

LEGISLATIVE COUNCIL

Thursday 28 June 2001

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

The President offered the Prayers.

WASTE RECYCLING AND PROCESSING CORPORATION BILL

Bill received and read a first time.

Motion by the Hon. Carmel Tebbutt agreed to:

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

RETIREMENT OF HIS EXCELLENCY SIR WILLIAM DEANE

Motion by the Hon. Patricia Forsythe agreed to:

That this House notes the retirement of His Excellency Sir William Deane as Governor-General, acknowledges that he has served the people of Australia with great distinction and dignity, and wishes Sir William and Lady Deane a long and happy retirement.

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**.

Cessnock Greyhound Racing Club

Petition expressing concern about the revocation of the registration of the Cessnock Greyhound Racing Club, and praying that the House refer the administration of the Greyhound Racing Authority to the Standing Committee on Law and Justice, received from the **Hon. Peter Primrose**.

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**.

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**.

GENERAL PURPOSE STANDING COMMITTEE No. 3

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

Reverend the Hon. FRED NILE, on behalf of the Hon. Helen Sham-Ho [11.10 a.m.]: I move:

That Report No. 6 of General Purpose Standing Committee No. 3 entitled "Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing", dated June 2001, be referred to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report by 26 October 2001.

Honourable members will be aware that the House has been presented with a detailed report that provides the reasons for this reference. Those reasons are now obvious and should not require extensive debate. Witnesses

appearing before parliamentary committees should be able to give evidence, either in open hearing or in camera, without the fear that they may be discriminated against or that their employment may suffer. That applies particularly to public servants, whether police officers or officers of government departments. They are entitled to give evidence on oath and tell the truth without being concerned that action will be taken that may affect their careers.

Honourable members are aware that some police witnesses who appeared before the committee received a letter from the Commissioner of Police that, in the view of some individuals, appeared to have an element of intimidation. Only the privileges committee, when it conducts its inquiry, will be able to ascertain whether that was incidental or deliberate interference by the Commissioner of Police with witnesses giving evidence before a parliamentary committee. This is a serious matter on a point of principle that needs to be investigated by the Standing Committee on Parliamentary Privilege and Ethics. That committee should also clarify the rights of any further witnesses who are employed in any government department. This is an important matter and I commend the motion.

The Hon. RON DYER [11.13 a.m.]: The Government opposes the motion. General Purpose Standing Committee No. 3 handed down a special report to this House on possible breaches of privilege arising from the inquiry into Cabramatta policing. In that report the committee deals with two issues. The first is the unauthorised publication in the *Sydney Morning Herald* on 24 April of extracts from a confidential submission received by the committee that had not been made public at that time. The committee decided, and it is unanimous on this aspect of the special report, that it views the unauthorised disclosure of the submission most seriously and that the disclosure potentially interferes with the committee's functions. Despite this, the committee does not believe that further inquiry will be able to identify the source of the disclosure.

It is certainly my experience during my now lengthy service in the House that "leak" inquiries tend to lead nowhere. I remember one such inquiry with which I was associated that had the ultimate outcome of a reference to the privileges committee, and the committee decided, according to a somewhat archaic precedent in my view, that the House should consult its own dignity, in other words, that it should take no further action. That is the House of Commons precedent in regard to a matter that the House considers cannot usefully lead anywhere. However, I note in addition that more recently there has been, in my view, an even more serious leak to the media. Material was published in the *Sun-Herald* on 17 June under the heading "Drugs capital thrived as police turned a blind eye", which is an exposé of the actual draft report of the committee—not the special report we are now considering but the actual substantive report from the committee that the committee has not yet adopted.

The Hon. Duncan Gay: And the Public Accounts Committee inquiry into Graincorp.

The Hon. RON DYER: I have no knowledge of the matter to which the Deputy Leader of the Opposition refers. However, the first is a serious matter to which, in my view, General Purpose Standing Committee No. 3 needs to give attention. It is a scandal that the draft report was leaked to the media even before the committee had the opportunity to consider it. That potentially interferes with the proper functioning of the committee. I have said that the committee is unanimous on the first leak that occurred from the committee. However, Government members dissent from the majority recommendation of the committee regarding the second matter, which relates to what the Police Service refers to as directive memoranda.

The majority report now being debated states that the committee regards the actions of the Police Service with regard to the four officers who gave evidence to the committee as potentially constituting interference with the committee's functions and jeopardising the integrity of the committee system. The Government members dissent from that and have appended a statement of dissent to the special report. In that statement we have said that the issue of directive memoranda by the Police Service followed serious allegations attributed to four officers in an article in the *Sydney Morning Herald*, which was entitled "Drug criminals 'recruiting school students'".

Government members of the committee, and the Government itself, take the view that the Police Service is entitled and, furthermore, is obliged to investigate such serious allegations as were made to the committee and that the committee should have an interest in ensuring that the allegations made before the committee are fully investigated by the Police Service. Government members of the committee condemn the majority approach taken by the committee, which in our view seeks to interfere with operational policing and may potentially expose the community to unchecked criminal conduct.

The Government members also noted that the majority of the committee refused an application to the committee to permit a representative of the Police Service to be present at the hearing on 23 April at which the

four unnamed officers gave evidence. It was our view then, and it still remains our view, that had that representative been permitted to be present, some safeguard would have been provided for the proceedings, particularly as that representative may well have been either Mr Ian Temby, QC, or his junior, Mr Glenn Bartley of the New South Wales bar. We are also concerned about the failure to maintain the confidentiality of the committee. We note in our statement of dissent that when the firm of solicitors representing the four unnamed officers wrote to the chair of the committee on 24 April this year, that correspondence did not assert that it had interpreted the directive memorandum as constituting either a threat or any form of intimidation. Clause 9 of the Police Service Regulation states:

That police officers are to comply strictly with the Act and this Regulation and promptly comply with all lawful orders from those in authority over them.

I cited that clause to Assistant Commissioner Small at an in camera hearing—the evidence is no longer confidential—on 11 May this year. He assented to the proposition that that is what the regulation provides. I then asked him whether the expression "directive memoranda" was defined in the regulation or whether it had grown up as a matter of practice. Assistant Commissioner Small confirmed that it was a practice that had grown up. I then put the following proposition to Assistant Commissioner Small:

Suppose that the directive memoranda is lawful within the terms of the police regulation to which I have referred; and suppose further that the officers to whom it was directed failed to comply with it; and suppose finally that some penalty or retribution of some sort is visited upon those officers flowing from that failure to respond appropriately, in your view. If all of those things happened, would it be your contention to this Committee in regard to the privilege issue that those penalties would be visited on those officers not arising out of the fact that they gave evidence here but arising out of your perception that they had failed to comply with a lawful direction to, in effect, prosecute crime or investigate crime?

In response to that admittedly fairly complex question, Assistant Commissioner Small responded that police should report their knowledge of the events in question. He went on to say:

It is not connected ... with anything they have said or done at this hearing or at this Committee at all.

I then said:

I am seeking to draw a distinction between the two .

Mr Small responded, in part:

It is completely independent and unrelated.

I also asked Assistant Commissioner Small:

What I was trying to put to you before is that a distinction can be drawn between the giving of the evidence here and the failure to comply with the directive memorandum. The directive memorandum may well arise out of the evidence. However, it is presumably common ground among all of us that the Police Service is there to suppress and to fight crime. That being the case, if a serving officer gives evidence to a parliamentary committee that X has occurred it seems to me—and I am asking you to assent or otherwise—that it is legitimate for a superior officer in the Police Service to ask what the basis of that is and to use that response, if any, from the officer in question to follow up in terms of investigating the particular criminal activity.

In response to that question, Assistant Commissioner Small said:

That is correct. And additionally I should point out that I have had legal advice that it is not a contempt of Parliament, and it was in the newspapers as well.

Putting the matter simply, some of the four unnamed officers, to whom I referred earlier, gave evidence about an alleged incident that occurred in the vicinity of Cabramatta High School. Following the giving of that evidence, directive memoranda were served on those officers to advise their superior officer—the local area commander, Mr Hansen—as to the basis of those allegations to enable the Police Service to follow them up. It was alleged that the recruitment of schoolchildren was occurring near or adjacent to school premises and that a particular incident had occurred.

It seems to Government members that the Police Service is not only entitled but obliged to investigate, prosecute and suppress crime. That being the case, we believe it cannot be said that this lawful direction—there is no question that it is lawful under the terms of the relevant legislation and regulation—should be responded to by the officers in question, who should say what they know about the matter so that it can be pursued. Government members believe that that in no sense can be said to be intimidation, harassment or anything of that sort and that there is no case for referring this matter to the Standing Committee on Parliamentary Privilege and Ethics.

The Hon. GREG PEARCE [11.26 a.m.]: On 23 April 2001 four serving officers from Cabramatta local area command appeared before the General Purpose Standing Committee No. 3 and gave evidence in camera. The four officers had provided the committee with a draft submission on 18 April and during their evidence on 23 April they verbally amended that draft. I will not detail the subsequent events, except to note that when the directive memoranda—there was not one memorandum but two—were served the police felt that this was an intimidatory action on the part of Police Service management. After reviewing all the facts, the committee found that the actions of the Police Service with regard to the four officers:

... potentially constituted interference with the Committee's functions and may have jeopardised the integrity of the Committee system.

As such, the committee concluded that this might constitute a possible breach of privilege. When the four officers appeared before the committee, the Hon. Ron Dyer asked them:

Does the witness refer to the draft submission of the Police Association?

The Hon. John Hatzistergos also stated:

We have a document that was faxed through with a cover sheet.

The officers confirmed that they were referring to that document, and they then set out a number of amendments. Most of those amendments involved simply changing the terminology of the submission to make it relate only to those four officers plus two others, rather than to a broader group. So the submission was from six officers. Importantly, the document that was amended in that minor way had been widely available inside and outside the police station to many people for a significant period before the officers gave evidence to the committee. In evidence, Officer D said:

As a matter of fact there has been no secret of the document. It has been handed to management at Cabramatta as well. They have got a copy and I am sure the Police Service has a copy of it as well.

It is not appropriate to discuss today the issues at Cabramatta, but I will refer to several evidentiary matters associated with the motion. The first of these is the operations and crime review process. On 23 April the Hon. John Hatzistergos asked:

What sorts of things would you be told to do?

Officer C replied:

Drugs are not a problem. If you do not arrest people for drugs you have not got a drug problem. Drugs were not on the index.

When asked further about the index, Officer A said:

With the daily taskings of the car crews at one stage it was given to the duty officer to task the car crews. There were five duty officers and each of those five duty officers had a portfolio. One had a portfolio for robbery, one for break and enters, et cetera. So that taskings of the day would depend on which duty officer you had on duty that day.

I then asked:

But there was not one for drugs?

Officer A responded, "No." On 23 April before the committee Officer D stated:

What frustrated the police at Cabramatta was the fact that they wanted to do something about the drug problem but, for some reason, robberies might have been up that month and they would have been told, "We have got to get the robberies down." The chart was put up at some parades each morning stating, "This is the white line or the black line. Here is the red line ..." But there was never anything there to indicate where we were with drugs. The fact was that we were getting belted up the street with drugs and all that the police wanted to do was address that problem. We have said all along that if you hit and hit and hit drugs you will find that your assaults, your break and enters, your car thefts and your stealings would probably come down.

The submission that had been tendered by the four officers and signed by six officers from the Cabramatta local command had been widely circulated at the command, amongst our committee and police management. It included the following:

2.3 **Inadequate Leadership.** The Commission—

that is, the Wood royal commission—

identified a leadership that was characterised by command and control, autocracy and suspicion of new ideas. This form of leadership was prevalent throughout the Police Service, with Cabramatta as no exception.

Clause 2.16 stated:

Continued complaints by operational police were met with no action and a retreat into the old management style of command and control which had been so effectively denounced by the Wood Royal Commission. Certainly by May 2000, the Region Commander was very aware of the problems and frustration at Cabramatta Local Area Command.

Clause 2.18 stated:

By mid-2000 the impression of police at Cabramatta was that:

- If you spoke out against what was happening, you were likely to be targeted with change of duties or transfers.
- You had to agree with management to be promoted.
- Region and Headquarters supported the manner in which the LAC was managed.
- There was an atmosphere of "us versus them" (in regard to the way staff were managed).
- There was a great deal of internal suspicion with the LAC.
- There was a total lack of direction emanating from leaders.
- There was a budget focus in all decision making.
- Police felt they were being attacked at every level of the Police Service.

Irrespective of the truth of these perceptions, they were very real and should have been dealt with by senior management.

Following the evidence from those constables an article by Linda Doherty appeared in the *Sydney Morning Herald* on 24 April 2001, which stated:

Detective Sergeant Tim Priest told the committee on February 23 that gangs were "actually recruiting these kids at the front gate of the school".

His allegations were denied by Assistant Commissioner Clive Small, the regional commander covering Cabramatta, and the Minister for Education, Mr Aquilina.

Mr Aquilina said of Mr Priest's allegations of drug dealers targeting a school in south-western Sydney: "To tarnish the reputation of this great school with these unfounded allegations is absolutely criminal."

I shall return to that issue in a moment. The officers received the directive memorandum on 24 April and immediately consulted Police Association solicitors, who wrote to the police and to the chair of our committee, the Hon. Helen Sham-Ho. The letter from Walter Madden Jenkins, also dated 24 April, stated:

Our clients are concerned that if they obey and answer the Directive Memorandum, they may be in contempt of the Committee.

That was their immediate concern. On 11 May Commander Small, Mr Hansen and Miss Wallace appeared before the committee and initially gave evidence in camera. I asked Mr Small about the original submission and he said:

That is the point, it is not in the draft document and the issue that was raised in the newspaper is in the transcript of the evidence, not in the draft document. That is another point that shows that the leak occurred from someone who was present when the evidence was given.

Those matters must be considered by the privileges and ethics committee. We do not know how the information got to the newspapers, but the important point is that senior police did not have the evidence, or supposedly did not have the evidence, and acted by immediately issuing these directive memoranda on 24 April based purely on a newspaper report. Senior police had the original submission and, instead of doing anything else, issued the directives based on a newspaper report. I recommend that honourable members interested on this aspect should read the entire transcript of the in camera evidence of 11 May as it is quite enlightening about the way senior police approach the issuing of directive memoranda.

On numerous occasions during that evidence Commander Small and Mr Hansen indicated that the directive memoranda were usually used for internal police disciplinary-type investigations; they are not used to elicit bits of information from someone who appears before a committee. The memoranda are used seriously in relation to internal investigations. There was no reason for these sorts of directives to be issued based simply on

a newspaper report when the evidence was available many days beforehand. Much was made by Minister Aquilina, the Premier and committee members about Mr Priest's evidence and the way he was hijacked in giving that evidence. During the giving of in camera evidence, after Mr Small had attacked Mr Priest, Mr Small said:

There is something that I do not think I have actually said in evidence—

he certainly had not—

and probably I need to state it so that there is absolutely no misunderstanding. I have never suggested that we do not have school-aged druggies; that we have school-aged kids or kids going to school who are selling drugs, or are recruiting friends into drug groups. I make that absolutely clear. What has actually become the problem, if you like, for me in giving evidence here is this central claim that gangs are going to schools and are actively seeking out recruits in the school environment. What I am simply saying is that, on that issue, we do not have any evidence to support that.

Based on Sergeant Priest's evidence, Mr Small, in the secrecy of an in camera hearing, was admitting that what Mr Priest had said was true. I shall not go through it all but I commend to honourable members a complete reading of the in camera evidence of 11 May as it contains a great deal of other evidence from senior police about the drug problem in our schools. It was quite outrageous the way the Government and the Police Service attacked Sergeant Priest on this point.

The Hon. Dr Brian Pezzutti: That was outrageous.

The Hon. GREG PEARCE: It was absolutely outrageous. The other issue I shall touch on briefly is that of the reporting of the school incident. In the evidence of 11 May Miss Wallace talked about altering the police entry on the COPS system about the report of the incident at the school. I shall not go through the detail of that evidence now, but I commend to honourable members a complete reading of it. It will be seen that Sergeant Priest's evidence was correct; he was hijacked while giving that evidence, and that attack was quite outrageous.

In the context of the attack on Sergeant Priest, these four officers came forward and gave evidence to the committee. What happened to them? The next morning, based on a newspaper report, they were issued with directive memoranda that normally are used for internal investigations into criminal activity. What conclusion can one draw from that other than that it was done to intimidate those police officers? The evidence of 11 May about the drug problem in schools is quite extensive. Subsequent to Sergeant Priest's evidence, a number of other incidents were outlined by the four police officers, including the incident on Easter Thursday when police officers found more schoolchildren with drug dealers. I draw the attention of honourable members to the evidence that Assistant Commissioner Small and Mr Hansen worked together to issue the memoranda. Their intention was quite clear: on numerous occasions they indicated that they wanted these police officers to be forced to say that their evidence was incorrect. They wanted to force them to withdraw the evidence. Assistant Commissioner Small said:

It has to understand clearly that the current arrangements, the current obstructions, cannot continue, and I would hope that it would also include a lesson for police that in appearing before parliamentary committees they should get their facts straight.

Senior police were saying that if officers wanted to attend a parliamentary committee they should get their facts straight. Their facts had to be what they agreed with the senior officers, not what they wanted to say. The nub of the matter is that senior police cannot tell police officers or anyone else that they cannot give what they believe to be true and accurate evidence to a parliamentary committee. I will refer briefly to the correspondence received from the committee by the New South Wales Police Service during the course of its hearings and the appearance of a police lawyer to supervise the four officers when they gave their in camera evidence. They wanted to give in camera evidence not because they were not brave enough to give it publicly—their submissions were in the public arena—but because they did not want it to become a media circus, and that appears in the evidence on numerous occasions.

What happened? The Police Service said, "We would like to have our senior counsel, Mr Temby, QC, sit there, supervise and listen to what these four police officers have to say. Maybe he will point his finger at them." What an outrageous suggestion! It is my understanding that parliamentary committees listen to what witnesses have to say and question them freely. The idea that a Queen's Counsel was going to sit in the hearing room and stare at the four officers as they gave their evidence is beyond belief. It is completely contrary to the practice and the history of parliamentary committees and completely against the proposition that witnesses should be free to give their evidence. Government members say that they find my reaction odd. If that is not intimidation, what is it? The New South Wales Police Service sent us a lot of correspondence, some of which is in the tabled papers. To give honourable members a flavour of the way the service approached things, I will quote from a letter of 27 April to the Hon. Helen Sham-Ho from the police lawyer, which said:

I wish to protest strongly at yet another instance of the committee's business being conducted in a cavalier manner to the detriment of both the effective functioning of the Police Service and also the public interest.

That is an example of the tone of the correspondence received from the Police Service. How could one expect these brave police officers to give their evidence when that is the sort of—

The Hon. Dr Peter Wong: Thuggery.

The Hon. GREG PEARCE: Thuggery—I thank the Hon. Dr Peter Wong—we had to endure. I draw the attention of the House to the most terrifying aspect of this matter. As a result of intimidation of Sergeant Priest and the co-ordinated, outrageous attack on him by the Government—led by that bastion of freedom, the Minister for Education and Training, the Hon. John Aquilina—and other intimidation, Ian Ball, the President of the Police Association, wrote to the Hon. Helen Sham-Ho on 2 May in these terms:

These members are now required to respond under very clear threat from the employer. We believe that the action of the Police Service constitutes a clear contempt of Parliament.

As a result, it is my intention to write to all members and advise them not to voluntarily give evidence to parliamentary inquiries such as yours, as they cannot expect any protection against the stand over tactics of an employer unable to culturally change.

There it is. The Police Association concluded, from intimidation of these witnesses, that it should tell its members not to give evidence to parliamentary inquiries. If that is not a direct challenge to this House and to our democratic system, then nothing is. This matter should be referred to the Standing Committee on Parliamentary Privilege and Ethics for thorough investigation.

The Hon. Dr PETER WONG [11.46 a.m.]: I support the motion. The upper House conducted an inquiry into Cabramatta policing, which, I am sure honourable members will agree, has had a tremendous impact on the problems of Cabramatta. As a direct result of the inquiry of this House the Government and, in particular, the Premier have tackled the problems of Cabramatta head on. One of the reasons the inquiry had such an impact was that brave police officers working in Cabramatta came forward to give evidence. They did this in good faith, and their help has been invaluable to the inquiry. However, it appears that evidence has emerged that these officers have been put under tremendous pressure from the New South Wales Police Service as a result of their evidence. The House will note that Unity has asked questions in this House to seek to clarify the situation and offer them some protection. It is important that those who speak up in the interests of the community be protected. I fully support the motion.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.47 a.m.]: I support this important motion. I will move an amendment based on the comments made by the Hon. Helen Sham-Ho in her Chairman's Forward to the report entitled "Special Report on the possible breaches of privilege arising from the Inquiry into Cabramatta policing" relating to her request to step down as chairman if the matter is referred to the privilege and ethics committee. As chair of both the committee that investigated Cabramatta policing and the Standing Committee on Parliamentary Privilege and Ethics she could have a conflict of interest. I move:

That the question be amended by the addition of the following paragraph:

2. That for the purposes of this inquiry Mr Breen be appointed as a member of the Standing Committee on Parliamentary Privilege and Ethics in place of Mrs Sham Ho.

The Hon. Peter Breen has legal training and would be a valuable addition to the committee. The matter should be referred to the privilege and ethics committee because it is of extreme importance. As we know, the Wood royal commission determined that the Police Service had a somewhat frightening closed-shop culture. It became evident during the course of the inquiry that the Police Service, as an instrument of society responsive to society and the Parliament, lacked accountability and transparency and was an inward-looking, authoritarian group responsible only to itself. The inquiry highlighted the effect of Special Branch within the Police Service, the State-within-a-State mentality, and so on.

There had been ongoing tension between the Minister for Police and the Police Service in regard to accountability; the incidents with Ted Pickering were an important part of that. Following the Wood royal commission and with a new commissioner for the service, the community believed that this culture of silence was being broken down and the situation was being fixed. There were some black hats versus white hats still within the Police Service, but it was considered that the police would respond to the directives of Parliament and to what society wanted, and that the problems were all solved. I thought that the revelation from these brave

police officers was, in fact, part of that new culture. The officers basically said, "We do not believe that the Police Service is going in the right direction. We are sufficiently upset about it to put our necks on the line and appear before a parliamentary committee with substantiated allegations to ask for help in regard to the way policing works in New South Wales." However, the revelations effectively meant that the new culture is not in place to the extent that it should be.

The suggestion that there should be someone present during the in camera evidence to make sure that everything that was said was reported to the police hierarchy is merely intimidation of those who are attempting to speak out honestly of their belief and their experience. It should be part of the parliamentary process to determine the direction taken by the New South Wales Police Service. I believe it is important that police be responsive to the will of Parliament and to what society demands. If the New South Wales Parliament is not expressing what the people want, then it should. If it does not do that, no doubt the views of society will be reflected at the ballot box in 2003. The Government's mealy-mouthed nonsense about the Police Service having to retain accountability for its officers was disappointing, particularly when we have witnessed a culture of intimidation designed to achieve silence. That is the only interpretation that can be placed on the directive memoranda, as I think they are called. It is very unfortunate when material is leaked from an in camera committee. I do not know how that happened.

On the other hand, if these matters are not aired publicly, they will continue in the way that those in power within the Police Service want them to continue. Basically the only force pushing these strong and organised institutions to respond to the will of the public is to make certain that the will of the public is clearly understood. I deplore the release of the in camera material. I think the substance of that material will have to come out and be discussed—although, presumably, that should have come out in the committee's report and been discussed at the time of the committee's report, not leaked from an in camera hearing. That is an unsatisfactory situation and perhaps it should be investigated as well. Certainly the intimidation of witnesses is extremely worrying.

The response from the Police Association, to the effect that it would discourage its members from coming forward if this was what was going to happen to their careers, is understandable from a union perspective. However, if it is just another force mitigating against exposure of the truth about what is happening in the Police Service and the way the State is being policed, it is an unsatisfactory situation that needs to be looked at. If we are seeking to have a more open society we must address these issues. Another issue that has not been mentioned is whether the police are getting sufficient directions from Parliament and whether those directions are appropriate. One cannot but wonder. Having heard Commissioner Ryan speak at the Drug Summit working party on policing, it is clear that he was looking for a direction from Parliament.

The question is: Do we want to get rid of the drug problem by policing it, by making it illegal, or do we want police officers to be social workers as the Government goes softer on the drug problem it cannot get rid of by policing? That is certainly one view. It may be that the police have recognised that the drug war is lost and therefore are not trying very hard; this lack of response is being transmitted to the people lower down the police hierarchy; that they are not being given directions to clean up the drug problem because those at the top believe it cannot be cleaned up. As one who believes that drug law reform is absolutely necessary and that police will never get rid of this problem, I have a sneaking sympathy for the proposition that the policing of drugs is an unwinnable war and that a more enlightened approach is required. That is what I have been saying in this House for quite some time.

Someone must be made accountable for the way that policing is managed in this State. That should be done competently and not in an authoritarian and non-transparent way. While I may agree that there are problems associated with policing the current drug laws, I believe those problems must be aired without fear or favour by serving policemen to the appropriate committee of this Parliament. If they are not, the matter should be investigated; and Parliament must take whatever action is needed to make certain that police carry out the will of Parliament in an open and transparent manner. The fact that contempt has been shown for a parliamentary committee is unfortunate and must be adequately investigated by this House.

The Hon. PETER BREEN [11.57 a.m.]: I admit that I am not particularly up to speed on this issue, but I have to comment on some remarks made by the Hon. Ron Dyer. I do not find myself disagreeing with the Hon. Ron Dyer very often, but on this occasion he has suggested that inquiries of this nature lead nowhere. I would suggest to the House that—although it is a particular incident and may indeed be an isolated incident—the public, and public servants in particular, must be able to give evidence to parliamentary inquiries and hearings of committees without fear of intimidation.

The Hon. Ron Dyer: I was referring to "leak" inquiries.

The Hon. PETER BREEN: I take the Hon. Ron Dyer's point about "leak" inquiries, but it seems to me that this goes to more than just what has been leaked. There is a series of correspondence, to which I will refer in a moment, that relates not merely to this issue but to an earlier issue in the same committee. The particular incident that we are speaking about—the directive memorandum—seems to have had the effect of intimidating a witness to a parliamentary committee. The Hon. Ron Dyer read onto the record Commander Small's answer to a question to the effect that he, Commander Small, had advice that the directive memorandum is not a contempt of Parliament. It needs to be said that that is only Commander Small's view. That is his advice. However, the committee also received a letter dated 2 May from the Police Association, addressed to the Hon. Helen Sham-Ho, to which the Hon. Greg Pearce referred. In that letter the Police Association said:

We believe that the action of the Police Service constitutes a clear contempt of Parliament.

