder inserts conditions into a contract that do not conform to the regulations. The bill states:

If a contract "contains a term that is inconsistent with (the regulations) the clause is unenforceable".

It is important to point out that we have no idea exactly what is to be in the proposed regulations affecting building contracts. The real usefulness of this new provision for consumers is yet to be seen. If no regulations are made or if the regulations are weak, current exploitative practices will continue. The regulations must at least better define the minimum amount to be allowed for liquidated damages, they must ensure that the statutory warranties provided in section 18 are not watered down, and they should ensure that consumers are not disadvantaged by disputes that are not their fault. I shall make one general comment about contracts. Most of the complexity in legislating in respect of contracts for the home building industry arises because the industry has not established one standard, plain English contract together with procedures for changing it during the construction. As I have heard said about other subjects to do with the home building industry, "It's not rocket science." The basic elements of a home building contract are simple enough: builders and consumers must simply sort out an agreed process for making changes to the project while it is under construction. They need some method to allow for agreed changes to variables such as the contract price and the completion date. After that every other aspect of a building contract could be standard and fixed by subordinate legislation.

Another hotly disputed clause in the bill is the provision that inserts a five-day cooling-off period after contracts are signed. I think this will be a welcome provision that reflects a similar protection given to real estate customers contracting to buy a house. It is intended to permit new home purchasers time to consult a solicitor about the contents of a building contract before it is finalised. The concept of a cooling-off period has been borrowed from the Conveyancing Act 1919. However, I think it remains to be seen whether this concept can be carried across effectively from the field of real estate to the building industry. There are some very significant differences as to how sales are conducted in these two commercial fields. The building industry has suggested that the same effect could be achieved if the Act provided for builders to give their customers a copy of the building contract five days before it is signed. I am not sure whether that would have a very different impact, but I think it would achieve the same result. My only concern is that the current wording of the bill may allow builders to subvert the intention of the cooling-off period. New section 7BA appears to allow two events that may "trigger" the start of the cooling-off period. The new section states:

... the contract may be rescinded any time before the expiration of five clear business days after the person has been given a copy of the signed contract (or becomes aware that he or she is entitled to be given a copy of the signed contract.).

For most home building customers the purchase of a new project home, for example, is a process not an event. It commences with the payment of a holding deposit and culminates a week or so later in the signing of a building contract. The commencement of the contract often awaits finance approval from a lending institution and council development approval. Further clarification of the wording of this new section may be required to ensure that a builder cannot trigger the start of the cooling-off period prematurely merely by informing customers of their entitlement to rescind the contract even before they receive the building contract. The Government has proposed some amendments to the cooling-off period that are likely to address that concern. Additional concerns about the cooling-off period relate to the amount of money that a builder may charge a customer who rescinds a contract within the cooling-off period. New section 7BA (3) (b)—no doubt the new numbering scheme introduced by this legislation will be mind blowing—entitles a builder to:

... retain out of any money already paid ... (for) any out-of-pocket expenses incurred before the rescission.

It is not hard to see how this provision could be abused to hinder the effect of a customer's electing to rescind because pulling out of the contract may be financially prohibitive. I note that the Minister intends to insert the word "reasonable" into that part of the bill, which may address that concern. The legislative package proposes a scheme of licensing for home building consultants. Building consultants are the practitioners who inspect houses or renovations after or during residential building work and prepare a technical written report on the soundness of the construction. The Australian Consumers Association magazine, *Choice*, recently published the results of a survey that studied the quality of work done by building consultants. According to the survey, which sought 30 reports from 24 inspection firms, almost half of the submissions were described as "poor", 10 were "okay" and only six were "good" in terms of quality. Many of the companies charged more for their reports than stated in their original quotes. Other criticisms made about building consultants were that their reports were difficult to read or that they were too general to be useful.

Building consultants are an important ingredient in the building dispute process. It is apparent that within the building industry a phenomenon operates with building consultants that is analogous to fields such as workers and accident compensation. One will find that, just as there are legal practitioners who could be described as "plaintiff lawyers" and others who could be described as "insurers lawyers", there are "consumers" building consultants and "insurers" or "builders" building consultants. The consumer-friendly consultants are described as being too generous to the consumers and the "builders" consultants are accused of ignoring or minimising defects. It never ceases to amaze me that one can read two very different building reports about the same building.

Differences between building consultants is a very important contributing factor to prolonging building disputes and litigation in the Fair Trading Tribunal. Inaccurate building reports can be as harmful to consumers as defective building work. If a consultant inaccurately alleges that a house contains major structural defects it can destroy the consumer's confidence in the building, needlessly rob the consumer of the satisfaction that he or she may derive from building a new home and set the consumer on a course of expensive, time-wasting and fruitless litigation. Similarly, a consultant who inaccurately minimises building defects could be exposing consumers to problems later or even to safety risks.

A report from a building consultant can be very expensive, ranging from a few hundred dollars to thousands. It is very difficult to successfully make an insurance claim or win a case in the Fair Trading Tribunal without one. However, I have noticed that a number of consumers are demanding a type of consultant's report

which is not generally available. Many consumers want a report that will be regarded as independent for the purpose of litigation. What apparently defines the independence of any report is who pays for it. A report paid for by a builder or a consumer is generally regarded as tainted as far as litigation is concerned before it is even tendered in court.

My suggestion is that the Department of Fair Trading should establish a means whereby consumers can obtain reports that would be respected as independent. This could be achieved either by having a listing service or by employing some within the department or funding a non-government building advisory service to provide them. These consultants, after vetting and approval by the department, could be accessed by consumers or builders on a fee-for-service basis. I am not exactly certain that a system of licensing is going to solve the problems of inaccurate building consultant reports, but its introduction has been virtually uncontested by the building industry, so I raise no objection to it.

This bill proposes to streamline the prosecution process for shonky builders. The bill proposes that in future it will be the director-general and not the Fair Trading Tribunal who will make the decision to cancel a building contractor licence. This represents yet a further reduction in the role of that agency. This fact is further evidence that the Government has lost confidence in the Fair Trading Tribunal. The tribunal has in fact been an abject failure because it has been powerless to process these matters in sufficient time to protect consumers from unscrupulous traders.

Last June the Parliament passed the Fair Trading Amendment (Enforcement and Compliance Powers) Act 2000, which gave the director-general the power to immediately suspend a licence granted under legislation administered by the Minister for Fair Trading. The ink was still wet on the new laws when the director-general launched action to cancel two licences, and I think others have been cancelled since. Nothing better illustrates the effectiveness of the measures outlined in schedule 5 to the bill.

I note that building industry groups have objected to these new procedures outlined in the bill. I agree that it is unfair to authorise a public servant, who is subject to ministerial direction, to carry out a disciplinary action which is more correctly exercised by a judicial officer. I feel somewhat uncomfortable about this means of proceeding. The unfairness is somewhat mitigated by the fact that any action taken under the new part 4 is subject to appeal in the Administrative Appeals Tribunal. But while I feel some discomfort about this procedure I cannot suggest a better means of achieving the required level of consumer protection.

If this bill were to be the subject of an inquiry by a legislation committee, as I have already suggested, I am sure that schedule 5 would have been scrutinised very carefully and it is possible that the process may have resulted in suggestions which may bring about improvement. However, I want to make a very important point: there is no point in streamlining or changing disciplinary powers which can be exercised by the Director-General of the Department of Fair Trading unless there are sufficient resources in the form of building compliance investigators to support it, and the commitment to exercise the new powers to benefit consumers.

By comparison to the much-maligned BSC, the department does not seem to initiate as much action against shoddy builders as the BSC did five years ago. And I think it is most unlikely that this is because standards in the building industry have improved so markedly. To illustrate, I will compare figures from last year's annual report of the Department of Fair Trading with one of the last annual reports of the old Building Services Corporation issued in 1994.

According to the 1994 BSC report there were 5,944 complaints to the BSC about building matters. I was amazed to read that these complaints are usually finalised on average within six weeks, and that a building site inspection occurred within seven days. It may be of interest to honourable members that there were also 1,512 insurance claims made to the BSC. The same report stated that the BSC initiated 1,092 prosecution actions against licensed builders that resulted in 577 prosecutions. In addition, there were 230 other formal disciplinary hearings conducted by the BSC: 99 were for building work, 88 for building trade work, and 42 for other trades such as electrical, swimming pool or plumbing work.

I know that these figures are not exactly comparable with figures today. In fact, the 1994 annual report points out that changes were introduced in 1995 whereby complaints were assessed by senior officers of the corporation "having regard to the contractors previous licence history". In some cases matters which were dealt with by way of show cause hearings were subsequently referred to other actions such as warning letters, prosecution, re-assessment of skills or debt recovery actions, where appropriate. But, that said, last year only 33 defendants were formally prosecuted by the DFT, and until this month only one show cause action was pursued.

I asked questions about this lack of action during the budget estimates hearings last year. My attention was drawn to the fact that there are other means which the department used for taking disciplinary action against rogue traders in the building industry. In particular, I was referred to figures published in the House notice paper last year where the Minister replied that 250 building licences had been cancelled during the previous year. As I pointed out earlier, many of these licence cancellations were not the result of active prosecutions by the department; they were the result of licences expiring, which is a very different matter. Additionally, many of the 250 cancelled licences are very quickly restored upon the appointment of another nominated supervisor.

The bill also proposes a number of means for streamlining procedures for resolving disputes. The new dispute resolution scheme will, in effect, be "the front end" of the Fair Trading Tribunal and, in summary, will work as follows. Consumers will be able to contact the Department of Fair Trading for preliminary information in relation to options for building dispute resolution. They then may wish to notify the Fair Trading Tribunal of the dispute. The dispute will be assessed by the Fair Trading Tribunal for the purpose of determining whether the matter is appropriate for resolution by an independent expert. An independent expert will be selected from a panel of experts approved by the chairperson of the tribunal. The intention is that the expert will quickly make contact with the parties and if possible attend the site. If the work is covered by the home warranty insurance, the insurer will be notified of the dispute and may attend also.

Irrespective of whether the insurer becomes involved, it will not be able to claim that the consumer's rights under the policy were prejudiced by any agreement that is reached with the builder. The independent expert will be required to prepare a written report on the dispute and provide it to the parties within a time limit specified by the tribunal. If the parties reach an agreement during the assessment by the independent expert, which I guess is what people will hope will happen, then the expert must put an agreement in writing, have it signed by the parties and then file it with the tribunal. If the dispute cannot be resolved through this early intervention dispute resolution system, a building claim can be lodged with the tribunal in order to have the matter heard and determined. What is interesting is that the building industry groups not only like the new process; they want it streamlined even further. They have called for the independent expert to have powers to actually "determine" the dispute, with very limited appeal against their decision.

Consumer groups such as BARG have been much more cautious. They feel the new scheme looks too much like the old BSC scheme, which was replaced by the tribunal. They are concerned that the people chosen as independent assessors will be the same old faces they saw in the BSC—the individuals whom BARG say used to visit building sites and, to use their words, "minimise the defects" in order to reduce the size of the insurance payments. Of course, it is important to point out that the independent assessors who work for the tribunal will not have the same conflict of financial interest that used to exist for inspectors who worked for the old BSC. However, I understand that there will be some nervousness because these assessors, of necessity, will come from within the building industry. There is obviously opportunity for them to have a close affinity with builders, and care will be needed to ensure that this link does not compromise their capacity to make objective judgments.

In response to consumer concerns, it will be critical to ensure that the personnel chosen to act as assessors are carefully selected. It will be important to ensure that the assessors operate according to clear guidelines to ensure that they respect statutory warranties set out for home consumers in section 18 of the Home Building Act. Consumers are tired of being subject to pragmatic compromises where they have to settle for less than they should in order to obtain agreement from a builder in mediation or to allow a tribunal member to appear conciliatory or unbiased. Measures will be required to ensure that they do not make expert or technical judgments outside their area of expertise. They should have the authority to obtain further tests and information about specific issues that are not within their own professional expertise. It has also been suggested to me today that it may be appropriate for these assessors to lodge information about their pecuniary interest.

I have two smaller concerns about the operation of the building dispute scheme as it is outlined in the bill. Firstly, the bill does not specify that the tribunal is able to permit the early intervention process to take place without formal hearings or waiting for the matters to list, and the holding of directions hearings, et cetera. In most cases it should be possible for the registrar of the tribunal to make the arrangements without undue formality immediately after the dispute papers are filed.

Secondly, I have a concern relating to the costs. I notice that in the first instance the tribunal will bear the costs of the building inspections conducted by assessors. However, in the circumstances where consumers have sought independent advice from a building consultant as a means of preparing themselves for lodging their claims with the tribunal, and their concerns about the quality of the building work are justified, I hope that the

tribunal will ensure that they receive compensation for any reasonable out-of-pocket expenses. I would now like to comment briefly on the operations of the Fair Trading Tribunal in resolving building disputes. I guess it could be said that this will be the most colourful part of my speech.

I believe that this is a very appropriate opportunity for me to make some comments about the operations of the Fair Trading Tribunal. This legislative package does amend the Fair Trading Tribunal Act. However, I believe that a more thorough-going reform of that agency is needed as part of a larger package of reforms to protect home building consumers. When the Fair Trading Tribunal was set up in 1997 it was intended to be an informal, expeditious and inexpensive means of resolving building disputes. It has turned out to be anything but that. During its first year of operation applicants, whether they were builders or consumers, waited about six to eight weeks between the filing of their application and the first hearing date. The recent annual report of the Fair Trading Tribunal states, "At present the tribunal's average first listing date across all divisions is approximately 11.2 weeks." That is, the waiting time has doubled in the first year.

I emphasise that this figure is an average; so some obviously wait longer. What is the point of appealing to a tribunal that takes three months to get around to listing your dispute, a time longer than most home builders take to actually build a house? Most consumers could have their homes built many times over while they wait for the procedures to drag on endlessly. The tribunal has not been game to give details of the time it takes to clear cases. In its last two annual reports it has used a meaningless measure of "the number of cases on hand" to benchmark its miserable performance.

In the opinion of many, the tribunal has become bogged down because it has not made sufficient use of its powers to carry out its tasks efficiently. Its Act was framed to give expression to the cutting edge of modern and speedy dispute resolution techniques. It gave the tribunal authority to: determine disputes without a hearing by just requesting the parties to lodge documents; use telephone or videoconferencing; give members the power to minimise legal argument and formality; use methods of alternative dispute resolution, such as mediation, neutral evaluation; and dispense with the formal rules of evidence. Division 4 of the Fair Trading Tribunal Act provides the tribunal chair with the authority to appoint expert assessors. The delay in making these appointments is outrageous. The chairman claims that the assessors have not been appointed because of budget difficulties. On page 3 of his annual report for this year the chairman said:

There continued to be a lack of clarity as to the Tribunal's budget for the year and an absence of appropriate delegations. Moreover the difficult resources environment inhibited the Tribunal's ability to make use of the assessors and mediators.

I contend that the above statement from the chairman is an admission that the management of the tribunal is a shambles. The lack of effort on the part of the chairman to appoint expert assessors is disgraceful. Enormous amounts of time in the tribunal are consumed with the debate about whether parts of houses have been constructed according to Australian building standards. The dispute progresses at a snail's pace while one building expert will give his opinion as to whether the bricks were laid correctly, whether the concrete slab was structurally sound, or whether termite protection has been compromised. Somehow or other complex construction terminology and building practice have to be explained at great length to a person whose working life has normally been in the legal profession.

Many members of the tribunal are people like me: they would not know the difference between a flat bastard file and a paint brush. Expert assessors were designed as a means of assisting tribunal members to cut to the chase on technical matters. There is no doubt that dozens of cases in the tribunal would progress faster if the job of deciding technical issues were left up to these independent experts. They can visit a building site, often with the builder and customer in tow, and quickly determine these issues for the member, enabling the member to deal with the legal issues. But, alas, none has been appointed, although they have been long promised. Last year the deputy chairman of the tribunal, Mr Ian McDonnell, wrote to a constituent of mine telling him:

As you will be aware, the Full-time Senior Members and Members of the Fair Trading Tribunal were appointed in late 1999. As a consequence, the Chairperson directed Senior Members carry out a comprehensive review of practices and procedures in the Tribunal. In the meantime I have been working with the Senior Members to develop a policy in respect of the use of Assessors as provided in the Fair Trading Tribunal Act. I hope to be able to communicate with you in the coming weeks concerning the operations of the Assessors' scheme.

The letter was dated 10 March 2000, but assessors have still not been appointed—more than one year later. I wonder what Mr McDonnell meant by a few weeks? I am appalled that the tribunal has not been able to appoint expert assessors, who would have dramatically reduced the time it takes to hear cases. But it has been able to find funding for two additional full-time members and 15 more part-time members. Unfortunately, the tribunal has not lived up to its charter to implement expeditious, inexpensive and informal dispute resolution, to quote

the Act, in building matters. I know of a dozen cases where the bill for the legal teams conducting the case, and the cost of consultants hired by both sides, have exceeded many times over the actual cost of the building work in dispute.

Other potential applicants who are mindful of the cost and delay in pursuing a complaint in the tribunal simply do not bother to seek justice at all. Others, I can sadly report, initiate a claim and then drop it because they feel intimidated by the potential cost. I can inform the House of a couple from the Macquarie Fields area who made an application to the Fair Trading Tribunal. They were legally represented, but their barrister had little experience in the tribunal. Lawyers representing the builder, a substantial development company, threatened them. They were told that if they persisted with their claim and lost they would face a legal bill from the other side of up to \$100,000. I regret to say that the member presiding over the case did nothing to convince them otherwise, even though such damages have never been awarded against a home owner in the tribunal.

The couple became so scared of the consequences that they instructed their barrister to drop the complaint. The hearing of the matter had lasted barely more than two hours. In such circumstances the member of the tribunal would normally have instructed them that they could leave, and no costs would be awarded. But oh no! Instead she allowed—and facilitated!—the building company to press an agreement on the couple that they not only drop the matter but that they also agreed to take no further action or make any further complaint to the media or any third party, such as the Department of Fair Trading or even a member of Parliament. I cannot name these people because of this stupid agreement that was struck in the tribunal.

So far as I can see the agreement made between the parties virtually cancels the effect of the insurance policy and the statutory warranties provided for them by the Home Building Act. If they make any complaint whatsoever about the quality of the building work on their house, they face immediate, and possibly expensive legal action. I wrote to the chairman of the tribunal on their behalf to assist them in obtaining a rehearing of the matter. The chair of the tribunal arrogantly ignored our combined submissions. I can assure honourable members that the building work on this house is defective, and cost the home owners thousands of dollars to correct. Some of the defects include lack of termite protection and compromises to the damp proofing of the house. The company fitted a shower rose to the wall of the ensuite bathroom, but designed the rest of the room in such a way that it is impossible to fit a shower recess. They have a shower tap and shower head in their ensuite, but they cannot use them. The chairman of the tribunal was informed of this, but he could not care less.

This week I made a visit to the Fair Trading Tribunal to observe the hearing of a show cause action brought by the Department of Fair Trading against a builder who is well known in this house, Mr Rocco Vitalone. The case has been going on for more than two weeks, and looks like going on for a great deal longer. I noticed that even the basic architecture of the hearing rooms, which have been constructed only recently, reflected a Victorian-era magistrates' court, with a high bench and wooden canopy constructed over the presiding member's chair. The only informal procedure I observed was that the deputy chairman, Mr Ian McDonnell, got plenty of exercise jumping up and down occasionally to receive documents tendered during the case. He frequently stepped outside to make multiple copies of documents for the various legal teams represented in the room.

I arrived just in time to hear Mr Vitalone trying to dazzle one of his hapless former clients with some amazing logic. He was trying to prove that because she signed every page of the building plans, she should have understood them. Therefore it was she, and not the builder, who was responsible for the placement of the electricity switches in her home. Apparently, she has the only home in Sydney in which all the light switches are located behind the doors. This means that at night when she walks into the rooms she has to shut herself into pitch dark, then grope around the walls behind the doors to find a light switch. It took more than 20 minutes to prove this small, but not insignificant, point. It is obvious that the rest of the case will take ages.

On previous occasions I have explained in detail how small glitches in the management of the tribunal, such as the failure to book translators and to summon all the parties to a hearing, the use of fraudulent medical certificates, and the failure to properly record proceedings, have cost petitioners to the tribunal the delay of a six-week adjournment or more. I could illustrate the point by reading a chronology sent to me by a constituent, Mr Lloyd Thomas. It outlines his experiences in the tribunal. He had problems with a builder, and made an insurance claim on his home warranty insurance policy from the insurer HOW, Home Owners Warranty. The company refused the claim.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

WORKCOVER STAFF DEPARTURES

The Hon. MICHAEL GALLACHER: My question without notice is to the Minister for Industrial Relations. What action is the Minister taking to stem the flood of departures among the 800 staff of the WorkCover Authority in the past three years, particularly in light of the more than 150 voluntary redundancies during this period?

The Hon. JOHN DELLA BOSCA: The honourable member's question relates to a purely operational matter. It is a good question. I will take it on notice and get back to him as quickly as possible.

The Hon. MICHAEL GALLACHER: I ask a supplementary question. What advice prompted the WorkCover Authority to finally gazette the approximately 150 voluntary redundancies dating back over that three-year period?

The Hon. JOHN DELLA BOSCA: Similarly, I will get back to the honourable member with an answer to his question as soon as practicable.

WINE INDUSTRY OCCUPATIONAL HEALTH AND SAFETY

The Hon. IAN WEST: My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House what the Government is doing for the health and safety of workers in the wine industry?

The Hon. JOHN DELLA BOSCA: Since February this year WorkCover has been undertaking a project aimed at improving health and safety in the wine industry. This project follows on from past initiatives, such as the introduction of the Wine Industry Code of Practice in 1999, which provides guidance for managing the occupational health and safety of workers engaged in this industry. The code was developed by WorkCover in close consultation with the Wine Industry Association of New South Wales and the Hunter Valley Vineyard Association Winecare Committee. A review of the wine industry undertaken following the introduction of the code resulted in more than 50 infringement notices being issued by WorkCover inspectors to wineries and vineyards.

The current project aims to raise awareness of the code and occupational health and safety legislation. The first part of the project has involved an information-gathering exercise. This included the conduct of a survey amongst 190 wineries located in northern New South Wales. The survey achieved a 50 per cent response rate. Preliminary results from the survey have indicated appreciable awareness of the wine industry code, a significant level of compliance with workers compensation insurance legislation and accident notification requirements. The survey is also helping to determine areas of the industry to be targeted in a program of workplace inspections.

A program of this kind has begun with inspections of 42 grape-crushing operations in the target area. This will be followed by inspections of other wineries that failed to respond to the survey. Wherever breaches of relevant legislation are encountered in the current project, remedial notices are being issued to ensure that safety shortcomings are rectified and appropriate control measures are implemented. The inspection program has the added benefit of improving compliance amongst wineries not yet visited by a WorkCover inspector, as news of the program is spreading throughout the industry. WorkCover is confident that this project will lead to significant health and safety improvements for workers in the wine industry.

ELECTRICITY CHARGES

The Hon. DUNCAN GAY: My question is directed to the Treasurer. Does he stand by his continued assertions that the contestable electricity market will deliver cheaper power prices to eligible customers, especially in the light of comments published in yesterday's *Australian* newspaper pointing to the possibility of price rises of up to 20 per cent in coming months, and considering that State energy Ministers are meeting in Melbourne today to discuss probable price rises?

The Hon. MICHAEL EGAN: I stand by all the comments I have made about the contestable electricity industry. I am pleased to be able to advise the House not only that New South Wales electricity prices are the lowest in Australia, but that they are probably among the lowest in the world—certainly the lowest in the world in relation to any of what might be referred to as stable political democracies.

The Hon. Dr Arthur Chesterfield-Evans: Stable democracy? Get serious!

The Hon. MICHAEL EGAN: Which part of my answer is the honourable member disagreeing with, "stable" or "democratic"?

The Hon. Dr Arthur Chesterfield-Evans: Democratic—the way you move.

The Hon. MICHAEL EGAN: It would be a lot less stable if the Opposition were doing a better job. If the Opposition did a better job, there would be some political uncertainty in this State, but there is no political uncertainty in this State because we have a pathetic Opposition—an absolutely pathetic Opposition. One had only to be present last night at the estimates committee hearing that dealt with my portfolios to realise how hopeless the Opposition is. In fact, Labor members of that committee did not ask me any questions; they said they were happy with the budget. The only intelligent questions were from the crossbench. I did not get one single intelligent question from the Hon. Jennifer Gardiner or the Hon. John Jobling.

In fact, the Opposition sent along its C-graders. I am getting a bit offended by that. I want the Opposition frontbenchers to come and quiz me. The Deputy Leader of the Opposition will never attend the estimates committee hearing that examines my portfolios, because he knows that in the two hours set aside for the examinations he will get done over time and again. I ask the Deputy Leader of the Opposition to try to get a guernsey to the estimates committee that examines my portfolios. As I was saying, New South Wales has the lowest electricity prices in Australia. It also has, of course, electricity prices that are considerably less in real terms than they were in 1994-95—considerably less than they were when the Coalition Government was in office.

That was a relative burden that the then Coalition Government was happy to impose on New South Wales businesses and consumers—just as it was prepared to impose the burden of payroll tax rates of 7 per cent and 8 per cent' and just as it was prepared to impose the burden of banking taxes. Of course, on 1 January next year there will be no taxes in this State on any banking or credit card transactions. New South Wales will be the only State in Australia without that impost. The high-taxing Opposition could only manage to chalk up not a surplus but a combined deficit of \$7 billion in seven years in office. It had high taxes, high electricity charges and massive budget deficits that meant that in the early 1990s New South Wales almost lost its triple-A credit rating. As I have pointed out on many other occasions, cheaper electricity is considerably cheaper than it ever was under the Coalition. There was not a point between 1988 and 1995 with a Coalition Government when electricity prices were cheaper than they are now. That speaks for itself.

The Hon. Duncan Gay: That is not true.

The Hon. MICHAEL EGAN: It is absolutely true. The honourable member knows it to be true. It does not matter how many times he repeats the lie, it will not make it true.

EASTERN DISTRIBUTOR CONSTRUCTION HOMES DAMAGE

Reverend the Hon. FRED NILE: I ask the Minister for Mineral Resources, representing the Minister for Transport, and Minister for Roads, a question without notice. Is it a fact that between 30 and 50 residents have made complaints concerning cracks in the walls of their homes, allegedly as a result of work carried out in building the Sydney Eastern Distributor. Is it a fact that the Eastern Distributor, which was built by Leighton Constructions, was opened in December 1999? What action is the Government taking to ensure that those residents receive adequate compensation?

The Hon. EDDIE OBEID: I have no doubt that my colleague in the other House will be keen to address that important issue. I will get the honourable member an answer from him as soon as possible.

YOUTH DRUG AND ALCOHOL REHABILITATION CENTRES

The Hon. HENRY TSANG: Will the Minister for Juvenile Justice inform the House about progress in establishing new youth drug and alcohol rehabilitation centres?

The Hon. CARMEL TEBBUTT: Drug and alcohol abuse is often a significant factor in young people becoming involved in offending behaviour and ending up in the juvenile justice system. Addressing the reasons for young people offending can have a significant impact on reducing the number of young people involved in crime. I am happy to inform the House about progress with two new youth drug and alcohol rehabilitation centres at Dubbo and Coffs Harbour. As honourable members would be aware—because the Hon. John Della Bosca and I have spoken previously in the House about these facilities—they are a result of the recommendations from the 1999 Drug Summit. It identified the need for more services aimed at young people with drug and alcohol problems in rural and regional areas.

Last week, with my colleague the Hon John Della Bosca, I announced that the Ted Noffs Foundation was the successful tenderer for the operation of the Coffs Harbour centre. My colleague had previously announced that the Ted Noffs Foundation would operate the rehabilitation centre in Dubbo. It would not come as a surprise to members of this House that the organisation was successful in tendering to operate both centres, because its reputation is second to none. The work it does with young people who are drug and alcohol addicted is well known. The services at Coffs Harbour and Dubbo will provide residential rehabilitation treatment to young people between the ages of 14 and 18 years who have a drug and/or alcohol problem that may have brought them into contact with the juvenile justice system.