While Commander Small expresses one view, and he relies on his advice about that, the Police Association in its letter to Hon. Helen Sham-Ho expresses the exact opposite view. That difference of opinion—legal advice saying one thing and legal advice saying another—would be one reason alone for the Standing Committee on Parliamentary Privilege and Ethics to inquire and, hopefully, resolve that conflict. The Police Service also wrote to the Hon. Helen Sham-Ho on 27 April. That letter is included in the special report among the breach of privilege papers. The solicitor for the service, Michael North, opens the letter with the words:

I wish to protest strongly at yet another instance of the Committee's business being conducted in a cavalier manner to the detriment of both the effective functioning of the Police Service and also the public interest.

So the Police Service is buying into the affairs of the committee yet again. It is not that long ago that it was doing exactly the same thing to the same committee.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT

The Hon. MICHAEL GALLACHER: Can the Treasurer, and Minister for State Development provide details of the number of private sector investment and business projects across New South Wales that have received no assistance from the Department of State and Regional Development but for which the department and the Government have claimed credit?

The Hon. MICHAEL EGAN: I can inform the Leader of the Opposition that to the best of my knowledge there are no such cases.

ASBESTOS REMOVAL SAFETY

The Hon. JAN BURNSWOODS: My question is directed to the Minister for Industrial Relations. Will the Minister inform the House what measures are in place to protect the health and safety of workers performing asbestos removal work?

The Hon. Duncan Gay: You would not answer me on that.

The Hon. JOHN DELLA BOSCA: I did. I provided the Deputy Leader of the Opposition with a comprehensive answer. The removal of asbestos material during demolition work is subject to controls under the Occupational Health and Safety (Asbestos Removal Work) Regulation 1996. Any person wishing to carry out demolition work at sites containing friable asbestos must apply to WorkCover New South Wales for a licence. Before such licence is granted, applicants must demonstrate that they have knowledge of safe working methods and at least three years experience in this type of work. They must also show that they have a system of training for their employees in safe working methods. Contractors undertaking the removal of more than 200 square metres of bonded asbestos material must also meet strict registration requirements.

In addition to licensing and registration requirements, WorkCover New South Wales maintains a system whereby friable asbestos removal work may not be undertaken without a permit for each individual contract or job. WorkCover will not grant a permit unless it is satisfied that the applicant is suitably qualified to

perform the work and will provide appropriate safety training and equipment. Contractors undertaking the removal of over 200 square metres of bonded asbestos must also notify WorkCover New South Wales of the work prior to its commencement. Failure to comply with the terms of the Occupational Health and Safety (Asbestos Removal Work) Regulation 1996 could result in prosecution under the regulation, which can carry a fine of up to \$11,000 or prosecution under the Occupational Health and Safety Act 1983.

WorkCover may suspend or cancel a licence if the licence holder is found to have carried out the work in an unsafe manner or is found to have been convicted of an offence under occupational health and safety legislation. In addition to investigating complaints about specific demolition and asbestos removal contracts, WorkCover New South Wales conducts periodic inspection programs that focus on this industry sector. The WorkCover blitz on medium density construction sites in metropolitan Sydney, the Central Coast and Wollongong that commenced on 12 June this year is one example of these programs. The blitz will involve a focus on safety practices at asbestos removal sites and workers compensation compliance checks. WorkCover New South Wales has also produced a guide for working safely with asbestos.

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT

The Hon. DUNCAN GAY: My question is to the Treasurer, and Minister for State Development. Considering the fact that the parliamentary Public Accounts Committee has found that the Department of State and Regional Development is claiming victories for economic activity that would have occurred without its intervention, can the Minister inform the House exactly how many times he has misled the Parliament by answering dorothy dix questions from his side of the House about investments allegedly facilitated by the department?

The Hon. MICHAEL EGAN: I have the public accounts committee report here. I have read it, but I have not seen any examples of what the Deputy Leader of the Opposition has alluded to in his question.

The Hon. Duncan Gay: Did you ring Joe?

The Hon. MICHAEL EGAN: No, but Joe rang me. I am happy to share with the House a letter that I received this morning from Deirdre Mason, the Chief Executive of the Committee for Sydney. I think that it is worth reading to the House:

Dear Mr Egan

While we have not yet had the opportunity to read the full report, The Committee for Sydney was deeply disappointed by the recent report by the Public Accounts Committee into the Department of State and Regional Development. It employed flawed logic to make recommendations to change a program that is both successful and by any measure less expensive per capita than in other states.

There are assumptions within the report that indicate a shallow understanding of what the Report terms "the fundamentals of the economy". Sydney is ranked as a global city—the only one in Australia—because of the presence of the four key industries of Accountancy, Advertising, Banking and Legal Services. These services did not locate in Sydney merely because of the weather, or even because of the harbour. The active support of Government in progressing economic development in Sydney ensured that international companies chose Sydney over other cities in the region to base their Asia-Pacific operations.

The Hon. Duncan Gay: Did you ring her to get her to write that?

The Hon. MICHAEL EGAN: No, I did not. It came this morning entirely at the volition of the Committee for Sydney. It was completely unsolicited. The letter continued:

As Sydney achieved critical mass in these four industries, the economic environment has moved to one of aggregation, where new firms gravitate to where the strength is.

But this occurs against a backdrop of a globalised economy in which firms and industries are constantly merging and requiring fewer regional headquarters. Constant vigilance is necessary to keep the critical mass that will keep Sydney, and by extension New South Wales, prosperous.

Sydney comprises 21% of Australia's population, yet it contributes far more than that to Australia's wealth. It is counterproductive to starve Sydney of the means to sustain this wealth generation that in fact benefits all Australians through the redistributive nature of the Commonwealth Grants system.

Yours sincerely

Deirdre Mason

Chief Executive

That is a very apt tribute to the great work of the Department of State and Regional Development. I could also read testimonials from Mr Andre Ruhan, Chief Executive of the London-based e-business company Global Switch and indeed letters from other companies.

The Hon. Michael Gallacher: You have been hitting the phones pretty heavily in the last couple of days.

The Hon. MICHAEL EGAN: No, I have not. The letter from Mr Ruhan was a letter to the *Australian Financial Review* on 13 October 2000. There are a number of things in the Public Accounts Committee report that the Government, as with all reports, will consider in detail, but I can assure honourable members that a number of the recommendations will be rejected. For example, we find it incredible that a parliamentary committee that includes a country Liberal member is recommending the abolition of regional development boards. [*Time expired.*]

The Hon. DUNCAN GAY: I ask a supplementary question. Treasurer, how can you account for the fact that you have a letter of commendation from overseas, given that the report was brought down only yesterday afternoon? Did you receive an advance copy?

The Hon. MICHAEL EGAN: I certainly did get an advance copy, because the letter I was about to quote was written by Mr Andre Ruhan, Chief Executive Officer of the London-based e-business company Global Switch. I am not sure what date it was written, but it was published in the *Australian Financial Review* on 13 October 2000.

PARLIAMENT HOUSE BLOCKADE

The Hon. DAVID OLDFIELD: My question is to the Treasurer in his capacity as Leader of the Government in this House. Was the Hon. Lee Rhiannon a vocal and active participant in the Parliament blockade a week from last Tuesday? Is it correct that the Hon. Lee Rhiannon used a megaphone to address the blockaders? Was there any suggestion that the Hon. Lee Rhiannon was inflaming the situation? Has the Treasurer seen the Channel 9 television footage showing the Hon. Lee Rhiannon as one of the blockaders who appeared to be impeding police as they were protecting members of Parliament who were rightfully making their way into Parliament House? Does the Treasurer, as Leader of the House, consider the Hon. Lee Rhiannon's actions to be appropriate behaviour for a member of this House? Can the Treasurer advise the House of any steps that can be taken—

The Hon. Richard Jones: Point of order: If the Hon. David Oldfield wishes to attack a member, he should do it by substantive motion, not by a question in the House. Madam President, I ask you to rule his question out of order.

The PRESIDENT: Order! A question is out of order if it makes imputations or inferences against a member. Accordingly, I rule that question out of order.

The Hon. DAVID OLDFIELD: I ask a supplementary question.

The PRESIDENT: Order! The honourable member cannot ask a supplementary question if the original question has been ruled out of order.

EXCELSIS INFORMATION SYSTEM ASIA-PACIFIC HEADQUARTERS

The Hon. HENRY TSANG: My question without notice is to the Treasurer, and Minister for State Development. Can the Treasurer update the House on Sydney's growing status as the information technology capital of the Asia Pacific?

The Hon. MICHAEL EGAN: Madam President, in your gallery this morning there is a very distinguished former member of this Parliament, one of Her Majesty's former Ministers, the Hon. Milton Morris.

The Hon. Dr Brian Pezzutti: You spoke about him yesterday.

The Hon. MICHAEL EGAN: Yes, about whom I spoke very highly yesterday. For 20 years he has done a fabulous job for the people of New South Wales as Chairman of the Hunter Valley Training Company,

the most successful training company in Australia. The company has successfully trained 8,000 apprentices in the 20 years since it was established as the brainchild of our former colleague the Hon. Patrick Darcy Hills.

The Hon. Patricia Forsythe: He might have been responsible for getting me into Parliament.

The Hon. MICHAEL EGAN: In that case, he has a lot to be proud of. As I have often said, there is only one intelligent Liberal on the Opposition benches, and that is the Hon. Patricia Forsythe. She should be the Leader of the Opposition in this place. She would do a much better job than either the leader or the deputy leader.

The Hon. Duncan Gay: You said that Pezzutti should be leader.

The Hon. MICHAEL EGAN: But I have revised my opinion since the Hon. Dr Brian Pezzutti has indicated that he will not contest the next election. And that will be a loss to the Parliament as well.

The Hon. John Jobling: When did he say that?

The Hon. MICHAEL EGAN: He said it on numerous occasions.

The Hon. Dr Brian Pezzutti: No, I haven't.

The Hon. MICHAEL EGAN: You haven't? It could have been a remark he made to the effect that he had lost confidence in the Liberal Party.

The Hon. Duncan Gay: What about poor Jim Samios? You put your hand on his shoulder once.

The Hon. MICHAEL EGAN: The Hon. James Samios could well be the leader of the Opposition in the lower House. The launch of the Asia-Pacific regional headquarters of German information technology [IT] leader Excelsis Information System Pty Ltd in Sydney marks an important win for Sydney's rapidly growing IT industry. The Excelsis initiative will create over 65 new high-skill jobs by the end of 2002. I point out that the Department of State and Regional Development has worked closely with that company. Founded in Germany in 1998, Excelsis is a consultancy group that plans, develops and implements information, communications and transaction systems for the banking, finance and telecommunications sectors. The Sydney headquarters is the company's first expansion outside Europe and will manage the company's Asia-Pacific operations in Singapore, Hong Kong and Wellington.

The company will bring new expertise to key new economy activities such as Internet banking and electronic payment systems. In addition, the company will make an important contribution to the development of the State's high-tech skills. Working with Sydney university's iLink program, Excelsis will provide full-time and part-time work experience and training for final-year students of computer science. Our key growth industries, such as finance and IT, need more skilled graduates with work force experience. Excelsis will help bridge this vital skill gap.

In yet another win for the growing IT industry, one of Britain's most successful IT training and consultancy companies has also chosen Sydney for its Asia-Pacific regional headquarters. The United Kingdom-based company, the InterTrain Group, recently set up an office in Chifley Tower, with plans to expand to suburban premises as staff increase to an estimated 50 people over the next five years. The new Australian firm is called InterTrain Learning Services [ITLS]. The firm trains employees of major northern hemisphere businesses, including US Fortune 500 corporations, in using Oracle software.

The Sydney presence will give a southern hemisphere balance to ITLS principal headquarters in London and in New Jersey. New South Wales has 70 per cent of Australia's top IT companies, 44 per cent of all Asia-Pacific call centres and over 40 per cent of Australian IT professionals. The arrival of Excelsis and ITLS provides further confirmation of Sydney's status as the IT capital of Australia and hints at its potential to also become the main IT training centre of the Asian and Western Pacific regions.

ROSEANNE CATT CONVICTION

Ms LEE RHIANNON: I direct my question to the Treasurer, representing the Attorney General. Does the Attorney General currently have new evidence before him relating to the case of Roseanne Catt? Does that evidence present a strong case that Roseanne Catt has been wrongfully convicted? Will the Attorney General act to ensure that justice has been done in this case?

The Hon. Jan Burnswoods: Point of order: The upper House Select Committee on the Increase in Prisoner Population has spoken to Roseanne Catt, and considered matters relating to her case. Therefore, the question relates to proceedings before the committee.

The Hon. John Ryan: To the point of order: I am the chairman of that committee. It is true that we have conferred with the inmate known as Roseanne Catt. However, the committee is taking absolutely no action about any of the submissions she has made. The committee interviewed her in reference to the construction of the women's prison. Clearly any evidence she has given will no longer be used by the committee. I see absolutely no interference in the committee's activities by the question asked by Ms Lee Rhiannon.

The Hon. Jan Burnswoods: Further to the point of order: I hate to disagree with the Chairman, but the final report has not been seen by the members of the committee. We are certainly not in a position to know that this matter might not be in the report. When we interviewed the person in question, her evidence related to an enormous number of matters that had nothing to do with the building of a new women's prison but with a great deal of matters relating to prisons.

The Hon. John Ryan: To the point of order: None of the remarks made by Roseanne Catt as a witness to the committee had anything to do with our terms of reference.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: The Hon. Jan Burnswoods suggested that the committee has no idea what is in the final report. I suggest that the committee has a pretty good idea what is in the final report. That is what its deliberations were all about. The committee will not report on the state of Roseanne Catt's personal situation; thus, the question relating to her situation is in order.

The PRESIDENT: Order! Questions may be put to the Chair of a committee that relate to the activities of a committee but the question must not attempt to interfere with the committee's work or anticipate its report. However, questions relating to public affairs may be put to Ministers, and as the question is addressed to the Attorney General, I rule there is no point of order and that the question is in order.

The Hon. MICHAEL EGAN: The Attorney General advises me that he has received correspondence this morning by facsimile from a solicitor acting on behalf of Roseanne Catt that refers to a submission seeking a review of her previous conviction. I am told that the letter of this morning attached a further document that forms part of the general submission that the matter be reviewed pursuant to part 13A of the Crimes Act 1900. The Attorney advises me that this material will be the subject of advice about whether a review pursuant to part 13A of the Crimes Act should ensue. I understand that Ms Lee Rhiannon informed the Attorney General just over an hour or ago that she would pursue this question in the House today. I am informed that the Attorney has no difficulty with referring this matter for the appropriate advice and I understand this is under way.

I am also advised that until this assessment has been made it is not possible to answer the second part of the question, whether there is a strong case of wrongful conviction. About whether justice has been done in this case, the Attorney does not usually comment upon matters that have been properly determined according to law. If a review is recommended, and if it were to show that some doubt arises concerning the conviction of Roseanne Catt, then the matter would be referred to the courts for a determination. The Attorney relies on the independent advice of the Crown Solicitor and the Crown Advocate in such matters. I am advised that the Attorney is not in the business of pre-empting any such advice.

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT

The Hon. PATRICIA FORSYTHE: My question without notice is to the Treasurer, and Minister for State Development. Why did three senior bureaucrats from the Department of State and Regional Development receive a total of \$80,000 in performance bonuses in 2000, including a single bonus payment of \$58,000 to one person, when it has now been shown that the department may not actually be achieving what it claims?

The Hon. MICHAEL EGAN: I do not for one moment believe that the department, or for that matter the Government, has been claiming achievements for which it is not responsible.

The Hon. Duncan Gay: That is not what the Public Accounts Committee says.

The Hon. MICHAEL EGAN: I have been a chairman of the parliamentary Public Accounts Committee and let me say that some reports are better than other reports. This report contains a number of

recommendations, which, as I have indicated to the House already, the Government will give very careful consideration to. However, the Government will reject many. For example, the proposal that the Department of State and Regional Development should not pursue investments in Sydney I think is laughable. Sydney is a major global capital and is becoming a more significant major global capital because, amongst other reasons, governments, Federal and State, successfully pursue that objective. We will continue to pursue investments in Sydney. Likewise, we will be retaining regional development boards.

I find it absolutely staggering that a parliamentary committee—although I do note that there is no representative on that committee from Country Labor and perhaps we should rectify that very quickly—should recommend the abolition of regional development boards. Further, I find it incredible that a member of that committee, a Liberal Party member from a country electorate—I think Albury—Mr Glachan, should advocate the abolition of regional development boards. As I have indicated to the Deputy Leader of the Opposition, it is a clear deficiency in the committee that there are no members of Country Labor on it. I intend to make certain that this is rectified as soon as possible.

WORKCOVER INSPECTORS

The Hon. JOHN JOHNSON: My question is directed to the Minister for Industrial Relations. Will the Minister inform the House what is being done to ensure that the number of WorkCover inspectors continues to be maintained?

The Hon. JOHN DELLA BOSCA: I thank the Hon. John Johnson for his interest in WorkCover matters. I am pleased to inform the House that today I will be presenting 42 trainee WorkCover inspectors with their authorities. These new inspectors, who commenced with WorkCover in October last year and January this year, were recruited to fill existing vacancies and the 25 new inspector positions announced by this Government last year. These positions brought the number of inspector positions in New South Wales to 301, the largest inspectorate in the country. People appointed to the position of inspector in WorkCover New South Wales undergo a 12-month Diploma of Injury and Illness Prevention and Management—Inspector. This consists of formal classroom lectures and fieldwork under the supervision of an inexperienced inspector.

The diploma is accredited by the New South Wales Vocational Education and Training Accreditation Board and its curriculum is developed from the WorkCover's inspectors competency standards. These standards, in turn, have been developed in line with the national training board guidelines for workplace competencies. WorkCover inspectors have probationary status for the first 12 months of their employment. Their permanent appointment is dependent upon satisfactory performance and successful completion of the diploma. Advertising for the next round of inspector recruitment will appear in the press in the coming weekend. It is anticipated that they will take up their appointments and begin training in September.

WorkCover New South Wales does 500 to 600 prosecutions a year. That is more than all the other States and Territories put together. Regular intakes of inspectors ensure that WorkCover is able to maintain a full complement of inspectors who have comprehensive training to carry out the crucial job of monitoring and enforcing workplace safety and employer compliance.

VILLAWOOD DETENTION CENTRE

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question is directed to the Treasurer, representing the Minister for Police. Will the Minister commit the New South Wales Commissioner of Police to issue criminal justice visas to the remaining six detainees whose evidence is crucial in the New South Wales Police Service investigation into allegations of bashings at the hands of Australian Correctional Management Ltd staff at the Villawood Detention Centre on 27 April? Will this happen immediately in view of their imminent deportation? Given that counsel for the detainees will seek Commonwealth cover to meet any expenses associated with the upkeep of the detainees during their extended stay in Australia for the police investigation into the allegations of violence, will the Minister guarantee that natural justice will prevail? Will the Minister also take note of the fact that the detainee who was a witness and who was returned to Guangzhou was not reunited with his family? Will the Minister press the significance of this fact that the Federal Minister? [*Time expired.*]

The Hon. MICHAEL EGAN: I thank the honourable member for his question. I will refer the matter to the Minister for Police and obtain a response as soon as I am able.

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT

The Hon. JENNIFER GARDINER: My question is directed to the Treasurer. Further to his comments about the Public Accounts Committee's recommendations in its report on industry assistance, I draw the Treasurer's attention to the following quote:

Until the Department tackles the issue of an objective and transparent measurement of its contribution to economic development in NSW, the question will remain whether DSRD actually achieves what it claims.

Will this be one of the committee's recommendations and points upon which the Treasurer intends to act? When will he implement an objective and transparent measurement of the department's contribution to economic development?

The Hon. MICHAEL EGAN: The Department of State and Regional Development reports in its annual report on those investments that have been attracted to New South Wales with which it has been involved. I do not think there is any suggestion—and certainly no evidence—that any one of those new investments in New South Wales has not had the involvement of the Department of State and Regional Development or another agency of government. I certainly have not seen any example in the committee's report and there is no evidence of that in the committee's report. I reject it.

The Hon. Duncan Gay: So you are rejecting it out of hand, for no reason?

The Hon. MICHAEL EGAN: I reject it out of hand because it is a silly assertion by the committee without any evidence to support it—without even a single example.

DEPARTMENT OF INDUSTRIAL RELATIONS REGIONAL SERVICES

The Hon. TONY KELLY: My question is directed to the Special Minister of State, and Minister for Industrial Relations. Will the Minister inform the House how the Department of Industrial Relations delivers services throughout regional New South Wales?

The Hon. JOHN DELLA BOSCA: The Department of Industrial Relations has developed and implemented a number of specific initiatives for regional New South Wales that allow better and more equitable access to departmental services. The services include the introduction of a statewide telephone inquiry service on industrial relations legislation, awards and employment matters. This service can be contacted from anywhere in New South Wales for the cost of a local telephone call. We have also increased services to regional New South Wales with the introduction of the Awards Online service, through which clients can access information 24 hours a day, seven days a week via the Internet. In conjunction with this service, queries can now be handled by email via the new web site. We have established six contact centres, three of which are located in regional New South Wales on the North Coast and in the Hunter and Illawarra regions. The department has overseen the outposting of industrial inspectors in five key locations in New South Wales, including Orange, Ballina, Gosford, Wagga Wagga and Dubbo.

Other initiatives have assisted in facilitating a greater departmental presence in New South Wales as part of the various education and award compliance campaigns undertaken in regional areas. These campaigns have a strong regional flavour. In the past year major campaigns have commenced and/or been completed in the Illawarra, Central Coast and Hunter regions. Other campaigns have been conducted in regional centres such as Tamworth, Batemans Bay, Dubbo, Bathurst, Orange and Port Macquarie. The Department of Industrial Relations has also developed and implemented a series of information sessions and workshops to continually inform employers of their industrial responsibilities in regional New South Wales. These information sessions are often run in co-operation with industry associations and community groups such as local business enterprise centres. The campaigns continue to assist employers in regional New South Wales to become better informed and more able to manage their workplaces. These examples show that the department has not only maintained but also improved its regional presence and the equitable delivery of services—services that meet the real needs of those living and working in regional and rural New South Wales.

FIREWOOD AND WOOD-FIRED HEATERS

The Hon. IAN COHEN: My question is directed to the Minister for Juvenile Justice, representing the Minister for the Environment. Australia currently burns six million tonnes of firewood per year, which is twice our amount of woodchip exports. Given that wood from Canberra is transferred 600 kilometres on average and

that Sydney's firewood is sourced from Queensland, will the Government undertake the mandatory licensing of firewood merchants to ensure the ecologically sustainable collection of this wood? Will the Government direct the Environment Protection Authority [EPA] to ensure that neighbours are told when wood-fired heaters are installed? Will the Government move to stop the unregulated, unsustainable harvesting of firewood?

The Hon. CARMEL TEBBUTT: I thank the Hon. Ian Cohen for his question.. I do not know whether it was prompted by this morning's announcement of a range of initiatives aimed at improving air quality in New South Wales, but there was certainly quite a bit of discussion about the impact of wood heaters—which are a major source of the brown haze that hovers over regional centres and Sydney during the winter. The Minister for the Environment talked about the wood heater program that will commence in Armidale, Orange, Lithgow, Cooma and Albury, where EPA monitoring has shown that winter air quality improvements are needed. The program will include education about the clean use of wood heaters and provide cash subsidies to help people replace old, polluting heaters with cleaner alternatives. If the program proves effective it may be extended statewide. The Minister was keen to emphasise that this program aims to combine both education and incentives to replace the older-style wood heaters that cause particular pollution problems. As to the Hon. Ian Cohen's specific query about the transportation of wood, I will have to refer that matter to the Minister in the other House to obtain a detailed response.

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT

The Hon. RICK COLLESS: My question is directed to the Treasurer. As the Public Accounts Committee has criticised the Department of State and Regional Development for "crowding out" private sector development during good economic times, can the Treasurer confirm that the department did not offer any significant incentives to the proponents of the Lithgow aluminium smelter project? Further to the evidence of the Minister for Regional Development at budget estimates hearings last week, can the Treasurer also explain why no incentives were offered to or departmental funding expended on the aluminium smelter proposal?

The Hon. MICHAEL EGAN: The Government offered assistance to the aluminium smelter but not by way of electricity price subsidies. We made it clear right from the start that they had to be negotiated with energy suppliers on a commercial basis. Besides the energy question, the Government did offer assistance, the terms of which I have made public on many occasions in this House.

STUART AND SONS GRAND PIANO EXPORT

The Hon. IAN WEST: My question is directed to the Treasurer, Minister for State Development, and Vice-President of the Executive Council. Will he inform the House of recent developments with the Australian Technology Showcase company Stuart and Sons?

The Hon. MICHAEL EGAN: I thank the Hon. Ian West for his question and for reminding me of the remarkable instrument that is the Stuart piano. Only two months ago we celebrated the first export of a Stuart concert grand piano. This magnificent instrument, crafted in New South Wales red cedar, has been acquired by the Welsh College of Music and Drama in Cardiff. A spectacular concert and launch of the Stuart piano at the Welsh College of Music and Drama was held in St David's Hall in Cardiff on 29 May 2001.

The Hon. Dr Brian Pezzutti: Why weren't you there?

The Hon. MICHAEL EGAN: Because on that day I was delivering my 2001 budget—and a good budget it was. I am pleased to advise the House that His Royal Highness the Prince of Wales attended the launch. Prince Charles obviously takes his duties as patron of the Welsh college of music very seriously, and from all reports he was delighted by the quality of the instrument. His Royal Highness was also delighted with the collaboration between the college and the Newcastle university and conservatorium. World-renowned Australian-born pianist Piers Lane also gave a special recital on the instrument. The export to Wales of a 2.9 metre Stuart concert grand is the first foreign shipment of an Australian piano since the early twentieth century. As honourable members are well aware, Stuart and Sons was one of the first companies to join the Australian Technology Showcase.

The Hon. Malcolm Jones: Why technology; it's just a piano.

The Hon. MICHAEL EGAN: The honourable member is wrong. It is not just a piano. It is in fact the first piano in over 100 years to benefit from any significant technological advance. I point out to the honourable

member, as I point out to all honourable members, that new technology does not have to be in some modern industries such as information and communications technology [ICT] or biotechnology. Indeed, our success as an economy will depend very much on how well we adapt new technology and new ideas to everything we do, whether it be an old industry or product or a new industry or product.

The Hon. Malcolm Jones: What technology is involved?

The Hon. MICHAEL EGAN: I am not the expert on that. On many occasions, with the benefit of notes, I have explained that to the House.

The Hon. Malcolm Jones: Why is that piano, magnificent as I am sure it is, in the technology showcase?

The Hon. MICHAEL EGAN: Because the Stuart company has developed new technology that makes the piano far and away the best in the world. I will obtain the technical details for the honourable member, although on previous occasions I have given the House the details, chapter and verse.

The Hon. Dr Brian Pezzutti: It's all in the strings.

The Hon. MICHAEL EGAN: It is not just in the strings, as the Hon. Dr Brian Pezzutti says; it is also the use of ceramics. The piano has four pedals rather than three, but not being a piano player I will not try to tell members the significance of four pedals instead of three. As honourable members are well aware, Stuart and Sons was one of the first companies to join the Australian Technology Showcase and has been a key participant in the Department of State and Regional Development's exhibitions of innovative and exportable products. I am surprised the Public Accounts Committee did not turn its attention to the Australian Technology Showcase, because the whole of the world is lauding the efforts of the Australian Technology Showcase. [*Time expired.*]

NATIONAL PARKS TICKET MACHINES

The Hon. MALCOLM JONES: My question is to the Minister for Juvenile Justice, representing the Minister for the Environment. With the introduction of entry fees to North Coast and mid-North Coast national parks and nature reserves, how many ticket machines have been damaged or vandalised? How much does each ticket machine cost to replace?

The Hon. Dr Brian Pezzutti: Good question.

The Hon. CARMEL TEBBUTT: It may well be a good question, but it probably would be better placed on notice. I am sure the House is aware that the Government took a recent decision to introduce fees in some national parks, but the majority of national parks remain free of charge to the public. From 1 November last year a per-vehicle fee applies at 44 of over 500 parks and reserves in New South Wales: that is less than one in 10. The parks affected by this decision are those that receive high levels of visitation and, therefore, incur substantial costs to provide and maintain roads, visitor facilities and other infrastructure. The fee helps to minimise the impact of the high usage on the environment. It is important to note that the money raised from the day entry and camping fees remains in the local area to be used to create, maintain and improve local facilities for the benefit of those who use the park. I am not able to respond to the honourable member's specific question about the replacement cost of ticket machines. I will refer his question in that regard to the Minister in the other place for a response.

DEPARTMENT OF STATE AND REGIONAL DEVELOPMENT

The Hon. GREG PEARCE: My question is to the Treasurer, and Minister for State Development. When will the Department of State and Regional Development make public the incentives and grants allocated by the department?

The Hon. MICHAEL EGAN: The department does not make public the incentives offered to attract investment to New South Wales, and that is for a very good reason: to do so would weaken the negotiating power of the New South Wales Government with any new investors. That has been the practice not only of the current Government but also of the previous Liberal-National Government and, indeed, is the practice of other Australian governments. I simply point out, as indeed the Public Accounts Committee points out, that New South Wales probably offers far less overall, and in individual situations, to companies than that offered by other State governments.

The Hon. Duncan Gay: That's the point, isn't it?

The Hon. MICHAEL EGAN: What is the point?

The Hon. Duncan Gay: That you offer much less.

The Hon. MICHAEL EGAN: Do you think we should be offering more?

The Hon. Duncan Gay: Yes.

The Hon. MICHAEL EGAN: That is an interesting observation by the Leader of the National Party, because I believe the thrust of the Public Accounts Committee report is that we should be offering less, not more. The committee wants to abolish regional development boards. The competition for most companies that we attract to Sydney is not regional New South Wales; it is Melbourne, Singapore, Kuala Lumpur or Tokyo. In other words, they are investments in businesses that, if they did not come to Sydney, would go to another capital city. It is ludicrous to suggest that we should allow investments like Exodus or Global Switch to go to Singapore or Melbourne. We want to attract them to New South Wales because they are good for jobs. They are good for the development of Sydney as a global city, particularly in information technology and also in the emerging area of finance.

We make no apology for the fact that Sydney is now becoming a major player in the world finance industry. We are now a major finance centre not just in the Asia-Pacific; we are one of the major finance centres in the world. That did not come about by accident; it came about because we actively promoted Sydney and the merits of Sydney as a finance capital, and we will continue to do that. It is ludicrous for any parliamentary committee or any member of Parliament to suggest the opposite. As I have pointed out previously, it is ludicrous for anyone to suggest we should abolish regional development boards. It is ludicrous for anyone to suggest we should repeal the country industry's payroll assistance scheme—which clearly is the recommendation of the Public Accounts Committee. It talks about a national competition review, but in the body of its report points out that we should look at repealing it. I reject that suggestion. I say to the people in country and regional New South Wales that we will continue to make that kind of assistance available to attract industry and investment to regional New South Wales.

TARONGA ZOO AND WESTERN PLAINS ZOO WILDLIFE RESEARCH PROJECTS

The Hon. PETER PRIMROSE: My question without notice is directed to the Minister assisting the Minister for the Environment. What successes have Taronga and Western Plains zoos had with their breeding and conservation programs?

The Hon. CARMEL TEBBUTT: Although Taronga and Western Plains zoos are renowned as places of excellence where visitors can see and learn about wildlife, often not much is known about zoos other than as places to view wildlife. They also have international reputations in conservation, research and environmental education. As global pressure on wildlife increases, Taronga and Western Plains zoos are preparing to expand their roles in these areas to the benefit of wildlife here and overseas. Often that role does not receive a great deal of attention. It is good to be able to rectify that situation today. Taronga and Western Plains zoos have wildlife research projects that cover areas as diverse as the Antarctic, where the zoos' Australian Marine Mammal Research Centre is conducting studies into pack ice seals, including the leopard seal and crab-eater seal.

Other research projects are being conducted on China's Yangtze River, where zoo researchers are looking at the critically endangered Yangtze white dolphin; Indochina, where research is being done to save the critically endangered wildcat species, the kouprey; and our own Pittwater and Kangaroo Valley, where research is under way into radio tracking of feral animals, management of wombat populations in Kangaroo Valley, and the conservation needs of Australia's native cat, the quoll. So far as breeding and conservation programs are concerned, the zoos have had considerable success with species both here and overseas. Australian species such as the mallee fowl, bridled nail-tail wallaby and great bilby are being reintroduced in the wild at the flora and fauna sanctuary at Western Plains Zoo, at the predator-free sanctuary at Peak Hill and at Broken Hill.

The mallee fowl breeding program aims to re-establish a viable population at Yathong Nature Reserve. Western Plains Zoo currently maintains 12 breeding pairs for this project. It has enjoyed another good breeding season, producing 95 chicks, 80 of which are expected to be released in Yathong Nature Reserve in October. This will bring the total number of chicks released in the past five years to 300. The bridled nail-tail wallaby

program is conducted in collaboration with Queensland. The small population transferred to Western Plains Zoo for breeding aims to ensure that the species is not lost should a catastrophe occur in the wild. They continue to breed well. The greater bilby program has resulted in six offspring having been produced so far in 2001. Unfortunately, the species is extinct in New South Wales, but widely separated populations survive in Queensland, the Northern Territory and Western Australia.

The black rhinoceros program is part of an international effort to preserve the species that has been reduced in numbers by poaching from around 70,000 in 1960 to only 2,500 today. The program has produced four calves since 1996 and, hopefully, more are on the way. I can advise the House that the five-year-old male, Kusomona, is due to be transferred in September to Fossil Rim Wildlife Centre in Texas as part of the global breeding program. By breeding, displaying and researching endangered species the zoos are able to provide the community with experiences and educational opportunities that improve their perceptions of zoos and wildlife. The 85 zoo-based populations of threatened and endangered species are able to provide insurance against a collapse of wild populations. I am sure that honourable members would agree that both zoos are involved in important work. I look forward to reporting further on these programs.

LICENSED REPTILE KEEPERS

The Hon. RICHARD JONES: I ask the Minister for Juvenile Justice, representing the Minister for the Environment, whether licensed reptile keepers in New South Wales are importing wild reptiles such as tree monitors, two-line dragons and ridge tale monitors from the company WOMA in the Northern Territory? Are these licensed keepers holding the animals for six months, as they are supposed to, or are they trading them almost immediately? What is the National Parks and Wildlife Service doing to monitor this trade to determine how many animals have been imported, how many shipments are made and the range of species? Have allegations been made that these animals arrive covered in ticks and parasites, and that they are malnourished?

The Hon. CARMEL TEBBUTT: That is a very appropriate question to follow on from the last question. As I understand it, it is true that the National Parks and Wildlife Service issues licences to reptile keepers. I know, through media reports, that controversy has surrounded the company referred to by the honourable member. I have no direct knowledge of it. I will refer the honourable member's question to the Minister in the other place and undertake to get a response to the range of issues he raised about reptile keepers.

BUDGET PAPERS INFORMATION

The Hon. CHARLIE LYNN: My question is to the Treasurer, and Minister for State Development. How can members of Parliament and members of the public be certain that the budget papers do not contain misleading information, especially in light of the finding of the Public Accounts Committee that the program description for the Department of State and Regional Development does not accurately reflect the activities of the department?

The Hon. MICHAEL EGAN: I do not know what the honourable member is talking about, let alone what the committee is talking about.

RETIREMENT OF THE HONOURABLE JOHN JOHNSON

The Hon. MICHAEL EGAN: I suspect that this will be the last occasion that I will be in the House during question time in the presence of the Hon. Johnno Johnson. As honourable members are aware, I will be paired from tomorrow because I am heading overseas. I take this opportunity to say a few words of tribute to the honourable member, who is not only a great political colleague, particularly to those in the Australian Labor Party; he is a great personal friend to almost every member in this House. Johnno is an institution. He is, as I told caucus the other day, one of the most cantankerous, difficult, truculent people I have ever come across; but there is no finer human being than Johnno Johnson.

I doubt that anyone in this country has made a more significant contribution to Parliament, public life or politics than that made by Johnno. He was certainly a great and distinguished President of this Chamber, who performed his duties without pomp but with a great deal of dignity. I will be sad when he leaves the Parliament. I have no doubt that he will continue to be a very active member of the Australian Labor Party and, in many ways, will continue the work he has been doing for the past 40 years in an unofficial and unpaid capacity. Yesterday he asked a question and I gave him an answer, which was either "Yes" or "No", so that he could have the privilege of asking a question that received the shortest answer in the history of the Parliament.

The Hon. Duncan Gay: What about the ones you don't answer?

The Hon. MICHAEL EGAN: I answer every question. Johnno, as a former Presiding Officer of this House, could tell the honourable member without any bias at all that I am the only Leader of the Government who has ever fully answered questions. Isn't that right, Johnno?

The Hon. Charlie Lynn: This is about Johnno.

The Hon. MICHAEL EGAN: This is about Johnno. Johnno will tell you the truth, won't you, Johnno?

The Hon. John Johnson: Yes.

The Hon. MICHAEL EGAN: He will. Next week I am sure other members will take the opportunity to say their farewells to Johnno. But today I want to say: Johnno, thanks for a great job. I appreciate your friendship, and I appreciate everything you have done for the people of New South Wales and, in particular, for the New South Wales branch of the Australian Labor Party.

WOODLAND HOME PRODUCTS

The Hon. RON DYER: My question is to the Treasurer, and Minister for State Development. Will the Minister inform the House about recent international achievements of Sydney company Woodland Home Products?

The Hon. MICHAEL EGAN: I thank the honourable member for this opportunity to highlight another success story of the Department of State and Regional Development: the Australian Technology Showcase. It is a great program run by a top-class outfit known as the Department of State and Regional Development, which does a great job throughout country and regional New South Wales.

The Hon. Duncan Gay: That's not what the PAC, your people, say.

The Hon. MICHAEL EGAN: As I say, I have been a former chairman of the Public Accounts Committee, and some reports are better than others.

[Interruption]

I do not know what Joe had, but I thought it was a pretty silly report all round. Woodland Home Products has been a member of the showcase since March 1999 and recently won three industry awards for its exceptional achievements in exporting top-quality Australian barbecues. They are sold under the name Beefeater. In 1999 Woodland exported \$2.5 million worth of Beefeater barbecues to North America. This year it has tripled its export to \$7.5 million, a phenomenal improvement. It is worth noting that nearly 70 million American households own a barbecue, so America is a major market with plenty of growth potential. The company also sees potential sales of barbecues in Japan, Israel, the United Kingdom and Norway.

To help Woodland succeed in overseas markets, the department is giving commercial advice and financial support from the Australian Technology Showcase Export Fund. Government funding was provided to assist with bringing seven major distributors from the United States of America and Canada to show them Woodland gas barbecues in Sydney. The visitors were impressed by the creative design, excellent quality and competitive pricing of the Beefeater range.

In addition, Woodland's technology has been strongly promoted through the Australian Technology Showcase exhibitions at Fox Studios, on the ATS web site, and in promotions to the media. In response to its soaring sales figures, the company has increased its work force by 55 per cent to 70 people, who are now employed at a new and larger plant in Chester Hill. The company has plans to add another 15 jobs over the next two years.

Woodland's exports currently represent 34 per cent of total sales of more than \$16 million. Total sales are expected to reach \$35 million by 2003, another amazing increase of 120 per cent. The company's export achievements have earned three awards in recent years, namely, the New South Wales Premier's Emerging Export of the Year Award, the Western Sydney Industry Award for outstanding achievement by an emerging exporter, and the Bankstown City Exporter of the Year Award.

Greater western Sydney is the third largest Australian economy after central Sydney and Melbourne, and Woodland obtains about 75 per cent of its manufacturing input from western Sydney suppliers. I congratulate this western Sydney business on its success and trust that it continues its push into overseas export markets.

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

Questions without notice concluded.

NORTHPOWER AND GREAT SOUTHERN ENERGY SENIOR MANAGEMENT

Personal Explanation

The Hon. Dr BRIAN PEZZUTTI, by leave: I wish to make a personal explanation. Yesterday in the House the Leader of the Government said, "Only a month ago the Hon. Dr Brian Pezzutti was telling us that NorthPower was losing money and he is now telling us that it has been providing dividends of \$45 million." That is what he said. It is true that NorthPower provided a windfall bonus—

The Hon. Michael Egan: Point of order: This is not a personal explanation.

The Hon. Dr BRIAN PEZZUTTI: It is a personal explanation.

The Hon. Michael Egan: How has the member been misrepresented?

The Hon. Dr BRIAN PEZZUTTI: I am just explaining that. It is true that NorthPower—

The Hon. Michael Egan: I cannot see how this is a personal explanation.

The Hon. Dr BRIAN PEZZUTTI: I have quoted what the Treasurer said and I am now putting the record straight.

The Hon. Michael Egan: I think the member is making an argument, not a personal explanation.

The PRESIDENT: Order! Standing Orders 70 and 71 are relevant to this point of order. Standing Order 71 permits a member to intervene in debate for a second time in explanation or in reply on some material point on which the member has been misquoted or misrepresented. However, Standing Order 70 provides that the member may explain matters of a personal nature but must not debate the matters.

The Hon. Dr BRIAN PEZZUTTI: This is precisely what I say. The Treasurer has misrepresented what I said yesterday in question time. This is the first opportunity I have had to read *Hansard* to see precisely what he said and then set the record straight. The Treasurer misrepresented me in question time.

The PRESIDENT: Order! I will clarify with the member the procedure that he is using. Standing Order 70 states:

By the indulgence of the House a member may explain matters of a personal nature although there be no question before the House, but such matters may not be debated.

The member may explain personal matters, but he cannot discuss how he believes he has been misrepresented by another member.

The Hon. Dr BRIAN PEZZUTTI: Could you please explain at what stage under that standing order I can make a personal explanation when I have been misrepresented by a member?

The PRESIDENT: Standing Order 71.

The Hon. Dr BRIAN PEZZUTTI: It has been traditional in this House for members to use this procedure when they have been misrepresented.

The PRESIDENT: Order! I am simply reminding the member that in accordance with Standing Order 70 he must stick to explaining matters of a personal nature.

The Hon. Dr BRIAN PEZZUTTI: I am doing that precisely. It is true that NorthPower provided a windfall bonus of \$45 million. It is true that Mr Parkinson, the NorthPower chief executive officer, received the largest bonus, 105,000, in that financial year. I have never ever said that NorthPower was losing money, but I have repeatedly said that the Treasurer has continued to load NorthPower with State debt. I would like therefore to correct the record precisely about what I have said in this House over a long period of time.

ASSENT TO BILLS

Assent to the following bills reported:

Long Service Leave Legislation Amendment Bill
Casino Control Amendment Bill
Consumer Credit (New South Wales) Amendment (Pay Day Lenders) Bill
Crimes Legislation Amendment (Existing Life Sentences) Bill
Police Powers (Drug Premises) Bill
Police Powers (Internally Concealed Drugs) Bill
Corporations (Ancillary Provisions) Bill
Corporations (Administrative Actions) Bill
Corporations (Consequential Amendments) Bill

GENERAL PURPOSE STANDING COMMITTEE No. 3

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

Debate resumed from an earlier hour.

The Hon. PETER BREEN [1.06 p.m.]: The House is considering whether there should be a reference to the Parliamentary Privileges and Ethics Committee for inquiry and report by 26 October of the special report on possible breaches of privilege arising from the inquiry into Cabramatta policing. As I said earlier, the important question here is whether people giving evidence to parliamentary committees ought to be able to do so in a climate of freedom and without intimidation from any quarter—whether from their employer or any other section of the community.

A directive memorandum was issued in this case and the question is whether it had the effect of intimidating witnesses before the parliamentary committee. These are very important questions because if people cannot attend without fear of recrimination or intimidation they simply will not co-operate and give evidence to parliamentary committees on important questions that affect the community. On this occasion the Police Service had written to the Hon. Helen Sham-Ho, chairman of the committee, and protested in very strong terms. The service wrote:

... yet another instance of the committee's business being conducted in a cavalier manner to the detriment of both the effective functioning of the Police Service and also the public interest.

As I said earlier, this is not the first time the Police Service has involved itself in the affairs of this committee in this inquiry. Honourable members may recall that a censure motion was passed by this House earlier this year in relation to the Minister for Police. On that occasion the Police Service wrote to the Hon. Helen Sham-Ho on 23 February and made very serious allegations about the way in which the committee conducted its business. The letter stated:

With respect, I submit in the interests of a proper inquiry the Police Service, through its officers, in particular Mr Small, should be allowed to respond before your committee without delay.

Honourable members may recall that the result was an outcry from the police Minister and the Premier. It caused a great deal of anxiety among members of Parliament on the committee. The community generally would have wondered about efficacy of providing information to the Parliament in circumstances in which it results in such a backlash and public outcry. On that occasion it resulted in a censure motion. Now it has happened again. The Police Service wrote to the Hon. Helen Sham-Ho on 27 April in similar and strident terms.

It is appropriate to refer this matter to the Standing Committee on Parliamentary Privilege and Ethics. People should not fear giving evidence to parliamentary committees. I am not familiar with the exact circumstances of the committee but I know that some of the evidence of the four officers was leaked. Although that is not part of the proposed reference, the officers have been issued with a directive memorandum and there

is some question over their employment. I do not know all the circumstances but I have been informed that at least three of them are on sick leave. If that is the result of their giving evidence to Parliament it is a very serious matter that needs to be investigated by the privileges and ethics committee. A determination is needed so that people will know in the future what the rules are.

If the committee makes a determination about the position of witnesses and that determination is published and made available in future to other witnesses we will have done the Parliament and the community a great service. The operations of the parliamentary committee system are very important to the people of New South Wales. Without this Parliament acting as a brake on the Government and acting as a people's forum and a House of review the people of New South Wales would have no access to the operations of government except through their local members in the other place.

In the short time that I have been a member I have been very impressed by the effectiveness of the committee system. It would be a great tragedy to jeopardise that system as a result of intimidation and other forms of provocation to witnesses who might otherwise provide evidence to committees and co-operate with them. I therefore commend the motion to the House. The amendment proposes that I replace the Hon. Helen Sham-Ho on the privileges and ethics committee because as she is chair of the Cabramatta committee it is deemed inappropriate that she should sit on the privileges and ethics committee as well and consider the same issue. I am available to go on the ethics committee to perform whatever functions are required by the Parliament. I commend the motion to the House.

Ms LEE RHIANNON [1.13 p.m.]: I strongly urge members to support the motion moved by Reverend the Hon. Fred Nile on behalf of the Hon. Helen Sham-Ho. It is a far-reaching motion that has considerable implications for the running of parliamentary committees, and in particular for the role of police and for the accountability and transparency of the Police Service. As a member of the committee inquiring into policing at Cabramatta I took part in the process of drawing up the special report on possible breaches of privilege, which I strongly support. I understood from the contribution of the Hon. Ron Dyer that the Government was opposing the establishment of the inquiry. I have heard that the Government has now seen its way clear to support the inquiry. I certainly hope that is the case.

I was shocked at reports that the Government would not support the inquiry and at what the Hon. Ron Dyer said. If the inquiry does not go ahead, the democratic process in this State will be limited. That decision would also support the argument that the Government is reneging on the recommendations of the Wood Royal Commission into the New South Wales Police Service. Clearly, it is very difficult to change the culture of policing in this State. But that is no justification for the Government giving a blank cheque to senior police officers and cutting off support to the rank and file officers. That will be the perception if this inquiry does not go ahead.

There are two matters of concern for the inquiry. I will concentrate on paragraph (b), which deals with the directive memorandum. The Hon. Ron Dyer said that an inquiry would interfere with operational policing. I have had discussions with members of the New South Wales Police Association, and they have assured me that in no way has the work of the committee in relation to the directive memorandums interfered with operational policing. It seems to have been an excuse simply plucked out of the air to justify the Government at one stage scuttling the inquiry. Perhaps it still wants to scuttle it. Honourable members are busy at this time of the session and they may not have had the opportunity to read all of the report in detail, so I will go through some of it. It is important that people realise what has happened to the four officers concerned. The impact on them has been enormous. I have been contacted periodically, as I understand other members of the committee have, by the officers. They came to us in goodwill to share information that they thought would be important for our work.

When I speak about police matters in this House I am often ridiculed with the trivial types of things that members say, such as, "You just hate all police. What do you care?" At times I may have differences with the way police operations are carried out, but, obviously, I do not dislike all police officers. That is a ridiculous suggestion. Police must abide by their duty of care to the people of New South Wales. That should be the basis upon which they carry out their work. It has been the basis of my criticisms. Equally, I recognise the role of police officers and the important contribution they can make in coming forward to committees of this Parliament. That is why the motion is so important. It is why a number of members of the committee were so distressed about what happened to the officers. The officers gave evidence and made a submission to the committee.

I emphasise that a number of committee members asked the officers about the status of the submission. They gave evidence in camera and we wanted to know how that sat with their senior officers and the officers

they worked with. They all said that what they were doing was widely known and that they had support to appear before the committee. They were actually on paid duty that day. I cannot speak for my colleagues on the committee but I was relieved that they had that support from other police officers, including their senior officers. I gained the impression that there would not be repercussions. When we heard about the directive memorandum—and remember it came the next morning—a number of us were quite shocked. Initially we were concerned about the implications for the future of the officers and also for the important work of the committee.

The Police Association of New South Wales obviously gives considerable support to its membership, and I understand that it did an outstanding job for the officers concerned. The President of the Police Association, Mr Ian Ball, informed me that the police officers are no longer working at Cabramatta, that the association has assisted them with their green forms and they are now happily working in new locations. The way this matter was handled is a sorry tale. Many of us know that the police officers were committed to their work at Cabramatta. As a member of the Greens, I may have a different view of the tactics used in handling drug issues at Cabramatta, but that is not the point of this debate. The point is the treatment of the police officers. What sort of message does that send to people who believe they have information that would be useful to a parliamentary committee?

Mr Ball told me, contrary to what Mr Tim Priest said, that the officers were not forced to transfer but that they were assisted through the process. That process has given some satisfaction to the officers. However, individually they said they were frustrated in carrying out their work at Cabramatta and also in the period immediately following the inquiry. Again I refer to the directive memorandum, because Mr Ball has put something on the record that members of this place clearly have to acknowledge. On 2 May 2001 Mr Ball wrote to the committee as follows:

I express not only my disquiet about your Committee's failure to protect in camera witnesses, but also my disappointment that I am now forced to write to police officers discouraging them from voluntarily appearing before committees such as yours.

What a tragic state of affairs; we know about the many problems in the Police Service, and now the association that represents police officers has to give them that advice. Mr Ball further wrote:

Worse yet, on that same morning—

referring to the day after the inquiry—

a directive memorandum was served on each of them and another member in regard to evidence given to you relating to youth and drug activity at Parramatta ... As a result of changed circumstances, not the least of which was a publication of transcripts of evidence, these members are now required to respond under very clear threat from the employer. We believe that the action of the Police Service constitutes a clear contempt of Parliament.

As a result, it is my intention to write to all members—

that is, all members of the Police Service—

and advise them not to voluntarily give evidence to parliamentary inquiries such as yours, as they cannot expect any protection against the standover tactics of an employer unable to culturally change.

It is terribly unfortunate that there is a possibility that police officers feel that they would not have protection if they appeared before a committee of this Parliament and, in fact, that they could be victimised. I have been informed that the Government does not oppose the motion moved by Reverend the Hon. Fred Nile to allow this inquiry to proceed. That does not mean that all police officers, and other people, can feel confident that they can give evidence in a way that will not compromise them in some future activities. However, it is a small step towards achieving that. I congratulate the Government on not trying to block this inquiry. I am pleased that we will be able to proceed in that way and, hopefully, that we will be able to get some satisfaction from the committee's findings.

Amendment agreed to.

Motion as amended agreed to.

[The Deputy-President (The Hon. Henry Tsang) left the chair at 1.26 p.m. The House resumed at 2.00 p.m.]

NEW SOUTH WALES—QUEENSLAND BORDER RIVERS AMENDMENT BILL

Bill received and read a first time.