The service will also target those who may be at risk of coming into contact with the juvenile justice system. We are trying to reach out to the group that, while not yet caught up in the system, is at risk of being caught up. Each service is expected to be able to accommodate six young people at any one time. They will undergo a 12-week residential program involving, for example, individual and family counselling, education and training, and living skills. A 12-week follow-up program will also help the young person settle back into the community, with further contact after nine and 12 months.

Helping these young people is crucial. That is why out of the Drug Summit funding the Government has allocated \$2.4 million over three years for the provision of the rehabilitation units. In addition, there is a one-off payment of \$800,000 for capital funding for locating and refurbishing suitable sites for both centres. The Commonwealth Government is also contributing to the recurrent costs under the National Illicit Drug Diversion Strategy. The Ted Noffs Foundation has a long and distinguished history in providing community-based adolescent drug and alcohol treatment. The foundation has been operating for some 25 years in the eastern Sydney region. More recently it has extended its activities into western Sydney, the Blue Mountains, the Australian Capital Territory and now the mid North Coast and western New South Wales. The work of the Ted Noffs Foundation with troubled young people is extremely impressive. Evaluations have shown that it is a very effective program for helping young people with drug and alcohol problems.

The adolescent units at Coffs Harbour and Dubbo will be extremely important to the two communities in which they are located. If we can reach out early, before the problems become entrenched, to young kids now showing signs of drug and alcohol problems we as a community will benefit from the reduction in crime and antisocial behaviour. The young people and their families will also benefit. I am very pleased to report to the House progress with this initiative.

EMBEZZLED FUNDS TRANSFER

The Hon. DAVID OLDFIELD: My question is to the Treasurer, representing the Minister for Police. What is the procedure when it is suspected that a person convicted of fraud has transferred moneys interstate or overseas? What capacity do police investigators have to track and recover embezzled funds hidden by such transfers? What level of focus is there on identifying the location of embezzled funds? With the millions of dollars that from time to time disappear from solicitors trust funds, is the out-of-State or overseas tracking of embezzled funds a routine part of the investigation or a matter considered case by case?

The Hon. MICHAEL EGAN: I thank the Hon. David Oldfield for his question, which is important and interesting. I must confess that I do not have any particular knowledge or expertise in the matter.

The Hon. Duncan Gay: You have colleagues who probably do, though.

The Hon. MICHAEL EGAN: I am sure that I do have colleagues who do. I will refer the honourable member's question to the Attorney General and obtain a response as soon as I am able to.

MACLEAY RIVER FISHING BANS

The Hon. JENNIFER GARDINER: My question is to the Minister for Fisheries. In light of your decision to retain most of the bans on fishing in the Macleay beyond 1 July following the floods of three months ago, will you advise the House of your reasons for the ongoing closures? Given that your administration is examining the social and economic impact of fisheries options on local communities, have you assessed the economic impact of these closures on Macleay Valley businesses, including the tourism industry? What is the impact on those businesses? When will you review your decision?

The Hon. EDDIE OBEID: Last week the Hon. Jennifer Gardiner asked me a question while the working group was still looking at the issue through the community consultation process. The Richmond and Macleay communities have been hard hit by the northern floods. It has been a devastating three months for fishing families and local businesses. The floods virtually wiped out aquatic life in the rivers—something I saw when I visited in March and in April. At that time, acting on the advice of the fishing community and scientists, it was decided to ban commercial and recreational fishing until 30 June this year. Today I am pleased to advise that fish are starting to return to the waterways. Unfortunately, the process is not as fast as we would like. However, latest tests indicated that fish and aquatic life are returning to the mouths of the waterways. Some pockets of the rivers are heavily populated with fish and crabs.

The fish are a community-owned resource. That is why the New South Wales Government asked the Macleay and Richmond communities for their opinion on how to reopen the estuaries. The response has been overwhelming. Over 900 submissions have been received. Taking these into account, I have decided to allow limited recreational and commercial fishing in these rivers from 1 July. Unlike the Coalition, we are consulting with the experts—the community and scientists—to protect the sustainability of the rivers. Unlike the shadow Minister for Fisheries and the member for Oxley, this Government is working with the community. If the member for Oxley and the shadow Minister are really serious about the fishing families of the Richmond and the Macleay, why have they not appealed to their colleagues in the Federal Coalition Government? Fishers were crying out for income support in the period following the devastating natural disaster. I did not hear anything from the Coalition—neither from the Hon. Jennifer Gardiner nor from any member on the part of the coast affected.

Instead of contributing to protecting the sustainability of the Macleay River, the only contribution of the member for Oxley was a media release. Last week the shadow Minister demanded a pre-emptive decision on the Richmond River. She did not want me to wait until the end of the consultation period to listen to what the community had to say. She wanted me to act without the full advice of the recovery group, which included Fisheries, scientists, and community stakeholders. Yet we decided that until 15 June we would consult with the rest of the community affected. And consult we did.

I am very happy to advise that the decision by the community was that we should partially open the river. The Opposition spokesperson does not care about the Richmond or Macleay communities. Every time we tried to consult with the community on relevant issues she said, "No, don't bother about it, just go ahead and make your decision based on the working group's advice." I assure honourable members that the Government consults with the community, because the only way to have responsible fishing for the future is to have community ownership. The community that owns this resource should have a major say in what the Government does with future legislation.

The Hon. JENNIFER GARDINER: I ask a supplementary question. Minister, I note that you did not answer my question. Will you provide the House with the latest scientific papers you have relied upon to make the ongoing closures, in preference to the input from the recovery committees and local communities on both the Richmond and Macleay rivers?

The Hon. EDDIE OBEID: The Hon. Jennifer Gardiner has not listened to one word that we have been saying about consultation. From the day the rivers were closed the Government got scientists, commercial fishers, recreational fishers, conservationists and fishery scientists together to carry out tests transparently and openly. That is where the recovery team got its information. The scientific evidence is there, and it was the basis of the consultations. The Hon. Jennifer Gardiner has not bothered to go to the area; nor has she spoken to any members of the communities. She has not spoken to the recovery group. I suggest she look at the scientific evidence that was available to the community and the recovery group, because that was the basis of the decision.

NATIONAL DRUG ACTION WEEK

The Hon. TONY KELLY: My question without notice is to the Special Minister of State. Will the Minister inform the House of any activities occurring during National Drug Action Week?

The Hon. JOHN DELLA BOSCA: This question, this is National Drug Action Week, which is co-ordinated by the Alcohol and Other Drugs Council of Australia.

[Interruption]

Is the Hon. Charlie Lynn critical of National Drug Action Week? The council is the national peak body representing the interests of the drug and alcohol field. The council runs National Drug Action Week to raise awareness of the harm associated with drug abuse and to identify ways to better address drug problems. Community drug action teams in New South Wales have taken up the concept with enthusiasm and are doing their bit to promote awareness in their local communities. In fact, it would not be an exaggeration to say that this week thousands of people will be discussing drug issues and solutions for lessening the impact of drugs, in a wide range of public events across New South Wales as part of National Drug Action Week.

The community-based nature of the week's activities is a positive sign that the Government's strategy of supporting local involvement in tackling illicit drugs is working. There are now 56 community drug action teams, 37 of which are in regional areas. Many teams are organising free events such as movie screenings and public forums to help communities gain a better understanding of drug-related issues. Last night, in your company Madam President, I hosted a screening of the movie *Traffic*, at Hoyts George Street as part of the week's activities. Hoyts Cinema generously co-sponsored this event with the Premier's Department, a great example of the way in which partnerships on drug action are working.

All participants in the 1999 Drug Summit and representatives of some of our community drug action teams were invited to the event. While many honourable members from this Chamber and the other place were invited, due to estimates committee hearings and the Legislative Assembly sitting, few were able to attend. I do acknowledge, Madam President, that you were able to attend and I hope you found the film as interesting and thought-provoking as I did. For those who have not seen the film and are interested in this issue, I recommend it. The film portrays the issue in both the personal and global context, with all its complexity and contradictions.

Community drug action teams have responded enthusiastically to the National Drug Action Week. I am sure that honourable members will be interested to hear of some of those activities, or may even wish to become involved. Tumby Umbi High School is hosting an information evening and a hypothetical session. The hypothetical question is: In 2011, an 11-year-old kid overdoses in our community. In the year 2001 what can we as a community do to prevent that from happening?

Community drug action teams in Wollongong, Forster, Cessnock and Maitland are hosting special free screenings of the film *Traffic* in partnership with local cinemas and holding discussion groups afterwards. At Gosford, a Drug Awareness and Information Expo will be held in Kibble Park, with youth bands, Aboriginal dancers and information stalls. In Mudgee, young people who have overcome their drug addictions and drug habits will be talking about their experiences to local high school students. A free movie night, featuring films dealing with drug issues, and a supper forum will also be held.

The Albury community drug action team will launch an information brochure about local services that can help individuals and their families with drug and alcohol problems. I am sure that honourable members will agree that those are extremely worthwhile activities and all members of community drug action teams should be congratulated on taking part.

WESTERN REGION FORESTRY AGREEMENTS

Ms LEE RHIANNON: I direct my question to the Minister for Juvenile Justice, representing the Minister for Forestry. Will funding similar to that made available to the timber industry for restructuring as a result of previous forestry agreements in New South Wales be made available for the western region forestry agreements, including the Brigalow Belt South agreement?

The Hon. CARMEL TEBBUTT: I will refer Ms Lee Rhiannon's question about funding for timber industry restructuring to the Minister in the other place. I undertake to obtain a response as soon as possible.

DULWICH HILL AND MARRICKVILLE HIGH SCHOOLS AMALGAMATION

The Hon. PATRICIA FORSYTHE: My question is to the Special Minister of State, representing the Minister for Education and Training. In view of the announcement by the Government to extend the period of

consultation on the amalgamation of Dulwich Hill and Marrickville high schools for three months, does the Government intend to establish a committee which will include school, parent and community representatives to undertake that work? If so, when will it be established? If not, how does the Government intend to resolve the issues that arose in the first consultation?

The Hon. JOHN DELLA BOSCA: The Hon. Patricia Forsythe would be aware that a priority of the Department of Education and Training is to ensure full access to information concerning public education for all parents, care givers and school community members, including people from non-English-speaking backgrounds. For parents, care givers and school community members from non-English-speaking backgrounds the department's principal communication strategy has been to provide schools and districts with funds to meet the cost of engaging the services of recognised interpreters.

At Marrickville Public School and Marrickville High School meetings were held at which community members asked questions through their interpreters. I do not have the immediate ability to answer the honourable member's question about recent rearrangements with respect to Dulwich Hill and Marrickville. The remainder of her question relates to specific consultation mechanisms, and I will obtain an answer and make it available to her as soon as possible.

RETAIL EMPLOYEES WORKER ENTITLEMENTS

The Hon. JOHN JOHNSON: My question without notice is to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House how the Government is ensuring that retail workers receive their correct employment entitlements?

The Hon. JOHN DELLA BOSCA: I inform the Hon. John Johnson that recently a campaign was completed involving retailers in the Bega central business district. Industrial inspectors have worked in the area since March this year to ensure that local retailers understand their legal obligations under the New South Wales industrial laws. In the first stage of the campaign the department provided 25 separate retailers with free information about their legal obligations, including copies of awards, legislation and other relevant material. Retailers were also offered free advice on industrial relations matters. During April and May workplace inspections were carried out to examine employees' time and wages records.

The department's workplace inspectors viewed the records of 103 employees in Bega, 70 of whom were females. The workplace inspectors uncovered 69 serious breaches of the Act and the Shop Employees (State) Award. Initially, only three of the retailers were found to be fully in compliance with the Act and the award. However, I am pleased to report that as a result of the department's work and the constructive and co-operative attitude displayed by the remaining employers, the shortfalls have since been rectified. More than \$8,000 has been back paid to the employees. Consequently, the department does not intend to take prosecution action against any of the retailers involved in the campaign.

It is also notable that the New South Wales division of the Australian Retailers Association assisted the department significantly in this campaign. It provided information to employers as part of the larger information kit provided by the department. The association is to be commended for its approach in ensuring compliance with this State's employment laws. The outcome of the department's retail industry campaign in Bega is an example of the Government's practical and balanced approach to compliance with this State's industrial laws. At a local level Bega retailers now have up-to-date information to help them understand their legal obligations in the industry. They also have a greater knowledge of the services on offer through the Department of Industrial Relations that will assist them to meet their obligations.

The employees in the Bega locality have been educated in relation to their rights and responsibilities in the workplace. Importantly, they are now receiving their correct award wages and conditions. More broadly, this campaign has again illustrated the need for such campaigns throughout New South Wales by the department's industrial inspectors. Currently the department has 26 separate campaigns either under way or about to commence. Included in these campaigns are retailers in Coffs Harbour, Yamba, Newcastle, Bankstown and Nowra. The Bega retail targeting campaign is just one example of the Government's commitment to balanced and constructive industrial relations in this State. I am also aware that the honourable member is particularly concerned about the managers of retail stores, particularly employed managers. Obviously, I have undertaken to get a detailed response on the implications of these campaigns for the employed managers of such operations.

GUNS AND AMMUNITION IN SCHOOLS

The Hon. JOHN TINGLE: My question without notice is addressed to the Minister for Juvenile Justice, representing the Attorney General. Is the Attorney reviewing the penalties imposed on a father and son

in the recent case of a hand gun and ammunition being taken to a school at Castle Hill? As the court penalties imposed for the two counts of possessing an unregistered firearm were a caution for the boy who took the gun to school and a good behaviour bond for his father, can the Attorney advise the House whether these penalties are in keeping with the spirit or the letter of the Firearms Trafficking Bill, which was passed recently? If they are not in keeping with penalties provided in the bill, will the Attorney ask the Director of Public Prosecutions to consider an appeal against the leniency of the two penalties?

The Hon. CARMEL TEBBUTT: I do not actually represent the Attorney General; the Treasurer does. Given that he is unavailable I will refer the question to the Attorney General and undertake to get a response as soon as possible.

MONTAGUE ISLAND FAIRY PENGUIN COLONY

The Hon. RICK COLLESS: My question is directed to the Minister Assisting the Minister for the Environment. Can the Minister confirm that 42 fairy penguins were burnt to death in a fire ignited by National Parks and Wildlife Service officers on Montague Island? What action will the Minister take to ensure that in future National Parks and Wildlife Service officers refrain from killing off native animal species in New South Wales, as they did with 400 bats last year?

The Hon. CARMEL TEBBUTT: I thank the honourable member for his question because it provides an opportunity to put on record some of the details around what is a very unfortunate incident that occurred over the weekend on Montague Island. Having said that, the tenor of the honourable member's question would probably cause some concern to members of the National Parks and Wildlife Service because it seemed to indicate that it was a deliberate event. Nonetheless, the best way to respond is to provide more detailed material to the House. Last Saturday an experimental burn-off of an infestation of kikuyu grass on the island burnt several hectares of this dangerous weed. This burn-off was part of a wider scientific project. The project is being overseen by an eminent scientist, Professor Nick Klomp of the Charles Sturt University, who is working in partnership with the National Parks and Wildlife Service. For several years the professor has been studying the threat posed by kikuyu infestations to the breeding habitat of the island's colonies of 12,000 little penguins.

The Hon. Charlie Lynn: They certainly fixed that.

The Hon. CARMEL TEBBUTT: It is all very well for the honourable member to interject, but this is a serious issue. Kikuyu poses a threat to the island's colony, as I will outline to the House if honourable members opposite are in any way interested. In some areas the grass grows in thick mats up to two metres in height. Professor Klomp has found that the kikuyu has doubled and the colony's growth has been threatened. Indeed, a number of penguins have died over recent years because of strangulation by grass runners. The burrows of the penguins have been dangerously overgrown, significantly reducing the area where the birds can live and breed.

Professor Klomp's project has been examining several options for dealing with this problem, including experimental burning of limited areas, the use of herbicides and replanting of native plants and trees. Last Saturday the service and the team from the Charles Sturt University decided to use a one-off experimental burn off to evaluate its effectiveness in reducing the kikuyu's density to allow for the replanting of native plants. The timing was chosen because the great majority of the 12,000-strong colony is then off-shore, away from their burrows, searching for food at this time of the year. Unfortunately, a wind change saw the burn get out of control, and 42 penguins died.

Staff who work on Montague Island are rightfully proud of their dedication to the penguins and the island's fragile habitat. The parks staff have won international awards for their management of the island and for balancing environmental issues with ecotourism. Their efforts are also rightfully recognised by the local community, especially the Narooma community. As a result of their work the local Narooma economy receives more than \$1.6 million a year from visiting tourists and 26 locals have jobs in the private sector. Local staff are dedicated to preserving these penguins and serving the local community. I am advised that they are devastated by this incident. I can report that the Director-General of National Parks and Wildlife has asked Dr Peter Dann to join with parks staff and officers from the Rural Fire Service's fire investigation unit to identify what happened in this incident. Dr Dann is an internationally renowned expert on penguins who works for the Phillip Island Nature Park in managing its famous penguin colony. The attitude of honourable members opposite indicates that they do not take this issue seriously. Their environment record is appalling. [*Time expired.*]

WALLERAWANG POWER STATION RENOVATIONS

The Hon. JAN BURNSWOODS: My question is to the Treasurer, and Minister for State Development. Can the Minister update the House about the current situation at Delta Electricity's Wallerawang power station?

The Hon. MICHAEL EGAN: I am glad that the Hon. Jan Burnswoods has asked me that question because I can inform the House of some excellent news about the Wallerawang plant at Lithgow. Delta Electricity has recently announced that it plans to spend \$22 million to renovate its coal-fired generator known as unit seven. This is a very significant investment at Lithgow and it is expected to secure local power generation jobs as well as boost the local economy with spending related to visiting technicians. Siemens Engineering was recently contracted to refurbish the generator and expects the work to take around two years. Siemens has worked on several other power industry projects at Lithgow, so its local experience will be invaluable. Delta has spent a considerable time analysing the future of unit seven and has decided that refurbishment is a better commercial option than either replacing or closing the plant. When the plant was originally built by the old Electricity Commission—the Hon. John Jobling is old enough to remember the Electricity Commission—

The Hon. John Jobling: You are right.

The Hon. MICHAEL EGAN: And so am I—it was intended to operate for only three months of peak supply a year, serving as a backup to the main generation system. I am sure the Hon. John Jobling is also aware of that. Since Delta took over Wallerawang in 1996 unit seven has operated at considerably higher production levels than was predicted initially, but some troubling technical difficulties have necessitated a review of its future. In announcing the refurbishment Delta's chief executive Mr Jim Henness said that the budgeted \$22 million upgrade makes good business sense for Delta and for the supply of power across New South Wales. Mr Henness said that the upgrade would make a significant contribution to meeting predictions of electricity demand. The Country Labor member for Lithgow, Mr Gerard Martin, represented the New South Wales Government at the upgrade announcement, and said:

This renewal of Wallerawang will cement its place as a key part of the State's energy infrastructure for many years to come.

The Hon. Duncan Gay: Is that the same bloke who didn't send any letters to Harry Woods about the aluminium smelter? Is that the one?

The Hon. MICHAEL EGAN: Mr Woods was not the Minister who dealt with that matter; I was. I received many representations from Mr Martin on that issue. In fact, I think I had more representations from him on that single issue than I have received in six years from all the members on the Opposition benches. I cannot recall the last time that an Opposition member in this Chamber made representations to me in my capacities as Treasurer and Minister for State Development, or even as Minister for Energy. I am not saying that that did not happen on the odd one or two occasions, but it was only the odd one or two occasions.

The Hon. Duncan Gay: Table them.

The Hon. MICHAEL EGAN: I have a stack of correspondence and representations on my desk every day, and not one of them comes from the Opposition. The Government is delighted that Wallerawang will become an increasingly valuable contributor to the national electricity market, and we congratulate Delta on its far-sighted business investment.

COMMUNITY RELATIONS COMMISSION

The Hon. Dr PETER WONG: My question is directed to the Treasurer, representing the Premier, Minister for the Arts, and Minister for Citizenship. Is the Treasurer aware that last Wednesday's National Press Club of Australia address by the chair of the newly established Community Relations Commission on the future concepts of citizenship had to be cancelled due to lack of interest? What does this inability on the part of the Community Relations Commission to engage the interest of the community and national media say about the relevance of the commission? Given this obvious lack of public interest in the Government's new and supposedly exciting concept of citizenship, why was it so important to change the name of the Ethnic Affairs Commission and the associated ministerial portfolio?

The Hon. MICHAEL EGAN: That is a very good question, and I thank the Hon. Dr Peter Wong for it.

The Hon. Duncan Gay: You're going to refer it on.

The Hon. MICHAEL EGAN: No, I will not refer it to anyone. I do not think much of the National Press Club. I have never been to the National Press Club and, if I were invited, I would not go. However, I have often watched press club lunches on television or heard excerpts from the questioning of various guest speakers, and I think they are a pretty second-rate bunch. If I were the chair of the Community Relations Commission I certainly would not waste my time talking to the National Press Club; I would talk to more important people in our community.

WORKCOVER TARIFF CLASSIFICATION

The Hon. DOUG MOPPETT: My question is addressed to the Minister for Industrial Relations. Did the Minister inform the House on 7 June that WorkCover had been placed in the financial institutions tariff classification when its workers compensation insurer was GIO Australia from 1989 until September 1999? Why was WorkCover's tariff classification changed when it joined the Treasury Managed Fund in September 1999, and what was the new classification it received? What is WorkCover's current tariff classification?

The Hon. JOHN DELLA BOSCA: That is an excellent question. I have explained the difference between the Treasury Managed Fund's operation of WorkCover's insurance and the way in which the premium—I think it was at the estimates committee hearing—

The Hon. Michael Egan: I am the expert on the Treasury Managed Fund.

The Hon. JOHN DELLA BOSCA: I know. The Treasury Managed Fund is a very good claims manager. I do not wish to be disrespectful to the Hon. Doug Moppett, but I think his question is very similar to one I was asked during the estimates committee hearing, which was placed on notice and which I undertook to answer. Therefore, I seek the Hon. Doug Moppett's indulgence and undertake to make the answer to the estimates committee question available to him as soon as practicable.

now2001 EXHIBITION

The Hon. RON DYER: My question is directed to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. Will the Treasurer please update the House on the success of the now2001 exhibition?

The Hon. Dr Brian Pezzutti: Now? Not then?

The Hon. MICHAEL EGAN: No, it is the now2001 exhibition; that is its name because 2001 is now. Last year 2001 was next year and next year 2001 will be then. Although, in Paul's first letter to the Corinthians he uses "then" to refer to the future. He refers to the time when things will be perfect and, in comparing now with the future, he refers to "then".

Reverend the Hon. Fred Nile: That was all in Greek.

The Hon. MICHAEL EGAN: No, it was in English. I only read the *New Jerusalem Bible*; I regard all others as heretical. But even the *New Jerusalem Bible* contains what I regard as a very strange use of the word "then". I would like to retranslate it and make it more easy to understand.

The Hon. John Della Bosca: It's Hebrew tradition.

The Hon. MICHAEL EGAN: I see. I assure honourable members that the now2001 exhibition was held in May this year. It was held at Darling Harbour and officially opened by the Minister for Information Technology, Kim Yeadon. This year the exhibition was held under the auspices of the Australian Telecommunications Users Group and CeBIT, and represents Australia's premier information and communications technology event. CeBIT's involvement was the first of its kind in Australia. Internationally, CeBIT represents the largest exhibition provider focusing on information technology and communications [ITC]. As all honourable members will be aware, its major global event, which is held in Hanover Germany, is renowned throughout the world. The Hon. Dr Brian Pezzutti has upbraided me on many occasions for not attending the annual CeBIT fair.

The Hon. Dr Brian Pezzutti: You should go.

The Hon. MICHAEL EGAN: I would love to, but I do not anticipate that I will have the opportunity to do so for a very long time. Sydney is the focal point of the information technology and communications industry in Australia, and has the largest concentration of information technology and communications businesses in Australia. Almost 75 per cent of Australia's top 250 ITC companies are based in Sydney. In the Asia-Pacific region only Japan has a larger domestic market for ITC products and services than Australia.

People now are saying ITC; they used to say ITT, then ICT, but apparently it is now ITC! I will not quibble with that. The exhibition involved 180 exhibitors, including companies from the United States of America, the United Kingdom, China, Japan, India, France, Germany and Canada. Honourable members might be interested to learn that Taiwan is actually Australia's fifth biggest export partner; certainly it is New South Wales fifth biggest export partner. I was not aware of that fact until recently.

Over the three days nearly 7,000 business visitors attended the event. The Department of State and Regional Development was represented by eight innovative companies, many of course being members of the Australian Technology Showcase. The companies were Call Direct Telecommunications, Gpayments, DataTrack, De Morgan Electrodata, InfoStream, Zylotech and Forge Information Technology. *[Time expired.]*

SOLICITORS COSTS

The Hon. PETER BREEN: My question without notice is to the Treasurer, representing the Attorney General. Is the Attorney aware that solicitors costs agreements are not binding on solicitors and that the Legal Profession Act actually allows a solicitor to repudiate a costs agreement and charge a client in excess of the amount agreed to? Is the Attorney aware also that a client who disputes a solicitor's bill has no effective dispute resolution remedy except through the Office of the Legal Services Commissioner or the Supreme Court cost assessment scheme, that neither remedy is independent of solicitors, and that both appear to deny the principles of procedural fairness? Will the Attorney take steps to initiate an inquiry into legal cost disputes and the independence of the Office of the Legal Services Commissioner and the Supreme Court cost assessment scheme?

The Hon. MICHAEL EGAN: That appears to be a thoughtful and important question. Of course, I am not the Attorney General; I only represent him in this House. I suppose I should not step into somebody else's portfolio, but I have a layman's knowledge of these things. I can understand that when one engages a solicitor or lawyer there should be a freedom of contract, if you like, for a solicitor and his or her client to set their own payment arrangements. I suppose what the honourable member is really referring to is when a client is paying someone else's costs. Is that the crux of the matter?

The Hon. Peter Breen: The crux of the matter—

The PRESIDENT: Order! Are you asking a supplementary question?

The Hon. MICHAEL EGAN: No. I am seeking clarification.

The PRESIDENT: The Hon. Peter Breen may continue.

The Hon. Peter Breen: The dispute is in relation to a client engaging a solicitor to do a certain amount of work for a certain fee and then that agreement subsequently being repudiated by the solicitor on the basis that the case involved more work or whatever. No system is in place for the client to independently argue the justice of that situation.

The Hon. MICHAEL EGAN: That seems to me to be an appalling situation. I will refer the question to the Attorney General and seek his advice and action.

MINISTER FOR MINERAL RESOURCES, AND MINISTER FOR FISHERIES PECUNIARY INTEREST DISCLOSURE

The Hon. GREG PEARCE: My question is to the Minister for Mineral Resources, and Minister for Fisheries. On 19 October 1999 the Minister stated in relation to his undisclosed shareholding in Max Cutting Pty Ltd that "after considerable research ... it appeared that one share out of 700 remained in my name, which I transferred back". However, the 2000 annual return of Max Cutting Pty Ltd lodged with the Australian Securities and Investments Commission [ASIC] on 23 November 2000 shows that one share in the company

continued to be held by Edward Moses Obeid. Did the Minister in fact transfer that share to some other person in or around October 1999 or did he mislead this House on 19 October 1999?

The Hon. EDDIE OBEID: That issue has been well canvassed. The Hon. Greg Pearce is trying to resuscitate issues that have long been addressed. If he wants to know exactly what the situation is, he can ask the Clerk if he can look at my pecuniary interests disclosures.

The Hon. GREG PEARCE: I ask a supplementary question. In order to correct the public record will the Minister obtain and table in this House a copy of the signed and dated share transfer by which he claims he disposed of his interest in Max Cutting Pty Ltd? That would establish for the House once and for all whether the Minister has in fact transferred the share? Will the Minister table that share transfer and any other documents necessary to explain his position in this company prior to question time tomorrow?

The Hon. EDDIE OBEID: As I said before, and I will say it to him again—I know he is a new member who is not used to the protocols of this House; we have seen his behaviour—if he wants to understand exactly what I have said, it is on record. If he cannot read it, he should get someone to help him. He is a fake lawyer. He would not have a clue.

LOW-IMPACT MINING EXPLORATION PROTOCOL

The Hon. AMANDA FAZIO: My question is to the Minister for Mineral Resources. What has been done to address native title and exploration in New South Wales?

The Hon. EDDIE OBEID: I thank my colleague the Hon. Amanda Fazio for an important question. The New South Wales Government actively encourages investment and exploration in our minerals industry. We encourage also good relationships between investors and explorers and the community. We have ensured also that laws are in place to protect the interests of land-holders and potential investors at exploration sites. The native title issue continues to be widely discussed. The New South Wales Government is working with the Commonwealth, Aboriginal people and the community to find effective solutions to allow agreement to be reached over access for exploration. I am pleased to advise the House that an historic agreement has been reached today.

The New South Wales Minerals Council and the New South Wales Aboriginal Land Council today signed a memorandum of understanding that protects the interests of both parties. The "General Protocol for the Negotiation of Agreements for Exploration and Mining for NSW" is a major step forward. It shows that the New South Wales Aboriginal community and the mining industry are committed to working together. The agreement is similar to that required under our State's Mining Act between exploration companies and private freehold land owners. In 1999 the New South Wales Government amended the New South Wales Mining Act to provide for low impact exploration licences.

In October 1999 the Federal Attorney-General agreed that our State's low impact exploration proposals complied with the amended Commonwealth Native Title Act. In December last year the New South Wales Government introduced a low-impact exploration protocol. This requires agreement between native title holders or claimants and private land-holders. It is similar to the requirements of our State's Mining Act between exploration companies and private freehold land owners. Today's agreement is a first; it is an agreement between industry and the Aboriginal community that benefits everyone in this State. It is good news for the mining community, the Aboriginal community and the very vital and important matter of providing jobs for the people of New South Wales.

WORKCOVER JUDICIAL INQUIRY

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question is to the Minister for Industrial Relations. Is it true that the letters patent referring the terms of reference for a judicial inquiry into WorkCover to the Hon. Justice Terry Sheahan were signed on 7 June 2001? The judicial inquiry was to commence on 18 June, as stated in the document containing the terms of reference for this inquiry that the Minister tabled on 20 June. Why was there a delay in informing the public of this important matter?

The Hon. JOHN DELLA BOSCA: It was not a deliberate delay. As I have reported previously to this House and on a number of occasions publicly, the process was quite open and transparent. Formally making the announcement in this House was simply a matter of course. I am not sure of the implications in the honourable

member's question. The Government's proposal is that the Sheahan inquiry into common law and the workers compensation system would be a short and sharp inquiry, absolutely transparent and subject to all the normal probities of an inquiry in that form. Tabling the terms of reference is a matter for the judge. The Government has complied with all the normal conventions in relation to the formation of such an inquiry.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I ask a supplementary question. Does this mean that a delay of a fortnight in something like this is now standard?

The Hon. JOHN DELLA BOSCA: I do not understand the point of the honourable member's question. As I said earlier, Cabinet made the decision to put the Sheahan inquiry in place, and that followed the normal conventions in relation to this sort of inquiry. The announcement followed the normal conventions, the bill was paid and signed in accordance with normal conventions, and the information provided to this House and the public was in accordance with normal conventions. I repeat: I miss the point of the honourable member's question.

MINISTER FOR MINERAL RESOURCES, AND MINISTER FOR FISHERIES PECUNIARY INTEREST DISCLOSURE

The Hon. JOHN JOBLING: My question without notice is directed to the Minister for Mineral Resources, and Minister for Fisheries. Speaking on 19 October 1999 about his non-disclosure of his interests in Beirut Sydney Publishing Company Pty Limited the Minister said:

Some time during the 1990s—I am not sure of the year—it became necessary to sue a firm of accountants on behalf of Beirut Sydney. It was necessary that the company be resuscitated in order that appropriate legal action ... could be taken as determined by directors at the time.

Subsequently the Minister declined to answer questions identifying this case. In his 1999 pecuniary interest disclosure he stated that Beirut Publishing was restored to non-active status for the purposes of pursuing a defamation action. Is it a fact that the Minister was the applicant in the Supreme Court of New South Wales proceedings No. 4564 of 1994, in which he obtained court orders to reinstate Beirut Sydney Publishing pursuant to the Corporations Law, and that he knew, from at least 1994, the true status of Beirut Publishing and his shareholding in that company? [*Time expired.*]

The Hon. EDDIE OBEID: As I was saying, the Opposition is very empty on questions about issues that matter to the people of New South Wales. I stand by everything I have said. As a matter of fact, if the honourable member wants to know exactly he should go back to the statement I made in this House.

The PRESIDENT: Order! I call the Hon. John Jobling to order.

The Hon. EDDIE OBEID: This empty lot of Opposition members have no questions about portfolios. They are not interested in issues concerning the people of this State. They want to go back to the records. I have—

The Hon. Greg Pearce: What about integrity?

The Hon. EDDIE OBEID: The honourable member does not have any integrity. He should not talk about integrity. He is the biggest baboon in this House. He is a non-entity. In his inaugural speech he flouted 150 years of convention in this House. He is an idiot. In his inaugural speech he insulted everyone.

The Hon. Duncan Gay: Point of order: I ask you to ask the Minister at the table to withdraw the unparliamentary statement referring to a member of the Opposition as a baboon.

The Hon. Michael Egan: To the point of order: Can we find out, first, of whom the reference is made, because it might be accurate?

The PRESIDENT: Order! Under Standing Order 81, which refers to inferences and imputations against other members of the House, I ask the member to withdraw the term "idiot".

The Hon. EDDIE OBEID: I apologise to the baboon, and to anyone else—

The Hon. Michael Egan: Don't apologise. Just withdraw it.

The Hon. EDDIE OBEID: I withdraw it. In his first comments in this House this new, wet-behind-the-ears member insulted 150 years of protocol. Not only did he insult members of the Labor Party, but he insulted—

The Hon. Greg Pearce: Point of order: The Minister has already been directed by you not to make imputations. He is now flouting that ruling again.

The Hon. Jan Burnswoods: He was told not to call you an idiot.

The Hon. Greg Pearce: The Hon. Jan Burnswoods is now flouting your ruling by calling me an idiot. It is about time you kept this Minister in order and ordered him to answer a question on the public record. If the Minister were prepared to answer a question on the public record we would not have a problem.

The Hon. EDDIE OBEID: You're taking up my time.

The PRESIDENT: Order! Under Standing Order 81 I ruled that a certain word should be withdrawn, and it was withdrawn. The Minister's subsequent statements were not imputations against a member. It also needs to be pointed out that I cannot order a Minister to answer a question.

The Hon. EDDIE OBEID: That person over there, whose name is not recognisable, will be long remembered for breaking the protocols of this esteemed House. [*Time expired.*]

PROBLEM GAMBLING

The Hon. JOHN DELLA BOSCA: On 29 May the Hon. Dr Peter Wong asked the Minister for Juvenile Justice, representing the Special Minister of State and the Minister for Gaming and Racing, a question about problem gambling. My colleague the Minister for Gaming and Racing has provided the following answer:

One of the Carr Government's primary objectives in the regulation and administration of lawful gambling in this State has been to ensure that the impacts of gambling on the community are closely monitored and that the harm associated with gambling is minimised.

It is recognised that, for the great majority in the community, gaming and wagering are enjoyable and harmless pastimes providing many important and lasting job opportunities—and other economic and social benefits—for people in this State.

The Government is well aware, for example, that many benefits flow directly to the community from venues that also offer gambling facilities and that the gambling-related industries provide a range of important employment opportunities for people of all ages across all occupations throughout the State.

However, the Government also understands that gambling can cause significant and often devastating problems for a small number of individuals and their families.

The Government has already taken a range of legislative and administrative measures to address these problems.

The most recent regulatory measures are:

the Gambling Legislation Amendment (Responsible Gambling) Act 1999;

the Responsible Gambling Regulations made under this Act;

the Gambling Legislation Amendment (Gaming Machine Restrictions) Act 2000;

the Liquor Amendment (Approved Gaming Devices) Regulation 2001.

These legislative measures have been introduced by the Government in response to community expectations that there needed to be stronger laws in place to minimise the harm that can be caused by gambling.

In announcing the latest of these measures—the freeze on hotel gaming machine numbers through the Liquor Amendment (Approved Gaming Devices) Regulation 2001—the Premier also announced that the Government was working on further measures to be introduced through the forthcoming Gaming Reform Package.

Details of the Gaming Reform Package are still being finalised, but it is expected that an announcement will be made very shortly.

In relation to the consultation process, the Government's stand on responsible gambling is entirely consistent with the policy position which Labor took to the people of NSW back in March 1999. Labor's commitment was made abundantly clear in our policy paper entitled "A Social Conscience Stand on Gaming" released as long ago as the March 1995 election.

CONSTRUCTION INDUSTRY SUBCONTRACTORS

The Hon. JOHN DELLA BOSCA: On 29 May 2001 Ms Lee Rhiannon asked the Minister representing the Minister for Industrial Relations a question about construction industry subcontractors. I provide the following answer:

There is currently no recognised, acceptable methodology for accurately calculating the total cost of non-compliance with workers compensation insurance obligations by subcontractors in the construction industry.

However, the total provision for payment to uninsured workers in the WorkCover accounts for 2000/2001 amounts to \$13m. This compares to a total annual premium income, net of GST, for the period, of \$2,143m and represents 0.6% of the total premium.

The Government has instituted a range of initiatives to address the issue of non-compliance. The Workers Compensation Legislation Amendment Act 2000 introduced a number of significant amendments to enhance compliance. These included:

The introduction of a broad fraud provision which enables WorkCover to prosecute any person who has committed an act of fraud against the WorkCover Scheme. This provision includes a penalty of \$50,000, two years imprisonment or both.

Extension of liability for premium debt to Directors of Corporations where corporations are uninsured and where the corporation has provided the insurer with false or misleading information.

Recovery of audit costs from employers who have under-declared their wages by 25 per cent or more.

Charging employers interest on avoided premium due to under-declaration of wages.

New provisions governing the issuance and inspection of Certificates of Currency which contain details of an employer's workers compensation policies and premiums.

Increase in penalties for non-insurance from \$22,000 to \$55,000, failure to maintain or provide wage records for inspection from \$5,500 to \$55,000; failure to produce workers compensation policy for inspection from \$2,200 to \$5,500; failure to comply with direction from a WorkCover inspector to enter premises and inspect documents from \$5,500 to \$11,000.

Introduction of a \$750 Penalty Notice for non-insurance.

Power to exercise a Search Warrant.

Amendment to make it clear that an employer is prohibited from taking or receiving money from a worker for the purpose of paying the employer's workers compensation premium.

In March 2001, two additional \$500 Penalty Notices were introduced for employers who fail to provide the insurer with either a Wage Declaration or an Estimate of Wages.

WorkCover has commenced development of computer models to assist in identifying employers suspected of under-insuring. These computer models assisted WorkCover to initiate a large-scale program of targeted audits of employers suspected of non-compliance in November 2000. To date, these targeted audits have yielded a 1,000 per cent increase in the amount of additional premium identified per audit dollar spent, compared to previous returns for workers compensation audit projects.

In April 2001, the Government established a Compliance Working Party under the Workers Compensation and Workplace Occupational Health and Safety Council. I understand the Working Party is examining a number of options for further legislative reforms to assist in improving employers' compliance with workers compensation insurance requirements. The Government looks forward to receiving the recommendations of the Working Party.

The Hon. MICHAEL EGAN: If honourable members have any further questions, they might like to place them on notice.

Questions without notice concluded.

POLICE POWERS (INTERNALLY CONCEALED DRUGS) BILL

Message received from the Legislative Assembly agreeing to the Legislative Council's amendments.

POLICE POWERS (DRUG PREMISES) BILL

Message

The DEPUTY-PRESIDENT (The Hon. John Johnson): Order! I report the receipt of the following message from the Legislative Assembly:

The Legislative Assembly has considered the Legislative Council's message and schedule dated 21 June 2001 requesting the concurrence of the Legislative Assembly with the amendments to the Police Powers (Drug Premises) Bill, and informs the Legislative Council as follows—

Amendment No 1 The Legislative Assembly agrees to Amendment No 1 made by the Council in the bill.

Amendment No 2 The Legislative Assembly disagrees with the proposed amendment because:

The amendment undermines the basic principle of our criminal law that people should co-operate with police and should not obstruct police performing their duty.

Amendment No 3 The Legislative Assembly agrees to Amendment No 3 made by the Council in the bill.

Amendment No 4 The Legislative Assembly agrees to Amendment No 4 made by the Council in the bill.

Amendment No 5 The Legislative Assembly agrees to Amendment No 5 made by the Council in the bill.

Amendment No 6 The Legislative Assembly agrees to Amendment No 6 made by the Council in the bill.

Amendment No 7 The Legislative Assembly agrees to Amendment No 7 made by the Council in the bill.

Amendment No 8 The Legislative Assembly agrees to Amendment No 8 made by the Council in the bill.

The Assembly requests the concurrence of the Legislative Council in its disagreement to Amendment No 2 in the bill.

Legislative Assembly
26 June 2001

JOHN MURRAY
SPEAKER

Consideration of message deferred.

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL (No 2)

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [5.08 p.m.]: I move:

That this bill be now read a second time.

There is no dispute that workers compensation is in need of reform. People injured at work need a fair workers compensation scheme. The current system does not deliver that. The State's Workers Compensation Scheme is supposed to be a no fault scheme, yet last year 45 per cent of all major claims, those lodged by people who are off work for longer than five days, ended up in dispute. That is by far the worst rate in Australia.

The present system does not handle disputes well. About 10 per cent are finally settled by the scheme's resolution service. The result is that injured workers face delays in getting back to work and recovering their health. Research demonstrates that those who are injured at work more often than not have a poorer rate of recovery compared with those who sustain similar injuries on the sporting field, around the home or in other domestic accidents.

Why is it that a system that is designed to support injured workers can often leave them much worse off? There has to be greater emphasis on early rehabilitation and treatment to get people well sooner. Not only is the scheme not delivering to injured workers; it has had a woeful financial trend since the early 1990s. The deficit for the scheme continues to grow at the rate of \$1 million a day. Changes made by the Greiner-Fahey Government started a significant erosion of the scheme's stability and, without significant action, the scheme's projected deficit will hit around \$3 billion in 2003. A key factor contributing to this appalling state of affairs is the high rate of disputation and the current system for resolving those disputes. This bill unashamedly targets those problems.

The Government's reform package has been developed following extensive consultation with stakeholders. When I refer to stakeholders, the only two stakeholders are the injured workers and the trade unions who represent them, and employers and the organisations that represent them. All others are service providers. As honourable members would be aware, a bill was introduced in March of this year and has remained on the table since that time. At that time the Government clearly identified the problems that it believed needed to be addressed. Subsequently the stakeholders have had an opportunity to make their views on the original bill known. As a result of the consultation process, numerous changes have been made to the package. This includes substantial modifications to enhance the independence and transparency of the proposed dispute resolution system.

For the record, I would like to explain the consultation process with the trade union movement. Since 29 March I have had 11 meetings with the Labor Council negotiating committee, approximately 24 hours of

talks. Separately, representatives from WorkCover, my office and the Labor Council met in a series of working parties. The Government also agreed to scrutiny of the proposed new guidelines by medical experts nominated by the Labor Council. On Monday 4 June a copy of a draft bill, based on negotiations to that point, was given to Jeff Shaw, QC, for his consideration. Subsequently, the Labor Council's workers compensation adviser, Mary Yaager, also gave him the Labor Council's document detailing what it believed should be in the bill.

Jeff Shaw, QC, prepared his response—some of these points were accepted and further amendments made. Other points were raised at meetings with the Labor Council negotiating committee held on 1, 6 and 15 June. I was able to concede some contentious points, some were taken on notice, and others I could not concede. At the meeting on Friday 15 June I reiterated to the Labor Council negotiating committee that the Government still intended to introduce a bill on Tuesday. This bill would take into account issues resolved at the June meetings. A further conversation between senior officers of the Labor Council and my office took place on Monday morning, just prior to the meeting of affiliates. Further modifications were made and agreement reached to reword other points of contention.

Regrettably, by 12.30 p.m. the meeting of affiliates had voted for industrial action. I note the Labor Council is scrutinising the proposed medical guidelines—in fact, even after Tuesday's blockade of Parliament, one of five medical working parties met, including Labor Council doctors. I also note that where there is an appeal about medical assessment, injured workers can appeal to a review by two doctors and an arbitrator. Injured workers can be accompanied by a person, legally qualified or otherwise, to assist them and speak on their behalf. Finally, I note the Workers Compensation Commission will be headed by a judge as president, deputy presidents will have a seven-year term and arbitrators will be selected from a list nominated by employers, unions and Government.

I believe any fair reading shows that we have come a long way from the bill of 29 March. Even before the consultation process I, as Minister, had real concern about the level of compliance with premium obligations. While there are measures proposed in this bill to increase compliance, the Government is committed to doing more to ensure that all employers pay the correct premium. Therefore we will be developing, in consultation with stakeholders, further strategies to address this issue, including a proposed green paper. While there may not be consensus between the Government and key stakeholders on aspects of this legislation, it is time now to make decisions.

I now turn to the substance of the bill before the House. This bill contains extensive measures to prevent disputes arising. These include a proposed claims advisory service, a new system for registering commutation agreements and the introduction of streamlined claim procedures. These matters were outlined in detail in the second reading debate for this bill in another place. Schedule 4 to the bill continues to provide for the introduction of provisional liability payments whereby insurers are required to start payments within seven days while they make a formal decision on liability. The other major dispute prevention initiative is the proposed introduction of permanent impairment guidelines. These proposals have been the subject of much misinformation. Currently, permanent loss compensation under section 66 is determined using the Table of Disabilities.

Although the current system is meant to be objective, awards for similar injuries can vary widely. The guidelines, using scientific evidence, seek to ensure a greater degree of consistency in decision making. I do not propose to revisit the detail of the proposals; however, the following specific matters should be noted. First, the bill provides that WorkCover will be required to issue guides to assess the degree of permanent impairment, rather than simply relying on the AMA guides. The guides are currently being developed through a consultation process involving eminent medical practitioners, including a number nominated by the Labor Council. The work of these groups is overseen by a consistency group that also includes representatives of the Labor Council. The Government remains firmly committed to continuing this process, particularly the close involvement of the New South Wales Labor Council. The guidelines will also be subject to disallowance by Parliament and this will ensure appropriate scrutiny. The Government has also committed that any proposed changes to the guidelines in future will require scrutiny by the advisory council and medical representatives of the Labor Council.

Second, much has been said about whether it is appropriate to prescribe by regulation the compensation formulas under section 66 and the proposed thresholds under sections 65A and 67. The Government recognises that it would be preferable to include these matters in the principal legislation. In view of the long lead time for implementing this legislation, particularly in relation to the establishment of the commission, the Government needs to have the framework passed so that work can get under way to establish the system. Work on the guidelines will continue however if the legislation is passed. Once the formulas and thresholds have been

determined, the Government will move in the following parliamentary session to amend the Workers Compensation Act 1987 to reinsert these matters into the principal legislation so that they cannot be altered by regulation in the future. Third, comment has been made that by proceeding with the bill at the current time the existing common law thresholds will be affected. This is incorrect. The current bill does not affect the so-called monetary or narrative gateway to access common law. This will remain in place until such time as legislation, if indeed any does arise, to implement recommendations of the Sheahan inquiry commences.

Fourth, the Government has provided in this bill to allow people suffering permanent psychological impairment to access the no-fault benefits provided under the statutory scheme for permanent impairment and pain and suffering in certain circumstances. Previously, no stress-related or permanent psychological impairment compensation could be accessed through the statutory scheme. Injured workers suffering psychological impairment currently receive no lump sum benefits under sections 66 and 67. It has been suggested that as a result of the changes the Government will bar access to common law for those suffering a psychological injury. I place on record that the Government will not argue to the Sheahan inquiry for the exclusion of psychological and psychiatric injury, and it is not the Government's intention to bar these forms of injuries from being dealt with under the common law.

Fifth, it has been suggested to the Government that the transitional provisions contained in the bill will allow regulations to be made that can retrospectively change benefits for lump sum compensation. The bill is retrospective as to process but not in relation to benefit levels. Benefits for permanent loss or impairment will be calculated according to the law in force at the date of injury. This is made clear by clause 3 (1) at page 27 of the bill. It is not the intent of the legislation to confer a regulation-making power on government that could be used retrospectively to apply changes to benefit structures. I turn now to the proposed dispute resolution system. The bill provides for the establishment of an integrated service to be known as the Workers Compensation Commission. It is intended that the commission will operate independently and at arm's length from government. A judge will head the commission.

The Government is prepared to accept a reasonable amendment regarding the appointment by the Governor of the president and deputy presidents. This bill contains numerous measures to ensure that the process is independent and transparent. The commission will operate through three distinct functions: expedited assessment, medical assessment and arbitration. The expedited assessment function will allow small medical expense claims and interim payments of weekly benefits to be resolved and paid quickly. The bill also includes a defined process for the resolution of disputes relating to suitable duties in a timely manner so that injury management opportunities are not lost, as they often are in the current regime. The medical assessment procedures have been substantially remodelled and are more consistent with the approved medical specialists system provided for under the 1998 Act.

The bill now provides that the advice of approved medical specialists will be binding only when the issue referred relates to permanent impairment, including hearing loss. In other cases, such as treatment disputes and medical issues relating to causation, the certificate of the approved medical specialist will be prima facie evidence. However, sufficient weight will need to be given to the advice of the approved medical specialist. To address concerns regarding the binding nature of permanent impairment assessments, an appeal system has been included. Appeals will be made to a panel consisting of an arbitrator and two approved medical specialists. The injured worker will be entitled to be accompanied by another person, including, if so selected, a legal representative, who will be allowed to help the worker to tell his or her story to the panel. Arbitrators will primarily carry out the decision-making functions of the commission. Arbitrators will be appointed by the president and will generally be legally qualified.

To meet a commitment given to the Public Service Association, in some instances non-legally qualified arbitrators will be appointed to deal with specific types of disputes—for example, disputes relating to suitable duties. Decisions of arbitrators will be appealable to the presidential members of the commission. The need for appeal rights is, however, balanced with the need to ensure that the system operates in an efficient manner. Appeals will be subject to leave and if the appellant is not able to improve his or her position by at least \$5,000 or 20 per cent of the amount awarded leave must be refused. Once the appeal is heard, if the appellant fails to substantially improve his or her position—that is by at least \$5,000 or 20 per cent of the amount awarded—cost penalties will apply either to the insurer or to the solicitor.

This bill is the outcome of extensive consultation with key stakeholders. It contains substantial measures to minimise disputes, as well as providing a fair system for resolving disputes should they arise. The

Government is also committed to a process of continuous improvement. The bill provides that a review of the legislation should commence 12 months after the commission begins hearing disputes. The State Labor Advisory Council, employer groups and the Workers Compensation and Workplace Occupational Health and Safety Council will be consulted in this review process. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [5.25 p.m.]: In many respects the higher-level debate concerning workers compensation in general as evidenced by the debate on this bill is nothing unusual. The workers compensation system has been with us in one form or another, under a variety of governments, for nearly a century and the current debate is a continuation of this process. It is important to touch briefly on some of the major themes and developments in workers compensation before turning specifically to the bill before us today. New South Wales, like other Australian States, derives the origins for its system of workers compensation from the British Parliament's Workmen's Compensation Act 1897. Many members of this House would be aware that by 1910 New South Wales had a form of statutory workers compensation scheme.

This was then superseded by the Workers Compensation Act 1926, which introduced a compulsory insurance regulation and insurer licensing. It established a commission to conciliate and adjudicate disputes. Nearly 30 years ago, in 1972, there was a major proposal to create a single workers compensation scheme to cover all injuries and diseases—a national proposal that resulted from a committee of inquiry chaired by Justice Woodhouse. But it was never really acted upon. New South Wales did, and still does, retain its own workers compensation system. In more recent times, in 1984 the Workers Compensation Commission was abolished and replaced by the State Compensation Board and the Compensation Court. In 1985 the workers compensation system went through a major overhaul as a result of financial problems. In April of that year the then Minister for Industrial Relations had identified that premiums had reached an estimated 4.3 per cent of payroll—up from 2.65 per cent in 1976-77.

Prior to 1987 workers compensation premium rates were recommended to the insurance industry by the Insurance Premium Committee [IPC], made up of the State Compensation Board and a representative nominated by the Minister for Industrial Relations. After the cessation of private underwriting the IPC took over the scheme's finances. Due to the volatility of premium rates in the early 1980s the IPC introduced measures to calculate experience-based premium rates for employers. The final premium for each employer was determined by blending an industry classification premium and an experience premium. In 1986 a number of major new developments occurred. The Government ended the existing privately underwritten system and took over the risk itself. Amendments were made to the following legislation: the Occupational Health and Safety Act 1983, the Compensation Court Act 1984 and the Workers Compensation Act 1926.

This package was designed to rectify problems in four major areas: introducing a system of maximum insurance premiums on a prospective basis, linking those premiums to the occupational health and safety performance of employers, eliminating the hidden cost of brokerage from premiums, and reducing court delays and legal costs. This was also the year that the State Compensation Board produced a discussion paper entitled "New South Wales Workers Compensation Scheme: Options for Reform", which was released in September of 1986. This discussion paper pinpointed a number of problems, including an increase in workers compensation premiums despite improvements in workplace accident occurrence, court costs and delays, more expensive claims, increases in legal and medical costs, overstating of the severity of injury, and a lack of incentive and encouragement to provide rehabilitation for injured workers.

Some of those problems from 1986 sound all too familiar—we could be talking about June 2001. In fact, in my many visits to workplaces around the State the feedback I receive indicates that many problems have certainly not gone away. The 1987 Labor proposal, the Workers Compensation Act 1987, followed consultation with various interested stakeholders. Clearly, its most controversial feature was the abolition of common law rights for injured workers. If honourable members think that blockades preventing access to Parliament House last week were—

The Hon. Charlie Lynn: Pickets.

The Hon. MICHAEL GALLACHER: I should say pickets, but the word "blockade" is written in my notes. Honourable members may think that the picket preventing access to Parliament House last week was a serious matter, but in 1987 many people were predicting the end of the world as they knew it. Again, we can draw a parallel between what happened in the 1980s and the situation facing us today. In addition to the role of the Compensation Court being heavily cut back, a number of entitlements were indexed, the table of disabilities was extended, death benefits were increased, pain and suffering allowances were provided in certain cases with

the removal of the common law option, and journey claims were restricted. The Unsworth Labor Government's Act was strongly opposed by the unions and the legal profession. Again, we see a parallel with the situation facing us in 2001.

When the Greiner Coalition Government gained office in 1988 an extensive consultation review was undertaken with representatives from the union movement, employers, the medical and legal professions, and insurers—they were all included in a committee. That committee produced a report and the Greiner Government introduced a number of major changes and reforms. The Compensation Court was re-established and provision was made to allow workers to elect whether they wished to pursue common law damages. Access to common law was, however, more tightly controlled than had been the case before the introduction of the 1987 Act, with emphasis on containing the excessive costs of the previous scheme. I have already noted how we can draw parallels between the workers compensation provisions of the 1980s and those provided in today's bill. We can also draw a number of contrasts.