Motion by the Hon. Michael Egan agreed to:

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

TABLING OF PAPERS

The Hon. Carmel Tebbutt tabled the following paper:

Annual Reports (Departments) Act 1985—Report of University of Sydney for year ended 31 December 2000

Ordered to be printed.

APPROPRIATION BILL**APPROPRIATION (PARLIAMENT) BILL****APPROPRIATION (SPECIAL OFFICES) BILL****INSURANCE PROTECTION TAX BILL****STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL****Second Reading**

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [2.09 p.m.]: I move:

That these bills be now read a second time.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.09 p.m.]: I wish to put on record the Coalition's concerns about the Insurance Protection Tax Bill, which is cognate with the Appropriation Bill. We are concerned about several aspects associated with this tax and how it will impact on the people of New South Wales. The bill establishes a new tax on insurers calculated at \$69 million per year and has arisen as part of this Government's response to the devastating collapse of HIH Insurance—specifically, the effect of that collapse on compulsory third party motor vehicle insurance and the home warranty insurance scheme. The tax will be imposed on premiums received for general insurance in New South Wales, especially property, general risk and motor accident policies. Exempt policies include life insurance, Crown property, non-profit organisations and charities, workers compensation, loss through fire of tools or tools of trade, medical insurance, mortgage insurance, redundancy insurance for housing loans, and several other forms of policy.

While the bill does not specify how this tax will be apportioned, the Treasurer said in his Budget Speech that the money would be hypothecated to the soon-to-be established New South Wales Policyholders Protection Fund, which will shortly be considered by this House. Once it is legislated, the Treasurer has indicated that the fund, while designed to cover claims under third party and home warranty policies with HIH, may be extended in the future to cover claims for these types of insurance with other insolvent insurers. This concerns the Opposition greatly. What guarantee does the community have that the tax will not be continued in perpetuity in order to add to Government coffers? The need for transparency is utmost. This tax must not be used by the Government as simply a milch cow and a chance to slug what it calls the "big, bad insurance companies".

Clause 21 of the bill provides that insurers must not pass the tax on to customers. The penalty for doing so is \$550,000. The Government argues that the insurance industry should bear the major part of the current and future cost of rescuing those affected by the collapse of HIH. This bill seeks to recover the cost to the Government of helping car accident victims and home owners left without cover when HIH went under. The Government also argues that clause 21 will force insurance companies to take the money from their profits and not simply pass the cost on to consumers. The insurance industry opposes the legislation, which it describes as

bad public policy. It believes it sets a bad precedent of companies bailing out their failed competitors and, if companies cannot pass the cost on to consumers, will ultimately affect returns to shareholders—many of whom are also consumers. More than two million mums and dads have investments in insurance companies—many of whom came into those investments following the demutualisation of the NRMA—and millions more have superannuation funds invested with insurance companies. Like many honourable members, I have shares in the NRMA, so I declare my interest in this debate.

The legal advice to the insurance industry would appear to indicate that the application of clause 21 will prohibit insurers from passing on the tax or costs directly associated with it. That will have a significant impact on insurance companies and their shareholders. For example, the NRMA estimates that it will pay in excess of \$15 million per year as a result. The Insurance Council of Australia argues that the cost will be inevitably passed on to policyholders through increased premiums. The Government is aware of the Opposition's intention to amend the Insurance Protection Tax Bill by omitting "5 years" and inserting "3 years" on page 16, clause 25, lines 26 and 28. That is a very positive move in reviewing this legislation. It is important that we have an opportunity to conduct ongoing reviews of the impact of the tax on insurance companies, and therefore upon consumers.

The bill presently provides for a review to be conducted every five years, and the Opposition is seeking to reduce that period to three years. That would give not only the insurance industry but Parliament a greater understanding of the impact of the proposed tax, and therefore the insurance industry. It would also give us an opportunity to examine whether this tax should remain in place beyond the three-year period spelled out in the bill, as amended—I believe the Government intends to accept our amendment. I will not labour the point. The change that I have outlined is fair and equitable. We do not oppose the legislation.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [2.14 p.m.]: I will not go over the ground that the Leader of the Opposition has already covered, but there is another area of concern regarding clause 21 of the Insurance Protection Tax Bill. The Insurance Council of Australia has sent me a copy of a letter from Allen Allen and Hemsley expressing its concern that the detail of the bill does not reflect exactly the views of Treasury officials and the Treasurer. I have given a copy of this opinion to the Treasurer, who has kindly sent it to his people. My feeling from conversations with him—I do not want to verbal the Treasurer—is that the Treasurer certainly did not believe the interpretation of clause 21 would be so tough on insurance companies. I seek leave to table the letter in the House.

Leave granted.

Letter tabled.

Allen Allen and Hemsley states:

We therefore believe that the application of section 21, in effect, prohibits insurers from passing on the tax or costs directly associated with it or caused by it as part of any charge made against insurance.

We do not believe that the provision reflects the representations that have been made by Treasury and the representations made by Treasury would call for a provision which did not prevent the passing on of a tax and costs associated with it but rather the separate identification or specification of the amount which is included.

We have not further considered the extent to which this law would prohibit an insurer charging the tax through in policies which have no relevant connection to New South Wales and there may be issues as to the validity of this provision to the extent that it purports to apply to such policies.

I am seeking a response from the Government on this issue. The Government faced a difficult situation. It had to pay a certain amount of money, the cost of which it could have levied directly on taxpayers. However, it chose the other viable alternative of levying the charge on insurance companies, which will probably levy it on policyholders. I do not believe that is the proper way to proceed, but the Government chose that alternative in good faith. The problem is that clause 21 may preclude insurance companies from passing on the costs, which will affect their shareholders. NRMA Insurance is one company that will be hit hardest. It is a New South Wales-based company with New South Wales employees and shareholders comprising New South Wales mums and dads. The Government may not have envisaged that consequence. The Treasurer spoke to me about this issue in good faith. I hope that the Treasurer or the Parliamentary Secretary can inform the House of Treasury's understanding of the matter. Although the Government has acted in good faith, I am concerned about the interpretation of clause 21. Some clarification of this issue would assist the Insurance Council and those insurance companies that continue to operate. They were not responsible for the HIH collapse but they will bear the brunt of the consequences. As I indicated earlier, I appreciate that the Treasurer took our concerns on board and I hope there will be a reply.

The Hon. MALCOLM JONES [2.19 p.m.]: I echo the comments of the Deputy Leader of the Opposition. With the unfortunate collapse of HIH Insurance many members of the public have been left in dire straits. Federal and State representatives realised the problem and took steps to do something about it; by their actions they took ownership of the problem. The Insurance Protection Tax Bill seeks to transfer a part of that liability to the insurance fraternity and then prohibit it from passing it on to policyholders. Unfortunately, the liability will be passed on to the policyholders or shareholders, who are in no way responsible for the collapse. It is wrong to pass such a liability on to innocent parties. If the Government seeks to resolve the HIH insolvency, it should pay for it from consolidated revenue or raise taxes. It is not right or fair to do otherwise. This bill dumps the problem onto a section of society that did not contribute to the problem.

Although this bill seeks to prohibit passing that liability on to policyholders, I suspect it will be passed on. This House cannot read the actuarial reports of insurance schemes that it runs; how on earth will we see our way through actuarial schemes run by other people? There will be no chance! It is wrong to take a problem of this magnitude and transfer it to the prudent members of our society: those who choose to look after their assets. Some people do not pay a bean towards insurance because either they do not have any assets or they do not care to look after those they have. Prudent members of our society who have investments or insurance policies will pick up this liability because this Government deems it to be that way. That is not a fair process and it is the wrong thing to do. I oppose the bill.

The Hon. JOHN RYAN [2.22 p.m.]: Clause 21 of the Insurance Protection Tax Bill has been discussed at length, so I will leave my comments about general policy issues for the debate on the cognate bill. Clause 3 defines a series of exempt categories of insurance. One definition states:

insurance taken out by or on behalf of a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose,

The Treasurer has accepted, notwithstanding the provisions of clause 21, that insurers somehow are likely to recover the cost from insurance policyholders. Has the Government given consideration to the fact that it has set up a situation where charities and philanthropic organisations will actually pay an additional impost because the cost of their insurance policy will have increased? Charitable institutions buy the same insurance policies at pretty much the same rate as everyone else. If, for example, the St Vincent de Paul Society insures its motor vehicles with the NRMA, it will pay the same level as everyone else, dependent upon the risk it poses. However, the insurance company will retrieve some aspect of the levy it has apportioned to that insurance policy as part of its profits. The Government is not expecting the company to pay the levy because any insurance policy taken out by a philanthropic organisation covered by these provisions will be exempt.

Therefore, the Government has set up a position for insurers to profit at the expense of charitable organisations. Insurance companies will not have special policies for charitable organisations; they will be the same for everyone. However, insurance companies will recover a cost from policies not taken out by charitable organisations and pay it back to the Government. I suspect that this provision was included so the Government could not be accused of taxing charities for this particular fund, but charities will bear the cost. Insurers do not distinguish between charitable organisations and everybody else. The Government has made that category of insurance exempt, but insurers will recover the cost and not pay it to the fund as was intended. This is just one of the conundrums for the Government. This proposal is all about trying to make the Government look good, but it will not work the way the Government intended. I ask the Minister to give us an idea of how the Government intends to ensure insurers do not exploit charitable organisations. Having recovered the generic cost from the charitable organisation, the insurance company is not required to pay it back to the Government because that category of insurance policies is exempt.

This debate is not just about the Insurance Protection Tax Bill; this debate is about the appropriation bills. The estimates committee hearings, which have just concluded, are related to the debate. Last year during estimates committee hearings Ministers were questioned for two hours on the understanding that Government members would not ask questions nor take up the time with silly points of order. That did not happen. This year I attended a number of estimates committee hearings at which Government members asked questions. I have no objection to that, but once upon a time estimates committee hearings were held over three to four hours. In the Commonwealth Parliament Ministers endure estimates committee hearings all day. However, in this place two hours are allocated for hearings. The Minister usually gives a statement, then dorothea dixers are asked—they take up more time. Many portfolio areas did not receive the level of scrutiny they should have received. My other concern with regard to estimates committee hearings relates to what the Government has done with the notice paper. This year, unlike previous years, questions on notice were taken with the permission of the Minister. If the Minister refused to take questions on notice—and fortunately most Ministers did not—

The Hon. Ron Dyer: Point of order: The House is currently debating the appropriation bills. While that is sometimes a wide-ranging debate, it must focus on matters relevant to the financial affairs of the Government and on the appropriation. However, it seems that the Hon. John Ryan is embarking on a dissertation regarding appropriate procedures relevant to estimates committee hearings. The estimates committee process is outside the House. It is another process, with whatever rights and wrongs there might be according to the Hon. John Ryan. The honourable member is not discussing the appropriation bill or any matter relevant to it.

The Hon. JOHN RYAN: To the point of order: I am discussing the Appropriation Bill. The Appropriation Bill was being examined by the estimates committees. My point is that the Appropriation Bill did not receive its normal scrutiny. I have spoken about this during previous debates relating to the budget. It is absolutely appropriate that I raise this particular issue. However, the point I was seeking to make was nearly completed and I would have taken less time to do so than it took for the Hon. Ron Dyer to take his point of order. I put to you, Mr Deputy-President, that there is no point of order.

The DEPUTY-PRESIDENT (The Hon. Henry Tsang): Order! There is no point of order, but I urge the Hon. John Ryan to return to the leave of the bill.

The Hon. JOHN RYAN: I am not quite sure I understand what the ruling means. On this occasion the arrangements for asking questions were that if the Minister refused to take questions then they would be placed on notice. It is a reasonably unspoken secret that it is likely the Parliament will prorogue sometime before we reconvene in September. Therefore, every question on notice from the estimates committees hearings will disappear, totally vaporise. The Questions and Answers Paper is not published until the House resumes in September. Previously we were able to ask and put questions on notice and have them answered within two or three weeks. In this situation we will ask questions about the previous financial year at about the same time as the annual reports are prepared for the spring session. By pulling this little swiftly and slightly changing the standing orders relating to the estimates process the Government has attempted to wipe out scrutiny of the Appropriation Bill by doing away with questions.

I ask the Leader of the House, if he is available to answer, whether the Government is prepared to ensure that all questions on notice from the estimates hearings are answered and, if possible, answered out of session in the way they normally would be answered during the course of budget estimates. That can be achieved in myriad ways. The Government can publish its own answers to questions and answer the same questions that were asked on notice. It was an unfair arrangement and impacted on the scrutiny of the budget. To some extent the Treasurer made my final point when he took a point of order about the contribution of my colleague the Leader of the Opposition on the bill. The Treasurer attempted to make the point that people who spoke—

The Hon. Jan Burnswoods: Let me remind you that it was the Opposition who drew up the rules. The rules that you are complaining about were drawn up by the Hon. John Jobling.

The Hon. JOHN RYAN: I am pleased the honourable member interjected. The rules under which the estimates committees operated on this occasion were not drawn up by the Opposition. They were redrafted by the Government and are different from what the Opposition put to this House on previous occasions. But the facts never stand in the way of a good argument for the Hon. Jan Burnswoods. Normally, the take-note debate for the budget gives honourable members the opportunity to make a general speech about government administration and engage in general debate. For some years we have not had that opportunity in this House. We established the take-note debate, and honourable members have an expectation that they will be able to address the budget generally.

The Government introduced almost no legislation at the beginning of the session. It gives the crossbenchers and members of the Opposition the opportunity to deal with private members' matters, which is appropriate. Then, at the end of the session, when there is an opportunity to debate the budget, the Government throws in all the legislation and tells us that it must come to an end. Ultimately, the budget paper is the last item to be considered. About four honourable members have spoken on the budget in this place. This is the second year that general debate on the budget has been cut short. It is totally inappropriate. If the Government does not find some means of allowing honourable members to speak on the budget in general terms, as we have done previously, the House, somehow or another, will have to take matters into its own hands to ensure that its members have that opportunity.

The Government is escaping scrutiny on the budget. As years go by the annual reports are becoming more generalised. Many of the details we would normally get in hard facts are presented in difficult-to-interpret

graphs. The budget papers provide less and less information about the details of the appropriation. References to outputs are never accurate, and when a question is asked about outputs the answer is, "They are a guess. They are not appropriate." Members are deprived of the opportunity to debate those details because of the way in which the Government has organised its business. It would be utterly inappropriate if we were not to make that point at the only opportunity available to us, and that is during debate on the Appropriation Bill.

The Hon. RICHARD JONES [2.33 p.m.]: I wish to speak briefly on two aspects of the Appropriation Bill. One relates to the appropriation of \$561,735,000 for the portfolio area of the Minister for Agriculture, and Minister for Land and Water Conservation. This may be my only opportunity before September to speak on this increasingly urgent matter. Three farmers—Arthur Bowman, a canola grower from Molong; Julie McFarlane, a canola grower from Young; and Sam Stathson, an organic mustard grower from Conowindra—have come to this place today to talk to members of both sides of the Chamber. I understand they have already spoken with members of the National Party, who have given them a very fair hearing. These farmers are very concerned about the economic and environmental impacts of genetically engineered [GE] crops and their effect on agriculture and agricultural exports for Australia. They are asking for a five-year moratorium on all open field trials of GE crops.

They want a five-year moratorium on the release of Roundup, Ready Canola and all other GE canola products. They have requested that all current and proposed GE crops trial locations in New South Wales be made public. They want a transparent and comprehensive study of the potential contamination that may have already occurred within the New South Wales canola industry from farm to export terminal. They have asked for full segregation of current general release GE crops. They maintain that GE cotton must be segregated from the food chain. GE cotton trash and oil are now deliberately disposed of as cheap vegetable oil and livestock feed. They have also asked that a GE moratorium implementation committee be established, the membership of which should include farming and consumer representatives who do not have a conflict of interest.

The farmers have been talking to members of this House about the critical problem of the potential loss of exports. I wish to put on the record some of the detail that appears in a publication that I have received entitled "Genetically Engineered Crops: To Grow or Not to Grow". Under a heading "Is GE food safe to eat?" the publication states:

In 1989, GE L-Tryptophan (a dietary supplement) killed 37 people and maimed thousands. The GE content was less than 0.1% (8). Yet our regulators are still maintaining that 1% GE contamination should be acceptable.

Many independent scientists are warning that GE foods introduce new risks to health and the environment with potential for new allergenic, toxic and carcinogenic compounds in food.

The use viral and bacterial promoter and marker genes introduces risks of development of new pathogens and antibiotic-resistant pathogens ...

Only four corporations in the world control the entire market for GE crops. The majority of the GE crops (72%) are for tolerance to the corporations own herbicides. Most of the rest are for insect and virus resistance.

The publication points out:

Non-segregation of crops is costing farmers serious money. US grain dealers are now starting to segregate and farmers are being advised to keep strict records and segregate at farm gate.

The costs of having to segregate are impacting on profitability, but failure to segregate will reduce markets.

Reuters reported that in August 2000 European buyers had paid \$US5 a tonne premium on a 150,000 tonne cargo of Australian GE free canola.

The *Land*, 8/6/00 reported that Cootamundra Oilseeds has contracted to supply 10,000 tonnes a month of GE-free canola to China, a contract worth \$60 million pa.

As result of experiments with GE crops in the United States, its corn and soybean exports to Europe fell from \$US3 billion in 1996 to \$US1 billion in 1999, a \$US2 billion loss thanks to GE. The publication continues:

Projected US corn exports for 2001 are down 90 million bushels, and a premium was paid by Spain for 150,000 bushels of GE-free corn from Brazil. The two-tiered system has developed, with premium prices going to GE-free crops.

The first day of trading on the Tokyo grain exchange on 18 May last year on soybean futures market saw non-GE buyers commit to 914,000 tonnes as compared to 364,000 tonnes for non-segregated US soybean futures. The publication continues:

Negativity to GE foods is growing worldwide.

Markets for GE crops are diminishing. UK, Europe, Japan (our largest trading partner), Africa, South-East Asia, Brazil, China are demanding GE-free crops, fruits and vegetables.

Manufacturers worldwide are demanding GE-free sources. Major supermarkets—Tesco, Sainsbury, Iceland, Carrefour, Wiesenhof and Superquinn overseas are eliminating GE ingredients from own brands.

80 per cent of GE grain is grown to feed livestock. Meat and milk from GE-fed animals is being rejected by food producers in the UK, Europe and even in the US...

US universities have been revealing that these crops rarely provide economic benefits to farmers. University-based surveys of thousands of field trials of GE-soy reveal that a yield 6-10% less and require 2-5 times more herbicides than non-GE soy.

Increased level of "fusarium" disease in RR soybeans is linked to use of glyphosate.

Insect pests developing resistance to Bt have been reported in US, China and Australia, necessitating strategies that require 50% of the crop to be non-GE and repeated cultivation of land to prevent pest pupae from developing.

GE crops are being linked to a fall in cotton quality in US. GE cotton is more susceptible to Root-Knot nematode...

North Carolina State University has shown that Bt cotton is \$US2 per acre less profitable than conventional cotton. Bt toxin has been shown to leach into the soil. What are the soil consequences for soil ecology?...

In Canada, canola superweeds are sprouting up in wheat fields and other areas where farmers don't want them. Three types of canola, each engineered with genes to resist one type of weed killer, have merged to new varieties resistant to many herbicides.

The problem is so severe in Canada that crop advisers have been forced to introduce a nine-point management plan for the control of herbicide-resistant canola volunteers. Even more toxic chemicals, such as 2,4-D are being used to control weeds ...

A survey by the Royal Institute of Chartered Surveyors [in the United Kingdom] has revealed that 70% of surveyors advise against growing GE crops, that it will reduce land value and make land harder to sell. Consider that Tesco, leading food manufacturer in UK, has announced that land which has ever grown a GE crop cannot be used to produce foods for purchase by Tesco ...

How will Australian farmers be compensated for loss of revenue from missed premiums, returned shipments and contamination of neighbour's GE crops? The Swiss Reinsurance Company does not believe GE risks are insurable.

The Insurance Council of Australia consider GE risks are either uninsurable or unattractive to the general insurance industry in Australia.

Only the other day, by a very narrow margin, the National Party voted to consider genetically engineered canola.

The Hon. Duncan Gay: It was the other way, unfortunately.

The Hon. RICHARD JONES: It was the wrong way, I know.

The Hon. Duncan Gay: It was quite a narrow margin.

The Hon. RICHARD JONES: But I think one needs to look at what is happening with overseas markets. We should try to reverse that rate if we possibly can. The cost to the canola growers and to our exports is vast, because of the closing of markets overseas. I beg the Deputy Leader of the Opposition to go back to his people and say, "We really have to rethink this issue rather carefully." I think it is essential for the future of agriculture in New South Wales. It may be that the risks are not as great as some people say, but the risk to the market may be even greater. The loss of markets is the real problem. People in the Northern Hemisphere are rejecting GE products.

The Hon. Duncan Gay: That does not mean that I accept everything you have said.

The Hon. RICHARD JONES: I understand that point of view. The views I am quoting are largely not my own. They are usually from other sources—hopefully, decent sources. I would not want to take up the time of the House going into all of the facts that I have, but I want to ring a few alarm bells. What is going to happen in a couple of years in respect of agriculture is that we are going to have to allocate an awful lot of money rescuing our producers in this State, if we go ahead with mass GE trials.

I saw an interesting comment attributed to the ABC which said, "Main canola buyer pulls out of new South Wales". The article went on to state, "The Canola Association of Australia looks at downgrading forecast

crop size due to weather, the nation's major buyer has pulled out of the New South Wales canola market." There has been a huge jump in the meantime in the organic market, which is a safe market. The Minister for Agriculture talked about that at some length during the estimates hearing. He has really come to grips with this issue. There is a booming organic market. We have heard about it before and I will not go into it in great detail but I will put one or two more facts on the record.

The United Kingdom is importing 70 per cent of its organic produce and the market is growing at 50 per cent a year. The organic market is growing enormously, but the GE market is in fact contracting. I urge members of the National Party to put their full weight behind the organic growers and the organic market. That is where the future lies for us. There has been a 50 per cent jump in certified organic farms in Tasmania this financial year. In one year it has doubled. An article I have indicates that that State's first comprehensive survey of production, just completed by the Tasmanian Organic Coalition, shows organic food at the farm gate doubled in value this financial year, with an average growth rate of 50 per cent.

A chart from the Soil Association in the United States of America shows the retail sales growth of organic foods. I will read out a few of the figures. In 1996-97 the rate was £200 million; in 1990 it was £546 million; and for 2002-03 the prediction is that it will increase to approximately £1.5 billion. The same publication contains a chart showing the growth of organic farming in the European Union by millions of hectares. That chart is growing as fast as the world population chart used to grow. It is growing at approximately 30 per cent a year. Sainsburys is a leading British supermarket chain. Tristan Kitchener, product manager for Sainsburys, said at a seminar in Canberra a few weeks ago:

BSE led to a lack of confidence in the Government and customers are calling into question methods of food production. Probably the greatest risk to us is the loss of customer confidence in the products we sell.

He went on to say that the distrust his core customers have for modern agricultural practices has enabled Sainsburys to achieve leadership in the organic food market, with 31 per cent of it. He said that that market was growing at 76 per cent annually in Britain and that it now accounts for 5.5 per cent of the country's total produce. Finally, I refer to a comment by David Attenborough taken from the "ANZAAS Mercury". He delivered an address last year, entitled, "Five Ways to Destroy Life on Planet Earth". He listed the five ways as:

1. Unsustainable harvesting of plants and animals.
2. Competition from introduced species.
3. Destroying habitat.
4. Islandisation of habitats.
5. Pollution.

David Attenborough believes that there will be no sudden disasters, just a gradual change to a dirtier, more difficult world for our children and their children unless we take appropriate, timely action. The first challenge is to bring home to the community, industry and government the real cost of unsustainable development. I urge the Government—I know that the Minister for Agriculture is involved in this and will launch a new office for this purpose in Bathurst shortly—to look very carefully at where we are headed on the question of genetically engineered versus organic produce. There is no doubt that genetic engineering is entirely the wrong way to go. It has the capacity to destroy our agricultural exports, whereas organic markets are growing at a huge rate. Please think about moving away from GE and putting our weight behind organic growing.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.48 p.m.]: I speak to the Insurance Production Tax Bill. I want to echo some of the comments, particularly those of the Deputy Leader of the Opposition—and, indeed, some by the Hon. Malcolm Jones. The point of this bill is to protect the clients of insurance companies against collapses of insurance companies. In a sense it is a levy on insurance companies in proportion to their sales in New South Wales in order to build up a fund in case we have another collapse similar to the HIH Insurance collapse. I am a little confused about all this because I think this should be done at a national level. I presume that the Treasurer has introduced this bill because he has not had success in getting action at a national level.

The Hon. Duncan Gay: I think that that is too big an assumption. He is introducing it because he has a degree of responsibility in this area.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: There is a possible explanation. The point is that money is taken from the insurance companies and it goes into a fund to provide against some possible

future collapse of an insurance company. The insurance companies are probably similar to the banks in that they wish to have credibility for their industry, and if one company goes belly up it reflects on the whole industry. I am reminded of a book called *In Banks We Trust*. It basically deals with bad loans given to South American dictators with shaky currencies. The lenders made a huge profit in the short term as the massive interest charges were paid with part of the principal. In the long-term the lenders had great difficulty collecting the rest of the money but they relied on the overall funds of the sector to bail them out because they had a banking licence. Of course, this process caused considerable difficulties. The problem is that if banks all guarantee each other, the cowboys amongst them can make profits in the short term and rely on their mutuality in the longer term.

The same principle applies with insurance companies. You cannot have competition unless you let the weaker die. HIH was undercutting the market and went belly up because of that, or perhaps for other reasons. If the insurance industry had a mutual fund to pick up the tab, there would always be someone with a licence undercutting the others. The system is never stable in a competitive or capitalist society. The Treasurer is trying to take money from outside the system for the fund. In one way the fund is unquantifiable. He does not know which company will go belly up next time so how much money he collects is almost arbitrary. If he collects money only from companies selling premiums in New South Wales, that is a tax on insurers doing business in New South Wales. As the Hon. Malcolm Jones pointed out, that is likely to discourage insurance in New South Wales, which may increase risk to New South Wales people, particularly those at the margins who are discouraged from having insurance.