The Greiner Government consulted widely and extensively before introducing its major workers compensation bill. It established a committee to review the effectiveness of the 1987 bill and to recommend improvements. The amending bill was introduced a few months after the committee had reported. That approach can be readily contrasted with the way in which the Carr Labor Government introduced this bill and its immediate predecessor into the Parliament. In contrast with the Coalition's approach, the Government has arrogantly attempted to ram through legislation without taking the time to consult anyone, not even its own backbench and its union supporters—or should I say former union supporters. The Government did such a botched job with the original Workers Compensation Legislation Amendment Bill that it is still before the House, while we are debating this hastily cobbled together Workers Compensation Legislation Amendment Bill (No 2). In 1995 Labor inherited a surplus in the Workers Compensation Scheme approaching \$1 billion.

In 1995 the average premium rate was only 1.8 per cent of a company's payroll. In 1995 the Government introduced a number of reforms to the scheme, such as restrictions on stress claims and the suspension of indexation on lump sum benefits. In 1996 further measures were passed, including a 25 per cent reduction in lump sum benefits. Despite those measures, honourable members would be aware that the financial position of the scheme continued to deteriorate. In 1997 the then Minister for Industrial Relations, the Hon. Jeff Shaw, instituted the Grellman inquiry into workers compensation in New South Wales. Honourable members would also be aware that Mr Shaw has recently examined the current bill on behalf of the New South Wales Labor Council.

Chapter four of Richard Grellman's report, which was presented in September 1997, identified a number of key witnesses in the workers compensation system. He identified a lack of stakeholder ownership, a lack of legal and financial accountability, a lack of incentives for and heavy regulation of licensed insurers. Other identified problems included WorkCover's conflicting roles, major deficiencies in the premium system, a flawed benefit structure, insufficient incentive for early resolution of disputes, and complex and disjointed legislation. Many, if not all, of those problems are present in the system in 2001. Some of Mr Grellman's recommendations were acted upon, but there are glaring omissions in other areas.

Grellman made a number of recommendations in chapter seven of his report, including the formation of a workers compensation advisory council, provision for private underwriting of the scheme—something the Government has deferred on a number of occasions, and has still failed to provide—and more detailed industry classifications based on the Australian and New Zealand Standard Industrial Classification [ANZSIC] model, which I acknowledge the Government is introducing for premiums commencing in the new financial year. It is important that I record the haphazard way in which the Government has kept the business community up to speed on the impact of the introduction of the ANZSIC scheme. If it were not for the Opposition there would be a false expectation in the business community that with the introduction of the ANZSIC scheme employers would be likely to see a reduction in premiums.

I say that because the Opposition has continued to pursue the Minister to come clean on the impact of the introduction of the ANZSIC scheme. The reality is that up to 50 per cent of businesses in this State will have to pay significantly increased premiums, and they will compound over a number of years. I cannot help but wonder whether it was the realisation that the ANZSIC scheme was commencing on 1 July and that many employers would see that as yet another hit by the Government on their ability to run their businesses that caused the bill to be pushed through Parliament. I tend to think that the bill is a means by which the Government can go to the employers—who, quite simply, will have difficulty in meeting the increased premiums—to say that what it has hit them with it is hoping to take away on the other side of the ledger. But do not ask the Government to produce any figures to show how low the premiums will be!

Other recommendations by Grellman included a more effective benefit structure focusing on the return to work and improved injury management. The report recommended the integration of the Compensation Court with the District Court and something I am sure that all honourable members would agree is still urgently needed: new plain English workers compensation legislation and regulations. Following the Grellman inquiry the Government's Workplace Injury Management and Workers Compensation Act 1998 came into being, together with amendments to the Workers Compensation Act 1987. The industry reference groups were established. Private underwriting was supposed to be introduced but, as honourable members would be aware, that had already been deferred on a number of occasions. It is understood that private underwriting has been abandoned altogether by the Minister following pressure from the Labor Council. Last year's budget papers referred to the delay in private underwriting and this year's budget papers made no mention of it. Silence speaks louder than words.

The Workers Compensation Advisory Council and the Workers Compensation Premiums Rating Bureau were established. Measures were also introduced to speed up the return to work of injured workers, something that Grellman had identified as requiring major action. Despite the passing of the 1998 Act, the inherent problems of the scheme were still unresolved. During the 1997-98 financial year the scheme accumulated a deficit of \$886 million. As at 30 June 1999 the deficit had reached \$1.64 billion. The deficit as at December 2000 was \$2.18 billion, an increase of \$500 million in just six months. It is forecast that the June figure, when released, will be even worse.

Despite the Grellman inquiry and the 1998 Act the Government has acknowledged that its earlier reforms have simply not had the desired results, and now the Minister has announced a further three-stage reform process. Honourable members should remember that the current bill is only the second tranche. We have another workers compensation bill to look forward to, either later this year or early next year. Last year the Government brought in its first tranche in the form of the Workers Compensation Legislation Amendment Bill 2000. This bill, despite being touted as the start of the reform process, actually wound back the recommendations implemented from the time of the Grellman report.

The Coalition attempted to amend a number of the Government's proposals in that bill. It opposed the abolition of the Workers Compensation Advisory Council and the Occupational Health and Safety Council and their subsequent merger into the new, unwieldy Workers Compensation and Workplace Occupational Health and Safety Council. The Coalition opposed the Government's move to restrict common law claims without advisory council approval. Opposition members attempted to limit the number of medical reports used in disputed compensation claims as we believed there should be a government-funded panel of medical specialists to determine claims at that time.

The Coalition also sought to protect small businesses that paid an incorrect premium as a result of a genuine mistake and whose correct premium was under \$50,000 per annum. The intention was that they would only pay a penalty of 10 per cent of the correct premium unless the error was a result of gross negligence or deception. The Coalition also moved an amendment to strengthen the provisions when dealing with genuine cases of fraud in the scheme and to ensure that it will be possible to prosecute under the tougher provisions of the Crimes Act, in particular, section 178BA of the Crimes Act, which carries a penalty of five years' imprisonment for fraud.

It is important to acknowledge the contribution a short time ago of the Minister, who yet again spoke about compliance with legislation. However, it is only compliance insofar as employers are concerned. The Government talks tough about introducing integrity into the scheme and bringing down the cost drivers, but the moment one asks about the overall impact of fraud on the scheme—

The Hon. John Della Bosca: Minimal.

The Hon. MICHAEL GALLACHER: The Minister says it is minimal. The moment anyone tries to test the veracity of the minimal statement, the Government runs and hides. It is simply not prepared to consider any worthwhile examination of fraud in the scheme. All the Government is prepared to do is to put in place a maximum penalty of two years. Unfortunately, none of the Opposition's sensible amendments were supported by the Government. The Opposition is prepared to raise significant issues with the Government to turn this ship around but the Government is simply not prepared to entertain ideas; it simply discounts them out of hand.

It would be remiss of me not to put on the record the fact that the Government had to be dragged, kicking and screaming, to do something about workers compensation. For the past six years the Government has

repeatedly promised to do something realistic about the scheme. The first legislation that was introduced dealt with private underwriting, but that proposal was delayed for 12 months. The then Minister for Industrial Relations, the Hon. Jeff Shaw, started to dig himself into a deeper hole and had no answers to turn the scheme around. As we all watched we knew in our heart of hearts that the scheme was deteriorating because there was no evidence to suggest that it had been turned around. The Government took solace in the fact that there had been some stability in the scheme, and I acknowledge that, but nothing substantial was done by the Government to alleviate the underlying problems. Private underwriting was further suspended when the Hon. John Della Bosca took over carriage of the legislation. The Opposition repeatedly urged the Minister to come up with an alternative proposal and, as a result, this first tranche of reforms was hurriedly introduced.

However, the moment the spectre arose of a parliamentary inquiry into the Government's handling of the workers compensation scheme the look of sheer terror on the faces of Government members was evident for all members in the Chamber to see, including members on the crossbench. However, the crossbench members were prepared to give the Government an opportunity to outline its proposals, and the first tranche of reforms kicked in with a much heralded promise of a \$100 million saving in the scheme. All honourable members are aware that the scheme has continued to deteriorate, although I suppose the Government will suggest that had it not introduced the first tranche of reforms, the scheme would have been \$100 million worse off. The reality is that we are further down the track than we were this time last year and the Government has now introduced mark II of the 2001 legislation. It is interesting that the Government continues to shift and turn on every decision made up until this point.

There have been years of missed opportunity by the Government yet it only decided to change its mind at the suggestion of a public inquiry in an endeavour to avoid public scrutiny. The Opposition is resolute in its demand for public scrutiny, and any action the Government takes in developing a strategy to deal with the underlying problems of workers compensation will be examined by every member of this Chamber as stakeholders in the scheme, because we are all stakeholders in the scheme. We have all seen what happened with the collapse of HIH Insurance in recent months and the way in which the stakeholders scurried away without a trace. We in this place cannot scurry away. We have a responsibility to the people of New South Wales, as their representatives, to prepare legislation and maintain a scheme that will ensure equity for all. We have a responsibility to ensure probity and integrity in the legislation and scrutiny of that legislation by the Parliament.

One need only look at the key aspects of this bill to see the Minister's nocturnal approach to policy. He always seeks to remain in the dark. The moment the spotlight is on him, he becomes confused and disorientated. The Opposition cannot be accused of a lack of direction on this issue; we just question what happens next. Since becoming shadow Minister I have made it my objective to broaden my understanding of the problems facing both employers and employees throughout the State, and I have travelled extensively throughout all areas of New South Wales to reach that objective.

If one wants to initiate a discussion with a small business operator in this State, one simply asks what he or she thinks about workers compensation. The Workers Compensation Legislation Amendment Bill (No 2) seeks to address three key aspects of the system: the role of the court, or indeed its future; the litigious, adversarial nature of the scheme; and the adoption of binding medical panels. The further issue of common law has been removed from debate at this stage awaiting the findings of the Sheahan inquiry. In fact, reform of these three components of the current scheme is designed to address the practice of dispute resolution together with the culture under which the scheme operates. The expedited provisional acceptance of liability within seven days is an attempt to improve insurers' performance in managing the scheme, while at the same time focusing employers on their responsibility to improve their internal and external recording and reporting methods. This will hopefully result in their placing greater emphasis on the need to manage injury in the workplace.

We hear far too often about employers and management forgetting about injured workers the moment that injuries are reported to the insurers—it is as if the matter is no longer their responsibility. There are then justifiable screams when a massively increased premium is received later in the mail. I say that such screams are justified because there exists in our society the view that workers compensation is merely workers insurance. This view of the scheme is wrong simply because, unlike other forms of insurance, the insurer is not managing the risk of workers compensation but merely processing or managing claims. On the subject of responsibility for workers, I continue to be dismayed at the Government's handling of this State's emergency service workers, in particular. The Minister for Industrial Relations has been asked in recent times about his concerns and his approach to issues raised by fire brigade personnel, but he has displayed a simple lack of understanding or lack of concern for this State's emergency service workers. To confirm that, one need only look at policing and

consider the recent announcement to which I referred in another debate in this place regarding the Government's plan to employ civilians—public servants—as crime scene examiners in order to free police to perform more proactive policing duties.

What has happened to injured police officers who can no longer perform 100 per cent of their duties? Many officers would love the opportunity to use their skills, knowledge and experience to play an important role in policing in New South Wales. Yet the Minister for Industrial Relations does not care; he is not interested. He wants to see those members of the New South Wales Police Service who have been injured in the line of duty thrown onto the scrap heap rather than offered a real career opportunity.

The Hon. Duncan Gay: They gave Richard Face a job.

The Hon. MICHAEL GALLACHER: I will not discuss Richard Face. The fact is that the Government must lift its act and get its own house in order before it starts pointing the finger at others and telling them how to run their lives. The Government will have to do a considerable amount of work if it wants to get anywhere near the position of many employers who are currently managing their workers and giving them an opportunity to play a real, continuing role in their chosen careers or occupations.

The cost of successful claims will always be borne by the employer. The realisation of this fact explains the perceived lack of commitment on the part of insurers both to identify and to pursue fraud using active participation methods by which employees can be rehabilitated and returned to work as soon as possible. I am sure that numerous instances could be cited of insurers who have been more proactive in these areas. But the fact remains: Why should they do so under the current system? They are paid to manage the scheme irrespective of the outcome. The underlying premise is that they do not have ownership of the scheme and this Government does not want ownership of the scheme. Therefore, the scheme fails on that fundamental principle time and time again. Until the Government shows why private underwriting and the opportunities that may be achieved through a competitive, privately underwritten scheme are unacceptable, the Opposition will continue to explore every opportunity available to us to reduce premiums and ensure that insurers play a bigger role in making the scheme a success for both employers and employees.

Another significant cultural change is the creation of the Workers Compensation Commission and the abolition of the Compensation Court. By creating this new body the Government hopes to address dispute resolution issues. We are told that the Compensation Court is failing to check the escalating number of claims and that the process of protracted, legalistic disputing of claims has produced an environment in which matters are permitted to spiral out of control in terms of cost, with no chance of resolving the issue prior to both parties meeting on the steps of the court moments before the matter is to be determined. If this legislation is successful, the proposed Workers Compensation Commission will focus on deploying methods that it is hoped will reduce the litigious nature of many disputes, introduce binding medical assessments to determine disputed medical evidence and adopt impairment guidelines so as to provide some consistency with respect to compensation awards.

Parliament has been advised that determination of the guidelines is well under way, with five working parties already considering it. Yet we have been told that they will not report for some months and that the legislation cannot come into effect—irrespective of what happens this week—until those guidelines are finalised. Apart from the fact that the Government is not in a position to detail to Parliament the guidelines for determining impairment, there is little by way of information regarding what methods are being deployed by the five working parties—which we are told are already at work—to determine the guidelines for the first group of medical applications. Are they simply adapting the American Medical Association guidelines or are they using another source? Will there be a hybrid version of both sets of guidelines or are they developing their own version?

During debate last December on the Government's previous tranche of reforms it was made clear that the Opposition believes we should seek legislative changes that will lessen the litigious nature of medically disputed evidence. I am sure Government members are aware that the Opposition has said both in Parliament and elsewhere that medically disputed evidence must be assessed by medical practitioners who are specialists in their field. That would alleviate the need to take a legalistic and litigious approach to medically disputed evidence. Therefore, the issue for the Opposition is not about the benefits to be derived from adopting medical assessment but about ensuring that Parliament has a greater understanding of how those binding medical assessments will operate.

That leads me to another area of concern: the increased authority and power—free from any external review and scrutiny by Parliament—that this proposed legislation will vest in the Minister. That is a major

concern to the Opposition, as the Government is aware. I look forward to discussing the matter further with Government members in Committee. We all remember the debate last year on the first tranche of workers compensation reforms when the Opposition fought to maintain the role of the Advisory Council. Honourable members will recall that we were strident in our view that the independent monitoring role of the council should have been maintained. Everything we suspected would happen with the ratings bureau being solely accountable to the Minister has come to fruition.

New paragraph (d1) of section 30 (1) provides that included among the functions of the Advisory Council will be the requirement to provide advice to the Minister of proposals for guidelines and regulations. However, realistically the Advisory Council in its current form has become nothing more than a focus group. The Opposition recognises, as is spelt out in proposed section 376, that the guidelines will be open to scrutiny by the Parliament as they will be enacted through regulation. But there are other significant aspects of this legislation that will not be the subject of further debate, for example proposed section 248A, which clearly provides that it will be the Minister who conducts a review. I acknowledge the comments made earlier by the Minister, but as the bill stands the Minister will conduct a review of his own legislation to determine whether the policy objectives as spelt out in the legislation have been achieved.

We can all see it now: Two months out from the election campaign in 2003 the Minister will stand up and say, "Look, we've got it wrong. We haven't achieved anything. We haven't achieved a thing." If you believe that, Mr Deputy-President, I have a block of land on the Central Coast I just cannot wait to show you! When is this review likely to take place? Subsection (2) of proposed section 248A reveals it will be undertaken "as soon as possible after the period of 12 months from the commencement of Part 4 of Chapter 7". In other words, when they finally get the guidelines right. Some will say that it will be some months before we actually see the guidelines and before the regulation is introduced for enactment. So, if it happens towards the end of the year, for example, in December, the Minister will be required within 12 months of the enactment of the legislation to conduct a review. Does the Minister seriously expect us to believe that he will conduct a review of his own legislation within three months of the 2003 election campaign?

What assurance will we have before 2003 that we will see any indication that the legislation is turning the ship around? How convenient it is that this falls on the eve of the 2003 election campaign. One can see that the Government's rationale is: Let us put this monster to bed, at least for the time being; we cannot kill Frankenstein, but we can at least stymie the legislation until such time as we get through the 2003 election campaign and then we can worry about it after that. How convenient!

When the Workers Compensation Legislation Amendment Bill mark I was released we were told that savings in excess of \$300 million per year would be realised, plus \$100 million from tranche reform No. 1 from the year before. Of course, with regard to this bill we are yet to hear of a figure from the Premier, or indeed the Minister, that can be examined and scrutinised by actuaries at a certain period in time. But we have not heard about that; we have not been given any figures. It is all "Trust us. I am Honest John, the honest broker. Stick with me and I'll take you down the path." Not one figure has been given. It is extremely important that I go back to the point I made earlier: The members of the crossbench and Opposition need to know that there will be a level of transparency, an opportunity for this Parliament to maintain its responsibility as a watchdog to ensure that this proposed legislation and the entire system does not all go pear shaped over the next four months.

Just imagine this in the HIH Insurance context. What would have happened had the directors of HIH, the people in charge, taken a much stronger view and examined their organisations more closely some time ago? Before the system collapses entirely—and the Government is asking us to have a fair degree of faith in what it is trying to push through—the Parliament should have the opportunity to maintain a level of scrutiny of the Government's ongoing management of the scheme. The very same degree of uncertainty exists with respect to proposed section 364, which sets out the rules by which the Workers Compensation Commission will operate. From the outset subsection (1) refers to the power of the Minister, who "may from time to time by order make Rules of the Commission for or with respect to any aspect of procedures to be followed in connection with the jurisdiction or functions of the Commission".

The key, however, is subsection (3), which reveals that "Rules of the Commission are not a statutory rule for the purpose of the *Interpretation Act 1987*." In other words, the Minister will have complete control of the commission free from any scrutiny by anyone in this place. We are replacing the Compensation Court with all its constitutional independence with a commission presided over by a judicial officer who will possess whatever independence the Minister sees fit to give. Similarly, the President of the Workers Compensation Commission has power to remove an arbitrator at any time. Is it any wonder that so many people—unionists, lawyers and members of the Government's frontbench and backbench—have grave concerns about the independence of this commission, about it being free from political interference.

But it is not all bad news for the union movement. Amendments to the workers compensation legislation will provide the union movement with new cash trains previously never thought of, or should I say that were never available. For example, proposed section 42B provides claims assistance for injured workers and employers. Subsection (3) refers to the provision of funding—as yet we do not know how much—to assist organisations representing employers and employees for a period of three years. The Opposition recognises the need to provide assistance in the form of advice, education and training, but there needs to be some guarantees. Again it comes back to the tests of probity and transparency that this Government fails time and again. We want guarantees that this fund will not be used merely as a milch cow to buy back the support that the Government has lost so heavily over last couple of weeks. On one hand we talk about reducing the costs of the system, but on the other hand we introduce new schemes and measures that in fact are cost drivers.

It could be argued that by providing information and assistance the costs could be reduced, but the reality is that such assistance has to be funded, and that means money has to be found from a badly depleted and financially strapped system. Of course, assistance schemes like this are not new. With the introduction of the goods and services tax [GST] the Federal Government allocated over \$3 million to provide training for 20,000 people across the nation in the housing industry. We recognise that moving to this new scheme will obviously require some outlay by employer and employee representatives. But if the underlying premise for the reform is to reduce costs, we need some assurances that there will be a level of transparency.

We also want to know how the allocation of the assistance fund will be determined. Will it be granted on an individual organisational basis, or will the money be allocated to a peak group, such as the Labor Council, to determine how the money will be distributed to each employee representative group? Alternatively, will it be granted on a pro rata basis, thereby guaranteeing bigger unions a bigger slice of the pie, and smaller employer groups mere crumbs? Carefully worded terms such as "agent services" are little more than an attempt to disguise yet another opportunity for the Government to buy back union support while, at the same time, presenting the facade to business that it is serious about trying to rein in legal costs by fixing maximum legal costs.

One has to hand it to the Minister: this is a great attempt to divert employers' money through premiums into union coffers, all while the unsuspecting employer believes that the Government is doing something about legal costs. Part 8, division 2, section 337 provides, through regulation, the fixing of maximum costs for legal services or agent services. It provides for union representatives to be given equal standing for the purpose of payment as legal representatives. There is nothing in the way of annual reporting requirements by the commission to indicate the overall cost impact of this section to protect the scheme from merely introducing yet another cost driver. This, of course, leads me to overall questions about the cost of this package of reform compared with the package introduced in March.

All honourable members were shocked to hear a few months ago that the scheme had deteriorated quite markedly over the preceding six months, resulting in a further \$500 million explosion in the deficit, despite confident claims made last year by the Government that the decline had been arrested and stabilised at \$1.65 billion. The reforms of last year were supposed to save about \$100 million per year. We can all recall predictions by the Minister of savings in excess of \$300 million with the second change of reforms introduced in March, now replaced with this model today. We have been told that the most recent \$500 million decline is due primarily to three factors. First is the \$200 million-plus on what is called scheme revision and a deterioration in the cost structure. They are pretty interesting terms. A better way to describe it would be bad management of the scheme. Second, \$100 million to \$120 million is accounted for by what is called underperformance of investment. In other words, bad investment decisions made by the operators of the scheme.

The Hon. John Della Bosca: That is what they tried to suggest in the estimates committee.

The Hon. MICHAEL GALLACHER: It is interesting to note the interjection by the Minister. During the estimates committee hearing last week, when the Finance Director of WorkCover was asked questions about significant investment losses of more than \$1 billion in the past year, surprise, surprise, he was not in a position to inform the committee of the losses. All we heard was, "Look, everything is going fine. Overall it's going quite well." But when pressed on actual losses, and when we are told about \$100 to \$120 million in underperformance of investment, the Finance Director was not in a position to give the committee any information.

I note the presence in the gallery of members from the WorkCover Authority. When the general manager of the scheme was asked at the committee how many WorkCover employees have active workers compensation claims, he did not know. Irrespective of the fact that this information has been in the media for months, and there has been talk about WorkCover having twice as many people absent on workers

compensation than any other comparable government department, he did not know. I do not blame departmental heads. I know where the answers came from. They might have been mouthing the words, but I am pretty sure I know the direction they came from. "Don't answer any of these questions. Don't answer these. Just fob them off and let's try to get this legislation through."

The Hon. John Della Bosca: Who would have said that?

The Hon. MICHAEL GALLACHER: Yes, who would have said that? The remaining \$250 million loss is put down to non-achievement in estimated wages; in other words, a decline in the New South Wales economy. Last week the Premier told the Parliament that these reforms were as much about jobs as they were about reducing premiums. Confidently, he predicted that the unfunded liability amounted to \$7,300 for every one of the State's 300,000 policyholders. He predicted that that would equate to businesses with 100 to 150 employees shedding jobs by 10 to 20. He predicted how, unless the reforms went through, the bottom line would be fewer trainees and fewer opportunities for young people straight out of school and college to get a job.

With all of these dire consequences, if the bill is not passed where is the nexus between the legislation and the specific outcomes we can expect in, say, six or 12 months and more after the commencement of these reforms? Where is the transparency that can guarantee an independent assessment of the performance of the scheme over the next 12 months to two years? And where are other safeguards to prevent the Government's further mismanagement of the scheme that got us into the situation in which we find ourselves today?

If we are looking for a nexus on outcomes we need look no further than green slips. I am sorry to say that we remember the very same hollow commitments given by the Minister to reform green slips—the promise to reduce green slips by \$100. Once again we are being asked to trust a government that continues to fail to keep its promises.

It has been the long-held policy of the Opposition to support any reasonable reforms that will bring down premiums. The Government has attempted, through threat of introducing a reduction levy, to force these reforms through whilst failing to provide information and guarantees to ensure that the changed processes are open to scrutiny. We all agree that the scheme in its current form cannot continue to go unchecked, and that reforms have to be made. Yet we are also committed to ensuring that the Government does not have an unfettered right to make whatever changes it likes to the scheme, free of interference from this Parliament. The Opposition will seek to amend the legislation to provide a level of transparency that will protect against any further mismanagement of the scheme by the Minister.

With regard to claims assistance, the Opposition will seek to amend section 42B to require the WorkCover authority to report annually on all claims assistance funding provided during the previous 12 months, and to exactly whom and for what purposes the funding was provided. Section 248A deals with a review of the Act. The Opposition will seek to amend that section by removing the Minister as the person who conducts the review and replacing him with the Auditor-General, and ensuring that the report-back date is no later than 31 December 2002.

Section 320 deals with the appointment of approved medical specialists. The Opposition will seek to amend that section to provide that the criteria upon which selection is made will be covered by regulation so that it will come under the scrutiny of this Parliament. New section 337 deals with maximum lawyer and agent costs. The Opposition will seek to amend the section to require annual reporting by the Workers Compensation Commission to the Parliament, commencing upon the enactment of the legislation.

Such reporting will show the exact total cost of all legal services provided to employer representatives, employee representatives and insurer representatives; all agent services costs paid in respect of matters before the commission; and which respective parties those agents represent. Further, in fixing maximum costs for legal services or agents the latter is to be no greater than two-thirds of that determined as the maximum cost for legal services.

Section 364 relates to rules of the Workers Compensation Commission. In keeping with our position in this debate that this new scheme should be seen to be transparent and free of political interference, all rules of the commission will be maintained in a way that allows ratification by this Parliament. I will seek to amend the section accordingly in Committee.

Section 369 deals with qualifications for appointment to the commission. To ensure that the confidence of the community is maintained with respect to appointments to this body, the Opposition will seek to amend

subsection (3) to provide that if an arbitrator is appointed who is not a qualified legal practitioner, the appointment must be made in consultation with the Advisory Council. The Opposition wants the people involved in this process to have some scrutiny of the Minister's handling of appointments. Further, the Opposition will amend clause 6 (3) of new schedule 5 to provide that the president of the commission must show cause before dismissing an arbitrator. This amendment, together with a number of other amendments relating to matters I have discussed in the course of this debate, will be moved at the Committee stage.

Underlying the Opposition's amendments, of course, is the fact that the Opposition has long called for public scrutiny of WorkCover's management of the scheme. Earlier today I gave notice of a motion seeking the appointment of a select committee to inquire into and report on the operation of the workers compensation system in New South Wales, as established under the Workers Compensation Act 1987 and the Work Place Injury Management and Workers Compensation Act 1988, including the administration of the WorkCover Authority, the management of claims by the insurance companies, the extent of the unfunded liability, an industry-by-industry comparison of premiums before and after the changes made under the Workers Compensation Legislation Amendment Bill—the motion incorrectly referred to the Workers Compensation Legislation Amendment Bill (No 2), when it should have been referred to the Workers Compensation Legislation Amendment Bill 2000, the proposed premiums following the 2001 legislation, and monitoring of the implementation and impact on premiums of the Workers Compensation Amendment Bill (No. 2) 2001.

The motion is designed to ensure that this Government does not have an unfettered right during the next 18 months to simply lie doggo when it comes to scrutinising this legislation. The proposed committee will provide Parliament with an opportunity to ensure that the objectives of reform, with regard to the deficit, the unfunded liability, and, what is an extremely important issue, ensuring that premiums come down and creation of jobs for people in New South Wales, are examined very closely. I am conscious of the time and will not labour the point further in that regard.

The Hon. John Della Bosca: What are you going to do about fraud?

The Hon. MICHAEL GALLACHER: I am grateful to the Minister for that interjection because, quite simply, there are still questions that the Government has failed to address, such as ownership, which is one issue that the Opposition will continue to pursue. The Opposition will most certainly continue to pursue any opportunity to ensure that the ownership of the scheme results in fair outcomes for all parties. What we have now is the Government obfuscating on any opportunity to tie down the ownership of the scheme and thereby ensure that there are mechanisms in place to get workers back into the workplace through effective measures of rehabilitation.

The Minister asked about fraud. One need only look at the Government's performance on this issue to find a definition of "fraud". The Government talks big but has failed to deliver time and again. We will hear during the course of this debate from those opposite about compliance by employers, as we have heard about making sure that people in the building industry do the right thing. We all agree that that needs to be done. The Opposition does not want to see workers unprotected as a result of unscrupulous conduct by a very small number of employers.

I assure honourable members that wherever I travel around this State I am confronted by employers asking, "What are you doing about the shonks that are ripping employers off?" This relates to small business proprietors in particular, who are really doing it tough, and this Government is not prepared to pursue fraud. The Opposition is on record, and will continue to go on record, in that regard.

The Opposition is also keen to look at Treasury managed funds because that subject is starting to come under the spotlight. I wonder whether, if we had an amalgamation of Treasury managed funds, we could provide any means by which the average premium in New South Wales could be reduced. It is an interesting point. The Government has the secrets, the Government has access to the information, and it should let the Opposition have a look at it. The Opposition is prepared to consider any measure that may result in a reduction in the cost of premiums in an effective and equitable way. Right now the Government is not providing the Opposition with the information to enable it to make those decisions and be confident of the outcome.

In conclusion, there are four significant areas of concern to the Opposition. First is the need for Parliamentary scrutiny of the financial viability of the scheme. The Opposition will address that matter with the select committee. Second, we want transparency in relation to the rules of the commission and in relation to the guidelines. Third, we want to be involved in order to ensure that there is transparency and a level of ownership by the stakeholders in this place—the members who represent the community. Finally, the Opposition wants to make sure that the review of this crucial legislation is not left with the Minister; the review must be done independently of the Government.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [6.26 p.m.]: Mr Deputy-President the Hon. Johnno Johnson, it is an honour for me to speak to this bill while you are in the chair in your final week in this House. It is also an honour to follow such a fine contribution by the Leader of the Opposition. It is little wonder there is disquiet from the Minister and his flunkies on the other side of the Chamber. The Leader of the Opposition has delivered an erudite contribution and has detailed the concerns that the Opposition quite properly has, because no member of this House, absolutely no member, can deny that there is need for change to workers compensation legislation in New South Wales.

Before I speak to the bill, I want to take a moment to reflect on the events that have brought this bill before us today. The Minister for Industrial Relations brought a form of this bill to the House on 29 March, but it quickly became clear that it was not welcome by anyone. Almost immediately the bill was withdrawn to enable the Government to negotiate with the union movement and employer groups. Unfortunately, for whatever reason, the Government did not come near the Opposition during those negotiations. The first indication we had of progress in respect of the bill was the announcement in late May that agreement had been reached on the legislation. The first chance that the Opposition had to examine the 135 pages of this bill was when the second reading speech was delivered in the other place last Tuesday. That occurred after the unprecedented scenes outside Parliament, which some Government members have described as a barricade.

The Hon. John Della Bosca: You worry about your side of the House and we will worry about our side of the House.

The Hon. DUNCAN GAY: I was referring to the Treasurer and the Premier. Whatever description can be used, it was clear that the Government had reneged on an agreement that had been reached with the union movement. By pressing ahead with its reforms the Government isolated its own left-wing members—except for those who sneaked into Parliament, including at least one Minister of this House. The left wing had to bite the bullet and abandon its commitment to the unions and cross the picket line in order to attend a caucus meeting. Of course, the Treasurer and the Premier did not have to cross the picket line; they sneaked in by way of a side passage.

Labor members slept at Parliament House overnight. They brought their pyjamas in and camped in their offices. Have they paid back the \$110? Junior members were left without leadership. They had to come through the protest outside. The Treasurer said in this House that the protesters were stopping people coming in. I walked up to members of the group and asked, "Can I come in?" Someone in the CFMEU actually knew me and said, "It's Duncan Gay. He helped us against the Government on compulsory competitive tendering. What have you got to say?" My comment was, "I have not seen the legislation. I give you an undertaking that I will read it." I was told to go through. No one stopped us. The Premier indicated that people were trying to stop Labor members. I understood that there was an agreement with the Trades and Labor Council for Labor members to come in through the back gate. Yet the deliberate confrontation by this leaderless Government—

The Hon. John Della Bosca: Are you going to say anything about workers compensation?

The Hon. DUNCAN GAY: You are not proud of the fact that you were hiding in here and the Premier stood out there and gave the bird to the people who work hard all year for you. Not one of those people support the National Party, work for the National party, or send any money to the National Party. But when the Government ruled off the line on this legislation the Liberal Party, the National Party and the crossbenchers continued to work for the people out there. They will not work for the National Party. I know the group here. When it comes to the crunch they will be back out there supporting you, but you do not deserve their support. You have not done an iota in this place to earn their support.

The Hon. John Della Bosca: Are you going to talk about workers compensation at all tonight?

The Hon. DUNCAN GAY: The Premier tried to blame the unionists. Whenever he is in need of help he talks about architecture. He is like Paul Keating. You can tell when he is in trouble because he comments on buildings. So this week he commented on buildings. That did not work. I quote from Asianet today:

New South Wales Premier BOB CARR says the industrial dispute over workers compensation reforms wasn't caused by the unions—

We remember him saying last week it was caused by the unions—

but by lawyers, whom he branded liars.

The Hon. John Della Bosca: Is that a reliable report?

The Hon. DUNCAN GAY: It is Asianet. The report continues:

Mr CARR says the unions aren't at fault and has blamed misinformation spread by lawyers.

It has been stated time and again during debate in the lower House that there are no longer any true members of the ALP in this place. The action of their leader in sneaking in and leaving members to make a symbolic entrance through angry protesters is further proof of that. The Opposition stance on this bill is clear: there is an urgent need for reform. That is something on which we agree with the Minister.

The Hon. John Della Bosca: Oh, you got to it at last.

The Hon. DUNCAN GAY: He is pleased that I am going in this direction because he was not enjoying what I was saying. It was not the proudest day of the ALP. Reform is needed for three reasons: to reduce staggering premiums, to maintain employee benefits, and to reduce the deficit that is currently crippling the scheme. There has been much discussion about the true extent of the deficit. The Government claims that it is about \$2.1 billion; some say it is more and some say it is less. In his second reading speech in the other place the Premier said that the debt is equal to \$338 for every man, woman and child in New South Wales—another shining example of Labor's fiscal mismanagement. I bet that one does not go down in Labor's pre-election publications that the Government Printer would be putting together for the 2003 election.

The Hon. John Della Bosca: Greiner privatised the Government Printer.

The Hon. DUNCAN GAY: Yes, that is why I changed what I was going to say. It is worth pointing out, as my colleagues have done, that when the former Coalition Government left office the WorkCover scheme was in the black to the tune of \$1 billion. In six years, under Labor's stewardship—not all the fault of the Minister for Industrial Relations—that has turned into to a \$2.1 billion deficit. During that six years the average cost of premiums has risen to 2.8 per cent, compared with the Coalition rate of 1.8 per cent in 1994-95.

The Hon. John Della Bosca: You butchered the Unsworth scheme.

The Hon. DUNCAN GAY: I am willing to debate that with you but I do not think the Treasurer wants me to. I was interested to learn the breakdown of where the premiums go. The Combined Employers Group, representing organisations such as the Australian Retailers Association, the Electricity Association, Clubs New South Wales, the Motor Traders Association and New South Wales Farmers, has provided some interesting statistics in this regard. Lawyers fees, which the Government says are a high component of the total cost of running the scheme, total \$42 million, or 17 per cent of the total annual cost of the scheme of \$2.488 billion.

The source of the deficit can be traced back to the period between 1995 and 1997 when the number of injured workers taking more than six months to recover blew out from 6 per cent to 12 per cent. After the Government realised that the scheme's liability was growing, it cut benefits to injured workers by 25 per cent. But the Government did not address the underlying issues that had caused the blow-out. There have been piecemeal efforts to address outstanding issues since then, including legislative changes in 1997, and culminating in the introduction of the workers compensation legislation in March this year. An article in the *Daily Telegraph* dated 6 December 1997 stated:

Auditor-General Tony Harris warned in a report tabled in State Parliament yesterday that WorkCover had an accumulated deficit of \$789 million and was not viable as an ongoing concern.

That was 4½ years ago and finally we are seeing some action from the Government. The unfunded liability of the Workers Compensation Scheme now threatens the State's triple-A credit rating. The Opposition recognises the very real need for change. We recognise the need to reel in the debt that Labor has accumulated. I am just surprised that it has taken so long to get to this stage.

I will highlight some of the workers compensation anomalies that exist between New South Wales and other States. It is simply unacceptable that current workers compensation premiums in New South Wales abattoirs are 15.02 per cent of wages while in Victoria the rate is 8.4 per cent, in Queensland it is 8.6 per cent, and in South Australia it is 7.5 per cent. The Australian Capital Territory has an open market. The building industry in New South Wales pays 10.52 per cent while the rate in Victoria is 5.78 per cent, in Queensland it is 3.4 per cent, and in South Australia it is 7.5 per cent.

Farming and grazing also attracts a rate of 10.52 per cent, whereas in Victoria it is 5.78 per cent, in Queensland it is 3.76 per cent, and in South Australia it is 3.81 per cent. Logging comes in at a hefty 17.26 per cent of wages in New South Wales while in Victoria it is 5.78 per cent, in Queensland it is 11.01 per cent, and in South Australia it is 5.4 per cent. The figures are clearly unsustainable, they are hindering business development in New South Wales and they quite properly must be addressed. Yesterday, in another place, my colleague the honourable member for Lismore outlined some particular workers compensation issues affecting his electorate.

The Hon. Michael Egan: He is a good man.

The Hon. DUNCAN GAY: He is a good man. He stated:

The workers compensation premiums for the Northern Co-operative Meat Company in Casino are 2.4 per cent, compared with 1.46 per cent in Queensland and Victoria. Casino is only two hours away from the closest Queensland meatworks and we have to compete with them ...

We as the representatives of this State have to get it right so that we can compete with other States, workers who claim compensation are no worse off than workers in other States, and the annual premiums of companies are reduced so that New South Wales can compete against other States such as Queensland and Victoria. We have to be competitive in workers compensation ...

As the Treasurer indicated, Thomas George is a hardworking and well-respected local member. Frankly, he has got it right: there is a need for reform not only to address the problems with the scheme but also to allow New South Wales to be competitive with other States.

The Opposition is concerned that the bill will hand over control of the scheme to the Minister for Industrial Relations. The bill establishes a Workers Compensation Commission to hear and resolve disputes in the statutory scheme. It is designed to simplify the system for injured workers and employers through the introduction of clearly defined processes for resolving disputes. The claims procedure provisions of the bill state that WorkCover will decide by guidelines how a claim is to be made. As to medical assessments, the bill provides that a medical assessor must act at all times in accordance with WorkCover guidelines.

New section 376 (2) provides that the Minister has control of the procedure and issues guidelines with respect to procedures for assessment. The appeal provisions under the medical assessment are also determined by WorkCover guidelines. New section 364 relates to the rules of the commission. They are detailed rules, but it is of great concern that those rules do not come back before the Parliament for approval; they are subject to the stroke of a pen by the Minister. One of the most significant concerns of workers about this whole new set-up is that their determination for impairment will be subject to a similar set of guidelines. Parliament is being asked to approve a bill before the guidelines have been determined. The Opposition has no idea how the guidelines will impact on the assessment of the impairment of injured workers. Is it any wonder that workers are, quite properly, so concerned? Originally workers were told that the guidelines would be the American Medical Association guidelines. Now they are told that they will not be those guidelines and we do not know what the guidelines will be.

The Hon. Ian Macdonald: In the original bill it was WorkCover guidelines.

The Hon. DUNCAN GAY: I am aware that it is a movable feast at the moment. As I understand it, the bill will not be enacted before those guidelines are determined—but the guidelines are not scheduled to come before the Parliament. Yesterday the Leader of the Opposition, Kerry Chikarovski, wrote to the Premier about this bill. She stated—

The Hon. John Della Bosca: Did she give you permission to quote that?

The Hon. DUNCAN GAY: No. As far as I know it is a public document. I extracted it from my emails. Mrs Chikarovski wrote:

A primary concern is that so much is to be left to rules and guidelines to be determined by the Minister and the WorkCover Authority. With the exception of the impairment guidelines, these rules and other guidelines will not be subject to parliamentary scrutiny. Given the breadth of change to the existing system which this bill introduces, it is not unreasonable to ask that important matters—such as the operational rules of the Commission and the guidelines for the operation of the Medical Panel—be ratified by the Parliament before the scheme commences.

Did the Minister undertake to adhere to that?

The Hon. John Della Bosca: No, I was distracted by the Hon. Dr Brian Pezzutti.

The Hon. DUNCAN GAY: Sorry, I must have imagined it. That is one amendment that the Coalition will insist upon: we want to see what these guidelines and regulations are. Surely that is not too much to ask. We want workers to be properly compensated for workplace injuries. We want safer working conditions and we want to see the deficit reined in, but to allow that to happen without proper parliamentary scrutiny is sheer madness. Mrs Chikarovski clearly stated the Opposition's position on this bill in her letter to the Premier. The Opposition wants the review of the scheme, as required by the bill, to be conducted by the Auditor-General and not by the Minister in charge of it. We want that review to commence within three months of the first anniversary of the commencement of the operation of the scheme. The appointment of the president and deputy presidents of the commission should not be made by the Minister, to avoid any perception of a lack of independence of those office holders. I understand that there may be movement in that area.

In other words, we want a situation that will not simply become another case of jobs for Labor mates. There are only so many Labor presidents at the bar or in the judiciary to go around. The Opposition also proposes the establishment of a Legislative Council committee to examine the operation of the scheme and the financial pressures to which it is now subjected. Such a committee, supported by a reference group that would include actuarial and accounting expertise, could conduct its investigation during the coming break, with its report to be returned to Parliament at the same time that Justice Sheahan is to report. As stated by my colleague the Leader of the Opposition, the Opposition is prepared to support the bill conditional on the matters outlined by Mrs Chikarovski in her letter to the Premier. There is a need for reform, but it must be sensible reform that is guided by Parliament and not simply rammed through by the Government, which has failed at every turn in relation to the introduction of this bill—sadly, through secrecy.

Debate adjourned on motion by the Hon. Peter Primrose.

[The Deputy-President (The Hon. John Johnson) left the chair at 6.48 p.m. The House resumed at 8.30 p.m.]

LEGAL PROFESSION AMENDMENT (PROFESSIONAL INDEMNITY INSURANCE) BILL

LEGAL PROFESSION AMENDMENT (DISCIPLINARY PROVISIONS) BILL

WASTE AVOIDANCE AND RESOURCE RECOVERY BILL

Bills received.

Leave granted for procedural matters to be dealt with on one motion without formality.

Motion by the Hon. Ian Macdonald agreed to:

That these bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages, and the second reading of the bills be set down as orders of the day for a later hour of the sitting.

Bills read a first time.

POLICE POWERS (DRUG PREMISES) BILL

In Committee

Consideration of Legislative Assembly's message.

The Hon. JOHN HATZISTERGOS [8.34 p.m.]: I move:

That the Committee does not insist upon the Legislative Council's amendment No. 2 disagreed to by the Legislative Assembly in the bill.

The amended Police Powers (Drug Premises) Bill as reported back to the Legislative Assembly was not supported by the Government. The Government accepted all the amendments except amendment No. 2, which was moved by the Hon. Richard Jones. It creates a significant disincentive for people to commence application of the proposed and important powers to close down drug houses. I understand from the response of the Opposition in another place that the Opposition will not insist upon amendment No. 2 to the bill in this place. When debated in this place on 21 June, the amendment put forward by the Hon. Richard Jones was not supported by the Government. Honourable members will recall, however, that it was passed by the House with the support of the Opposition and a majority of the members of the crossbench. The amendment states:

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.

On behalf of the Government I indicated in the Committee of the Whole, in response to the amendment moved by the Hon. Richard Jones, that the amendment would not be supported because the common law has allowed compensation for persons who suffer civil law consequences for actions that are wrongful. What is being proposed in this amendment is in effect bad law. The amendment undermines the basic principle of our criminal law, that people should co-operate with police and should not obstruct police performing their duty.

The amendment makes a new law about compensation for damage caused by police executing a valid drug premises search warrant. The police will have to compensate the owner of premises damaged in executing a search warrant where a court considers a prosecution for the drug premises offences and finds that the premises were not drug premises at the time the search warrant was executed. It will not matter if the court finds that the premises were drug premises on the day before the search warrant was executed, or even one hour before the search warrant was executed: The owners will be entitled to compensation. I am advised by the Police Service that this amendment will enable people to claim compensation even where they have contributed to the damage by refusing entry to police with a valid search warrant.

For example, people would be entitled to compensation where a door has been damaged even when they had contributed to the damage and police have had to force entry because they refused to open the door. This is a significant and fundamental change in respect of liability for the execution of a search warrant. This is not the way our law operates with respect to other criminal offences and other search warrants. Owners of premises are already entitled to compensation in accordance with normal legal principles if police were negligent in executing a search warrant. The Attorney General's Department has confirmed that the amendment unnecessarily complicates a civil legal concept. This amendment means that people may now be entitled to compensation even if police act properly in executing a search warrant.

It is not consistent with current police guidelines for compensation, which require an element of unjustified or negligent action by police. These guidelines should apply to this new type of search warrant, just as they apply to other search warrants. Honourable members should bear in mind that a new type of search warrant is being introduced to tackle the problem of fortified premises built to stop police getting in and obtaining evidence needed to prosecute and convict drug dealers. Parliament should be sending a clear message to the public to co-operate with the police. If the police have a search warrant and knock on your door, you should let them in. This amendment creates an incentive for people to not co-operate with police and it creates a disincentive for police to use these new laws which are needed to crack down on drug dealing in Cabramatta.

The Hon. RICHARD JONES [8.37 p.m.]: What a load of hypocrisy and garbage! I have never heard so much garbage in my 13 years in this Chamber. The Government says the amendment undermines the basic principle of our criminal law that people should co-operate with police. The Government is undermining the basic law by finding people guilty, and those accused have to prove their innocence. The foundation for the rejection of the amendment is that it undermines that basic principle, as I said. However, my amendment does not contradict the reasoning that people should co-operate with the police.

Home owners will use this amendment when their homes have been damaged by police officers—after police claimed the premises were drug premises when they were not drug premises. We are talking about totally innocent people here in respect of whom the police make a mistake. The Government's sudden apparent concern for the fundamental aspects of the criminal law is embarrassing at best. The bill undermines far more important and entrenched notions of criminal law, such as the presumption of innocence until proved guilty.

The Hon. John Hatzistergos: Rubbish!

The Hon. RICHARD JONES: That is exactly what the Government's bill does. The Government is turning New South Wales into a police state. The conservative Carr Government is turning New South Wales into a police state where people have to prove themselves innocent. People are arrested first and then they have to prove that they are innocent. They are presumed guilty. My amendment stated:

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.

It 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 were never drug premises!

I must repeat that they are entitled to compensation if it is subsequently determined that the premises were not drug premises. It is essential that this very harsh legislation make allowance for errors when a warrant is executed. Doors, windows, walls, fences and other parts of the premises will undoubtedly be damaged in some situations when warrants are executed. If subsequent investigation reveals that the premises damaged were not drug premises it is only fair to provide for compensation. The Government is prepared to go as far as it can in relation to penalising people but not in affording them protection. This is a lamentable travesty of justice. The Minister went on ABC radio this morning to fudge the facts of the matter. He stated:

... when police go in and they do break down doors and cause damage, those drug barons will have a claim against the Police Service.

That is totally wrong. They are not drug barons; they are totally innocent civilians, totally innocent people. A person will have a claim only if the premises is not a drug premises. How are the police going to prove the person was a drug baron if, at the very least, the premises themselves cannot be deemed to be a drug premises? It is absolute nonsense. You gaol people first and they have to prove themselves innocent afterwards. The Minister went on to say:

I just think that is an absolutely outrageous position to put the New South Wales Police Service in.

Wrong. It is only "absolutely outrageous" to make disingenuous comments on radio about fair and equitable provisions. The Minister then stated:

It is going to jeopardise police investigations in Cabramatta.

Maybe only the investigations that are made in error—and they should be jeopardised! The Minister went on to say:

... and the Opposition have to change their mind on it.

That is the only part of his spiel that has turned out to be correct, unfortunately. The Government argues that if a court found that the premises were drug premises before the search warrant was executed, the owner would still be entitled to compensation. This assertion is flimsy at best and begs clarification. The owner could seek compensation only if, at the time the search warrant was executed—that is, the time the police decided to bust down the doors and "go for it", and presumably the police would have chosen the most opportune time to exercise such powers—it is revealed that the premises were not drug premises. Justice is surely done only when adequate and appropriate compensation is provided for. The New South Wales Law Society supports the amendment. It said:

As pointed out by the Criminal Law Committee's briefing note, the Bill as drafted was deficient in that it failed to address the issue of compensation for collateral damage caused to premises during the execution of a warrant. I am pleased to note that the Legislative Council has amended clause 6 of the Bill (execution of search warrant).

The shadow Attorney General in the other place said earlier today that the Opposition did not insist upon this amendment being included in the legislation because the Minister has given assurances that compensation will be payable when an error has been made. So the Government is going to compensate anyway. It is highly objectionable for the Opposition to claim that it accepts the Minister's assurances yet is not prepared to accept them as provisions in legislation. It is even more objectionable that the Minister would guarantee such provisions yet fail to deliver them in a legislative framework.

If the Minister is prepared to state that compensation will be payable in situations in which premises are damaged and the premises are later found not to be drug premises, if the Minister is prepared to give assurances that these people will be compensated, why not include it in the legislation? Otherwise the assurances are worth absolutely nothing. There is no reason not to do so if the Minister is sincere about his assurances. Of course, he is not sincere.

Innocent people are going to have their houses busted into and have their doors and windows broken; innocent people will be trembling and not let police in because they are afraid and think they are being burgled. The Minister may compensate them or he may not. We know of cases in which people were not adequately compensated. Members in this Chamber know of such cases. My amendment is very mild. The Minister lied on radio about its effects. It is outrageous that the Minister has gone to the media in this way and told lies about this very mild amendment.

The Hon. MALCOLM JONES [8.43 p.m.]: I support the amendment moved by the Hon. Richard Jones that was duly passed by this Chamber. I would like to talk about an event in 1994 or 1995. In the middle of the night in a typical Lilyfield house a close friend of mine named Marcel Piat was asleep at home with his

wife, with his children in the next room. There was a knock at the door and as he walked along the corridor toward the front door it burst in and a SWAT team ran into his home, stuck a 12 gauge up his nose and held him against the wall. He was stark naked. The SWAT team was looking for drugs.

The trauma on the family was extraordinary. It took my friend Marcel nearly to the edge of his sanity. It cost him his marriage. There was considerable damage to the property. It appears that the police were in the wrong home: the suspects were three houses away. It took five years and a great deal of money in court proceedings for him to get anywhere with compensation. His business is gone and his family has gone. It is just a dreadful story. Getting compensation through the courts was a long, difficult and painful business that caused ongoing trauma. The amount of consideration given by the police to his plight was farcical. If this amendment assists only in having property damage paid for, it is worthy of support.

The Hon. Richard Jones: As it was the other day. It passed this Chamber.

The Hon. MALCOLM JONES: Absolutely. In these circumstances the Government could move marginally into the area of generosity. We are talking about the good guys, not the bad guys. We are not talking about drug barons; we are talking about innocent people being attacked, particularly with the violence of a SWAT team. I am not saying there is anything wrong with SWAT teams. They might make mistakes but there should be consideration for the victims of their errors. Based upon the logic of the argument and the personal effect the story I have just related has had on me, I support the amendment.

The Hon. IAN COHEN [8.47 p.m.]: I support the amendment of the Hon. Richard Jones, as I did previously. I heard the statement by the Minister for Police this morning. The amendment he was referring to certainly did not sound like the amendment I supported. I checked with the Hon. Richard Jones and I can only conclude that the Minister lied on ABC radio this morning. He has really bent the truth. There is no way that I would have supported protection of a drug house or a crime syndicate.

As the Hon. Malcolm Jones related, in some cases householders are proven innocent. I hear the laughs and guffaws from the other side of the Chamber that this is bottom of the garden stuff. I heard the Hon. Charlie Lynn before. I have seen police with a sledgehammer bashing down the front door of the wrong house. It was next-door, and in the middle of the day. They got the number wrong. It involved an eviction of squats just off Glebe Point Road. I saw that with my own eyes. So from two members of this Chamber of 42 members we have heard cases of innocent people being affected by police raiding the wrong house.

We hear claims that it is obvious that if a place is barred up and absolutely fortified it must be a drug house. I know people of my parents' age in certain areas who fortify their houses because they are living in fear. Some people, particular elderly people, do not have confidence. They will not answer the door if someone is pounding on the door, even if they claim to be police.

This Chamber has to start getting real. I am sick of seeing Ministers lying on our mass media. It is not an overstatement to say that we are turning into a police State. We are losing the presumption of innocence. Police do make mistakes. What was done by the Minister on ABC radio this morning was appalling. If the Government spokesman today can prove that the Hon. Richard Jones, by moving the amendment, and I, by supporting it, are somehow supporting guilty people in drug houses I would like to hear the argument. The Government has way overstepped the mark of what is reasonable in a democracy.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.50 p.m.]: I, too, am amazed that this amendment has come back to this House. It seemed perfectly reasonable. I have previously told the House about the chap whose house was destroyed because it was believed to be a squat, although the neighbours told the destroyers that they were in the wrong house. The destroyers niggardly offered to replace the magnificent polished wood kitchen with a chipboard kitchen, although the owner had spent a fortune renovating it. The owner, a sensitive man who drank a lot and did himself a lot of harm, felt totally invaded.

For the Government to say that it has to engender respect for police, even if they smash down the wrong doors and it is proven that the occupants were innocent, sounds absolutely monstrous. That is a total reversal of the onus of proof. Is the Government saying that if the police think someone is guilty, that is near enough? Is the Government saying that if one's door is wrongly smashed down, the police do not have to pay compensation?

The Hon. Malcolm Jones cited a case in which a claim for compensation was made at law and refused. The anecdote I cited of the destroyed kitchen in Glebe certainly had a similar outcome. The Government has

said that those mistakes happen very rarely, and that it very rarely pays compensation. The philosophy that it never happens, it should not happen, and therefore we do not need a law, is extraordinary. One might seriously ask why the Opposition should roll over, if in fact it has. I hope it has not! I am extremely disappointed that this amendment has returned to this House. I knew that the Government was arrogant, but, really, is there no limit to its arrogance?

Reverend the Hon. FRED NILE [8.51 p.m.]: Honourable members who are opposed to the removal of the amendment from the bill cited examples of the police entering wrong premises. However, the amendment refers to a case in which a court finds that an offence has occurred in respect of premises that, at the time the power was exercised, were not drug premises. In other words, this is not about an innocent next-door neighbour and a mistake by police. If a mistake had been made there would have been no court proceedings. The police will not go to court for a wrongful entry into a neighbour's house in an endeavour to prove that it was a drug premises.

The Hon. Dr Arthur Chesterfield-Evans: What about compensation for smashing down a door?

Reverend the Hon. FRED NILE: I am clarifying the amendment, which refers to police proving in court that a house was a drug premises. It is possible that in spite of all the evidence the police could not prove that.

The Hon. Dr Arthur Chesterfield-Evans: The police had not acted in accordance with the law. Is that what you are saying?

Reverend the Hon. FRED NILE: No. In court, the police could not prove that they were right. As the Hon. Dr Arthur Chesterfield-Evans would know, police have to find evidence to support the claim that it was a drug premises. Through forensic investigation the police have to find evidence, even if the drugs have been disposed of. The court could reject the police charges and determine that the premises were not drug premises because of a lack of evidence.