It is a level playing field if it is a tax on premiums. However, if section 21 of the Insurance Protection Tax Act is invoked and the companies are not allowed to pass on the tax, it effectively comes out of their profits. The money comes from the shareholders. As NRMA point out, it is adversely affected because a greater percentage of its shareholders are in New South Wales and its share prices are dependent on shareholder returns. Its ability to raise capital and to compete in the market relates very much to its share prices. The NRMA also points out that many of its shareholders are mums and dads, because in the demutualisation process it ended up with more small shareholders than the large companies that had been in the market longer. So that is having a distorting effect.

I must confess that I assumed that section 21 merely provided that the companies cannot say that they are passing on the tax: "We have got this tax from the Treasurer of New South Wales and we have passed it on to you so now it is a tax on people buying policies rather than a tax on shareholders." That would irritate people paying premiums but they would recognise that it was done by the Treasurer presumably for the good of the people of New South Wales and thus they would effectively be buying insurance on insurance in case a company went belly up. The enforcement of section 21 seems a little vague. If companies claim to have a lot of costs as a reason for increasing premiums, the companies would not have to disclose all their costs and therefore a prosecution under section 21 would presumably be difficult. The NRMA was upfront and said that its legal advice was that if it complied with the Act, the money would come from the shareholders. There is a certain irrefutable logic in that statement.

I wonder whether section 21 is there merely because the Government does not want the insurance companies to state on their bills that the tax is attributable to the Treasurer. The Government wants it just to be passed on in overall cost changes, or the "new prices" as the advertisers would say, rather than the "increased prices". Then it may not be noticed and it could be considered a piece of good budgeting in the wake of the HIH collapse, and the Treasurer will be seen to have done something. If there are no more collapses for a while, he would have a wonderful nest egg there to use at a future time as there is no sunset clause. Once the Government establishes nest eggs it seems that the money eventually winds up back in consolidated revenue. Funds for children's guardians and such things are looked at very closely. I have grave misgivings about the bill. I can see that it will create a fund to deal with the situation if another insurance company goes broke, but the long-term effects are quite a worry. If insurance companies have to go broke so that a market can exist—that is the only alternative to the scenario I painted earlier—I think we need a little more discussion about how that should work than we have had with the introduction of this bill.

The Hon. IAN MACDONALD (Parliamentary Secretary) [2.57 p.m.], in reply: The Deputy Leader of the Opposition referred to section 21 of the Insurance Protection Tax Act. The law is clear: an insurer must not charge policyholders any amount that is "directly attributable to that tax". In announcing the tax the Treasurer said that while the bill prohibits the tax from being directly passed on to policyholders, the Government recognises that insurers may seek to indirectly recover some component of the tax from policyholders. The lawyers acting for the Insurance Council of Australia have suggested that the Treasurer's statements in some way contradict what is in the bill. There is no contradiction. The words in the bill mean what they say: insurers

must not charge policyholders an amount directly attributable to the tax. This is not limited to a prohibition against identifying an amount in premium renewals. The Treasurer's comments simply recognise that the insurers will, if possible, seek to avoid bearing the full burden of this tax. Let me state clearly: They should not.

In relation to the point made by the Hon. John Ryan relating to section 3, the definition of exempt insurance in this bill, which includes insurance taken out by charities, refers to the policies of insurance not taken into account when calculating the total pool of premiums used to calculate liability for the insurance protection tax [IPT]. There is no inconsistency between this provision and the insurance protection tax. As the tax is not to be passed on the IPT should have no impact on the policies taken out by charities. Premiums for these policies may rise for other reasons, however.

In relation to the points made by the Leader of the Opposition, foreshadowed amendments Nos 1 and 2 relating to the substitution of five years for three years, the Government has no objection. In response to the Hon. Dr Arthur Chesterfield-Evans, insurance protection tax revenue cannot be clawed back to the Consolidated Fund. This is set out in legislation to come before the House later in relation to insurance policyholders protection. The Hon. Dr Arthur Chesterfield-Evans was jumping the gun a little. The matters raised by him are in the bill that is yet to be dealt with. I commend the bill to the House.

Motion agreed to.

Bills read a second time.

In Committee

The CHAIRMAN: The Committee will deal first with the Appropriation Bill.

Clauses 1 to 26 and title agreed to.

The CHAIRMAN: The Committee will deal next with the Appropriation (Parliament) Bill.

Clauses 1 to 5 and title agreed to.

The CHAIRMAN: The Committee will deal next with the Appropriation (Special Offices) Bill.

Clauses 1 to 9 and title agreed to.

The CHAIRMAN: The Committee will deal next with the Insurance Protection Tax Bill.

Clauses 1 to 26

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.01 p.m.]: I draw the attention of the Parliamentary Secretary to section 21, about which I asked questions earlier. I seek an interpretation. The Parliamentary Secretary indicated that the premium could not be passed on directly. Can it be passed on indirectly without being named? By way of interjection the Hon. John Ryan and the Hon. Dr Arthur Chesterfield-Evans suggested that the Government understood that it would be passed on, but not as a government tax.

The Opposition can understand the politics, but the insurance companies need to know what they can do. The fidelity funds and shareholders of the companies are affected. It is important that the Government clarifies the situation.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.03 p.m.]: The answer is as I outlined to the House earlier.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.04 p.m.]: I ask the Hon. Ian Macdonald to tell me if my interpretation is incorrect.

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.04 p.m.]: One thing I am not is a lawyer.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.05 p.m.]: That was not a reasonable response to the question. The Deputy Leader of the Opposition and I raised this matter because NRMA Insurance has asked me the question because it wants to obey the law, and that is a reasonable position. The question is: Can a

company pass on the increase but not say it is passing it on, by including it in the overall cost structure? Could the premium increase be part of a company's new prices for the new year, thus passing on the cost without attributing it? Should someone ask a company, in order to enforce section 21, whether the increase is due to the tax increase, the company could answer no. Should someone ask how the price is determined, the company could answer that it determines its costs after considering the market, and that further details are commercial in-confidence.

In other words, the cost is passed on to the premium payers as opposed to being taken out of the assumed profits and thus affecting the shareholders and the share price. The Government must answer the question; it is not a big-deal legal question.

The Hon. Dr PETER WONG [3.06 p.m.]: I asked a similar question of the Minister's adviser during the briefing. I asked whether that section means that a company can incorrectly pass it on, and answer seems to be yes. The Deputy Leader of the Opposition is not asking the Hon. Ian Macdonald to be a lawyer, but to be honest. We want honesty!

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.06 p.m.]: That was a ridiculous final point made by the Hon. Dr Peter Wong. In announcing the tax, the Treasurer said that while the bill prohibits the tax from being directly passed on to policyholders, the Government recognises that insurers may seek to indirectly recover some component of the tax from policyholders.

The Hon. JOHN JOBLING [3.07 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo.

No. 1 Page 16, clause 25, line 26. Omit "5 years". Insert instead "3 years".

No. 2 Page 16, clause 25, line 28. Omit "5 years". Insert instead "3 years".

The Hon. IAN MACDONALD (Parliamentary Secretary) [3.08 p.m.]: The Government supports the amendments.

Amendments agreed to

Clauses 1 to 26 as amended agreed to.

Title agreed to.

The CHAIRMAN: The Committee will deal finally with the State Revenue Legislation Further Amendment Bill.

Clauses 1 to 5, schedules 1 to 3 and title agreed to.

Appropriation Bill reported from Committee without amendment, Insurance Protection Tax Bill reported from Committee with amendments, and remaining cognate bills reported from Committee without amendment, and bills passed through remaining stages.

PRINTING COMMITTEE

Report

The Hon. Ian West, as Chairman, tabled report No. 4 of the Printing Committee, dated 28 June 2001.

Ordered to be printed.

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL (No 2)

Second Reading

Debate resumed from 27 June.

The Hon. CHARLIE LYNN [3.12 p.m.]: Last night I said that as legislators we should strive to achieve a system to protect the rights of workers genuinely injured at work, to reduce the unacceptably high

levels of premiums paid by business owners, to reduce the size of the deficit that has developed under the policies of this Labor Government, and to reduce the ability of unscrupulous business owners and employees to rort the system. If we get the balance right New South Wales will continue to prosper as the engine room of the Australian economy. However, if we get it wrong, the State's triple-A credit rating will be at risk and there will be a flight of business to other States.

In debating such an important issue it is essential to have all the facts at hand—the good, the bad and the ugly. It is also important that there is sufficient time to consult with all parties affected by the bill—unions, non-union employees, business owners, business associations, private sector associations, the legal profession and the insurance industry. Given that the Government will not provide us with all the information required for debate, the fact that most of the interested parties have been kept in the dark and that we will not have adequate time to consult with them, the Opposition must register its suspicions at the strategic and tactical motives of the Government on this matter.

One thing I have ascertained since being elected to Parliament is that members opposite never leave anything to chance. They get the scriptwriters in to carefully rehearse their impromptu responses well in advance of questions being raised on any issue. The floor of the House is their theatre, the spin-doctors are their marketers, and the union minions are taken for their mugs. Workers compensation is too important to be left to chance by this opportunistic mob, so it is worth speculating on the real motivation for the show they put on in Macquarie Street, at great expense to taxpayers, on 19 June.

I shall commence with the Premier and his sense of political history. To beat the record of nifty Neville Wran as the longest-serving Labor Premier in this State, Bob Carr needs to win another term in office. To do this he needs an issue to create a credible diversion to the cracks that are beginning to show in public health, public safety, education, transport and regional development, to name a few. His parrot in this place also has an acknowledged ambition: to be remembered as the world's greatest State Treasurer.

Honourable members can imagine the scenario of the Premier in waiting, and Mr Fix It here, who just happens to have a handle on the most probable obstacle they will face in the quest for some sort of historical relevance: the unions. One can imagine the Premier calling them together and saying, "We're in luck, fellows. There's a bit of a problem with workers compensation. It is not that bad that it can't be managed but it's good enough for us to put on a stoush with the lefties and create a diversion from the Cabramatta police inquiry, Aquilina's mess with the kid at Cecil Hills and the blow-out in hospital waiting lists. We can't use Michael Knight as a lightning rod any more so we have to work out a way to get workers compensation on the front page."

The parrot leaps to his feet and asks about the State's triple-A rating. If Standard and Poor's knock a single A off the rating, his historical relevance is left in tatters. The fixer smiles and suggests they use a threat to the triple-A rating to spook the business community. They throw out bait to the lefties in the union movement at the same time. The tactic is absolutely brilliant. They agree that the parrot will get some figures to present the worst case scenario with workers compensation, and a figure of \$2.3 billion is suggested. Then, in case anyone misses the point, we are told that it is increasing by \$1 million a day—shock, horror!

A tactic must then be worked on to get the message into the media, and as only the elite of the left read the finance pages, it must be the *Daily Telegraph*. This will obviously take more than the ordinary run-of-the-mill demonstration in Macquarie Street so they agree on a Quo Vadis production—a picket line around Parliament itself. The Premier is now the conductor of the show. He hints that workers will lose their rights, and they react according to plan. He then tells business that if it does not bring pressure to bear on the Opposition to support his reforms, the State credit rating will be threatened, and for good measure he might have to slug them with a debt reduction levy. As New South Wales has the highest workers compensation premiums in the country, this had the desired effect. With everything in place, the Premier then instructed the fixer to hide somewhere in the bowels of Parliament while he and the parrot made a decision to rat on their colleagues. They scurried through a series of secret doorways, like a pair of rodents on the run, to get inside the Parliament.

By this stage the union picket line is in place and being worked up carefully by their minions with loud hailers. The police are out in strength and media photographers have staked out the place. The conductor is then advised of a small hiccup. Coalition members are walking in and out of Parliament and joking with the demonstrators. This is not serious enough for the media. The Premier cancels his plan to have his Ministers and members bust in quietly through the back entrance, as agreed to with police. Therefore, the conductor seizes the moment and orders them to march brazenly up Macquarie Street, with a mounted police escort, to bust the picket line wide open. Then, just in case the lefties do not get the message, the Premier stands protected on the steps of Parliament and gives them a good old-fashioned two-fingered salute—brilliant!

However, another hiccup arises. The fixer discovers that the lefties did not cross the picket line. This does not faze the conductor, who is now in full control. He has learned much from watching Michael Knight and Graham Richardson work over the Olympics, and he sends them a curt message: political principle or parliamentary pension? Quick as a flash the lefties are inside the Parliament and the conductor, the parrot and the fixer are destined for their respective places in history. The media now accepts the worst case deficit of \$2.3 billion as fact and buys the line that it is escalating at a rate that threatens the very foundations of our economy. The unions then capitulated and agreed to fall in line. The conductor kindly took some heat off them by blaming greedy lawyers for the blow-out.

If one wonders whether this great strategy had the desired effect, one need only look at the headlines of the day. They read "Unions bow to Carr on WorkCover"—that shows tough leadership—"Unions give in to Carr on WorkCover" and "Carr gets tough". There is also a little line from the lefties, which says, "They walked the walk of shame to give him strength" and "Reseal the sewer, Library offers a Premier entry" and "Carr's grandstanding a slap to his constituency". Tony Coote from Hunters Hill wrote to the newspaper two days later about Carr's triple-A rating, which he said stood for: aggressive, antagonistic and arrogant. The Government's media advisers would have said that it was a great hit. The scene is now set—these blokes are not short-term thinkers. Let us fast forward to June next year.

The Hon. John Della Bosca: We wish we were that clever; fortunately, we do not need to be.

The Hon. CHARLIE LYNN: The Minister will know about this because he is a good strategist; I acknowledge that. Let us fast forward to June next year when we will be only nine months away from the election that we have to have. The parrot needs an actuary who will give him a good set of numbers, so he gives that task to Fast Eddy, who just happens to know an accountant who needs a Medal of the Order of Australia to give him some credibility to negotiate a deal. He reaches into his fireproof safe and produces an actuarial report that says the deficit is now less than \$1 billion and is going down.

The conductor then calls on Wiley Walt to organise a press conference to announce that the conductor made the hard decisions in June 2001 and absorbed the pain associated with them but that now he has been vindicated: his triple-A rating is secure and so are his election prospects. That is a not an unlikely scenario given that the conductor, the parrot, the fixer and Fast Eddy are disciples of the "whatever it takes" school of politics. Those opposite know that.

Now that we know the Government's strategy, let us consider some of the issues surrounding this most important bill and assess the ability of this tired and arrogant Government to address them. This is the second time in the history of this Parliament that a Labor Government has set out to betray its own workers by trying to abolish or severely limit their common law rights as a means of restricting costs to the workers compensation scheme.

The first attempt was made in 1987, when the Unsworth Labor Government abolished workers' common law rights through legislative reform. It took a Coalition Government under Premier Nick Greiner to restore those rights and put workers compensation back on a sound financial footing. It is a matter of record that in 1988 the Greiner Government inherited a bankrupt scheme—TransCover and WorkCover—from the Unsworth Labor Government. When Greiner left office seven years later in 1995, WorkCover had a surplus of \$800 million. In seven years the Greiner Government turned a bankrupt system into a surplus. It is also a matter of record that the average premium rate for WorkCover at that time was 2.8 per cent. The Greiner Government's scheme was so successful—

The Hon. Dr Brian Pezzutti: It was 3.4 per cent under Unsworth.

The Hon. CHARLIE LYNN: And it is heading in that direction again. The Greiner Government's scheme was so successful that in 1994 the Fahey Government increased benefits under the section 66 table of maims by 25 per cent. This meant that injured workers received more benefits—and that happened under a Coalition Government, which is noteworthy. I suppose it is the difference between style and substance. The conductor has the style and we have the substance in the area of economic management.

Following a similar period in government, this Premier has blown a surplus and got into debt to the tune of \$2.3 billion—if we can believe his reports. To make matters worse, the deficit is supposed to be trending upwards at a rate of \$1 million per day. We must take the Government's word for that because it will not show us the books. No-one seems to know the present average premium rate, but it is guesstimated to be in the vicinity of 3.14 per cent. To parrot the Treasurer: it is every inch a Labor blow-out.

State Labor governments have had two attempts to fix the problems they created, and on both occasions the unions have been forced to join other interest groups and declare war against their own parliamentary party to fight for workers' rights. One can only wonder at the dumb logic that will motivate these unions to provide financial support to Labor in the next election campaign. The signs are emerging that the spivs in city Labor might be too smart by half on this issue. In the latest round of legislative reform on workers compensation we not only saw the unions used again but witnessed an open split among the Labor factions. A *Sydney Morning Herald* report of 27 April said that all except six of the 52 Labor backbenchers agreed that the Government should accept amendments drafted by the New South Wales Labor Council.

The Hon. John Della Bosca: What were they, Charlie?

The Hon. CHARLIE LYNN: If the Minister would give us more time to consider the legislation, I could give them to him. However, we do not have time to consult and study the information. We have not seen the books. I would like to share the amendments with the Minister, but I will assume that he already has them. This was an obvious crisis for the Politburo powerbrokers, who are simply not used to dealing with a break-out of democracy within their own ranks. Judging from the report, the Premier and the Special Minister of State—the fixer—were obviously singing from different song sheets. The Minister targeted lawyers' fees as being the scheme's biggest single unnecessary cost, while the Premier blamed the WorkCover blow-out on rotting. They have since got their act together by lifting the stakes in a well-orchestrated scare campaign.

This issue has certainly provided an interesting insight into how our brutal, arrogant Government operates in times of crisis. It certainly begs the questions: What is so unusual about this reform package that it has led to an open split between a State Labor government and the unions? What is the rationale behind this legislation? What has been going on behind the closed doors of the inner sanctum? The Minister for Police was given carriage of the bill in the other place. In his second reading speech he told that House that the intention of the bill is about:

... ensuring a simpler and fairer dispute resolution system that protects the rights and entitlements of injured workers.

How will the Government make that happen? How will it make the system fairer? It will do that by removing the Compensation Court from the process and replacing it with the new Workers Compensation Commission. It has all the shades of a Bob Carr rollback. I am a simple layman when it comes to these issues, but I thought the purpose of an independent judiciary was to ensure fairness. This Labor Government seems to think it must remove the court from the process to ensure fairness. Perhaps when the Minister replies to the debate he can give us Labor's redefinition of fairness.

In 1987 the Unsworth Labor Government put in place a series of reform measures, which included the radical abolition of common law rights for the first time in New South Wales State legislative history. Unsworth also attempted to replace the traditional, experienced Compensation Court with an administrative body. So the current strategy has been tried before. History shows that the Unsworth reforms did not solve the problems with the schemes: they simply disadvantaged injured workers by denying them access to common law. More importantly, those reform measures were at odds with a series of established legal principles, such as workers' fundamental rights to access the courts, and the principle of judicial independence.

I am sure that there would be heated agreement in this House about the need to protect the rights of workers who are genuinely injured at work. As elected representatives, we have a duty to ensure that employers pay a premium that is fair and equitable. We also have a duty to taxpayers, now and in the future, to ensure that we reduce the potential deficit. To achieve these outcomes we need proper, informed debate. Regrettably, that seems to be the last thing the Government wants.

The Hon. Dr Brian Pezzutti: Not even Government members understand that.

The Hon. CHARLIE LYNN: No, they do not. But they have a choice between political principle and parliamentary pension and access to the parliamentary dining room. We know which one took precedence last week. It is now obvious that Labor has been less than frank with its own rank and file, and that led to the unprecedented, ugly, un-Australian scenes we witnessed outside Parliament last Tuesday. It has also been less than frank the elected representatives in this Parliament, as typified by the Government's arrogant use of the guillotine in the other place last Thursday. As a result of that arrogant use of power, our leader has had to revert to expressing her concerns to the Premier via Australia Post rather than by addressing him across the Chamber in the usual manner through informed parliamentary debate.

The Hon. John Della Bosca: That's her choice.

The Hon. CHARLIE LYNN: She had no choice because the Government guillotined debate. The Leader of the Opposition wrote to the Premier—what a blight on democracy that we must revert to writing letters about such important legislation—and said:

Dear Premier,

The NSW Coalition has advocated for some time the need to reform the workers' compensation scheme, to ensure that the deficit is reduced while protecting the rights and benefits of injured employees.

Importantly, we believe that premium costs are far too high, with the average premium increasing from 1.8 per cent in 1994-95 to 2.8 per cent currently.

This huge increase is a direct impost on employees and therefore, a direct impost on jobs.

We have concerns, however, with the legislation currently before the Parliament. Nevertheless, we believe these concerns can be addressed and the problems rectified, provided there is goodwill on all sides.

We are prepared to work with this, but it must be done in a spirit of goodwill.

The Hon. John Della Bosca: It's all okay.

The Hon. CHARLIE LYNN: So you are going to accept all these amendments?

The Hon. John Della Bosca: I've already told Michael where we stand.

The Hon. CHARLIE LYNN: She went on to say:

I would appreciate it if you Minister could provide the Parliament with the actuarial assumptions and calculations that have been used to determine the deficit figure of \$2.1 billion.

Has the Minister done that?

The Hon. John Della Bosca: Given her my briefing, yes.

The Hon. CHARLIE LYNN: No. The letter says "provide the Parliament". Has the Minister tabled them? She is not the only one involved in the briefing; crossbench members are also involved. Have they seen them?

The Hon. Malcolm Jones: No.

The Hon. Dr Peter Wong: No.

The Hon. CHARLIE LYNN: There you go! She continued:

Further, it would help our deliberations if I could have the actuarial assessment of how the proposed changes would reduce the deficit.

That is important. She goes on to say:

In relation to the Bill itself, there are a number of amendments which I would seek. 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 operation of rules of the Commission and the guidelines for the operation of the Medical Panel—be ratified by the Parliament before the scheme commences.

In fact, as the Minister for Police pointed out in his Second Reading Speech, the scheme cannot become operational before the determination of the impairment guidelines in any event. To ensure openness and transparency, the scheme should not become operational before all the guidelines and rules are determined and approved by the Parliament.

The Hon. Dr Peter Wong: Hear! Hear!

The Hon. CHARLIE LYNN: The Hon. Dr Peter Wong acknowledges that as it is an important part of the process if we want to have open and accountable government. Our leader went on to advise the Premier:

Additionally, we believe the review of the scheme required in the Bill should be conducted by the Auditor-General, not by the Minister, and that such a review should be completed within three months of the first anniversary of the commencement of operation of the scheme.

I would hope that the Minister supports that wish of our leader because it is a very important part of the process. She continued:

Further, the appointment of a President and Deputy Presidents directly by the Minister may give rise to a perception of a lack of independence of these judicial office holders. I suggest the normal practice of appointment by the Governor would be more appropriate.

Her final point was:

... the NSW Coalition believes that there is still a great deal of uncertainty about the financial difficulties of the scheme. Accordingly, we propose 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 which would include actuarial and accounting expertise, could conduct its investigation during the coming break, with its report to be returned to the Parliament at the same time as Mr Justice Sheahan is to report.

That is a reasonable suggestion. She continued:

The NSW Coalition is prepared to support the Bill on the condition that its commencement is conditional on the ratification of the guidelines and rules as outlined above, and with your agreement as to the matters raised in this letter.

As you can appreciate, the Government's stated aims on workers' compensation reforms are similar to those of the NSW Coalition—reduce premiums, maintain the entitlements of employees and reduce the deficit. With co-operation, and some amendment, this legislation will pass through the Parliament.

This puts the onus on the Government to come clean and work with all of us to achieve those objectives with which we have no argument. I share our leader's concerns about the radical overhaul of the benefit entitlement proposed by the so-called Labor Government, in particular the alterations to impairment assessment, the imposition of binding medical assessments and the new claims assessment service. These concerns certainly are shared by the absolute majority of interest groups: the Labor Council of Australia, the Australian Medical Association, the Australian Society of Orthopaedic Surgeons, Employers First, the New South Wales Self-Insurers Association and many others. The comments of the New South Wales Self-Insurers Association provide a good indication of why we should be concerned about the Government's approach on this issue. In his letter of 26 June Mr Gething refers to employers managing their own risk. He said:

Unfortunately, the Government, and in particular the Special Minister for State, Mr Della Bosca has not responded to our request for further consultation on the Bill.

That is exactly what we have been talking about: consultation. He continued:

Unfortunately because of the manner in which the Bill has been brought before the Parliament and because of the lack of opportunity for the stakeholders to have input into the proposed amendments, I am not able to state categorically that every member of the Self Insurers' Association supports every one of the amendments referred to, although I strongly suspect that if a proper opportunity was provided for consultation in respect of the proposed amendments, this would be the fact.

The Association is (and always has been) of the view that further consultation is required and at this stage it would seem that the most appropriate means by which such consultation could take place would be by way of an inquiry into the whole scheme. Issues such as the basis upon which the deficit is alleged to exist and the real reason for such a deficit if it exists have not yet been properly investigated.

He provided more detail about his association's concerns. As I have said, I totally support the principles of workers compensation legislation. I was on compo for a short period as a young bloke in Melbourne after I was injured on a building site. It was my only source of income and although it was not enough to even cover my board, it was all that I had. I remember the feeling of insecurity at that time. I was extremely grateful that we had a system in place. I have no doubt that this was the intention of the original workers compensation scheme when it was introduced in New South Wales in 1922. The situation remained unchanged until the 1980s when the scheme encountered similar deficit problems to those we face today.

A briefing paper entitled "Workers' Compensation and Motor Accidents Compensation in NSW", issued by Marie Swain in 1995, provided us with a detailed account of the history before 1995. Another excellent briefing paper by Rachel Callinan was emailed to us a few days ago. I regret that honourable members will not have sufficient time to digest its detail as it would provide a basis for a much more informed debate on this most important issue. As I said earlier, one of the primary objectives of workers compensation legislation should be the protection of employees who are genuinely injured at work. This certainly was the objective when the first piece of workers compensation legislation, the Workmen's Compensation (Lead Poisoning—Broken Hill) Bill, was debated in this House under the Fuller Coalition Government in 1922.

Unfortunately, new Labor, represented mainly by city Labor—we certainly see its members around this Parliament—are more interested in cost-cutting measures than reducing employee benefits under the legislation.

This is a far cry from the Labor Party of old and more reminiscent of the comments of Kim Beazley senior when he described new Labor as the dregs of the middle-class: honourable members will remember that famous quote. The impending departure of the Hon. John Johnson will see also the departure of the last of the old Labor guard. It will be a sad day for this Parliament because he will leave behind a mob of urban spivs representing new Labor. That will not be good for the workers or for the Labor Party—perhaps a new party could emerge. An article under the headline "Union turns back on arrogant ALP" in yesterday's *Newcastle Herald* indicated the level of betrayal felt by Labor's traditional supporters over the treatment of this issue—the comments are from Labor heartland. The article, written by Kevin Maher, an Australian Workers Union official, stated:

I don't know whether the Carr Government is as arrogant and uncaring as it is because there is not a strong Opposition to keep the Government's feet on the ground or whether it is because the Government still has more than two years to the next election and it believes we will forget about these changes.