Mr Whelan said that the amendment would protect drug barons, because it refers to people being in a house that was not proven to be a drug premises. We know that, unfortunately, in a number of cases drug dealers and drug traffickers get off. They are very clever, and that is the problem in this war against drugs, not the war against drug addicts. We are fighting a very sophisticated enemy. Unfortunately, other States and other nations must bring in strong laws to fight this sophisticated crime.

The Hon. JAMES SAMIOS [8.54 p.m.]: The Opposition had concerns when this matter first came before the upper House, but in view of the Government's explanation and assurances relating to compensation, the Opposition supports the Government's position.

The Hon. RICHARD JONES [8.54 p.m.]: Reverend the Hon. Fred Nile has extended the argument one step further. He said that even when people are found to be innocent they are guilty. He said that when people had been to court and their premises were not proven to be a drug premises, they are still guilty because otherwise a charge would not have been laid in the first place. As far as he is concerned they are still guilty.

The Hon. JOHN HATZISTERGOS [8.54 p.m.]: I thank all honourable members who have contributed to the debate. Some members of the crossbench seem to be under the illusion that a new industry will develop as a result of this bill if the amendment is not carried. That is, that police will go around bashing down the wrong doors knowing that in doing so they will not be liable for compensation. This legislation deals with a serious problem. Under the civil law, if there is an unjustifiable or negligent action on the part of the police, proceedings can be brought against them seeking compensation.

A number of the anecdotes that have been given have been addressed. The amendment goes further and requires police to get a search warrant from a magistrate before they go to premises. The police have to provide detailed information to the magistrate to substantiate their belief that premises are drug premises. The police have to go to the premises armed with that warrant and ask for entry. If entry is refused, police can take action. The Hon. Dr Arthur Chesterfield-Evans suggested that police can knock on a door, say, "We are here," the occupants can refuse them entry, and then nothing can happen.

The honourable member is trying to gut the bill, as he did with all his other amendments. He is opposed to it, and he should say so. He should not try to find 50 million different ways of achieving the objectives he had

when this debate commenced. This amendment is about gutting the legislation. If the honourable member is serious about the fight against drugs, he will support the Government's position. I congratulate the Opposition on this change of position and encourage all members to support the proposal that I have put forward.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.56 p.m.]: Again the Government has amazed me, although I thought that was becoming impossible. Basically, the Government is saying that if access is refused, the police will not knock down the door of the premises. The only risk to police is that if they are wrong they would have the added cost of fixing the door. However, if they have good evidence, that will not stop them.

If policing is the answer to the drug problem, and I am increasingly doubtful that it is, and they are about to conduct a raid with a lot of Special Weapons and Tactics police, the cost of a door is minor. Surely if the police are not confident that a premises is a drug premises, they should not be bashing down the door and, therefore, this amendment is not a problem.

If the cost of the door is the deciding factor in a police raid, the police could not have had very good evidence in the first place. The Government's proposition is absurd. Reverend the Hon. Fred Nile implied that even if a person is found innocent in court, he is still guilty if the police bashed down his door because there may have been an evidentiary problem. He is saying that after a person is found innocent, effectively he is still guilty and should not be recompensed if his door was bashed down. Yet three of the 42 members of this House have personal knowledge of people's homes being invaded by supposedly lawful authorities who went to the wrong addresses.

Reverend the Hon. Fred Nile: But they were not charged.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: No, they were not charged, but the people whose houses were wrongly entered did not find the existing remedy satisfactory. That is a telling fact. Although I do not like to proceed by anecdote, and because we normally do not have any scientific studies to assist our decisions, perhaps a small anecdote is sufficient. We are considering an absolute statement that that sort of mistake does not happen, but three out of 42 is a very high ratio, and therefore justifies the amendment.

The Hon. PETER BREEN [8.59 p.m.]: I was not intending to speak to this amendment but the Hon. John Hatzistergos has suggested that somehow we are all opposed to the legislation and want to gut it. I do not think it could be suggested that this amendment guts the whole legislation. Surely it relates to only a small aspect, that is, the question of drug premises and whether people who happen to be living in the wrong street at the wrong time have their door knocked down and are perhaps injured.

The Hon. John Hatzistergos: A search warrant has to be issued.

The Hon. PETER BREEN: There are plenty of cases of police getting a search warrant on what they thought was good information, only to find that for some reason the information was wrong or what they expect to find was not there. As a result, the police have simply returned and apologised for breaking down the door. Having said that, there is another problem with the amendment: it is unlikely that a court would find, in proceedings in respect of premises, that they were not drug premises. That is not the kind of finding a court would reach. If a case were to fail or a court were to dismiss it, the court would not rule that they were not drug premises. Therefore, the provision is deficient anyway. I do not believe that the amendment represents a threat to the whole bill, as the Hon. John Hatzistergos suggests and I, for one, support it.

The Hon. RICHARD JONES [9.01 p.m.]: I think we now need to send out a warning to the householders of Sydney, Paddington, Kings Cross and Redfern that anyone who has bars on their windows can be considered to be guilty of having drug premises. They are practically guilty before the police get there. Those who have bars on their windows or padlocks on their doors are practically guilty. The view will be that it is probably a drug premises, and if the police break in, tough luck.

Question—That the motion be agreed to—put.

The Committee divided.

Ayes, 24

Ms Burnswoods	Mr Johnson	Mr Samios
Mr Colless	Mr Lynn	Mr Tingle
Mr Dyer	Mr Moppett	Mr Tsang
Mr Egan	Mrs Nile	Mr West
Ms Fazio	Reverend Nile	
Mrs Forsythe	Mr Pearce	
Miss Gardiner	Dr Pezzutti	<i>Tellers,</i>
Mr Harwin	Mr Ryan	Mr Jobling
Mr Hatzistergos	Ms Saffin	Mr Primrose

Noes, 8

Mr Cohen	Mr Oldfield	<i>Tellers,</i>
Mr M. I. Jones	Ms Rhiannon	Mr Breen
Mr R. S. L. Jones	Dr Wong	Dr Chesterfield-Evans

Question resolved in the affirmative.

Motion agreed to.

Amendment No. 2 disagreed to by the Legislative Assembly not insisted upon.

Resolution reported from Committee and report adopted.

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

CORPORATIONS (ANCILLARY PROVISIONS) BILL

CORPORATIONS (CONSEQUENTIAL AMENDMENTS) BILL

CORPORATIONS (ADMINISTRATIVE ACTIONS) BILL

Second Reading

The Hon. JOHN HATZISTERGOS, on behalf of the Hon. Michael Egan [9.10 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

The Bills before the House are part of a package of Corporations Bills complementing the Corporations (Commonwealth Powers) Act 2001.

Honourable members will recall that the Corporations (Commonwealth Powers) Act 2001 was enacted earlier this year. That Bill provided for the referral of the Corporations Law and the ASIC law to the Commonwealth Parliament. I am proud to record here that New South Wales was the first jurisdiction to enact the referral Bill, enabling the Bill to be introduced into the Commonwealth Parliament shortly after.

The new arrangements rely—

Firstly, on the reference of corporations matters to the Parliament of the Commonwealth by the Parliaments of the States.

Secondly, on the enactment by the Commonwealth Parliament of a new Corporations Act and Australian Securities and Investments Commission Act.

Thirdly, on the enactment by all the States of supporting legislation to make provision for—

- (a) transitional arrangements (contained in the Corporations (Ancillary Provisions) Bill); and
- (b) consequential amendments (contained in the Corporations (Consequential Amendments) Bill);
- (c) the validation, following the doubts raised in *R v Hughes*, of certain actions taken by ASIC and its officers, or by other Commonwealth authorities or officers, under the Corporations Law (dealt with by the Corporations (Administrative Actions) Bill).

The Bills before the House complete the amendments to New South Wales legislation that are necessary to ensure that the status quo is not disrupted after the referral, and that a smooth transition takes place.

The first of the bills is the Corporations (Ancillary Provisions) Bill 2001.

Members will appreciate that a number of consequential and transitional amendments to our State legislation are required before the new national corporations scheme can commence.

The effect of this bill is twofold.

Firstly, the Bill updates references in New South Wales legislation from the old Corporations Law regime to the proposed new Commonwealth Corporations Act.

Secondly, the proposed new Commonwealth Corporations Act states that is not intended to cover the field in the area of corporations.

This means that any indirect inconsistencies between the Commonwealth Act and any New South Wales Act do not necessarily result in the invalidity of the New South Wales provisions.

However, as a result of the referral of corporations power, any direct inconsistencies between New South Wales legislation and the Commonwealth Act will result in invalidity due to the operation of section 109 of the Commonwealth Constitution, which provides that the Commonwealth provision is to prevail.

In order to protect these New South Wales provisions, some legislation needs to be amended to insert declarations that the Corporations Act is not to apply.

I now turn to the Corporations (Consequential Amendments) Bill.

The Corporations (Consequential Amendments) Bill amends over 160 Acts and Regulations that contain references to the Corporations Law, or to a previous Corporations Law scheme, or that otherwise need amendment because of the change from a State-based to a Commonwealth-based system of Corporations Law.

This wide-ranging amendment of the statute book is being made so that the new arrangements for a national Corporations Law are more readily understood as they apply to the text of State Acts. The alternative, and less satisfactory, approach would have been to rely on interpretation provisions of a general nature without direct amendment of individual Acts.

The schedules to the Bill make amendments that fall into distinct categories, namely —

- (a) amendment of provisions referring to the Corporations Law, or any part of it, so that they refer in future to the Corporations Act of the Commonwealth, or the relevant part of it;
- (b) correction of references to particular provisions of the Corporations Law so that they are read in future as references to the correct provisions of the Corporations Act (this includes amendments consequential on the Corporate Law Economic Reform Program Act 1999 (CLERP));
- (c) similar amendment and correction in relation to existing references to the Companies (New South Wales) Code and other Code Acts;
- (d) in accordance with Part 1.1a of the proposed Corporations Act of the Commonwealth (dealing with the interaction between Commonwealth legislation and State provisions), provisions to continue certain existing exemptions, exceptions and exclusions from the operation of the Corporations Law that apply under State law;
- (e) the re-enactment of provisions in Acts that apply particular provisions of the Corporations Law as if they were part of those Acts, so that the provisions continue to apply as State law; and
- (f) other miscellaneous adjustments necessary for the new Corporations scheme.

The schedule does not amend every reference in the statute book to the Corporations Law or its predecessors. The Corporations (Ancillary Provisions) Bill contains a safety net translation for references that are not directly amended. This means that unamended references to the Corporations Law will be read as including a reference to the new Corporations Act, unless the context requires otherwise. However, there are some references to the Corporations Law that have been identified as continuing to be correct as they currently read, whether because they are historically correct or for any other reason, and these will be preserved by regulations to be made under the Corporations (Ancillary Provisions) Bill.

I now turn to the Corporations (Administrative Actions) Bill 2001.

The object of this Bill is to give validity to certain potentially invalid administrative actions taken before the commencement of the proposed Commonwealth Corporations Act 2001 by Commonwealth authorities or officers acting under powers or functions conferred on them by laws of the State relating to corporations.

Section 51(xx) of the Commonwealth Constitution gives the Commonwealth Parliament limited powers to regulate corporations. That provision empowers the Commonwealth Parliament to legislate with respect to "foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth". The Commonwealth Parliament also has other legislative powers under the Commonwealth Constitution that assist it to regulate corporate activities, such as the Interstate Trade and Commerce Power (Section 51(i)), and the Postal, Telegraphic, Telephonic, and other like Services Power (Section 51(v)).

However, the High Court has held that the Commonwealth's Constitutional powers do not extend to regulating aspects of a number of important commercial areas such as the incorporation of companies, certain activities of non-financial and non-trading corporations, and certain activities of unincorporated bodies that engage in commerce.

By contrast, the States have broad powers to regulate corporations and corporate activities, subject to the Commonwealth Constitution.

As a result of the restrictions on the powers of the Commonwealth Parliament, a national scheme of corporate regulation requires co-operation among the Commonwealth and the States and Territories. Several different schemes of co-operation have been implemented at different times since 1961.

The current scheme commenced on 1 January 1991. Under that scheme, the substantive law of corporate regulation (known as the Corporations Law) is contained in an Act of the Commonwealth enacted for the Australian Capital Territory and the Jervis Bay Territory (the Capital Territory). Laws of each State and the Northern Territory apply the Corporations Law of the Capital Territory (as in force for the time being) as a law of the State or Northern Territory. The effect of this arrangement is that, although the Corporations Law operates as a single national law, it actually applies in each State and the Northern Territory as a law of that State or Territory and not as a law of the Commonwealth.

The Corporations Law is administered by a Commonwealth body, the Australian Securities and Investments Commission ("ASIC") established by the Australian Securities and Investments Commission Act 1989 of the Commonwealth ("the ASIC Act"). Each State and the Northern Territory has passed legislation applying relevant provisions of the ASIC Act as a law of that jurisdiction, known as the "ASC" or "ASIC law".

Legislation of each State and the Northern Territory confers functions relating to the administration and enforcement of the Corporations Law on ASIC, the Commonwealth Director of Public Prosecutions and the Australian Federal Police. These bodies are responsible for the investigation and prosecution of offences under the Corporations Law.

In the *Queen v Hughes* (2000) 171 ALR 155, the High Court indicated that, where a State gave a Commonwealth authority or officer a power to undertake a function under State law together with a duty to exercise the function, there must be a clear nexus between the exercise of the function and one or more of the legislative powers of the Commonwealth set out in the Commonwealth Constitution.

If this view prevails, then the Commonwealth would not be able to authorise its authorities or officers to undertake a function under State law involving the performance of a duty (particularly a function having the potential to adversely affect the rights of individuals) unless the function could be supported by a head of Commonwealth legislative power.

Although the court found that the particular exercise of the prosecution function by the Commonwealth Director of Public Prosecutions in question in *Hughes* was valid, it made no finding about the validity of the conferral of the prosecution function generally, or of other functions under the Corporations Law Scheme.

The decision in *Hughes* may have implications for the validity of a range of administrative actions undertaken by Commonwealth authorities and officers under the Corporations Law Scheme and the previous co-operative scheme. A number of Commonwealth authorities have functions and powers under the current scheme, including ASIC and the Commonwealth Director of Public Prosecutions. Commonwealth authorities, most notably the National Companies and Securities Commission ("the NCSC"), had functions and powers under the previous scheme. Much of the work of the NCSC was carried out by State and Territory authorities as delegates of the NCSC, and the Bill applies to actions of those delegates on the basis that the actions of a delegate are treated as actions of the principal. Since the commencement of the Corporations Law, Commonwealth authorities including ASIC and the Commonwealth Director of Public Prosecutions have continued to carry out functions under the previous scheme.

Many or all actions by these Commonwealth authorities are likely to be valid, because they could be supported by the Commonwealth's legislative powers. However, the validity of each action can only be determined on a case by case basis, having regard to the particular circumstances of each action.

The Bill provides that every invalid administrative action taken under the current or previous scheme has (and is deemed always to have had) the same force and effect as it would have had if it had been taken at the relevant time by a duly authorised State authority or officer of the State.

The Bill applies to administrative actions taken before the commencement of the proposed Corporations legislation. The validity of future actions by Commonwealth authorities and officers will be assured by the reference of matters to the Commonwealth Parliament by the Corporations (Commonwealth Powers) Act 2001, which each State is proposing to enact and by transitional amendments to the current scheme being included in the Corporations (Consequential Amendments) Bill.

This package of reforms to the Corporations Laws will ensure that our national system of corporate regulations is placed on a sound Constitutional footing and reinforces Australia's reputation as a dynamic commercial centre in the Asia-Pacific region.

I commend the Bills to the House.

The Hon. JAMES SAMIOS [9.10 p.m.]: I support the Corporations (Ancillary Provisions) Bill and cognate bills. The bills complete the necessary amendments to New South Wales legislation in the area of corporate law. The object of the Corporations (Ancillary Provisions) Bill is to enact ancillary provisions, including transitional provisions, relating to the proposed corporations legislation to be enacted by the Commonwealth Parliament following the reference of matters relating to corporations made by the States under section 51 (37) of the Commonwealth Constitution. The New South Wales reference is made under the Corporations (Commonwealth Powers) Act, which, as stated in the overview, refers to the Commonwealth Parliament certain matters relating to corporations, corporate regulations and financial products and services.

This bill, the Corporations (Commonwealth Powers) Act 2001, the Corporations (Consequential Amendments) Bill and the Corporations (Administrative Actions) Bill constitute the legislative package needed in New South Wales for the new corporations arrangement. Honourable members will be aware that there is general consensus that corporate laws should come under the operation of the Federal system, and this package of reforms to the Corporations Law will place our national system of corporate regulation on an important, more streamlined constitutional footing that will help Australia's commercial reputation in the Asia-Pacific region. The legislation is somewhat complex in that the Corporations (Consequential Amendments) Bill is 265 pages long. However, the reality is that this legislation is overdue and attempts to streamline corporate law in the best interests of this nation. Therefore, the Opposition supports the legislation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.14 p.m.]: The Australian Democrats accept that the Corporations (Ancillary Provisions) Bill and cognate bills are machinery legislation and part of a package of reforms to Corporations Law resulting from issues raised in last year's High Court decision in *Regina v Hughes* regarding legal uncertainties about the regulation of Corporations Law between the States and the Commonwealth. The Corporations (Consequential Amendments) Bill amends more than 160 Acts and regulations that contain references to the Corporations Law or to a previous Corporations Law scheme. The reforms are intended to ensure legal consistency between jurisdictions and will hopefully clarify any ambiguity in the regulation of corporations. The Australian Democrats support the legislation. However, it is difficult to respond to legislation that comes before this place extremely quickly, and we believe the Government should give honourable members more notice of any changes to the order of business and more time to consider bills originating in the other place.

The Hon. GREG PEARCE [9.15 p.m.]: Earlier this year when I spoke in the debate on the Corporations (Commonwealth Powers) Bill, which was subsequently enacted by Parliament, I encouraged the States and Territories—apart from New South Wales and Victoria—to deal with the issues raised in that legislation, which are echoed in this bill, and to act expeditiously to refer the powers necessary to ensure certainty in our corporate environment. I encouraged the Government and business lobby groups to follow the debate vigorously as it is important to the vitality and competitiveness of our business and corporate sectors to resolve the outstanding uncertainty in Corporations Law. I am pleased with this package of legislation, which completes the rectification action to ensure that our Corporations Law and corporate regulatory system continue to operate effectively and in the best interests of the country and our economy.

I congratulate the Commonwealth Government on acting expeditiously with regard to these issues. The Howard Government pays real attention to important issues that must be dealt with as a matter of urgency, and this is another area where the Commonwealth Government has acted as quickly as possible to provide certainty and ensure that our legislative and regulatory systems reflect the best interests of the Australian community. I understand that all the other States and Territories have now enacted referral bills. I have not checked whether that information is correct but, if it is, I compliment each of those governments on their actions. This will enable the new corporate regulation scheme to commence on 1 July. I was not as surprised as some by the High Court decision in *Wakim and Hughes* that created uncertainty and problems for regulators and corporations. It was the precursor to legislation introduced earlier this year and now to this package of legislation, which deals with a variety of transitional and other issues.

I want to reinforce the importance of the safeguards in this package of legislation that are designed to ensure that the rights of the States are not "trampled on"—to use the words of the Attorney General in another place—by the Commonwealth. First is the safeguard that the current referral will remain on foot for only five years unless the various States and Territories agree to extend that period by proclamation. There may well be a referendum during that time to determine whether more complete corporations powers should be referred to the Commonwealth—which I am sure would be the subject of considerable debate.

The second safeguard, which again is important to State rights, is that the referral can be terminated on six months notice. My colleague the honourable member for Gosford made a number of comments in the other place during debate on these bills with regard to the rights of the States in relation to corporations power. I am comforted by the knowledge that these safeguards are in place. The third safeguard is that the Corporations Agreement will provide that the Commonwealth can make amendments to the referred laws only after it has undertaken a vote of the States, which must appear in accordance with the provisions of the Corporations Agreement. Therefore, there is a safeguard on amendments.

Finally, a safeguard of particular relevance—and one that would be a topic of attention for many members on the other side—is that the Corporations Agreement expressly provides that the referral is not to be

used for the purposes of industrial relations or regulation of the environment. I am sure that if the legislation did allow for referral to the Commonwealth of industrial relations laws or, for that matter, laws in relation to the environment, we would have a lively and interesting debate on these bills. An efficient, effective and coherent system of Corporations Law is absolutely essential for the efficient functioning of our modern economy and legal system. These bills contribute to that efficiency, coherency and certainty. However, they do not detract from our Federal system of government, which has been the foundation for an effective and stable government since Federation.

The Opposition is committed to ensuring that we have a Corporations Law scheme that enables the business community to have certainty about its obligations and the economy to proceed without undue uncertainty. Like a number of members, I am concerned at the trend in this House of introducing complex legislation with a minimum of time for the Opposition and crossbenchers to review. As my colleague the member for Gosford pointed out in the other House, these bills are extensive, one comprising 265 pages. It is a problem for everyone that this Government has a habit of rushing bills through the Parliament without proper opportunity for consultation or scrutiny by the Coalition and members of the public. In this case, it is accepted that the legislation can go through quickly, but the trend of introducing complex legislation and not allowing time for consideration should be deplored. We must make sure that the Government understands that that is not acceptable. I commend these bills to the House and look forward to the future certainty of our Corporations Law and its regulations from 1 July.

The Hon. JOHN HATZISTERGOS [9.23 p.m.], in reply: I thank honourable members for their contributions to the debate. Hopefully these matters will be resolved quickly and the system of dealing with issues will be a satisfactory resolution to the current impasse.

Motion agreed to.

Bills read a second time and passed through remaining stages.

AGRICULTURAL AND VETERINARY CHEMICALS (NEW SOUTH WALES) AMENDMENT BILL

CO-OPERATIVE SCHEMES (ADMINISTRATIVE ACTIONS) BILL

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [9.26 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

The bills that I am putting forward today are cognate with the *Commonwealth Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001*, which was introduced into the Senate on 3 April 2001.

These bills are introduced to ensure that the important roles of Commonwealth authorities and officers within the National Registration Scheme for Agricultural and Veterinary Chemicals are not put at risk because of the High Court's recent decision in *The Queen v Hughes*.

The National Registration Authority for Agricultural and Veterinary Chemicals known as the NRA, operates a national system that evaluates, registers and regulates agricultural and veterinary chemicals, which is known as the National Registration Scheme.

The NRA in partnership with the States and Territories, is the primary regulatory agency in relation to the importation, manufacture and supply of agricultural and veterinary chemicals in Australia. Consequently, it is vital that the integrity of this inter-governmental legislative scheme is maintained.

The decision in *Hughes* casts doubt on the capacity of Commonwealth authorities and officers to exercise powers and functions conferred on them by State legislation in situations where a power or function is coupled with a duty and there is no clear federal head of power to support that duty.

In turn, this casts doubt on the existing Commonwealth-State National Registration Scheme relationship including the functions of the Commonwealth Director of Public Prosecutions, the Commonwealth Administrative Appeals Tribunal and Commonwealth inspectors and analysts appointed under Commonwealth laws.

In order to remedy this problem the Parliamentary Counsel's Committee has drafted the two bills that I am introducing today.

The bills have been drafted on a uniform basis for enactment throughout Australia.

They address the implications of *Hughes* for the National Registration Scheme and address gaps in the co-operative legislative scheme relating to the conferral of functions on Commonwealth authorities and officers.

I will deal with each of the bills separately.

The *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001* addresses the implications of *Hughes* for the National Registration Scheme.

This bill amends the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* by making changes to the National Registration Scheme in order to place it on a more secure constitutional footing.

It does this in two ways.

Firstly, by validating administrative actions done or omitted to be done by Commonwealth authorities or officers.

These actions may have been invalid due to gaps in the National Registration Scheme legislation.

This issue has arisen independently of the decision in *Hughes*. Secondly, the Bill ensures that administrative action taken or omitted to be done in the future by Commonwealth authorities or officers in pursuance of the National Registration Scheme, has a constitutionally sound footing.

The *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001* could be described as solving the non-*Hughes* problems within the National Registration Scheme, whereas the *Co-operative Schemes (Administrative Actions) Bill 2001* is targeted at solving the *Hughes* problems within the National Registration Scheme.

The *Co-operative Schemes (Administrative Actions) Bill 2001* addresses the gaps in the co-operative legislative scheme relating to the conferral of functions on Commonwealth authorities and officers.

The Bill has been drafted so that past validation for previous administrative action not linked to a Commonwealth head of power under the Constitution may be extended by proclamation.

This will not only benefit the National Registration Scheme but also authorities such as the National Crime Authority.

The Bill places the National Registration Scheme on a more secure constitutional footing by ensuring that no duty, function or power is conferred on a Commonwealth authority or officer which is beyond the legislative power of the State.

In conjunction with the cognate Commonwealth *Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001*, the *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001* and the *Co-operative Schemes (Administrative Actions) Bill 2001* will secure the constitutional basis of the National Registration Scheme and the conferral of functions and powers upon which the National Registration Scheme is dependent.

I commend the Bills to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [9.26 p.m.]: These cognate bills follow the introduction in the Senate on 3 April of the Commonwealth Agricultural and Veterinary Chemicals Legislation Amendment Bill. These bills were introduced to ensure that the national registration scheme for agricultural and veterinary chemicals is not put at risk due to the High Court decision in *Regina v Hughes*. The decision in that case casts considerable doubt on the duties, functions and powers of Commonwealth authorities and officers within the National Registration Scheme. As honourable members may be aware, the National Registration Authority is the primary regulatory authority for the importation, manufacture and supply of agricultural and veterinary chemicals: it is a co-operative Commonwealth-State venture. The decision in the *Hughes* case questions the capacity of Commonwealth officers and authorities to exercise functions conferred on them by State legislation in situations where any power or function is coupled with a duty and there is no clear Federal head of power to support that duty.

As I understand it, these bills will be uniform across States and Territories. The Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill makes changes to the Agricultural and Veterinary Chemicals Act 1994 by placing the national registration scheme on a more constitutional grounding. This will be done in two ways. First, it will validate administrative actions done or omitted to be done by Commonwealth authorities or officers and, second, it will ensure that administrative action taken or omitted to be done has a sound constitutional footing. The Co-operative Schemes (Administrative Actions) Bill is aimed at solving problems raised in the *Hughes* decision as they relate to the National Registration Scheme. The bill addresses the gaps in the co-operative legislation scheme dealing with the functions of Commonwealth authorities and officers. The Opposition recognises the important work of the National Registration Authority. We are keen to see that it is given more constitutional footing in which to do its important work. A uniform legislative framework across the country is also essential. It is for these important reasons that we support this Government legislation.

The Hon. RICHARD JONES [9.29 p.m.]: I support the Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill and the Co-operative Schemes (Administrative Actions) Bill. As the Deputy Leader of the Opposition just said, it is basically a tidying-up exercise in consequence of the recent High Court decision in the case of the *Regina v Hughes*, which cast doubt on the capacity of Commonwealth authorities and officers to exercise the powers and functions conferred on them by State legislation. On the general question of agricultural and veterinary chemicals, during the estimates committee the Minister gave us a long discourse, which I was delighted to hear, on new advances made in New South Wales and across the world on phasing out certain chemicals in the production of food, and the tremendously fast-growing organic food production industry in this State.

Apparently, organic production in Australia is reaping something like \$250 million and growing rapidly. Some of us have been invited to the opening of the Bathurst Centre in two or three weeks time. Three people at the Bathurst Centre are working on organic production. I am aware that agricultural and veterinary chemicals have been very useful, but some of them need to be phased out. We must look to the future, at the growing markets in Japan, Europe and England, in particular, which want our product really clean and green—which means grown without the use of any chemicals, if possible. I support the legislation.

Debate adjourned on motion by the Hon. Peter Primrose.

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL (No 2)

Second Reading

Debate resumed from an earlier hour.

The Hon. GREG PEARCE [9.31 p.m.]: We support reform of the workers compensation system, but the bill in its current form is not the answer. The way that our arrogant Premier has forced it upon all of us, without discussion and his stunt last week, is reprehensible. But the worst feature is that we will have to rely on the Minister for Industrial Relations to make the legislation work. Who could trust the Minister on this legislation? Last week the Minister, the Hon. John Della Bosca, provided this House with the definition of the "practice of scabbing". He said:

The practice of scabbing, as I understand it, is to subvert the conditions and wages of organised labour in the course of pursuing one's own employment.

This bill is surely an exercise in scabbing. The bill was introduced into this House by the same Government and the same Minister that imposed the unfair Motor Accidents Scheme on the people of New South Wales. They have deprived innocent motor accident victims of their rights, and now they intend to do the same to their constituency. The Premier's histrionics have produced confusion and a false expectation that the bill is about the WorkCover deficit, and that it will do something to arrest that deficit. Well, it is not. The bill's antecedents are in the three-stage reform process outlined by the Minister on a number of occasions. In June last year the Minister announced his plans for the future direction of workers compensation reform in New South Wales. The plans were to be implemented in three stages.

Stage one was to concentrate on renewing, in the Minister's words, the focus of the WorkCover scheme on injury management and improving compliance. We have heard quite a lot about compliance, and there has not been any improvement—although there was a legislative package. The second legislative package the Minister intended to introduce over all of that time is intended to bring about reform to dispute prevention and resolution in New South Wales. That is the package we are now considering. It is not about the deficit; it never has been. It is part of the Minister's three-stage package, and part of it primarily is about dispute prevention and resolution. Stage three, which the Minister still has to bring forward, is meant to focus on the simplification of the legislative framework, which is urgently required. It is difficult enough now for employers, especially self-insured employers, and employees to work in the current convoluted scheme.

Now we have another 135 pages of legislation and an unknown number of regulations. The legislation is about changing the way injured workers pursue their rights. I have no problem with simple, fair dispute resolution procedures. But the bill, as it stands, does not guarantee any of that. In his second reading speech in the other place the Minister for Police again emphasised that the primary focus of the bill is dispute resolution. The Minister for Police said that the current scheme lets down the stakeholders; that, for employees, there are too many disputes and too many delays in the system. We would all agree with that. He claimed that the bill represented the outcome of a consultation process. We all know about the consultation process. He claimed that

the bill achieved the Government's objective of ensuring a simpler and fairer dispute resolution system that protects the rights and entitlements of injured workers. We cannot tell whether it does that. He went on to claim that the bill delivered an independent and transparent dispute resolution system. The problem with those claims is that no-one can tell. To do so we need to see the guidelines and the threshold that establish entitlements of workers and employers. The Minister in the other place admitted this when he said:

Until the guidelines are developed a proper assessment cannot be made as to what compensation formulas are adequate.

One of the important features that has come out of the process is that the Minister for Police in the other place acknowledged that the dreaded American guidelines, which were imposed on this State by the Minister for Industrial Relations, are too draconian. The Minister for Police said:

The Government recognises that there is a need for locally developed guidelines to be used rather than the guidelines issued by the American Medical Association [AMA]. During the consultation processes a number of the specific concerns were raised with the existing content of the AMA guides. There is a need for a comprehensive review of those guidelines before they are implemented.

That is what he said about the guidelines for workers. What about motor accident victims? The Minister in the other place went on to say:

The bill now requires WorkCover to issue locally developed guidelines instead of rely exclusively on the AMA guides.

We then come to the crux of the matter: urgency. We have heard the Minister in the other place and today we heard the Minister here tell us that WorkCover is in the process of producing the guidelines, and that they are not far off. The position the Opposition has taken is that the Parliament must be given the opportunity to decide on the guidelines, not the Minister. Given that the WorkCover guidelines will be disallowable by Parliament it is only appropriate that there is parliamentary scrutiny of their content, and we wish to see them. The Government should accept the Opposition's amendments, which will guarantee these basic, democratic, due process requirements. What about the right of workers to have an independent judge determine their claims? Although we have been told that this bill will not extinguish common law rights, the Minister for Police, in his second reading speech, said:

The Government is still considering its position on the appropriate impairment-based threshold to be applied.

The Minister told this House today that the Government's intention is to go through some sort of process whereby regulations will be made to apply those thresholds, but that the Act will be amended in due course and the thresholds legislated for. That sort of process is not acceptable, particularly when the argument for urgency and this type of process has not been properly made out. That again raises the question: Why the urgency? Why the histrionics about this process?

I want to turn for a moment to the question of the deficit. The Minister for Police was not unduly worried about that aspect and hardly touched on it in his second reading speech. Nor has the Minister for Industrial Relations expressed any real urgency about the deficit when discussing the reform process. That is consistent with the Government's record of sloth in dealing with the deficit. It is not as though the Government did not know about the deficit. The *Daily Telegraph* reported on 6 December 1997:

The Auditor General, Tony Harris, warned in a report tabled in State Parliament yesterday that WorkCover had an accumulated deficit of \$789 million and was not viable as a going concern.

The Leader of the Opposition pointed to that same quote in his contribution earlier. In December 1997 the Auditor-General said that WorkCover was not viable as a going concern. The *Daily Telegraph* article continued:

It is essentially beyond repair. My audit opinion is that it cannot be regarded as an ongoing scheme and it has to be replaced.

The Hon. Jeff Shaw, who at that time was the Minister for Industrial Relations, was also very relaxed and comfortable about the deficit. He was quoted in an article in the *Daily Telegraph* of 5 December as acknowledging that the cost of pressures on the scheme, though real, should not be overstated. Perhaps the Premier should read that statement by his former Minister. A year later nothing had improved. The *Sydney Morning Herald* reported on 23 December 1998:

According to figures published by Mr Tony Harris, WorkCover is now losing an average of more than \$2.4 million every day of the week, 365 days a year.

What has the Minister for Industrial Relations had to say about this? Given the shocking state of the deficit, it is useful to ponder the Minister's words. In a statement to this House on 27 March the Minister said:

Last October I reported to this House that the estimated deficit of the WorkCover scheme as at 30 June 2000 was \$1.6 billion. The WorkCover scheme actuaries have now provided their draft valuation on the scheme as at 31 December 2000.

The Minister then went on, matter of factly, to tell us about the blow-out of \$540 million in the deficit. At least one can say that HIH Insurance took a few years to do it, and did it across the world. In the case of One.Tel, it took a couple of years. The Minister, however, told us that his pet, WorkCover, lost \$540 million in six months!

The Hon. John Johnson: But they are not having a royal commission into us.

The Hon. GREG PEARCE: Well, they certainly should think about a royal commission. I assume that the Hon. John Johnson will support the Opposition's motion to establish a select committee to examine this matter. The Minister went on to explain the reasons for the blow-out when he addressed this House in March of this year. He said there were three main reasons for the increase in the deficit. The first was the greater than expected claim costs, which he said added \$200 million to the deficit. The second factor was the current state of the economy—that there had been an increase of \$120 million because of the state of the economy. The Minister tried to paint that increase as some sort of unexpected cost that neither the WorkCover board nor the Minister could do anything about.

However, when one examines what the Minister said, one sees that the increase of \$120 million in estimated liabilities was due to "a revision of assumptions about future inflation and investment returns". What is this deficit? What is it really all about? The Minister's third reason for the blow-out in the deficit—and this is telling—was the undercollection of premiums, about which the Minister said, "I have previously noted". Very good! I am so pleased that the Minister noted this undercollection of premiums. There are two elements to the undercollection of premiums. First of all, premium undercollection, according to WorkCover, was \$120 million. Then there was a separate issue of the shortfall in premium collections, which amounted to another \$100 million.

There we have \$200 million—which I am pleased to say the Minister noted!—but the WorkCover board seems to have done nothing about it. In the context of that the Minister 'fessed up and said that it was government policy to budget for WorkCover to run at a deficit; it was government policy to set the rate for premiums at 2.8 per cent of wages—notwithstanding that the Government and the Minister and the WorkCover Authority knew that the cost of the scheme was greater than that and knew that the cost of the scheme has been consistently greater than that. There they were, deliberately budgeting for a deficit. The Government had this deficit running along as policy. The Government ensured that the scheme budgeted for a deficit! Why did the Government not do something about the underlying problems? Why did the Government not do something about the undercollection of premiums by \$120 million? Why did the Government not do something about the shortfall in premium collections of \$100 million? Why should the Minister be so surprised now about the deficit? On 24 May 2000, just over a year ago, in answer to a question on notice the Minister said:

Early gains from injury management appear to have stalled and no further gains have been evident in the past six months. The objective of bringing costs below the current average premium rate of 2.8 per cent has not been achieved. Scheme costs are again on the rise.

The Minister continued:

The scheme deficit is increasing again. The bottom line is at December 1999 it is \$1.8 billion, which is projected to increase to more than \$2 billion by 30 June 2000. It is clear that further changes of a more substantial and fundamental nature are required.

They certainly are. Here we are more than a year later and the Government is saying "Trust us. The Minister for Industrial Relations will make sure it all works out. We have to do it this week because suddenly we have this deficit of \$2.18 million." But there was a blowout of \$540 million in six months! On 24 May 2000, one year ago, the Minister said that the deficit was projected to increase to more than \$2 billion by 30 June 2000. So he knew about this a year ago. Did he not tell the Premier? Did he just forget about it? So why is the urgency now thrust upon us? It is because of the arrogance of this Government. This is not about the deficit. The deficit will continue to grow because of the Government's failure to address the required reforms for six years. It will continue to grow because of the mismanagement of WorkCover, which the Minister fails to address. He refuses to do anything about the appalling mismanagement of WorkCover.

The large businesses that self-insure pay nothing like the costs that WorkCover incurs to run its scheme. The self-insured workers compensation programs are run for about a third of the cost under WorkCover. The coalminers scheme, which is separate, I understand runs at about two-thirds of the cost under WorkCover. So why does the Minister not do something about the mismanagement of WorkCover? He does not

hold the WorkCover board accountable for anything. But that is typical of the Government. No-one in this Government is accountable for anything: if something goes wrong you blame somebody else. The Government takes no responsibility for anything. It just gets out into the media. So this week the Premier was tripping around with the media looking at buildings and telling us what he thinks of buildings instead of dealing with the real issues.

He should be dealing with WorkCover's appalling investment results, the negligence in premium collections, budgeting to break even and doing what is required to achieve that. The Minister thought he could score political points by bashing the lawyers. Let us look at what he did. He gravely announced that lawyers received \$422 million from the scheme in legal fees compared with the \$438 million in weekly benefits paid to workers. Members of his own party, who would not put up with the reforms, then insisted he enter a consultation period. Honourable members will be interested in this. The Minister had produced for us coloured pie charts and tables to support the claim of \$422 million. But the figures were not true. We cannot believe the Minister. The true figures were provided to the Labor Council. He gave it the real figures. In 1999-2000 the real figure for lawyers was not \$422 million but \$317 million—not 17 per cent as claimed by the Minister but 11.8 per cent. The weekly benefits paid to workers did not amount to \$438 million but \$643 million. They are the figures the Minister should have produced to this Chamber but instead he gave us his own figures.

The Hon. John Della Bosca: It is still a lot of money, though, Greg. You cannot argue with that.

The Hon. GREG PEARCE: How can we trust the Minister? He is proudly acknowledging that the figures I have given are the true figures. We need real reform that addresses the real problems of the scheme, not stage-managed hysterical attacks on our political and legal systems and on the rights of workers and employers. I will address various specific issues in relation to the bill in Committee when dealing with the amendments. However, one matter that requires comment—I was pleased to hear the Minister mention it in his second reading speech today—is the possible retrospective operation of the bill in new part 18C in the transitional provisions. For example, clause 5 (1) of new part 18C currently provides that:

The regulations may make provision for or with respect to requiring a class or classes of existing claims to be treated as new claims for the purposes of the Workers Compensation Acts.

That retrospective operation of the legislation in relation to existing claims terrified me. In fact, it brought back to me the image of Minister Della Bosca wielding the butcher's cleaver—chop, chop, chopping into workers rights.

The Hon. Rick Colless: John Della Butcher.

The Hon. GREG PEARCE: No, the Hon. John Della Butcher. I will be pleased to see the outcome of the legislation in respect of retrospectivity, which is not to be supported. I also address an interesting conundrum which was referred to by my leader earlier. I was interested to read in the *Sydney Morning Herald* this morning an article by the newspaper's industrial editor, Brad Norington. He posed the question: Is there more to the abrupt union decision to abandon protests over workers compensation? The article reads:

As cave-ins go, yesterday's by the NSW union movement looked about as breathtaking as they get.

He speculated on the reasons and one conclusion he came to was:

Another possibly is that some government concessions have been made.

That is very interesting. The article continued:

Unions are saying that they achieved more than they let on but are being constrained in what they can say publicly for the sake of maintaining Carr's strongman image ...

Perhaps some inkling can be gained by looking at some of the goodies for the unions. First there are the goodies to be handed out by the authority under new section 42B, which is euphemistically headed "Claims assistance". The authority will provide assistance for three years to help, amongst others, organisations representing employees. I wonder who that might be. We will see. But the real golden egg is in the fees paid to agents. Once again there is a regulation-making power which allows the Minister discretion to make rules for the payment of costs to agents. "Costs" are widely defined in new part 8 and extend to agent services. "Agent service" is defined as:

... any service performed by a person in the person's capacity as an agent.

An agent is defined as "a person who acts as agent for a person in connection with a claim". Who might that be? Who will regulate the agents? Who will ensure that they are trained? Who will ensure that the workers who use the so-called agents are paying them a proper amount? Who will ensure that this is not a mechanism for unions to milk funds from the workers compensation system?

Although there is plenty of attention given to what lawyers are entitled to charge and an overrestriction on lawyers brought in by the legislation, new section 344 is quite extraordinary; it permits orders against lawyers. No such limitation is included for agents, although there is that provision in the industrial Act. Why not give protection to employees by ensuring that the agents who are able to represent workers are qualified and regulated and are required to ensure that they charge the proper amount? I hear a lot of chatter from members opposite, but I will continue. Ordinary hard-working Australians would not contemplate a government setting up a WorkCover scheme that is already broke as a cash cow for the union movement. But what concessions have they won? Having seen the arrogance and dishonesty of the Government we can only nervously hold our breaths.

The Hon. IAN COHEN [10.01 p.m.]: If no-one else wants to speak, I will.

The Hon. John Jobling: He is speaking from the Opposition side of the House. He doesn't like to turn his back on members on the Government side.

The Hon. IAN COHEN: There has been betrayal on both sides of the House, and I am not impressed either way. Perhaps I should stand somewhere else, or not even bother. When I see the games that are played in this House, I wonder—

The Hon. Jan Burnswoods: But you still accept the salary, don't you?

The Hon. IAN COHEN: Yes, and I think I work legitimately for it. I stand in this House and I argue constantly, unlike some members of major parties who float around and undertake the dirty work of the right-wing while pretending to be left-wing supporters and representatives of the people. You are a hypocrite.

The Hon. Jan Burnswoods: So are you, that is the point I am making.

The Hon. IAN COHEN: That is the point you might make, because you have nothing better to say. You are a little trained animal, jumping up and down like a puppet, to do the dirty work of the Australian Labor Party [ALP]. You have no principles, you are absolutely amoral. I have seen that so many times in this House and it absolutely makes me sick. So, stick to the issue.

The Hon. Jan Burnswoods: You are always noble, aren't you?

The Hon. IAN COHEN: Maybe I have something to say and maybe I do represent a constituency. Without your Labor Party and your whole corrupt system you would not get anywhere in this House. The Greens are totally and fundamentally opposed to the bill.

The Hon. Jan Burnswoods: As a matter of principle.

The Hon. IAN COHEN: As a matter of principle, and there are some people in this House who have principles but I would not include you among them. It is extremely sad that this Parliament is about to pass a bill that will significantly reduce the rights of injured workers and their entitlements to benefits. It is equally sad and totally appalling that this bill is being introduced by Labor, a party that is meant to champion the rights of workers. It is unbelievable that any Labor Government would seek to destroy the rights of injured workers in such a fundamental way.

The bill is not tinkering around the edges, it is a total rewrite of the workers compensation system. At the end of the day, innocent injured workers will have less access to the benefits that they desperately need, all in the name of reducing a so-called deficit that, according to a number of actuaries, is not as big as the Government is making out. One actuary said that there is no deficit. It is hard to know where to begin with this bill, because it is so bad. The process that the bill went through to get to this stage is remarkable.

In March, the original workers compensation bill was introduced. This caused an outrage in the trade union movement and eventually the Minister for Industrial Relations agreed to put the bill on hold for seven

weeks while he consulted with key interest groups, particularly the Labor Council. No such consultation had taken place beforehand, nor had the Minister's Workers Compensation Advisory Council been involved in the drafting of the bill. That is a tragedy in itself. The advisory council is made up of employees and employers, and it is a credit to the council that while operating it managed to come to agreement on most major issues despite members coming from opposing sides. Of course, there was a lot of compromise on both sides but at the end of the day the council came up with decisions that both sides could live with.

The bill has created political turmoil in the Labor Party and within its own support base, the unions. On Tuesday 19 May the Premier almost faced an unprecedented constitutional crisis. On 21 June the *Sydney Morning Herald* reported the seriousness of the situation. Under the standing orders of the Legislative Assembly, question time had to proceed at 2.15 p.m. However, at that time the Premier did not have the numbers in the lower House. The *Sydney Morning Herald* pointed out:

Without the Speaker or his deputy, the Opposition could elect an acting Speaker and move a vote of no confidence in the Government. Having won that vote, Chika could have gone to the Governor and asked to form a government. She wouldn't have had the numbers and we would have had to go to the polls.

It is a tragedy that Labor members of Parliament were forced to cross a picket line. For Labor, the picket line is a symbol of its beliefs and values.

The Hon. John Della Bosca: It was a blockade, not a picket line.

The Hon. IAN COHEN: The Minister said that it was a blockade, not a picket line. That was an interesting interjection. The interests of workers and their rights are supposed to be at the very heart of the party. That is why it is unbelievable that a Labor Government could be so unrelenting about trampling on workers rights. The Government, by passing this bill, is attacking the very heart and support base of its own party. Traditionally, Labor governments have fought long and hard for workers rights, which is why its strength comes from workers and the union movement. Why on earth would a government want to attack its very foundation and then force its own members, particularly the left, to cross a picket line.

The Hon. John Della Bosca: You let us worry about that, you worry about yourself.

The Hon. IAN COHEN: I am making a comment, because it was historic. It is obvious that the Minister is failing, he is not interested.

The Hon. John Della Bosca: You don't understand it.

The Hon. IAN COHEN: Perhaps I don't, but I am sure that you do. Perhaps the Minister will remind me of a bit of Labor history in his reply. I will make comments and am open to correction by the expert of the Labor movement, who has a close relationship with the union movement.

The Hon. John Della Bosca: We do our best.

The Hon. IAN COHEN: Indeed, that is quite something. For a Labor Government to force its members, particularly those of the left, to cross a picket line—which is elevated to an almost religious status by most members of the party—is absolutely tragic. Those members must now feel that they have broken a sacrosanct rule: Never cross a picket line. As one left-wing member said to the *Sydney Morning Herald* on 20 June, a union picket line has to be respected and not crossed, regardless of where it was established. He said:

It is a very traditional, historic tool ... I can't see how anybody can legitimately be a member of the Labor Party is that are prepared to cross a picket line.

Mr Damian O'Conner, the ALP's left assistant secretary, said that no Labor member of Parliament could possibly be unaware of the significance of a picket line. It is interesting to note that Bob Carr is a strong supporter of picket lines and trade union tactics when he feels like it and it is in his interests. According to the *Sydney Morning Herald* the Premier went three times in one week to the wharfies picket line during the 1998 Patrick stevedoring waterfront dispute. There he rallied the union members, encouraging them to continue the fight against Patrick stevedores.

When the FreightCorp legislation is debated in this House, I will be interested to hear who the bidders are for FreightCorp and the National Railway business. We will wait and see how Patrick stevedores fare in that. So what is different now, Mr Carr? Why are the union tactics employed in the Patrick stevedores dispute okay,

yet the tactics employed by the Labor Council, which targeted your Government, are not okay? The arrogance of the Premier, Bob Carr, was unparalleled on 19 June. But not only did he sneak into Parliament through a little-used entrance—and technically he did cross the picket line—but he had the audacity to give a victory salute to the unionists from the front of Parliament House.

That action was not only arrogant; coupled with his requiring his Ministers to walk down Macquarie Street, it was downright foolish and dangerous. As Ian Ball, the President of the Police Association pointed out, "What Carr did could have turned a demo into a full-on riot." And not only that. It must have been shocking for the workers.

The Hon. John Della Bosca: They were either going to let people in or they weren't. You can't have it both ways.

The Hon. IAN COHEN: You think it is appropriate for the Premier to signal to the workers outside, do you, rubbing salt into the wound?

The Hon. John Della Bosca: I was just commenting on the fact that you cannot have it both ways. They were either going to let people in or they weren't and they were going to have a riot. You cannot have it both ways. It is a fundamental contradiction.

The Hon. IAN COHEN: It seems that arrogance is overtaking this Government that has been in office for only 1½ terms. It will not be the Opposition next time around but that does not mean you will not lose the support of your heartland. Here was the Premier giving a victory salute from Macquarie Street while workers were staring down the barrel of a loaded gun, the severe loss of their rights if they are injured. What a cold, heartless thing to do!

What is so badly wrong with this bill that the Labor Council was prepared to go to such extraordinary lengths? From the Greens perspective, one of the major problems with the bill is the whole dispute resolution process and, in particular, the independence of the whole system from WorkCover. First, there is the abolition of the Compensation Court, which will result in the curtailment of the rights of citizens to a fair go. This will be replaced by a new Workers Compensation Commission.

There are many problems with the new commission, such as tenure. Members of the commission do not have security of tenure and can be dismissed at any time, not the least if they make determinations that go against the wishes of the Minister, as set out in the objectives of the commission. These are set out in new section 367. Some of these objectives are extremely objectionable and are certainly designed to reduce benefits for injured workers. For instance, new section 367 (1) (a) specifies as one of the objectives of the commission:

... to provide a fair and cost effective system for the resolution of disputes under the Workers Compensation Acts.

"Fair" and "cost effective" are conflicting objectives; they are totally contradictory. "Cost effective" means, in effect, fewer benefits for injured workers. New section 367 (1) (b) provides another objective: "to reduce administrative costs across the workers compensation system". Again, this will mean less advocacy and benefits for injured workers. If a member of the commission makes determinations that are inconsistent with these objectives and starts awarding injured workers too many benefits, he or she is likely to be sacked. As members of the commission do not have tenure, they will have to toe the line or risk being sacked.

The suggestion in another objective of the commission, "to provide an independent dispute resolution service", is a joke. The commission and its members will not be independent. They will be totally at the mercy of the Minister. It is not a good situation for injured workers to face a commission that is not impartial.

New section 368 sets out the members of the commission, which will be a president, two deputy presidents, a registrar and arbitrators. All members will be appointed by the Minister, except the arbitrators, who will be appointed by the president, who is appointed by the Minister. In other words, the Minister will have his finger in the pie over the appointment of arbitrators. Arbitrators do not have to be legally qualified, although they will be required to interpret the legislation and apply the law.

Although the deputy president has to be a legal practitioner of five years standing, there is no requirement that he or she has actually practised over that period of time. The president has to be a judge but there is no stipulation on the length of practice or time as a judge. The New South Wales Bar Association pointed out in its briefing note:

Injured workers will be denied access to experienced judicial officers with independence and security of tenure. Neither in its structure, nor in its decision-making process, is the body proposed by the Government independent of the Minister.

The Commission can make a decision against the interests of a party to a dispute without hearing from that party, contrary to the principles of natural justice.

Although there is a limited right of appeal from certain medical assessments, there is no right of representation from the appeal panel.

In other respects the rights of the parties to appeal are drastically curtailed.

Members of the Commission are not required to give full reasons for their decisions. Yet, decisions are final, binding and unappealable except in very limited circumstances.

Clause 2 of new schedule 5 sets out the terms of appointment of members of the commission. Clause 2 (1), (2) and (3) states:

- (1) Subject to this Act, a member of the Commission holds office for such period as is specified in the instrument of the member's appointment.
- (2) The term of an appointment must not exceed 7 years in the case of a Presidential member or 5 years in the case of any other member.
- (3) A member is eligible for reappointment.

This, coupled with key objectives of the commission "to provide a fair and cost effective system" and "to reduce administrative costs across the workers compensation system" is a real threat to the independence of the members. For a start, there are no minimum years of appointment. Members could be on a one-year or two-year contract. Their performance, in terms of whether they reduce administrative costs and make determinations that lead to a cost-effective system, could be the key indicators of whether they are likely to be reappointed and will undoubtedly impact in a significant way on their independence. The Bar Association says of this lack of independence:

Assessors and Arbitrators may be removed from office at any time for any or no reason. Limited rights of review are given to a President and Deputy Presidents, each of whom can be removed from office by the Minister. Judges, on the other hand, are independent of government. They cannot be removed from office if they make decisions that do not suit the government of the day or other powerful interest groups.

The Labor Council extracted from the Government an agreement that the dispute resolution system and members would be independent from WorkCover. It was also, according to the agreement, to be headed by a judge and able to operate as a court. While new section 369 specifies that "A person is eligible to be appointed as president only if the person is a judge of a court of record", the person will not be appointed as a judge, that is, with unlimited tenure.

Also, the registrar, not the president, appears to administer the commission. For instance, the registrar, not the president, deals with "disputes about non-compliance with chapter 3". This is set out in new sections 306, 307 and 308. The registrar does not have to be a legal practitioner, let alone a judge. While the president has to be a judge, although not acting in this case in a judicial manner by having unlimited tenure, he or she is not the one who administers the commission.

Arbitrators, while appointed by the president, according to new section 372 are "in the exercise of their functions, subject to the general control and direction of the Registrar". They are not under the control of the president, which would be far more desirable. The bill makes reference to guidelines, formulas and thresholds. This is despite an assurance by the Government that there would be no reference to many of these issues until a proper review has taken place. In particular, the guidelines are still in the process of being formulated.

Justice Terry Sheahan of the Land and Environment Court is looking at common law issues. The inquiry is due to report back in August. However, the bill makes reference to common law issues. All these references should be deleted until the conclusion of the Sheahan inquiry. For example, new section 331, which deals with guidelines, states:

Medical assessments, appeals and further assessments under this Part are subject to relevant provisions of the WorkCover Guidelines relating to the procedures for the referral of matters for assessment or appeal, the procedure on appeals and the procedure for assessments.

The guidelines will cover the area of the assessment of the degree of permanent impairment of an injured worker as a result of injury. Major issues such as medical assessments, appeals and assessment of the degree of permanent impairment of an injured worker will be included in the guidelines, which are not yet available. In other words, Parliament is passing a law that enables yet to be formulated guidelines later on down the track to determine significant workers compensation issues, such as medical assessments, appeals and thresholds.

The Minister will issue the guidelines and under new section 376 the Minister can amend, revoke or replace WorkCover guidelines at any time. The Workers Compensation Advisory Council is only to provide advice to the Minister on the WorkCover guidelines and regulations. The Labor Council specified in a meeting to crossbenchers that under the agreement the council was to have input into the guidelines and to oversight the guidelines and regulations. However, the bill has not provided for this level of input.

The same arguments apply to the issue of thresholds, which is still to be considered in detail by Justice Terry Sheahan. The section 67 threshold is to be set by regulation, as are the mechanisms for determining the section 66 lump sum quantum of compensation. Fundamental issues such as this should be upfront in the legislation or not referred to in the legislation until the completion of the Sheahan inquiry. Appeals are possible under this legislation, but the barriers to them are too great. The certificate of the commission's determination is set out in section 294. Section 294 (2) specifies:

A brief statement is to be attached to the certificate setting out the Commission's reasons for the determination.

A brief statement is totally inadequate; there should be a full judgment. The leave of the president is required to appeal an arbitrator's decision. This is set out in section 352. The commission is not to grant leave to appeal unless the amount of compensation at issue on the appeal is at least \$5,000 or such amounts as may be described by the regulations and at least 20 per cent of the amount awarded in the decision appealed against. No fresh evidence is to be introduced without leave, and appeals must be lodged within 28 days.