Whatever it is, this Government is out of touch with ordinary working people in this State and won't listen to the unions who represent them.

... We are appalled by the Government's attempt to rush this legislation through and it is clear that the legislation will have a devastating effect on the rights of injured workers.

He made the further point:

There will be new provisions dealing with lump sum entitlements for permanent injury. The amount of compensation is to be prescribed at a later stage by regulations. This is not satisfactory because we do not know what amounts of compensation will be available to injured workers and the Government can effectively impose whatever amount it wishes.

The method of assessing injuries will be changed. The legislation does not set out how injuries will be assessed under the new system. "Guidelines" are to be developed at a later stage.

He went on to be very critical. An article by Scott Tucker in the same paper, under the headline, "Union, Labor sever ties in compo row", states:

The Newcastle, Central Coast and Northern Regions Branch of the AWU sent a letter to ALP headquarters in Sussex St, yesterday officially severing its long-standing relationship.

The Hon. Dr Brian Pezzutti: The AWU?

The Hon. CHARLIE LYNN: Yes. The article continues:

The move will remove about \$35,000 a year from the ALP's coffers and cancel election support to Hunter ALP candidates during local, State and Federal polls.

Mr Maher said:

There is a lot of sorrow as I always believed the unions and the ALP were linked for good and proper reasons but this State Government has forgotten all about that.

That is what they are saying in the *Newcastle Herald*. The editorial said:

The Newcastle branch of the AWU has about 7500 members, and has a long fatal history in the ALP's Right-wing. Branch Secretary Kevin Maher says that the branch has spent freely on recent marginal seat campaigns and pays about \$35,000 in party affiliation fees, which gives it the right to send 10 delegates to State ALP conferences.

In today's *Newcastle Herald* we have the screaming headline "Party's over". It has a cartoon with a husband and wife, the husband being the conductor and the wife being Mrs Della Bosca. They are standing in the doorway as all the children of unions are walking out on them. The couple walking past are saying, "Remember when they were one big happy family?" The headline of the *Newcastle Herald* says "Union vows MP revenge". The article states:

The Newcastle branch of the powerful construction union withdrew support from three right-wing Hunter Labor MPs yesterday as union leaders vowed to get "square" over new compensation laws. Construction Forestry Mining and Energy Union (CFMEU) organiser Bob Cochrane said the union was outraged at the behaviour of State MPs John Price (Maitland), John Bartlett (Port Stephens) and Richard Face (Charlestown) in backing the new laws.

The front page of the *Newcastle Herald* says:

"These three Hunter bastards are not getting any support from us at the next election", Mr Cochrane said.

Stephen McCartney is paraphrased up in the top because of the significance of these comments. He is 48 years old and the sub-branch secretary of the Construction, Energy and Plumbing Union, and was more straightforward about his feelings. He said:

"The ALP stinks", Mr McCartney said.

"My father told me when I was 18 that any working man who didn't vote for the ALP had rocks in his head.

Well things have changed, haven't they?"

Things certainly have changed. Mr Frank Hewston, 59, of Waratah west was among the 1,000-strong crowd at Club Nova, Newcastle. A Labor voter all his life, he said

... the AWU would cease its affiliation with the ALP over the issue.

"The letter to the party is in the mail," Mr Hewston said.

"For the first time in my life I am thinking about how I vote."

I doubt whether he will think about city Labor. Another article is headed "Unions to fight on workers rights". They are some of the headlines that have been generated. The constituency of the ALP heartland is talking about the Government's betrayal on this most important issue. Its only hope is a Coalition government. It is interesting that traditional Labor supporters now have to rely on the Liberal-National Coalition to ensure that their rights are protected. We make no apology for our support, which is based on the principle of a fair go. There is no doubt that the legislation is seriously flawed.

The bill is a denial of justice for employees. It reduces individual rights. It will do nothing about increased premiums. It will lead to an increasing economic burden on the people of New South Wales through the expansion of bureaucracy. They are some of the predictable outcomes of the legislation, if it is passed without major surgery as per the amendments we will move. Any bill that sets out to eliminate a court from what can be a complex process, and replace it with a bureaucratic commission, should be treated with the utmost suspicion. That is exactly what the legislation sets out to do by replacing the Compensation Court with the Workers Compensation Commission, which will have jurisdiction over the court. New section 105 of the bill states:

Subject to this Act, the Commission has exclusive jurisdiction to examine, hear and determine all matters arising under this Act in respect of any new claim.

That means that the Government-appointed commission will determine compensation claims and assess common law damages, thereby limiting employee access to court proceedings. Honourable members should note that proceedings before a commission are not conducted in accordance with the normal rules of evidence, yet the decision of a commissioner in a workers compensation matter is binding on all parties with no right of appeal or review by any other court or body. However, as we have learned from the Minister's second reading speech in this House, decisions by the commission are appealable to the president of the commission. Unfortunately, the Minister was not able to explain how this will guarantee fairness in any such appeal. This provision reduces the role of the Compensation Court to a token level. The day before yesterday I received a briefing note from the Labor Council that contains a specific paragraph regarding the Workers Compensation Commission, which states:

The Government has agreed the President of the Commission will be a judge. The bill requires amendment in this regard. The appointment of Deputy Presidents will be made by the Governor and subject to tenure.

These are positive moves compared with the previous drafts of the bill. However, if the composition of the new commission and the appointment of presidents, et cetera, are similar to those of the court and a judge, why not keep the current, experienced Compensation Court in its current form? The Government is in the best position to explain this anomaly, but it has chosen not to. I can only assume that it does not want to defend its real intention, which is to expand the power of the bureaucracy. The judiciary is far too independent for this mob. I agree that lawyers are an easy political target in this case. However, it is inappropriate for the Government to blame them for faults within the system. We are the legislators in this State and we must accept responsibility for any flaws in legislation that comes out of this place.

The Premier's attack on the legal profession is a cheap and tacky desertion from the real flaws that have brought about this situation. We do not know what the flaws are, but we know that they have occurred under this Government. It will take a royal commission to find out why this Labor Government has turned an \$8,000 million surplus into a \$2.3 billion deficit in just six short years. For the Premier to brand lawyers as liars is reminiscent of the pot calling the kettle black. I am sure that honourable members can remember the Premier's lies on the M4, M5, tollways, hospital waiting lists and the other lies—

The Hon. Dr Brian Pezzutti: Prince of Wales Hospital. Lies! Lies! Lies!

The Hon. CHARLIE LYNN: For the Premier to call lawyers liars is certainly the pot calling the kettle black. The kindest thing we could say is that it takes one to know one. The legal profession works within existing rules and regulations to ensure that injured employees receive fair justice before the courts.

The Hon. Dr Brian Pezzutti: They are required to.

The Hon. CHARLIE LYNN: They are. Lawyers certainly do not get the lion's share of the payout. According to the Law Society of New South Wales, out of every \$10 of compensation workers get \$6.08, investigation and prevention costs \$1.68, medical practitioners get \$1.22 and lawyers get \$1.02. If we were to remove lawyers from the system, unions and their leaders would represent the case for the injured workers and, thus, get the lawyer's share.

The Hon. Dr Brian Pezzutti: Out the back door, in the front door.

The Hon. CHARLIE LYNN: Yes. We can now see it coming again. The legislation will not reduce costs. All it will do is redirect costs from the legal profession to the union movement.

The Hon. Dr Brian Pezzutti: But the unions are going to give it back to the ALP then.

The Hon. CHARLIE LYNN: The Hon. Dr Brian Pezzutti, as perceptive as ever, has hit the nail right on the head. Perhaps the real agenda of the labour movement and the real reason the State Labor Council rolled over so quickly and quietly on Tuesday night—

The Hon. Dr Brian Pezzutti: Show us the money!

The Hon. CHARLIE LYNN: One can only imagine the slide show on Friday night—that would have been put on by the conductor, and attended by the parrot, the fixer and Fast Eddie—when they explained this little redirection of funds from the legal fraternity to the union movement. Any employee who wanted a fair hearing before the Workers Compensation Commission would be encouraged to join a union. A no ticket, no hearing system would quickly emerge and be protected by legislation. Union membership would soar, union funds would be awash with new subscriptions and union representatives in the new system would be the new rich. That possibility was identified by Peter Bale, of Bale Boshev and Associates, in a letter dated 22 June that he sent to the Premier and to all honourable members. In that letter he listed the following questions that require an answer:

1. Why is the Government avoiding a judicial inquiry into WorkCover? A cynic might suspect a cover-up of past mismanagement or even an attempt to hide a 'dash for cash' by the Government.
2. Why is the public not told that WorkCover profit for the year ended June 2000 was \$365 million? How much more if injured workers are to receive less?
3. Why is the public not told that current assets of the WorkCover funds are approximately \$6.3 billion (June 30, 2000) and that current liabilities are \$2.3 billion?
4. Why is the public not told that if a line was drawn in the sand today, and a new system for injured workers started, the NSW Government would receive a cash windfall of about \$4 billion?
5. Is it true that the Government does not include in WorkCover actuarial calculations interest of about \$500 million a year?

The letter continued:

Premier, there are key matters the Government has not clarified if the changes to WorkCover are introduced.

1. Why have there not been undertakings to employers to reduce workers compensation premiums?
2. If the independence of the courts is removed, who is going to monitor what the Government will do with the "cash box"?
3. How is it that self-insurers have managed their scheme so effectively yet WorkCover can't?

That was not a bad question. The letter continued:

4. Can you be confident that the WorkCover estimates for outstanding liabilities are realistic or are they grossly exaggerated, as others believe.

The draconian laws introduced by the Government in 1999 have denied 90 per cent of innocent motor vehicle accident victims fair compensation ... Why hasn't the cost of Greenslips drastically reduced?

New South Wales workers reasonably ask will the Government's workers compensation legislation have a similar effect.

That referred to the motor vehicles accident legislation that passed through this House in 1999. They are good questions and I challenge the Minister to answer them in his reply. One does not have to be a Rhodes scholar to realise that these funds will be mobilised in support of the Labor Party come election time. Just this morning I received from the Grafton abattoir the new workers compensation premium classification of rates. These will take effect from 1 July—in two days time. They were distributed by the National Meat Association and relate to the meat industry. I call on Country Labor to listen closely to my comments because Country Labor's so-called constituency is being done over by the political spivs in city Labor who are more interested in protecting the rights of corporate spivs and rorters than they are in looking after the interests of honest, hard-working Australians. The new classifications as they relate to the meat industry are an absolute disgrace! Only the spivs in city Labor would condone such a reclassification, because it has no impact on their vegetarian-munching, cappuccino-sipping constituency.

I spoke with Mr Stuart Ramsey at the Grafton abattoir this morning. He spoke to me because his local member, Harry Woods—now considered to be the ugly face of Country Labor in that area—will not even return his calls. Mr Ramsey saved the Grafton abattoir—he provided 200 jobs in Grafton. When he had the official opening he could not get rid of Harry. He was everywhere! In every photo opportunity, Harry was there saying, "Isn't this great?" In fact, people thought that they had a Harry virus in their cameras. They swear that Harry was not there when they took the photo, but when the photo was developed Harry popped up, in his hat. It is still one of the great mysteries in Grafton. Now that those 200 jobs are at risk and the workers need their local member to fight for them, he is missing in action. It is a sad day for Country Labor when its own member cannot summon up the courage to look these victims of city Labor in the eye.

[Interruption]

Harry has been done over by city Labor. He has been done over to such an extent that the slogan for the next election in Grafton will be, "Hooroo, Harry." There is no doubt about that, because they will not forget and they will not forgive. The news for Mr Ramsey's abattoir is that his business costs for workers compensation are about to double. I will say that again for the benefit of Country Labor members: Mr Ramsey's workers compensation business costs are about to double. Honourable members might well ask how that could be, because we have been advised by the "fixer" here that the 2.8 per cent average premium for the States business would remain.

As with every reform this Government tries to bludgeon through this Parliament, the devil is in the detail. In fact, it is clear that industries in rural and regional New South Wales are providing a hidden subsidy to keep the statewide average premium at 2.8 per cent. I hope that members of the National Party and of the Liberal Party in the bush, who are the true representatives of rural and regional New South Wales, bring that point to notice. Let me explain how this has been done. The rate notice for Grafton abattoir advises that the rate classification for the abattoir in 2000-01 will be 15.02 per cent. It advises that in 2002 it will come down to 15 per cent. It will come down by 0.02 per cent! I can see the headline now, "We have reduced workers compensation rates by 0.02 of one per cent." That is all Headline Harry needs in Grafton. He issues his press release, activates the camera virus and he is away! Let us look at the detail. In abattoirs there are meat packers, boners and so forth.

The Hon. Dr Brian Pezzutti: It is all hidden in here. It is hidden in these last documents.

The Hon. CHARLIE LYNN: Yes, indeed. The devil is in the detail. Let us look at the impact this reclassification has had on the abattoir in Grafton. The rate notice says that the premiums for workers compensation have been reclassified. For workers employed in the meat packing and freezing area they have been increased from 5.4 per cent to 8.7 per cent, and will be going up in two days time to 9.51 per cent! What does that mean? When the Grafton abattoir was advised that workers who were not employed in boning—in other words, those who do not use knives in the course of their duties—were to be reclassified, they were hit with an \$87,000 bill in retrospect. A bill of \$87,000! Mr Ramsey sent off the cheque under protest. He engaged an auditor. The independent auditor reviewed the classifications and rang Mr Ramsey only the other day. He said, "That \$87,000 is not right. You can get your cheque back." But then he laughed and said, "It doesn't matter. He has got you." The fixer here has got him. The Minister has reclassified those workers and the cost of the premium has increased, as I said, from 5.4 per cent to 8.7 per cent, and in two days time to 9.51 per cent. These reclassifications will have a devastating impact on abattoirs in rural New South Wales. They are unfair and unwarranted.

The Hon. John Della Bosca: What are you doing about it?

The Hon. CHARLIE LYNN: What are we doing? I am telling you about it. The Minister should get Headline Harry up there. Let me tell the House how unfair and unwarranted it is. In the last three years the Grafton abattoir has paid \$500,000 a year in workers compensation premiums. It has had to pay out on claims of \$120,000. It cares for its workers' safety and welfare—they are family, it is a genuine concern. Its reward for best business practice and care of its workers is basically a penalty by city Labor of \$380,000 a year. That is what Grafton abattoir is putting in the pockets of "the parrot" here so that he can spend it on his city Labor spivs. Under the new classification rates to take effect on 1 July, the premiums could now rise to around \$700,000. That is obviously unsustainable, and up to 200 jobs could be threatened. Let me say that again, very, very slowly for Country Labor: Up to 200 workers at Grafton abattoir could be placed on the scrap heap because of the failure of Country Labor to protect them.

The other concern coming from the bush about the need for reform relates to insurance companies. There is widespread anger at the fact that insurers have no liability under the system because they are merely agents. They do not care how much the payouts are because they have no responsibility and they carry no risk. They have no incentive to check out and identify fraud. The only way to correct this situation, according to the pragmatists in the bush, is to privatise the insurers involved in the scheme and introduce competition—because the aim is to bring down premiums.

With due respect to my colleague the Hon. Dr Brian Pezzutti, medical doctors also come in for their share of criticism. I have been advised that workers consulting doctors have been persuaded to accept a certificate for light duties that they did not want. That means that they have to go back to the doctor for review. It has been suggested that the fees of doctors reviewing workers on light duties should be reviewed. Perhaps they should be paid the full rate on the first visit, which includes diagnosis of the injury or illness, and have the fee reduced by 50 per cent thereafter because all they are then doing is monitoring progress to advise when the worker can resume normal duties. This would remove the incentive for doctors to use the system as a supplementary cash cow. Mr David Fennell, who works extremely hard and runs an extremely successful electrician's business in Camden, would like to know whether it is possible to have a system to record some of the miraculous recoveries that often occur on the same day as incapacitated workers receive their payouts.

The Hon. John Della Bosca: Are you saying that there is fraud in the system?

The Hon. CHARLIE LYNN: I am saying there is fraud in the system. Your Premier has said that the major problem with the system is the fraud and the rorts.

The Hon. John Della Bosca: Everybody who reads *Hansard* wants to know your opinion.

The Hon. CHARLIE LYNN: I am telling you there is fraud in the system. Are you saying that there is not fraud in the system? Do you want me to turn the microphone toward you?

The Hon. John Della Bosca: I have already responded. I want to know what you think about fraud in the system.

The Hon. CHARLIE LYNN: I have told you that there is.

The Hon. John Della Bosca: I am interested in that.

The Hon. CHARLIE LYNN: Are you saying that there is not?

The Hon. John Della Bosca: No, I did not say that there is not.

The Hon. CHARLIE LYNN: You are not saying anything. This Minister has nothing to say.

The Hon. Tony Kelly: Point of order: Mr Deputy-President, I would ask you to ask the honourable member to address the Chair in accordance with standing orders.

The DEPUTY-PRESIDENT (The Hon. John Johnson): Order! I have been listening intently. I would like to hear what the member says, not that I agree with it.

The Hon. CHARLIE LYNN: I had not seen the Special Minister of State freeze before a pointed microphone but his answer is obvious. Mr David Fennell is not religious but he is a believer in miracles because

he said they do occur under workers compensation. This bill poses more questions than it sets out to answer. For example, what guarantees are there to ensure that a new, inexperienced bureaucracy will be able to settle disputes more quickly and fairly than the existing Compensation Court? How can people be convinced after so many years of mismanagement of WorkCover that the Government will overnight turn out to be an expert in workers compensation management? Under the bill the Minister is given very broad powers. Together with an expanded bureaucracy, the Minister will run the whole show throughout the process—from its administration to payouts and dispute resolution. That is a major concern that lives outside the tent of the New South Wales Labor right.

The other major concern I have about the bill is that it does not address rorts. This is exactly what we are talking about here: rorts and fraud. I believe this is the core problem of the current system. When I talk about rorts I am referring to the unscrupulous employers who cheat on their workers by not paying the proper premium and to crooked employees who abuse the system with false claims. If the Government is not prepared to tackle these rorters by imposing heavy penalties on those who cheat the system, then this bill will not have the credibility it should have in the wider community.

I stated earlier that the blunt instrument used by the Premier to push this bill through the Parliament without proper scrutiny is the escalating level of the deficit. We are expected to accept his figures without having access to the books. This is too big a leap of faith for me to accept. I am supported by comments I received in a well-informed letter written by Mr Robert Bryden. He claimed there is no funding shortfall. He said:

The figures used by WorkCover to "prove" there is a deficit are fudged. They are deliberately misleading. The figures are based on WorkCover's "estimates" of the future value of claims. These estimates are deliberately overstated so a deficit can be created to justify WorkCover's position.

A Claim's Expert for a private insurer recently told me of this deceit. A claim he had been given carried an estimate of \$300,000.00. It was settled for \$60,000.00. This created a \$240,000.00 "deficit" in this one matter alone. WorkCover is dealing with all of these matters in this way to deliberately create a deficit they can exploit.

As I said earlier, it may well take a royal commission to establish the veracity of Mr Bryden's claims. I am of the view that we will never achieve an accurate picture of the situation until and unless we hold such a commission. I will not go into any further details because the flaws of the bill and our concerns have been well canvassed by our leader and deputy leader and other speakers in this place. At the start of my contribution to this debate I said that we have a duty to ensure that we have a workers compensation system that protects the rights of workers who are genuinely injured at work. We have to seek to reduce the unacceptably high level of premiums paid by business owners. We have to reduce the deficit that has developed under the policies of this Labor Government. And we have to reduce the ability of crooked employers and crooked employees to rort the system. I regret that the bill in its current form fails to meet these objectives.

The Hon. TONY KELLY [4.07 p.m.]: I wish to raise a number of issues in relation to the Workers Compensation Legislation Amendment Bill. Maintaining and improving the amount received from workers compensation by injured workers is paramount in the minds of all members of this Chamber. However, the amounts received are impinged on by payments in other parts of the system. I also wish to refer to the impact on rural businesses. A number of members have spoken on this point. I will also refer to the deficit and how the payment of further levies, because of the deficit, could impact on the workers compensation system. Both of the last points could seriously impact on jobs in country New South Wales. A number of members have spoken on the problem of compliance—avoidance of premiums—and the need to ensure worker safety in a safe work environment. I am sure all would agree with the comments that have been made so far that there is an urgent need to get the bill through Parliament, because the impact of workers compensation premiums on rural communities and rural business is well recognised.

Many members have been approached by people and businesses from rural communities in relation to the impact of workers compensation premiums. They have spoken of how premiums affect employment at present and how they will affect employment in the future. The Hon. Rick Colless, the Hon. Doug Moppett and a number of other members gave specific examples of the significant impact of workers compensation on country meat processors and the employment consequences. I have had approaches from a number of abattoirs—Fletcher's, and the abattoirs at Goulburn and Harden. The abattoir at Goulburn has a workers compensation premium close to the figure mentioned by the Hon. Rick Colless, \$3 million each year. This has a serious impact on employment. The supplies of country abattoirs are mobile: the cattle are on trucks. In the area of the Hon. Rick Colless the trucks can turn left or right at Oak Street. When they come out of the farm gate they can go to the Inverell meatworks or across the border, where workers compensation premiums are half or less in a number of cases.

We have to keep that in the back of our minds. Clearly, reform is needed and it cannot be delayed. There is a need to introduce measures that will reduce premiums so that employment opportunities in the bush will be enhanced. Rural industries have some of the highest premiums in New South Wales—and compared to other States they are very high. Recently, in Queensland I spoke with a person who used to own a dairy next to my property. He now owns a ginger farm. I asked him the level of workers compensation in Queensland. He replied, "I do not really know, it is not an issue up here." The premiums in Queensland are so small that they are not a concern. However, he recalled the rate he used to pay in New South Wales some 12 to 15 years ago.

The President of the New South Wales Farmers Federation, who lives north of Inverell, recently stated in a press release that the system was in urgent need of reform. He said that the cost to employees could be reduced. He also recognised that there is a need to achieve better outcomes for injured workers. He said that as a farmer he was in competition with wool growers and beef producers in other States.

Of particular relevance to this debate is the table that was incorporated in the press release comparing workers compensation rates in different States. The comparisons are illuminating, and a number have already been quoted. I will give some more examples. According to the press release the premium rate in the New South Wales pig industry was 10.52 per cent, this year it will be 9.86 per cent. In Victoria the figure was 5.78 per cent, almost half, and in Queensland it is 2.02 per cent, almost one-third. The difference is astounding. Presumably the rate of injury in those different States is no different, so why is there a marked difference in premiums? There is a similar situation in the cut flower and flower seed-growing industries. According to the New South Wales Farmers Federation the rate in New South Wales was 6.26 per cent last year, but in Queensland the rate is much lower—2.26 per cent, again less than half.

Why is there such a difference? Probably the difference is because there are more claims in New South Wales and our claims are more costly to resolve, for whatever reason. It has been alluded to quite often that the delay in the system allows legal costs to escalate. Clearly, steps need to be taken to ensure that New South Wales remains competitive with other States. If action is not taken to control the deficit, one can imagine how the already high premiums will rise in the future. The deficit will have to be paid in some way. As I said before, one way to pay for the deficit is to increase premiums. Obviously that is not the way to go, because it would have a devastating effect on the rural industry.

The bill provides the fairest way to address the problem. The bill does not cut premiums, nor does it cut benefits for injured workers. The bill addresses the concerns of both rural workers and employers. The new dispute resolution system will provide a fairer means of resolving disputes that maintains costs at an affordable level. The bill includes extensive dispute prevention measures. Reducing the number of disputes, particularly the length of time of the disputes, will reduce the legal costs for the system overall.

Honourable members know that the legal costs are the major component of the system. Under the new system there will be less chance for disputes to arise, because more assistance and information for injured workers and employers will be available to help them navigate the workers compensation system. Schedule 2 to the bill proposes to establish a claims advisory service to assist injured workers and employers. An injured or ill worker is not in a good position to be taking on a complex system like the workers compensation scheme. For that reason, assistance will be provided to guide workers in how to receive their entitlements and participate in injury management.

Unions will be given support to help their members. Many workers turn to their union rather than to WorkCover for help. In order to ensure that workers have a choice of where to turn for help, the bill provides for funding to equip unions to provide information and assistance to injured workers. Although employers do not generally need the same kind of support as workers need, an injury at the workplace impacts on the workplace. Many employers, especially in small businesses, are unsure of what to do. Employers may prefer to contact their trade association or employer organisation for advice. Schedule 2 to the bill also provides funding to those bodies to help employers understand and carry out their responsibilities.

Other measures in the bill to reduce the number of disputes include the introduction of provisional liability and streamlining of claims procedures. Workers will get their benefits faster, reducing disputation and legal costs. Workers will be able to support their families and be able to concentrate on getting back to work. Employers will benefit through lower premiums and that will save jobs in New South Wales. The current system impacts on injured workers, including rural workers. The last thing an injured workers wants is to have his or her return to work delayed.

Employers have obligations under the Act to provide suitable work for injured workers. Workers have an obligation to return to work as soon as it is safe for them to do so. Consultation on this bill identified a need

for a more formal and timely structure to deal with disputes that arise in that area. Although at the moment such disputes can be dealt with through the Compensation Court, hearings occur too late in the day, often at a point at which the employment relationship has completely broken down—sometimes years later.

The bill provides for early conciliation of those disputes by the registrar and through delegated staff within the commission. The registrar will have broad powers to call on the Claims Advisory Service and injury management consultants to assist in resolving disputes. If the matter cannot be resolved through conciliation, the registrar will be able to make recommendations to the parties to assist with meeting injury management obligations. The parties will have 14 days to comply with a recommendation or to seek a review by an arbitrator. The availability of this mechanism will ensure that disputes about suitable duties do not drag on. The amendments will create a fairer and simpler system for injured workers and employers with fewer disputes, legal costs and delays.

I reiterate, at the end of the day when all the processes, including the Sheahan inquiry, have concluded we must keep our minds on the number one need, that is the need for workers to be able to gain improved payments and support in getting back to their workplace as quickly as possible. Honourable members should keep in mind the huge impact on rural businesses, because many could easily move over the border. If the deficit is not addressed soon, jobs could be exported over the border. We should keep in mind the main issues, and a number of examples have been given of compliance and avoidance of premium payments. Workers' safety on the job must be addressed as well as the premium issue. I commend the bill to the House.

The Hon. Dr BRIAN PEZZUTTI [4.19 p.m.]: I have been waiting for quite some time to contribute to this debate. I state at the outset that there is absolutely no way I will vote for this bill as it stands. Some members have given the history of this legislation and I will not delve deeply into it. However, I clearly remember the introduction of the 1987 amendments to the workers compensation legislation by the Unsworth Government, which effectively took away common law rights for injured workers. The amendments made a number of interesting changes which were not altogether bad. It introduced the principles of rehabilitation and encouragement, among others. However, echoed in this bill is the draconian provision of three commissioners, three wise men who have not seen the claimant, determining on paper that claimant's entitlement without the claimant having any right of appeal. This bill is Unsworth legislation Mark II. I recall the angst that accompanied the changes introduced by the Unsworth Government on workers compensation and motor vehicle insurance. I vividly remember the by-election in the Northern Tablelands following the untimely death of a very good and popular local Labor member, Bill McCarthy.

The Hon. Doug Moppett: It is either a good member or a Labor member? The two are mutually exclusive.

The Hon. Dr BRIAN PEZZUTTI: No, he was a good country member of the party. The Opposition romped in at that by-election. I recall seeing hundreds of lawyers walking down the street of Armidale, not because they were worried about their incomes but because they wanted to advise the public what they had lost. One could have understood if it was just a lawyer thing, but everywhere I went during that election campaign people said that they were thankful that the Coalition was going to win the election. I recommend the approach taken by Mr Greiner at that time to all opposition parties. He informed the public what he would do to address the problem if elected to government. He wrote a letter to the President of the Law Society of New South Wales, which was published in the *Sydney Morning Herald* on 16 September. When I was elected a member of this Parliament I committed myself to taking workers compensation seriously. In that letter Mr Greiner stated:

On the question of common law rights for accident victims I wish to confirm it is our policy to reinstate the right to sue a negligent motorist for lump sum damages and reintroduce the right to sue a negligent employer for lump sum damages—

So both accident compensation and workers compensation were covered—

It is clear that these rights will have to be modified because of the financial pressures which have been built up under the old system. I am not in a position to spell out the detailed policy at the moment. Neither I nor any member of the Opposition has access to the necessary financial information.

This is Unsworth all over again; it is *deja vu*. Mr Greiner continued:

I do, however, give you an unequivocal undertaking that these matters will be given a high priority by a Coalition Government and as soon as possible after the election I intend to take the following steps—

And he outlined those—

I wish to further advise that my Government will be philosophically oriented towards abolishing the existing monopolies in TransCover and WorkCover. I would invite other insurers to become involved in this area and I believe the Government Insurance Office should make greater use of the service of private legal firms in handling all forms of insurance, including personal accident claims.

At that time the Government Insurance Office had a monopoly with WorkCover and TransCover; it was one big bloated operation that was paid, no matter what. There was no need for competition; therefore, it did not care. If it sought to spend more money the next year, it delayed matters until that year. It had no idea about covering claims in the one year. Consequently, the liability to the taxpayers of New South Wales blew out. It was necessary for the Greiner Government to significantly increase motor vehicle registration fees to pay off the \$3 billion it had inherited with TransCover. It also had to deal with the debt of WorkCover. What Unsworth did back then is exactly what this Government is doing now. The response from the union movement has also been the same. However, this time Mr Costa is the threat. Yesterday's performance just made me sick.

After winning office, in 1989 Mr Greiner fulfilled his promise and responsibly returned common law rights. However, he did more. He modified the workers compensation schedule, and that made a number of notable changes to the workers compensation system, re-established the role of the compensation courts and restored common law rights. But, importantly, it involved a judicial structure rather than the bureaucratic, administrative model introduced by Barrie Unsworth. This is the principal difference between the Coalition and Labor. Labor favours a bureaucratic commissioner while the Coalition always favours a judicial role. The Opposition's amendments will reflect that difference.

Mr Greiner also introduced a barrier to prevent small claims. This is consistent in all models of workers compensation and third party insurance. Indeed, the new scheme for health liability has a threshold to prevent small claims, to relieve the administrative burden and to reduce costs. It is ridiculous for \$60,000 to be incurred in order for a worker to receive only \$3,500. In the early 1990s a number of legislative amendments were made that were beneficial to injured workers. These improvements were made because of the sound performance of the revamped scheme. In May 1990 there was a \$1.1 billion surplus. It had grown significantly because of the higher than anticipated return-to-work rates. The Coalition was able to produce results with one initiative introduced by Barrie Unsworth, that is, the rehabilitation system.

The system was revamped in the two years following the Unsworth Government because the Coalition was concerned about getting workers back to work, because it considers rehabilitation better than compensation. An example of the amendments in 1991 included expansion in the range and level of benefits, more access to common law with the introduction of the Workers Compensation (Benefits) Amendment Act 1991 and increased rehabilitation services. All this information can be found in the marvellous briefing paper prepared by Rachel Callinan from the library. It is a shame that the Government did not have the benefit of her wisdom before it introduced this bill. She said that the surplus had grown significantly but that the target premium rate was lowered from 3.2 per cent under Unsworth to 2.6 per cent. It eventually fell to 1.9 per cent under Greiner—but it has climbed again. Ms Callinan, referring to other changes, stated:

First, those of an administrative and procedural nature, such as removing the need for multiple insurance policies for an employee who works in one or more States. Second, those made as a direct response to decisions handed down by the courts, which were seen not to be in keeping with the spirit and intention of the legislation.

In other words, the Government took direct responsibility. If the compensation courts fell out of favour with the Parliament, they were rapped over the knuckles and told to do it right. Lawyers were not allowed to get into new territory and thereby establish new precedents. Mr Greiner was very strong on that issue. In the briefing paper Rachel Callinan said:

For a number of years following the various legislative changes outlined above, the workers' compensation scheme appeared to be a success. Cost blow-outs, a feature of early workers' compensation schemes, seemed finally to have been halted, the premium rate was maintained at a relatively low amount. In 1991/92 the target premium of 1.8% was reached. The true cost of claims was estimated to be higher but the difference was being offset by investment income on the surplus.

That was good investment, good management. She continued:

The 1.8% premium was maintained over the next 3 years.

The rate was confirmed in 1994-95. However, what happened after Jeff Shaw became Minister for Industrial Relations? This is where things get very murky. He made the usual fashionable noises that he was worried about the future, but that did not stop him. The Coalition had used these benefits to improve compensation services, lower premium rates and improve the return on investments in WorkCover. We invented WorkCover: we

changed the name from the Workers Compensation Court to WorkCover. We are proud that successive Ministers—including Fahey and Chikarovski—managed the scheme well. Then along came Jeff Shaw and the 1995 amending bill. It was claimed that it would reduce the number of expensive court actions and the involvement of lawyers in workers compensation. This is when Jeff Shaw started bashing the lawyers.

The bill was heavily amended in the Legislative Council, where the Government lacked a majority. Consequently, only moderate cost savings were achieved—I remember, as would the Hon. Doug Moppett and the Hon. Jennifer Gardiner, the Government's draconian proposals—in light of adverse trends that exceeded expectations. The deficit in 1996 was \$454 million. Jeff Shaw allowed that to happen in two years. There was speculation at the time that the Government would make a further attempt to achieve its original reforms. We thought it would do that in 1996, but this bungling Government returned to the issue five years later.

The 1995 Act restricted the number of claims for stress, put in place a 6 per cent threshold for hearing loss, suspended the indexation of lump sum benefits, and introduced a deduction of pre-existing back and pelvis impairment for lump sum employment. We had taken the view previously that workers with a pre-existing injury who were then injured on the job should get paid for that injury. That was no longer the case. Jeff Shaw also famously restored no-fault compensation rights over journey claims from home to work because he said the system could wear it. I am interested in this issue, and I know that the Minister wants me to address it. I received some information, as did other honourable members, from Australian Business about the latest WorkCover annual report dated May 2001. The latest statistics are for 1998-99—good old WorkCover under Labor is not forthcoming with its statistical analyses. In 2001 the latest report from which business can work is a WorkCover statistical bulletin for 1998-99.

The report breaks journey claims into several categories: road traffic accidents, accidents away from work during recess period, and commuting accidents. They are the different types of non-workplace injuries. Some 21 deaths resulted from road traffic accidents. What did the Government do about that? It is important to know. Last year the Government rolled into the Motor Accidents Authority legislation the claims that were covered by WorkCover—the system was working really well and Jeff thought he could improve things. When the Government introduced the new TransCover legislation—the system was out of control, premiums were too high, and nobody wanted to pay them—it snuck in this provision. It means that if a person travelling from home to work is involved in a motor vehicle accident WorkCover will not pay; that person can sue under his third party insurance. Having reintroduced journey claims to the system, Labor lumped them into the third party scheme, which was really failing.

In 1999 there were 21 deaths and 144 serious injuries in road traffic accidents. There were 598 accidents, which represented about 5 per cent of the \$19 million payout. There were no deaths in the category "away from work during recess period" but there were 54 serious injuries and a payout of \$2.9 million. Commuting accidents—I presume that this category refers to people who are walking down the street and fall down a hole—accounted for 46 deaths, which is an awful lot, and there was a \$62 million payout. The total payout was \$84 million. Some \$19 million of that was transferred to green slips, but that still left about \$60 million for "commuting" and "away from work during recess" claims.

The Minister has provided some more up-to-date figures. In 1999-2000 there were 10,091 journey claims and a \$138 million payout. There were 163,000 claims against WorkCover—I have not seen these figures before—of which 10,000 were journey claims. That total does not include car accidents, so it is only claims in the categories of "commuting"—someone falling down a hole—and "away from work during recess". Those 10,000 claims cost \$138 million—the cost doubled in one year. That was the beginning of the rot. Another criticism of the Greiner scheme was that people had two choices: they could go to the statutory scheme but if it did not provide for their particular illness—such as a skin disease, AIDS and so on—they could sue separately under the common law scheme. That was called double jeopardy. However, it was very hard to ensure fairness. What could be done if the statutory scheme did not provide for a particular illness? Either the scheme had to be expanded to include more illnesses or there had to be another scheme.

This legislation is exactly the same as the 1987 bill. Even some of the players are the same. They included Barrie Unsworth and Mr Sheahan, who I think was Attorney General at the time and, as such, would have been responsible for the legislation. He is now conducting a judicial review of common law as it applies to workers compensation—something that he as Attorney General and Unsworth legislated against. We can only hope that the review will be fair. What will it mean for workers? I think the then Attorney General mucked it up; he took his eye off the ball. He was not really a mathematician. He was a good Queen's Counsel but not a good administrator. As Minister for Industrial Relations, he was responsible for WorkCover and its operation. He had a skilful mind when it came to words but he was innumerate.

Mr Sheahan has now been asked to review what Labor promised the union movement behind closed doors and what it then delivered; what Labor said it was delivering and what the unions thought it said it was delivering. The Government claims that Mr Shaw said there was no difference. It said, "Mr Shaw's writing says there is not much difference." However, the union movement said, "Hang on, Mr Shaw's writing says there is a big difference." Either Bob Carr cannot read, Minister Della Bosca cannot read, or the Trades and Labor Council cannot read, because they are all referring to the same letter. It is bizarre! Is it any wonder that we received no information and were never included in the cosy secret negotiations with the actuaries? Actuaries are given tasks with certain conditions and preconditions. An actuary must best guess all future conditions and estimate the result; it is a skilled profession. I would love to see the actuarial methodology in this instance; it was not tabled and nobody has any idea of its meaning.

The actuaries involved in this task are not able to talk to everyone in Parliament and are not even available to explain the conditions the Government said would exist. Through Treasury, the Government told the actuaries what was expected in 2001, 2004 and 2010. I remind honourable members that the Treasury Managed Fund has not been mentioned by this Government, but I shall refer to its involvement shortly. The Treasury Managed Fund is the key to my presentation. Treasury, not beyond caring for itself and knowing its exposure, could not be expected to be rosy about those things because it probably has more experience with them than WorkCover. Treasury has intimate knowledge of what it manages—it owns its own insurance company—and gave advice to the actuaries. I would love to know if there was an objective assessment and how good the background conditions were.

The Hon. Doug Moppett: Probably written on the back of Mrs Beaton's cookery book.

The Hon. Dr BRIAN PEZZUTTI: No, but they could well have been cooked up a little bit before the actuaries arrived on the scene. Actuaries are mathematical geniuses. Mrs Chikarovski hit the nail right on the head when she said there is argument about the nature of the deficit. We want to see reduced premiums, maintained benefits for employees, and the deficit reduced. I am committed to that position on this issue. Much discussion has taken place about the deficit and what it means for the future.

I shall now comment on the Treasury Managed Fund, as many honourable members covered many of the issues I had intended to raise. I thought I knew pretty well everything, but I did not know that the Treasury Managed Fund is arranged to cover WorkCover as well as other insurances, such as professional indemnity insurance, for the inner budget sector. Therefore, a NorthPower employee is covered by NorthPower paying a contribution to an insurance company that manages the arrangements for WorkCover. It is the same for employees of Ramsey's Meat Works at Grafton.

However, if you work for New South Wales Health there is a parallel deal whereby that department is entitled to the same WorkCover provisions but the Government does not put in any money. It does not help to run the WorkCover Authority; it does not pay its fair share of the running costs. The Treasury Managed Fund has within it an amount of money that may or may not be hypothecated for this purpose and the claims are controlled by the GIO, which is the fund's contract manager. However, this does not mean that the GIO receives money; the Treasury Managed Fund makes the payouts.

This year's budget shows that the Treasury Managed Fund has losses of \$303 million. I believe its present total exposure or deficit is \$1.2 billion. I do not know whether that is a reasonable figure, but we will get that information from Minister Egan or Minister Della Bosca in debate on another bill. I believe that the Treasury Managed Fund not only covers workers compensation but also shadows payments for the Motor Accidents Authority, professional indemnity insurance, public risk, buildings falling over, and so on.

However, the difference is that much of the inner budget sector operations, such as area health services, have premiums deducted from the money allocated to them by the Minister. The Minister allocates \$218 million to the Northern Rivers Area Health Service but says, "Hang on, we're not actually going to give you the amount of money you are liable for in workers compensation, and we are not actually going to give you the amount of money for the professional indemnity insurance because that is retained—but it is all on paper."

If a claim is lodged, the Treasury Managed Fund gives penalties to the area health services. But we know very little about the Treasury Managed Fund. We do not know whether these wonderful actuaries did an assessment of the impact of these changes on the Treasury Managed Fund or the impact of leaving everything alone. We received reports only about the estimate of WorkCover's future losses. WorkCover is actually solvent; it has more money in the bank than you can poke a stick at. It has simply been estimated that if it had to bring to book all the future claims and payouts, the figure that has been quoted would be the deficit.

WorkCover actually made a profit last year. The Treasury Managed Fund did not make a profit; it is budgeted to lose \$303 million this year. Can the Minister tell the House whether an assessment has been made of the Treasury Managed Fund's exposure in the same way that WorkCover's exposure has been sold if there is no change to the Act? That is an important consideration because the people who provided the actuaries with the conditions on which to do the assessment would almost certainly have been from Treasury, which has a vested interest in the process; it does not have clean hands.

I should like to touch briefly on the impact of these insurance rates. My colleague the Hon. Charlie Lynn stole my thunder on Ramseys. However, I should like the House to know that Ramseys does not presently pay any payroll tax. The reason Harry appeared in all the pictures was that Ramseys was granted an exemption from payroll tax and workers compensation.

Ramseys was at an advantage compared with Northern Co-operative Meat Company Ltd at Casino because it started with a clean slate for workers compensation. It had no previous history and received a low-based assessment, whereas in the same year the Northern meat co-operative received an early advice or prepayment claim of \$1 million. The existing meatworks at Casino was carrying this huge background government cost and competing nationally and internationally to buy cattle from the same markets that Ramseys deals in, which was set up in Harry's electorate in direct competition and with all these advantages. Ramseys is now realising what it costs to run an abattoir. Ramseys would never have reopened if it had realised the real cost. It is still not paying payroll tax.

The Hon. Doug Moppett: You can take the 15 per cent figure quoted by the Hon. Rick Colless as indicative of operating mechanisms.

The Hon. Dr BRIAN PEZZUTTI: That would be right. Ramseys is still not paying the whole payroll tax—it got a four-year or five-year exemption—but Bindaree and the meatworks at Casino are paying it.

The Hon. Doug Moppett: All the other meatworks.

The Hon. Dr BRIAN PEZZUTTI: That is correct, all the other meatworks are paying it. Yet Ramseys is experiencing a huge squeeze on its cash flow. It would be different if everybody in Australia had the same problem, because they would compete only with overseas markets and competition within Australia would be fair. Queensland pays only one-third of the workers compensation premium levied in New South Wales. Just across the border the same cattle are being bought at the same auction yards and sold to the same markets, so companies in New South Wales are at a disadvantage against those in Queensland, where workers compensation premiums and payroll tax are lower. Queensland is absolutely laughing!

Yet our beef producers, our workers in Casino, Grafton and Inverell have to deal with costs imposed in New South Wales. Across the border, around Warwick, workers compensation and payroll tax is half of what it is in New South Wales. Country people who live in border towns like Moree or along the Murray have to compete with lower premiums in Queensland and Victoria. That is where it matters. It is difficult for people to understand that this is affecting real employment. Putting workers off causes them a serious disability. Not having work is even more stressful than work-related stress. Unemployed people who live with their families in country towns are driven to suicide and mental illness.

Although the Government is concerned about stress-related claims and common law claims—and I accept that—being without a job is even more stressful. The Government, through its improper management of the system, has forced large numbers of people to seek employment outside New South Wales that they would get in this State if we had a better system in place. There is no reason why we have to depend upon such a huge payroll tax. Queensland and Victoria manage with a lower rate. Why cannot New South Wales copy the system in those States? We should be able to have a similar system. Why do we not have a Queensland or Victorian workers compensation scheme?

The Hon. Jennifer Gardiner: Because we have a slothful ALP Government.

The Hon. Dr BRIAN PEZZUTTI: Because it cannot manage, and it never has been able to manage. The Government does all right only when the taxes are pouring in.

The Hon. Jennifer Gardiner: It can't even manage the business of the House.

The Hon. Dr BRIAN PEZZUTTI: That is true, it cannot. It never has been able to. I draw the attention of honourable members to the Workers Compensation General Amendment Funding and Records

Regulation 2001, which was published on Friday 22 June. Many honourable members would not have put this beside their bed to read at night but I read everything that comes across my desk, and I waded through this thing. Members would have no idea about the detail in it. What one has to pay depends entirely on exactly what one does. The regulations are extremely specific. One section refers to toys and sport goods wholesale, and includes employers engaged in wholesaling toys, bicycles, bicycle parts, firearms, fireworks—

The Hon. Ian Macdonald: All the other States have adopted this. It is part of the Australian Business Statement [ABS].

The Hon. Dr BRIAN PEZZUTTI: How does one comply with all this stuff? Another section refers to cultural and recreational services. What if there is a bit of each? You are not allowed to average it across your work; no, you have to go to the worst-case scenario. That is how it is. One solution would be to allow for employers of this State to have their own privately managed scheme, as the Government has.

The Hon. Ian Macdonald: Don't let the facts get in the way, Brian. This system is in all the other States. It is ABS based.

The Hon. Dr BRIAN PEZZUTTI: I do not doubt that, but I bet they do not pay the same percentages. For airconditioning and heater services it is 5.19 per cent. But the important thing is that the Treasury managed fund is like a private fund. The Government has its own captive insurance company to test out the WorkCover system, which has not been reformed. All the insurance companies manage for a price, but at the end of the day they are not responsible for the losses or gains in the system. On the other hand, the GIO manages the Treasury managed fund, and it can ensure that it does the job and pays on time to comply with Government requirements. It is like having a private scheme. A couple of private schemes are doing quite all right. Coalminers, the Dust Diseases Board and a few others have private schemes that are doing all right.

The Hon. Doug Moppett: They should have one for the police.

The Hon. Dr BRIAN PEZZUTTI: Do not distract me. There is one for the police. It is called the Treasury managed fund. We do not know much about its management, though, because it is not part of the bill. As I said earlier, we are trying to find out. Why has the Government, which has legislated for private industry funds, not promulgated the legislation? I understand that the Minister was going to attempt to have a couple of trials, which would be sensible. I do not blame the Government for being cautious about change that impacts on workers. But the workers compensation scheme is underwritten by the Government, so any WorkCover debt is a debt for every citizen, not just employers. Like the Treasury managed fund, every dollar of debt belongs to every citizen.

I am staggered by the trade union movement's pullback, even though Mr Robertson continues to say that there is advice to the contrary from Mr Shaw regarding significant breaches of the agreement by the Hon. John Della Bosca and the Government. The Hon. Charlie Lynn read out a letter from Kerry Chikarovski to Bob Carr, which I will not read again because it is already on the record. However, its final point is:

The New South Wales Coalition believes there is still a great deal of uncertainty about the financial difficulties of the scheme, which I have demonstrated. Accordingly, we propose the establishment of a Legislative Council committee to examine the operation of the scheme, the financial pressures on which is now subject to such a committee, supported by a reference. That group would include an actuarial and accounting expert who could conduct an investigation during the recess, and report to be returned at the same time as Mr Justice Sheahan's report on the common law matter.

That puts my position in a nutshell. We should all understand that the American Medical Association guidelines were imported into this bill and, I presume, will be imported into the—

Reverend the Hon. Fred Nile: We are going to have our own New South Wales guidelines.

The Hon. Dr BRIAN PEZZUTTI: Yes, we will have our own. But, remember, the AMA guidelines were never designed to be used in this way, to award money or to assess monetary value. There are problems with that. The Government said it would formulate its own guidelines, but then it said that about the MAA, did it not? The Government said it was not going to have American guidelines; it was going to have Australian guidelines. It did not. The Government imported the whole thing. When it appeared in the *Government Gazette* it contained American spellings. The Government promised Australian guidelines. If the Government had those guidelines prepared for the MAA as it promised, why would it say, "We will give you the guidelines sometime in November"? They should have been developed already. This Government cannot be trusted to manage it. The Opposition cannot have any faith in what the Government said about actuaries, but neither can the Opposition

not believe it: it is the only information we have been given. Someone said something about post hoc to proctor hoc—merely because someone is your enemy's enemy it does not mean he is your friend. The Special Minister of State suggested that merely because the trade union movement is the enemy of the Opposition's enemy—the Labor Party—that does not mean it is going to be friendly to the Opposition. That is true.

This Government is continually undermining services to ordinary men and women in this State; and the costs of employment are going up and up. That means that the number of jobs available for the work force is decreasing. I think the Government will get a very rude shock come the election in 2003. I hope that in the meanwhile the Government will see sense and get rid of the board of WorkCover. I mean that quite seriously. If Craig Knowles could get rid of the Ambulance Service overnight, the Minister could get rid of the whole WorkCover board. The board of WorkCover has demonstrated a total inability to manage over a long period. I ask the Minister to explain why he has not sacked the whole lot of them and appointed a board with demonstrated managerial skills. It is a huge operation. It is bigger than Coles, for heaven's sake! It is bigger than Woolworths. The Minister should get Greiner back to manage the thing and get it back into shape as he did last time.

The Hon. AMANDA FAZIO [5.02 p.m.]: In speaking in support of the bill, I have drawn upon my experience working in the area of Commonwealth employees workers compensation and rehabilitation—both as senior claims manager and, at times, Assistant State Commissioner. I have listened very carefully to the debate that has taken place on this bill. I must say that I found the issue of workers compensation to be very complex. One has to understand a whole range of issues, including the actuarial base of the scheme, the premium rates charged, the costing of claims for the life of the claim, the precedents that existed in terms of granting claims, and the payment of medical expenses and other therapies that injured workers claim. As I have listened to the debate in this Chamber I have been surprised at the number of instant experts on the issue of workers compensation. They have grown like mushrooms! So many speakers have said, "I doubt the actuarial claims. I do not believe a deficit exists." Others have said, "Look at this item in the WorkCover report. It had an operating surplus for last year." Those people have no concept of the idea of costing the claim for the life of the claim.

I am indebted to Reverend the Hon. Fred Nile for bringing a voice of reason to the debate yesterday and for correcting some of the misapprehensions that had been espoused by some of the other speakers in the debate. It appeared to me that Reverend the Hon. Fred Nile had made the effort and taken the time to read through the issues. He did not react in an overly emotive way to a lot of the lobbying from vested interest groups. I thank him for his sensible comments, because there have been very few sensible comments in this debate so far. A lot of members have overreacted to the issues, to suit themselves. The current workers compensation scheme is in crisis. The WorkCover scheme's financial position is assessed by the difference between total scheme assets and liabilities, the major asset being investments—for example, stocks or bonds—and the major liability is future claim payments on existing claims. The final amount of these payments is estimated by actuaries. If estimated liabilities exceed assets, it creates a deficit.

The scheme deficit is the gap between scheme liabilities and scheme assets. At its most recent valuation in December 2000 the scheme had assets of \$6.881 billion, but liabilities of \$9.061 billion. As at 31 December the deficit was estimated to be \$2,179 million. In six months the deficit had grown by nearly half a billion dollars. The deficit has deteriorated for the following key reasons. First, more is expected to be paid in common law damages and in commuting weekly benefits. Second, investment returns will be lower because interest rates are falling and this affects interest rates paid on bonds. Third, the amount collected in premiums is less than expected because wages have not grown as fast as previously. This may be related to the slowing economy. This deficit is projected to grow further over the next few years. If WorkCover were a private insurer it would have been put into liquidation many years ago. No-one has tried to argue that HIH Insurance made only technical losses and is only technically insolvent.

So, how has this come about? The WorkCover scheme was introduced in 1987. In the early years the scheme generated a sizeable surplus. However, from the early 1990s scheme costs began to escalate dramatically and began to exceed premium levels. During this time premiums were not increased and were maintained at around 1.8 per cent of wages on average. This led to the surplus being eroded and ultimately being turned into a deficit. Costs have increased as a result of growth in the numbers of injured workers on long-term weekly benefits. In turn, this increase in duration has been characterised by high rates of disputes and litigation, and a focus on lump sum compensation and increased utilisation of common law. The Government introduced a number of reform packages in 1995, 1996, 1998 and 2000 to stem the costs escalation. Premium levels were also increased in 1995 and 1996 to 2.8 per cent, up from 1.8 per cent, bringing premiums closer to the real cost. While the real cost of the scheme was higher than 2.8 per cent, to minimise the impact on business and employment the Government has sought to maintain premiums at 2.8 per cent of wages.