The Bar Association has provided excellent additional advice to crossbenchers about the new bill dated 18 June 2001. For instance, the Bar Association argues that both workers and employers will be worse off under the bill because they can be denied a hearing on the merits. The fundamental rights of the parties to be heard in an open court have effectively been removed. Under the new bill, medical assessors and arbitrators will make most of the decisions currently made by judges. If there is a hearing there is no requirement that the proceedings be recorded. Under the existing law, cases are heard in open court with witnesses giving evidence under oath and being subject to cross-examination so that their assertions may be tested and untruths and misconceptions exposed. In the absence of hearings and transcripts there can be no proper scrutiny of the decision-making process. The rights of all parties can be trammelled.

The Special Minister of State alone will determine the scale of permanent impairment benefits to injured workers. Guidelines for impairment levels will be prepared and issued by WorkCover under the direction of the Minister. The legislation enables the Minister to determine the amount of benefits without subsequent referral to Parliament or key stakeholders. The rules of the commission will be determined by the Minister, not the commission.

The rule-making power extends to provisions relating to the making of assessments and determinations, extending or reducing time limits for appeals and the way in which either damages or compensation may be specified. The proposals give the Minister unprecedented powers to determine the future benefits and entitlements of workers and employers. The bill permits any or all existing claims to be removed from the Compensation Court where they are awaiting a hearing before a judge, with all the protections that that affords the parties.

During debate on the bill the Greens have heard a great deal about compliance and injury management. Earlier in the debate the Construction, Forestry, Mining and Energy Union presented a paper to crossbenchers regarding non-compliance in the industry. The paper is entitled "The Crisis: Workers Compensation Non-Compliance in the Building and Construction Industry 2000". The executive summary of the paper makes the following important points:

It is a recognised fact that there is a significant problem in workers compensation premium compliance in the building and construction industry. We believe that there is 30% non-compliance by contractors in the building industry. We have raised this issue with the State Government. Nothing has been done. The problem has only become worse. We now have a crisis. This has resulted in a premium collection system that is not collecting the correct level of premiums from across the industry. Legitimate contractors complying with the law are being placed at a competitive disadvantage by these unscrupulous operations.

The paper specifies that companies fail to comply with the workers compensation obligations in several ways. They include failing to have a workers compensation policy; underestimating the number of workers they employ, including deemed workers; understating the quantum of wages they pay each year; nominating the incorrect tariff category by pretending that they are operating in low-risk industries; engaging in phoenix behaviour—companies regularly liquidate and then reopen under another name, usually managed by the same individuals with different company office holders—and folding companies to avoid high experience rated premiums. This deprives the managed fund of millions of dollars each year.

If the State Government addressed non-compliance properly and took occupational health and safety matters more seriously, this bill would be unnecessary. The so-called alleged deficit would decrease, and truly injured workers would be able to receive the benefits they need so desperately. In other words, the Government is tackling this perceived problem in the wrong way. It should try the options suggested by the unions, doctors, lawyers and other interested parties before resorting to this drastic legislation, which is only bad news for injured workers. According to the Workers Compensation and Occupational Health and Safety Newsletter of August 2000, employer fraud is a major contributor to the deficit. The newsletter argues:

... a major incidence of fraud, is that which is committed each year by employers who deliberately under declare wages paid to employees thereby avoiding paying their full premium. In one industry alone—construction—under declaration is admitted by peak industry bodies to be at least 30 %. In the wider employer community fraud by under declaration is believed to be at least 10% of the total premium—around \$200 million each year.

On the other hand, the incidence of employee fraud is said to be very low. There has been a great deal of debate about the alleged WorkCover scheme deficit. The paper deficit is currently said to be \$2.2 billion, increasing by \$1 million per day. It is interesting to note that there is no consensus in actuarial reports as to the true extent of the alleged deficit. In three separate actuarial reports released within a six-month period, three separate results were arrived at as to whether there is a deficit. WorkCover scheme actuaries Trowbridge and then Tillinghast estimated outstanding claims liability at \$7.2 billion on 30 March 2000 and then \$7 billion in June 2000. On the other hand, Zaman estimated that the outstanding claims liability at 30 June 2000 was \$5.86 billion.

It is important to take a good look at the alleged deficit. According to David Zaman, an actuary whose report was presented to crossbenchers by the Australian Plaintiff Lawyers Association [APLA], there is no deficit. First, the scheme liabilities are a projection of all the claims in the system and are projected out to the year 2050 based on current economic indicators, such as interest rates. It is a paper debt in that it is not a debt that must be paid immediately. According to the WorkCover actuary, Tillinghast Towers-Perrin, assets were worth \$6.9 billion in June 2000 and liabilities were \$9.1 billion. However, when one looks more closely, it soon becomes apparent that this is a worst-case scenario. In a summary of the Zaman report, APLA states:

The extensive appendices to the Tillinghast report indicate that future claims liabilities may be being projected over a period of as much as forty years from accident date. If this methodology is being given widespread application, it is no wonder that future liabilities are being projected as so large.

The difficulty with such projections is that they take no account of reality. Those in practice in the area noted that it is rare to encounter a claim that has a life of more than 10 years, and with the renewed availability of commutations—acknowledged by both Zaman and Tillinghast to be a source of reduction in outstanding liabilities—many claims are being completely closed by payment of no more than 5 years worth of weekly compensation benefits.

Zaman predicts a steady decline in the deficit without any legislative intervention. Actual claims decreased from a peak of 130,342 in 1996 to 124,879 in 2000.

Debate adjourned on motion by the Hon. Ian Cohen.

ADJOURNMENT

The Hon. IAN MACDONALD (Parliamentary Secretary) [10.32 p.m.]: I move:

That this House do now adjourn.

SCHOOL SECURITY

The Hon. PATRICIA FORSYTHE [10.32 p.m.]: School security is very topical at the moment because of the recent devastating fire at Pennant Hills High School. However, if I were to look through my files it would be obvious that many devastating incidents have affected schools across the State in the past few years—many of which I believe we may have been able to avoid with appropriate care. We are losing more than

\$20 million of school property annually, yet the Government is spending between only \$5 billion and \$6 million on security measures. The Government could do many different things to better support schools and I shall refer to some of them. For a considerable period of time I have said to the Government that it would be appropriate to undertake an audit of school property by looking at the siting of each school and the various surrounding conditions to see if they could be improved.

I read in a newspaper article on 22 June that Orange High School had this year installed improved school lighting in its playground, which the school principal said had significantly reduced crime. However, the District School Superintendent, Arthur Townsend, said, "Lighting similar to that in Orange High School may not have the same impact for other schools; it depends on the school's layout and location." I have made that point for a considerable period of time. Each school may well be different, but lighting, security cameras and video surveillance may assist all schools. Last year Mitchell High School, which is in the Minister's electorate, spent \$11,000 on video surveillance and \$4,000 on lighting. The school was impressed with the impact this change had on graffiti, vandalism and fires.

Whenever a school is affected by fires or vandalism in any form—graffiti on fences or walls, or more significant vandalism such as broken windows and equipment, and damaged work—it impacts on the appearance of the school and its ability to attract new enrolments. It also impacts significantly on the everyday working of the school. When the Government came to office it abolished the Coalition's task force that operated within the security unit of the Department of Education and Training. The unit's role was to monitor security firms to ensure accountability. As I have said many times, under this Government the contracts for electronic security—that is, back-to-base monitoring and alarms—were considerably weakened in early 1999. Previous to that security firms were required to have a response time of approximately 15 minutes. Last week during an estimates committee hearing the Minister for Education and Training said that the average response time is now 30 minutes. In 1999 many contracts had response times of 15 minutes.

Fewer contracts were let to fewer firms, which meant that more firms were managing more schools, which meant that their opportunity to undertake regular patrols had been significantly reduced. I am told regularly by people within the security industry that the installation of static security, barrier security as it is known—that is the installation of security fences, bars and windows by schools in New South Wales—is below standard. Although the schools facilities standards document, known as the SFS8, makes it very clear that a school should install that sort of equipment according to the specifications—that is, that it has to be installed by somebody licensed under the Security Industry Act—very few school principals have that brought to their attention.

Principals see it as their responsibility to accept the lowest tender. They get three tenders, they then accept the lowest. They are not required, or they do not understand, that they need to ensure that anybody installing such equipment is licensed under the Security Industry Act. I am told that if one were to audit that sort of equipment that has been installed in schools in the past five years, specifically as many of the regulators were updated, very few schools would have had conforming work done. If we are going to do something about this \$20 million-plus loss of school property then we must go back and look at the contracts that have been let to security firms and electronic monitoring. We must do better in terms of static security and, above all else, we must do better at ensuring that schools, through lighting and video surveillance, have an opportunity to protect their property.

AUNG SAN SUU KYI FIFTY-SIXTH BIRTHDAY

The Hon. JANELLE SAFFIN [10.36 p.m.]: I wish to publicly note the fifty-sixth birthday last Tuesday, 19 June, of Burma's Aung San Suu Kyi.

The Hon. Dr Brian Pezzutti: She doesn't look it.

The Hon. JANELLE SAFFIN: She sure doesn't! The day is also celebrated as Women of Burma Day. Honourable members know of my support of her and my work with her movement, which includes a large number of nationalities. I had arranged a small party last week at lunchtime to celebrate with some of her friends from the Australian Burmese community. Tuesday was an unusual day. The people turned up, and they celebrated and sang happy birthday outside with a lot of other people. Auntie Pyone, Auntie Ida Pay, Debbie Stothard and Angela Parker—four of her best women friends who lived in Burma and now live in Australia—celebrated outside. One of the old Aunties made a quite funny, but telling, comment, "This is what we are fighting for in Burma: to be able to demonstrate like this outside." She said, "I celebrate in the ability to demonstrate."

I kept in touch with them by phone because I was not able to join them. But I had the birthday cake, the candles and all the trappings. I carried them around with me until nine o'clock that night. Other people got to eat the birthday cake. New Zealand and East Timor celebrated both the birthday of Aung San Suu Kyi and the Women of Burma Day. They also launched the New Zealand Friends of Aung San Suu Kyi and the East Timorese Friends of Aung San Suu Kyi, which was launched by Xanana Gusmao and Kirsty Sword Gusmao. The Australian Friends of Aung San Suu Kyi was launched here by Sharon Burrow. Xanana Gusmao celebrated his fifty-sixth birthday on 20 June.

The Hon. Dr Brian Pezzutti: What happened 56 years ago?

The Hon. JANELLE SAFFIN: I do not know. Xanana Gusmao had a joint cake at his birthday celebration for him and Aung San Suu Kyi. Bishop Belo was the first person to join the East Timorese Friends of Aung San Suu Kyi.

The Hon. Dr Brian Pezzutti: The war ended.

The Hon. Patricia Forsythe: That's what happened 56 years ago.

The Hon. JANELLE SAFFIN: Is that what it was? Bishop Belo was the first person to join up for the friends there. He was very keen to do that. It was a joint activity between a number of places in Australia—it was also in Melbourne—and New Zealand and East Timor. Some honourable members would know that Aung San Suu Kyi is a Companion of the Order of Australia. She was received into that order in May 1996. That was done with a bipartisan blessing. It was instigated when Gareth Evans was Minister for Foreign Affairs with the support of the then Opposition, and completed when Alexander Downer was Minister for Foreign Affairs.

Aung San Suu Kyi was still imprisoned on her birthday. She is imprisoned in her house in University Avenue in Rangoon, and has been for a long time. There have been periods when she was allowed out, but only in Rangoon. She spent her birthday holed up inside the house, unable to communicate with anybody. There is some talk in Burma about dialogue, but it cannot be characterised as dialogue. Dialogue is something that happens between equal parties and they are able to report the progress. That has not happened publicly. She is forbidden to leave the house and talk to anyone. In spite of that, there is a modicum of optimism in Burma, and there is still an awful long way to go. What a way to celebrate one's birthday—not being able to go out of the house and wondering what is going to happen next. Her friends and I had a laugh when we could not have a party. She is a funny woman and she would see the humour in what happened on the day. But we celebrated her birthday in spirit.

LEGALISED BROTHELS

Reverend the Hon. FRED NILE [10.41 p.m.]: I wish to speak about the exploitation and degradation of women and young girls in New South Wales. There is rising anger in Sydney and in country areas of New South Wales over the growth of legal and illegal brothels. There have been complaints from areas such as Sutherland, Canterbury and particularly recently in Tamworth. New South Wales must repeal its legislation that legalises brothels, which I regard as a modern form of white slavery involving legal exploitation and degradation of vulnerable women and girls, and particularly illegal immigrants—young women who are being used virtually as slaves in the prostitution industry in New South Wales.

Honourable members may be interested to know that not only is there revulsion against this activity in this State, but right around Australia there is spontaneous rejection of legalised brothels. Only recently in the South Australian Parliament the bill to legalise brothels in South Australia was defeated by 12 votes to seven. Three members of Parliament who had supported the bill at the second reading changed their minds and voted against the third reading on 17 May. Concerned Christians shared in an unprecedented campaign of prayer and local action that the Festival of Light helped to co-ordinate. Several members indicated that no other issue had prompted such an outpouring of letters, emails and petitions. The Festival of Light director in South Australia, Dr David Phillips said:

This victory is an example of God's people in action—praying for MPs and urging them to protect women, children, marriages and families. It was a tremendous grass-roots effort.

Members of Parliament were briefed about the damage that can be caused through prostitution. They were particularly supported by Linda Watson, who had previously been a madam—that is, a woman who organises and runs a brothel—in Perth. She described to the members of Parliament the distressing facts about her old way

of life in the prostitution trade, including how prostitution damages women. Linda's testimony opposed the nonsense circulated by representatives of the prostitution industry, who say the industry is a wonderful career choice. Linda also told members of Parliament in South Australia about her "House of Hope" in Perth that helps bring freedom to women who want to get out of the prostitution industry. Dr Phillips said:

Now that Christians have helped reject the plan for legal brothels, the challenge is for more of God's people to reach out, like Linda, to women trapped in the sex trade.

A report published in the *Australian* of 26 June referred to the quintessential odd couple in Perth, Barry Hickey, the Catholic Archbishop of Perth, and the former prostitute to whom I have been referring, Linda Watson. The report referred to the fact that they had formed a partnership and that the archbishop was helping her to finance the operation of her "House of Hope." Apparently it has been overwhelmed by prostitutes wanting to get out of the industry. They are coming to the "House of Hope" to get help to move into a different area of life. Archbishop Hickey and this former madam have joined together to campaign against the Labor Government in Western Australia, which is planning to legalise brothels in that State. We hope that Archbishop Hickey and the one-time prostitute and madam, Linda Watson, will succeed in their campaign to prevent the Western Australia Government from making what they believe would be one of its biggest mistakes ever. Archbishop Hickey said:

We don't agree that legislation will provide the control that everybody wants.

Legalising prostitution will only make the wealthy people, madams, and their backers, even wealthier, and I can't see why a Labor government would want to do that.

We believe the campaign will be successful. I ask honourable members to support the view presented here tonight, to pray and, if they wish, to write to Archbishop Hickey in Western Australia, and to Linda Watson of the "House of Hope", care of the Archbishop, giving them encouragement and support.

MEDIA COMMENTARIES ON ABORIGINES

The Hon. JAN BURNSWOODS [10.46 p.m.]: Tonight I pay tribute to Stan Grant for his thoughtful article which was published in the *Sydney Morning Herald* this morning under the heading "Spare us the white man's 'concern' for Aborigines". Stan Grant has clearly picked up the hypocrisy of much of the discussion, particularly over the past two or three weeks, about the difficulties surrounding violence in Aboriginal communities. He has picked up the deafening noise of various white journalists and social commentators who have jumped on the bandwagon. As he said:

Reporting about Aborigines over the past few months has depicted a society populated by drunken, violent criminals, racked by internal squabbling, and with no credible leadership.

Stan Grant pointed out that most of the writers that he is referring to have, of course, launched those attacks under the guise of concern for Aborigines. His analysis points up clearly the continued setting of agendas by people such as Paul Toohey and Frank Devine in the *Australian*, Miranda Devine in the *Sydney Morning Herald* and Michael Duffy in the *Daily Telegraph*. All of those people write supposedly out of concern for the Aboriginal community and supposedly out of fear for the safety of black women, but implicit in much of what they write is an insidious attack on the legitimacy of Aboriginal political movements and Aboriginal political debate within their own community.

As Stan Grant asked, "Aren't Aboriginal people allowed a vigorous internal debate? Can't Aboriginal people pursue issues of social justice and political recognition at the same time?" It appears as if other people in the Australian community are allowed to debate political issues and a range of issues, but in the minds of these writers Aboriginal people for some reason are only supposed to deal with one subject at a time. Miranda Devine, for instance, thinks that there should not be any discussion of an apology because it would not prevent black women from being bashed. As Stan Grant rightly asks, "Would an Australian republic stop white women being bashed by white men?"

Apart from the journalists and commentators mentioned by Stan Grant in his article, I also draw attention to the recent appearance of what seems to be a very small but insidious group, known as the Bennelong Society. We had the so-called Bennelong group, who appear to be the largest players in the pharmaceutical industry, spending a great deal of time with John Howard and Michael Wooldridge. We now have the so-called Bennelong Society, led by John Herron and Peter Howson. John Herron was the Minister for Aboriginal and Torres Strait Islander Affairs who was sacked by John Howard. Peter Howson is a former Minister for Aboriginal affairs, possibly in the Fraser Government or even as long ago as the McMahon Government.

The Hon. Greg Pearce: Point of order: On a number of occasions the Chair has ruled that the speaker may address only one topic in an adjournment debate. The Hon. Jan Burnswoods began by saying she wished to thank Stan Grant for his article in this morning's *Sydney Morning Herald*, and she has done that comprehensively. She has now moved on to discuss totally different topics. Therefore, she is out of order and should not proceed, or she should be brought back to the topic of her speech.

The Hon. JAN BURNSWOODS: To the point of order: At the outset I said that I wished to talk about Stan Grant's article relating to journalists and social commentators. I am continuing to talk about people making comments about Aboriginal people and Aboriginal society and, indeed, I am returning to Stan Grant's article.

Ms Lee Rhiannon: On the point of order: One evening during the adjournment debate I was prevented from giving my speech when I moved on to a second issue. Later the next day whoever was in the chair at the time apologised to me and said that honourable members can speak on more than one subject.

The Hon. Dr Brian Pezzutti: On the point of order: On many occasions the Chair has ruled that only one topic can be covered unless the honourable member can bring the topics together.

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Order! There is no point of order.

[Time expired.]

EBENEZER EMERGENCY FUND

The Hon. ELAINE NILE [10.51 p.m.]: Last Wednesday at Women for the Family in the parliamentary theatre we were privileged to hear speakers Diane and Steven Lamb of Corrimal. This couple saved their money for a number of years so they could serve as volunteers with the Ebenezer Emergency Fund for six months in the former Soviet country of Ukraine and for three months in Israel with Streams in the Desert. Ebenezer Emergency Fund is an international non-denominational Christian organisation that was founded by Gustav Scheller as he and other international intercessors in Jerusalem sheltered from scud missiles during the Gulf War. Ebenezer now has two ships. The first is the *Iris*, which will double the capacity of the *MV Russ*. The new ship will be managed by Moshi Mano, owner of Mano Maritime, who is an old friend of Ebenezer. The Ebenezer Emergency Fund book entitled *Celebrating 100 Sailings* states:

In December 1999 Ebenezer, by God's grace, completed 100 Savings from Odessa to Haifa as part of our calling to help Jewish people leave the former Soviet Union and go home to Israel. Back in 1991, when I supported Gustav Scheller to take practical steps to start this work, I could never have imagined that Ebenezer would complete so many sailings. In less than ten years Ebenezer has helped over 50,000 Jews to reach the Promised Land by sea and on the Jewish Agency-sponsored flights in accordance with the prophetic scriptures about God's end-time regathering of His ancient people from the end of the earth.

These scriptures are linked with God's glory. This exodus will serve as a tremendous testimony to His power and to the fact that the God of Israel and Father of our Lord Jesus Christ is very much alive. It will be much greater than the one from Egypt. When God's name is glorified through this, a man-made organisation will not be seen to be bringing about the exodus, but His mighty arm. Therefore we can expect it to increase beyond all we can imagine. There are still some 12 million Jews around the world who need to come home, so it is going to be an enormous miracle when the floodgates open and the massive exodus takes place.

The book further states:

Ukraine means "borderland" or "on the edge". The first country where Ebenezer started work in the former Soviet Union, hundreds of thousands of Jews were slaughtered there during the Nazi occupation in 1941-43. Ebenezer has helped over 25,000 Jews to make aliyah—

that is, returning to Israel—

by ship from Odessa since 1991, including Holocaust survivors. There are still around half a million Jews in the Ukraine, including 3,800 Holocaust survivors.

Ebenezer regularly brings aid to these elderly Jews and gives them the opportunity to visit relatives in Israel by ship. Many of them subsequently decide to make aliyah. The Ebenezer teams, helped by local churches, are urging the Jewish people to go to the Promised Land before it is too late. Rising anti-Semitism is a vivid reminder that the country's terrible history could repeat itself before very long. On 18 February Gustav Scheller went to be with the Lord. Tributes poured in after he died. These are some of them. Chaim Peri of the Yemin Orde Jewish educational community in Israel said:

We will remember him ... for all wonderful things he did and for which he stood.

Sam Orbaum, in the *Jerusalem Post*, said:

... no one person in our time has so monumentally contributed to the essence of Zionism—the Ingathering of the Exiles—as this Christian gentleman.

Professor Yuli Tamir, Israel's Minister of Absorption, in his message to the one-hundredth sailing reception at Haifa, said:

Mr Scheller connected his destiny with the destiny of the Jews in the former Soviet Union and with the destiny of the Jewish state. His readiness to invest his time for the immigration of Jews to Israel is worthy of all praise. The wonderful story of this dear man is worthy of being told from every stage and used as an example and model.

The couple that spoke at the meeting last week spoke of survivors from the Holocaust whose clothing was threadbare. Diane said that she had wept when she put her arms around these elderly people and packed belongings that people in Australia would normally throw out. Some of the scriptures that this Christian group is working from include Isaiah 43:6, which reads:

I will say to the north, "Give them up!" and to the south, "Do not hold them back". Bring my sons from afar and my daughters from the ends of the earth—

Ezekiel 36:28 reads:

You will live in the land I gave to your forefathers; you will be my people, and I will be your God.

I thank the Lord that there are Christians willing to go to these places. [*Time expired.*]

HEALTH DEPARTMENT ASSET SALES

The Hon. Dr BRIAN PEZZUTTI [10.57 p.m.]: I speak about something very important to the State of New South Wales: the fire sale of important assets in the Health Department. In the Treasurer's report I notice a paucity of information about what is being sold but we do know—and the Hon. Jan Burnswoods and just about everybody has had a bit of a run at it—there is the Gladesville site. We keep being reassured—

The Hon. Jan Burnswoods: Point of order: I believe that the honourable member is anticipating debate which appears in a very desultory and rather slow way to be occurring in a committee that he chairs. While this committee inquires into hospitals all over New South Wales and their assets, it seems to be looking after the interests of Port Macquarie. The honourable member is anticipating debate and the proceedings of the committee that he chairs.

The Hon. Michael Egan: To the point of order: The Hon. Dr Brian Pezzutti referred to the "Treasurer's report". Of course, he was referring to the Treasurer's Budget Speech. But he could not refer to that because that is before the House.

The Hon. Dr BRIAN PEZZUTTI: I know.

The Hon. Michael Egan: He would be out of order if he did that. He has just admitted that that is what he was referring to. A rose by any other name is still a rose. The appropriation bills are before the House. The sessional order for the adjournment debate says that on any motion for the adjournment to terminate a sitting any member may speak for five minutes on matters—plural—not relevant to the motion but must not refer to matters that are not in order. Obviously, members cannot refer to matters that are before the House in another way. I happen to know about that sessional order because I wrote it back in about 1986 when I was the adviser to the then Leader of the House, the Hon. Barrie Unsworth. We would not have an adjournment debate in this House but for—

The Hon. Dr BRIAN PEZZUTTI: That was a reform measure.

The Hon. Michael Egan: That was a great reform which I introduced.

The Hon. Jan Burnswoods: Does that mean that we can speak on two topics?

The Hon. Michael Egan: The honourable member can speak on 10 topics if she likes, as long as they are matters which are in order. Honourable members cannot anticipate debate and they cannot otherwise infringe the standing orders.

The Hon. Jan Burnswoods: In that case, I owe the Hon. Greg Pearce an apology, and the Hon. Dr B. P. V. Pezzutti owes me an apology.

The Hon. Michael Egan: The Hon. Jan Burnswoods owes the Hon. Greg Pearce an apology, and she should get up and apologise now, and the Hon. Dr Brian Pezzutti should get up and apologise to the Hon. Jan Burnswoods.

The Hon. Dr BRIAN PEZZUTTI: I will have absolutely no compunction—

The Hon. Michael Egan: The Hon. Dr Brian Pezzutti should apologise to everyone because he has been the troublemaker in this House for as long as I have been here. He is a troublemaker.

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Order! Minister, were you speaking in support of or against the point of order?

The Hon. Michael Egan: I was speaking in support of the point of order.

The Hon. Jan Burnswoods: Further to the point of order: Having heard that erudite reading, I would certainly—

The Hon. Dr BRIAN PEZZUTTI: Madam Deputy-President, there is no point of order. The Hon. Jan Burnswoods is wasting time and I need to speak tonight.

The Hon. Jan Burnswoods: I would certainly like to apologise to the Hon. Greg Pearce because I certainly did quite genuinely stop him from talking about two topics.

The Hon. Dr BRIAN PEZZUTTI: I will remember this. I will remember her.

The DEPUTY-PRESIDENT: Order! The Hon. Dr Brian Pezzutti will resume his seat.

The Hon. Jan Burnswoods: But, of course, the Hon. Dr Brian Pezzutti on many occasions has done that to me.

The Hon. Dr BRIAN PEZZUTTI: Further to the point of order: I am just saying that the Hon. Jan Burnswoods is trying to waste time and she should get on with it.

The DEPUTY-PRESIDENT: Order! What does the Hon. Dr Brian Pezzutti have to say on the point of order?

The Hon. Dr BRIAN PEZZUTTI: I was casting a vote that there was a message in the bill that there were to be asset sales. I was going to go through a whole series of asset sales that are not in the budget, and that is why I am raising this matter.

The DEPUTY-PRESIDENT: Order! I ask the Hon. Dr Brian Pezzutti to address the point of anticipation.

The Hon. Dr BRIAN PEZZUTTI: There is no point of anticipation. I am not speaking about the budget. That is the point.

The DEPUTY-PRESIDENT: Order! There is no point of order.

The Hon. Dr BRIAN PEZZUTTI: A number of sales are going on in this State: namely, at Gladesville; the sad tale at Allandale, a 360-bed nursing home in Cessnock owned by the State; Rachel Forster Hospital; and the sad tale of the sale of Prince Henry Hospital. [*Time expired.*]

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Order! Before the House adjourns, I want to comment about honourable members speaking on various matters during the adjournment debate. This seems to have become an issue recently in this House. There is no ruling on the issue of how many topics an honourable member can speak about in an adjournment debate. However, Deputy-President Gay ruled:

Members may speak on more than one subject in the Adjournment debate. That is the practice of this House but members may speak only once on the motion for Adjournment.

The latter part of the ruling refers to an honourable member being allowed to speak only once. This issue seems to come up frequently and I thought it best to clarify the matter before the House adjourns tonight so that hopefully no more points of order will be taken by any honourable member about how many topics or issues can be introduced in the adjournment debate. I remind honourable members that the purpose of the adjournment debate is to allow honourable members to speak freely. I would like every honourable member to keep that in mind during future adjournment debates.

Motion agreed to.

House adjourned at 11.03 p.m.