The Government's reforms have reduced costs to 2.87 per cent from a peak of 3.5 per cent for 1995-96. However, this still exceeds the average premium rate of 2.8 per cent, excluding goods and services tax effects. However, the underlying deficit has continued to grow because of the shortfall and inflation. If the Government does not act the deficit is expected to reach \$3 billion by 2003. This is unsustainable. There is simply no value in denying the current deficit. The deficit exists and has been recognised by WorkCover's actuaries, the WorkCover board and actuaries engaged by the former advisory council. There is nothing to be gained by denying that unless action is taken now it will continue to grow. The current proposal is not about cutting benefits to workers or about attacking lawyers—although the lawyers must feel threatened because they have been at the vanguard, lobbying crossbenchers and the Opposition. It is all about having a fair system and ensuring that workers receive their entitlements on time and in full, and that workers are assisted to return to work without unnecessary delays and prevarication.

Benefits will not be reduced. In my experience working at Comcare I saw people who had what we used to call "compensation syndrome". They were people who, if they had not been pursuing a common law action through the courts, would have been able to put their lives in order, focus on rehabilitation and have a positive stimulus in life. But, suffering from compensation syndrome, they had to maintain their illness. They could not recover. The personal costs to those people in the longer term, and to their families, could not be counted financially. It often destroyed those people, because they would not try to overcome the need to appear ill or injured when they finally got their day in court. One of the key cost drivers in the scheme is legal costs. One of the main reasons that legal costs are so high is that the level of disputes is too high. In New South Wales 45 per cent of all major claims are disputed. This compares with rates of between 7 per cent and 17 per cent in most other Australian jurisdictions. New South Wales has the highest proportion of dispute related costs—that is, legal and investigation costs—in the country.

Dispute-related costs represent the largest third party costs in the scheme, and they are the only area where substantial savings can be made without impacting on worker benefits. There are a number of reasons why the level of dispute is high. Poor management of claims is often the cause of the many disputes in New South Wales. Insurers are failing to manage claims properly. In particular, insurers frequently fail to meet the required timeframes for processing claims and payments. Injury management is not well co-ordinated with claims management, and too often this process results in claims unnecessarily turning into disputes. The bill addresses this by providing for provisional liability payments to be made by insurers. The legislation is complex. Workers, employers and even insurers often do not know what is required by whom and when. Everybody waits for someone else to do his or her part and in the end nothing happens. At the moment there is no incentive for insurers to resolve problems early. The scheme offers free legal service to all parties—workers, employers and insurers. There is no reason not to litigate. It is free and even if you lose you do not have to pay.

Insurers are used to denying liability. A massive change of culture is needed to ensure that injured workers are treated more fairly. The bill sets clear timeframes for determining claims and penalties for failure to comply. But it is not just about legal costs and a deficit; the scheme has human costs as well. The system simply has not been working as it should. The whole idea of a workers compensation scheme is to make sure that people who are injured at work are looked after financially and medically while they recover. It is also supposed to help them get back to work as soon as possible. The scheme in New South Wales in recent years has not been doing this. Payments are often delayed and medical treatment is delayed. Workers and employers get bogged down in a cumbersome and protracted process that does not help anyone.

Under the current system payment and medical treatment are delayed. Most disputed claims go to court and take a long time to be resolved. The new system ensures that benefits are paid quickly and worker injury management stays on track. The system is broken. We all want it fixed. Without a major overhaul of dispute resolution there is little chance that the culture can be changed. I urge our new-found friends of the workers opposite—people who now champion the rights of workers, the same people who supported Peter Reith's Federal industrial legislation—to start speaking the truth and listening to reality. This system needs to be fixed. These reforms are necessary. I commend the bill to the House.

The Hon. JOHN TINGLE [5.12 p.m.]: I did not intend to speak to the bill because I believe that far too much has already been said that has clouded the issue and not cleared the air. I do not want to deal with the details of the bill because that has been done by everybody else. I want to comment on the atmosphere and the context in which we have tried to introduce this vitally important piece of legislation in this Parliament. I precede that by saying that I have been reporting politics and parliaments since 1952. I was in the Federal press gallery during the Petrov affair, the schism of the ALP and the rise of the DLP. I reported on things such as the row that went on about the two-airline policy and the nationalisation of the banks. I can say that I do not remember any piece of legislation which has been brought in with as much confusion as this has been. I cannot remember a bill presented to the public with such poor communication and information.

I was taught during management training in the 1970s that where clear and effective communication are not established the grapevine flourishes. That is what has happened here. This whole bill has come to us surrounded by a storm cloud of misinformation, outright lies, carefully contrived innuendo, hysterical rumour and deliberate misrepresentation. The Government must take much blame for this—for the false starts on the bill, the lamentable lack of communication and the unclear information. But equally I believe that sections of the union movement seem to have been a bit careless with the truth—even perhaps setting out to frighten members about this bill instead of giving them whatever they understood of the facts and letting members work it out for themselves.

Even as late as yesterday afternoon I had a call from a union delegate—somebody known to me; a member of my party—who had watched the Labor Council broadcasts yesterday morning and was very concerned. The person still believed the American Medical Association table of maims was in the bill, that there would be no monitoring, and all the rest of it—things that I understood had been fixed. The person admitted that what had been heard could have been misunderstood, but I know this is an intelligent person. So what conclusion do we draw about the perception given of the agreement reached between the Government and the Labor Council on Monday? Even as late as last night during debate in this Chamber some members were repeating concerns that I understood had been addressed, according to a memo from the Labor Council. There have been some astonishing misrepresentations during this debate. Even today emails continued with the same stories that I understood had been put to rest.

It is no wonder that there was a blockade last week. It was conceived in fear, born in confusion and raised in anger. But it was doomed to fail. No government can be seen to capitulate under such pressure. Otherwise it abdicates its right to govern. The Hon. Richard Jones said last night that the blockade was the biggest since 50,000 people turned out to protest against Dr Terry Metherell's education changes. That is not true. In June 1996 87,000 people packed Macquarie Street to protest against John Howard's incoming gun laws. One week later to the day the Government introduce those laws in a Saturday sitting of Federal Parliament, with the full support of the Opposition. The moral is that mobs are never likely to change the mind of any government worthy of the name. But demonstrators never learn that.

I have to say that I have been absolutely appalled by the media release I have been shown which states that the Greens have offered to negotiate with the Government and the Opposition to prevent this House having to sit next week because the Greens have 118 amendments foreshadowed. I absolutely support the right of the Greens to introduce whatever amendments they want but I do not think that they should be used as a lever to blackmail the Government into doing what the Greens require. That is not the way parliamentary democracy and parliamentary debate should work. My position was that I would not support the bill in its original form. Version No. 2 improved on that original form, particularly by omitting the table of maims. I waited anxiously over last weekend to see what further changes would flow from the meeting of the Labor Council and the Government on Monday.

John Robertson of the Labor Council tells me that the Labor Council is still unhappy with the bill but that he feels they have taken the matter as far as they can go. So now I believe cautiously and, in some areas, pretty reluctantly that I can support the bill if—and it is a big if—the very small number of amendments that I will also support are carried to make what I believe to be necessary improvements. I trust that the Opposition's amendments will be moved in good faith and not in an attempt to score paltry political points, as happened during last week's blockade of Parliament. One thing that is clear through the miasma of misinformation and confusion is that the WorkCover scheme needs to be fixed urgently. So on that basis alone perhaps the bill must be supported. It is a crucially important moment. But it is a hell of a way to bring in a bill is important is this.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.18 p.m.]: I am afraid I will not speak favourably on the bill. My background since the early 1980s has been in workers compensation, and I have seen the incredible misery under the present system. I do not believe that the bill as brought in will address the very real problems that exist. The problems are in the management of WorkCover, in claims management. I could tell many stories. I have a folder full of letters so thick that I did not bring it down to the Chamber. Some examples have been quoted already. I will refer to one case. Only the week before last I saw a woman, Susannah, who was a cleaner. She is about 52 years old—I am not sure of her exact age—but she was born with a slight wrist anomaly. She has been an energetic cleaner, working hard all her working life. She came to me about two years ago with a very tender wrist. She said, "I have been working hard lately and it is very sore." It was quite tender. I thought it may have been a case of RSI—I know that it is not fashionable to call it that these days—or overuse syndrome. She had a slightly reduced range of movement. This is unusual even allowing for the normal difference in the range of movements. I sent her off for an X-ray. It showed an anomaly with one bone longer than the other and a gross amount of arthritis.

Susannah had been working two jobs, 20 hours a week in each, so she had two insurers. She had that added problem—which involves an increasing number of casual employees and, ultimately, insurers—of neither employer being totally responsible for her injury. Her wrist was very difficult to treat. She had quite a good marriage and she told her husband that she could not work because her wrist was too sore. One insurer, who saw the X-ray report that showed a slight anomaly in the wrist, dropped her case without paying one cent. Another employer wanted to pay for only 20 hours a week, and that employer has since dropped out and refused to pay. Susannah is extremely depressed. She underwent unsuccessful surgery, and the wrist remained weak and painful. She consulted another doctor for a wrist fusion, a procedure I thought might lessen the pain even if it would not make the wrist more functional. At that time she was a Medicare patient. Doctors are considerably less interested in a compensation patient with Medicare because they know they will be challenged by a Queen's Counsel, dragged before a court and have their practice disrupted for some time.

Susannah went to the clinic and was seen by a junior person, who had a particular problem, and no progress was made. Whether progress could have been made is another story. Susannah's case is difficult. I was not able to fix her wrist, nor was one of the best hand surgeons in Sydney. A second opinion was sought and, dare I say, it was somewhat dubious. She became even more depressed when her compensation ceased. She was relying on her husband's income, and he was reaching retirement age. She became suicidal and recently was admitted to hospital. Her family is supporting her and she is rallying on. Although she had a congenital problem in her wrist, she went to work. The old eggshell skull principle was that employers took on employees as they found them. She had worked long and hard until her mid-fifties, so the wrist had not prevented her from working. The doctors decided that because she had a congenital problem her injury was only partly work related and, therefore, she was deemed to fall below the threshold although she could barely use her right hand. The system does not work very well, particularly if there are multiple insurers. Medical treatment does not always work and this legislation will make no difference to that.

In the Minister's second reading speech he said that he may do something about psychological injuries, although that is not provided in the bill. I propose to move amendments to cater for that. Armed hold-ups sometimes result in post-traumatic stress on the victim and that is generally managed by psychologists, who do not get a guernsey in the bill. The American Medical Association guidelines do not offer much assistance; the Australian Psychological Society has better guidelines for quantifying final losses for psychological injury. I propose to move amendments to fix that situation, but I do not know whether the Government will accept them. Other diseases involve chemical sensitivity and they are difficult to quantify. Generally, the establishment maintains that those diseases do not exist. However, I have treated a number of patients with related symptoms and I accept their stories. Under the guidelines they will probably receive no benefits because they do not reach the threshold.

Management delay is another problem. I will repeat a story I told recently—it has to be told. Injured workers would come to me directly from their employer, because my practice included a first-aid service. I had a good relationship with management and understood the jobs that the workers were doing. I was able to negotiate what tasks injured workers could realistically do within the workshop. A couple of weeks ago Dr Hassan gave evidence to a parliamentary committee of the successful practice in country New South Wales. The employers, the unions, the injured workers and the rehabilitation workers sang his praises. He had not lined them all up, but they told of their successful working relationships and praised him for those interlinks in a non-confrontational way. The links between doctors and the system are critical. Within the framework some workers had injured their back and had pain down their legs, which indicated sciatica. I sent them for a CAT scan to a nearby premises. Within an hour of their consulting me they had obtained a CAT scan, I would have diagnosed them and referred them to a neurosurgeon, who would then see them within a couple of days.

The system worked very well. That same day I would write a letter to the insurance company and ask the patient to return in two weeks, on the assumption that he or she would have seen the neurosurgeon and booked the hospital, and I had to merely check the patient's progress. In almost every case when I rang the insurance company two weeks later the insurance company said that it had not received my letter, notwithstanding that every letter I have ever sent in Sydney got to its destination overnight or close to it. I would routinely make an appointment to see the injured worker 21 days after the accident. But every time I rang an insurance company to ask who was managing the case I was told that the insurance company had received my letter only that day and had not made a decision about the surgery I had recommended. The insurance company never conceded that the surgery was necessary, or that the scan was three weeks old, or that the worker had seen a neurosurgeon a couple of days after seeing me. Presumably, the neurosurgeon's letter had not yet been opened either.

When the decision was finally made—more than three weeks later—and communicated to the patient, about four weeks had elapsed. It took four weeks to get permission to do special scans or to perform surgery. If

anything else was required, that would take another four weeks—four weeks for every encounter with an insurance company. I recently attended a dinner at the Wentworth Hotel—all the men were dressed in monkey suits. I sat next to an insurance manager. I asked him why that happened, and he replied that it was WorkCover's fault. I asked how him to explain and he said that he was paid the same to reply to letters within one day or four weeks. He said that they get the money, invest it and do the work later. That is the basis of his contract with WorkCover. Previously I had asked the former Attorney General, Jeff Shaw, about the nature of those contracts. I pointed out that if the insurance companies were going into profit maximisation—and the insurance manager had assured me that that was what he was expected to do as a duty to the shareholders without regard to any injured people lying in agony—this was a problem.

That management problem causes people to take a lot more time of work, apart from the suffering, and causes the institutional thinking of "I will never get better. I am in a very bad situation." There are many examples of grassroots mismanagement in WorkCover. I used to ring the insurance companies to ask who was managing a case so I could obtain a decision. I always rang from my office when the patient was with me so that the patient would know that I was doing everything above board and could hear at least my half of the conversation. When I rang the insurance companies I had to listen to the options before deciding whether to press button one, button two, et cetera, and then listen to the music until someone answered. I would not have done that had the insurance company not been paying for my time. I was often told that a different person was now handling the case, and it was difficult to make contact—of course it would be: they are managers. When I was at the Water Board the computers calculated when it was economic to pay out people. The probability of a person going back to work after a certain injury and being off work for a certain time was low, based on the average of people with that diagnosis. It was management by computer.

It was management by contract with respect to time and management by computer having regard to how much money was to be spent on rehabilitation. Of course, rehabilitation was something of a lurk because the insurance companies owned the rehabilitation providers, who for \$150 an hour—it might be more now—would attend the workplace using their own cars, charge for travelling time, to monitor the rehabilitation. I might have suggested sending a worker to a particular job, but then the insurance companies would send the worker to rehabilitation where treatment was repeated by people who did not have my contacts, and my work was ignored. The company was owned by the same insurance company that managed the claim, so the \$150 an hour went back to it. It was not responsible for the cost of the claim; WorkCover was, and as a result rehabilitation costs blew out, and that resulted in legislative changes. Meanwhile, the occupational therapists who conducted the assessments were receiving only \$27 an hour, using their own vehicles and writing reports in their own time. WorkCover was supposedly supervising and, I understand, giving out contracts for the management.

The real objective of WorkCover should be to help workers, yet it is regarded as either a financial problem or a huge black hole that is insoluble. It seeks to catch the "bludgers" who are causing the blow-outs; that is, workers pretending to have injuries. The bludger mentality exists in the high towers of city buildings owned by insurance companies. The insurance companies use ridiculous models of computers, delayed times and tactics to force negotiation with the aim to discontinue benefits. Those insurance companies have a high turnover of clerical officers because they constantly face tirades of abuse from frustrated and outraged people whose lives have been destroyed by this inefficiency. When I put this fact to my insurance manager he said that the staff were paid by the process not by the results, which is why expensive clerks are not employed to do the job. Clerks are poorly paid, they are constantly abused, they have ridiculous protocols to follow, they litigate many cases and, because of the rapid turnover, there is little expertise in the management of the system. That is the nub of the problem. Injured workers suffer financially, emotionally and physically because of delays. The incidence of broken marriage is high. This is a human tragedy, and the codswallop sprouted by some members is depressing and makes me very angry. It is extremely discouraging that they have the same vote, but they have learnt nothing.

Why has the bill been introduced? There is said to be a financial problem or a problem with the unions. There may be a degree of anxiety about the State's credit rating, because no-one seems to know the extent of the deficit. Perhaps there is pressure from the big end of town or it maybe panic over the alleged actuarial deficit. The Minister says there are problems, yet I have been told that the Minister has not adequately consulted with the Law Society of New South Wales, the New South Wales Bar Association, Injuries Australia, the Australian Psychological Society, the Australian Association of Surgeons, the Physiotherapists Association and the Self-Insurers Association. Surely the first to be consulted should have been the Self-Insurers Association, which is managing its scheme for a lot less than it costs to manage WorkCover, and without a deficit.

The Hon. John Della Bosca: We are looking after the workers.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I would suggest that those who are with the Self-Insurers Association are much happier than those I have seen in my private practice. The people in Sydney Water, which is managed by Mark Hanna, are a lot better off than those I see in my private practice in Burwood. And this is being achieved with 60 per cent of the premiums. I have suggested that the Minister meet him. I brought him to meet the Hon. Eddie Obeid when he had carriage of the matter, but the Hon. John Della Bosca has not taken up my offer. He said in his second reading speech that the disputed major claims constitute 45 per cent of all claims. That is WorkCover's fault, not the fault of the lawyers; WorkCover disputes the claims. The legal costs are high because of the disputes. It is as silly as kicking a dog and criticising it for barking. A person who starts a fight can hardly expect lawyers not to defend those who are not paid, who are underpaid and so on, because of the incompetence of WorkCover.

The Minister said that the deficit is increasing by \$1 million a day. According to the actuarial figures WorkCover had a surplus of \$365 million, which would suggest that the situation is improving by \$1 million a day. So the question arises whether there is a crisis. The Minister also said in his second reading speech that the accumulated deficit as at 31 December 2000 was \$2,180 million and as at 30 June 2000 it was said to be \$1,639 million; in other words, it went down by \$541 million, and if that amount is divided by 180 days, what is revealed is a daily reduction of \$3 million.

The Hon. John Della Bosca: They are the actuarial figures.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is my point. The figure for the deficit was much the same in the 1998, 1999 and 2000 reports, using the same discount rate of 6 per cent—that is, the deficit was stable at about \$1.6 billion. It is interesting that on 6 December 2000 Rodney McGuinness, Assistant General Manager of WorkCover, said that the deficit was down to \$1.6 billion and stable. The Minister said it was \$2.2 billion in March this year. I ask the Minister: What is the discount rate for the deficit? The actuarial calculations are massively influenced by the discount rate. As it compounds over many years, even a small change in the discount rate multiplies the calculation of the liabilities many times. The basis of the actuarial calculation has not been provided because the Minister wanted a high figure in order to make these changes. I understand that the rate used to calculate the deficit was 6 per cent, which is about 1.5 per cent above the risk-free rate. If the Government had used the lower rate of 4.5 per cent, the accumulated deficit would be much higher. The Minister needs to answer that question.

The Minister has been disingenuous. He produced a pie chart and figures to show that the situation was in crisis and then he blamed the lawyers. Let us compare the Minister's figures with the breakdown of payments in the WorkCover annual report 1999-2000—which is the latest report available. The difference is quite extraordinary. According to WorkCover, weekly benefits totalled 26.3 per cent, while in the Minister's figures they were 17 per cent. Commutations were 18.6 per cent in the annual report but 13 per cent in the Minister's figures. WorkCover said that permanent impairment was 10 per cent while the Minister said it was 7 per cent. The figures for death were 0.9 per cent and 1 per cent respectively; common-law claims, 12.5 per cent and 17 per cent; rehab 2.3 per cent and 2 per cent; doctors, 10.4 per cent and 11 per cent—at least those figures are reasonably consistent—and investigations, 4.9 per cent and 5 per cent respectively. WorkCover said that lawyers payments were at 11.2 per cent while the Minister cited 17 per cent. The Minister reduced the percentage for weekly benefits from 26.3 per cent to 17 per cent and increased the lawyers figure from 11.2 per cent to 17 per cent and said, "Look, the same amount is being spent on lawyers and weekly benefits."

I have some other interesting figures pertaining to lawyers. The weekly benefits percentages have been consistent for many years. Let us compare WorkCover annual reports from 30 June 1991 to 30 June 1999 and examine legal payments as a percentage of the total claim payments in each year under the New South Wales WorkCover scheme. Legal payments totalled 10.2 per cent in 1991 and were 11.2 per cent as at 30 June 1999. They peaked at 12.7 per cent in 1996 and dropped to 10.7 per cent in 1997. The figures remained close to 11 per cent for almost a decade. Yet the Minister has cited a magical 17 per cent. It is scare tactics: he is blaming the lawyers. The Minister has not explained how the legal costs are divided between plaintiff lawyers and defendant lawyers. Plaintiff lawyers' fees are capped at a certain rate while defendant lawyers can presumably amortise some of their costs.

Everyone agrees that the extraordinarily high figure for investigations is also interesting. It appears that 5 per cent of all money—which is almost half the percentages for medical treatment and legal fees—is spent on running around photographing people on the assumption that fraud is being perpetrated. I wonder how many of those people are convicted of fraud. How many successful prosecutions have there been? How much money is spent on investigating people who have not paid their premiums as opposed to those who are allegedly injured? The general manager of WorkCover, Ms Kate McKenzie, believes most cheats will be exposed. She says:

The construction industry is one of the first to be comprehensively targeted. Using new technology WorkCover can now confidently claim cheats will no longer be able to hide in the system. The new compliance improvement branch has assembled a team of specialist investigators bringing decades of experience to the investigation of criminal activity. These investigators are supported by a team of highly qualified data analysts who use advanced computer technology to analyse large and complex data bases. WorkCover has equipped this team with software that enables investigators to find needles in a haystack within the workers compensation system.

Manager of the compliance improvement branch, Ermyl Sip, said monthly cheats lists would be produced for investigators on likely fraudulent companies. He said, "We used to get a \$1.30 return for every dollar we spent in non-compliance. Our rate is now up to 9 per cent for every dollar spent and it could go much higher with the new technology available.

WorkCover has admitted that it can use a little technology to catch people who have not been paying their premiums—and the ratio is 9:1. In my experience, workers do not stay on compensation a minute longer than they have to. The assumption that workers will cheat because there is a big pot of money at the end of the rainbow is extremely flawed and reveals absolutely no understanding of human nature. People in receipt of workers compensation lose friends whom they no longer meet at the pub after work. Social life and self-esteem are tied closely to work, as is one's role as a breadwinner. I have never known anyone to have boundless faith in the legal system. Everyone I know avoids lawyers. Why would people pretend to be ill so that the lawyers would give them a huge pot of money? No-one I know would have any confidence that that money would arrive.

The idea that workers compensation cheats exist and must be pursued is fatuous. Yet nails are driven into people's tyres so that they can be photographed changing that tyre or people are followed to the supermarket where there is an opportunity to photograph them picking up their baby or their shopping. What choice do the sufferers of repetitive strain injury have? They must lift their child, do their shopping or change a tyre regardless of whether their arms hurt. Were any prosecutions pursued for the crime of puncturing car tyres?

There are many questions about the extent of the problem. The Minister is guilty of lack of consultation, and the figures used to attack lawyers are dodgy at best. The fact that WorkCover controls the legal costs has been overlooked totally, as the Hon. John Tingle said. WorkCover has been managed incompetently. During my time in this place I have made contact with some whistleblowers. This is a valuable group of people, most of whom have sacrificed their careers in order to tell the truth about things that do not work well in the bureaucracy. Robert Taylor is an actuary who tried to draw attention to the WorkCover deficit when the situation was supposedly rosy. He was much criticised by WorkCover for his actions. I will not go into the details of his personal situation because that will not contribute to this debate.

Mr Taylor has facts and figures that relate to WorkCover and the problems that arose. According to Mr Taylor, in mid-1996 when WorkCover mishandled the tender for services from consulting actuaries, which was worth about \$600,000 per annum, it reclassified the consultants as contractors who were thus subject to direction from non-actuarial WorkCover officers. Such practices may give rise to allegations of corrupt conduct. They certainly contribute to an explanation of the inept and improper financial management of the New South Wales workers compensation insurance scheme and the huge losses that led to the deficit which, according to the Minister, currently totals \$2,200 million. Mr Taylor was upset by the lack of respect paid within WorkCover to protected disclosures. He was prompted to blow the whistle by a document entitled "The way we do things around here", which talked about probity within the organisation.

The story about WorkCover's incompetence is quite lengthy and I will not attempt to cover it all. The industry tariff schedule started with the 1926 workers compensation legislation and has not been properly updated since except through ad hoc tariff reviews of several industries every year. The tariff industry codes, which basically determine the premiums, have failed to incorporate many changes. Interestingly, when there were suggestions to privatise WorkCover, these codes were reviewed and the question arose as to what would happen to the tariff ratings. Those ratings were compared to the ANZSIC industry ratings, and the expected percentage changes were tabulated. For example, the rate for libraries decreased by 86.45 per cent, the number of private households employing staff decreased by 61.46 per cent, oil and gas decreased by 59 per cent, gold ore mining decreased by 54 per cent and cleaning services decreased by 54.9 per cent.

At the other end of the scale where, in order to obtain parity, tariffs had to be increased, tobacco products wholesaling should have been increased by 105 per cent—it was underpaying that much—museums increased by 23 per cent, fire brigade services increased by 245 per cent, and lotteries increased by a massive 412 per cent. They were not getting the premiums right, and that made huge differences to the money being received and the equity within the system, and that in turn resulted in cross-subsidies having to be addressed.

Bob Taylor had considerable difficulty getting a handle on what was going on and was unhappy about his freedom of information requests. Of course, the point at which covering up becomes corruption depends on

definition. As part of the culture of secrecy with what is after all public money, he cites the comment from the Auditor-General's office that after a further loss of \$885.7 million in the year to 30 June 1998 the total deficiency in the reserves of WorkCover's statutory funds as at 30 June 1998 was \$1.6745 million. At page 400 of the 1998 New South Wales Auditor-General's Report to Parliament, Volume 3, Part 2, the following appeared:

Given the size of this deficiency, it is difficult to believe the whole-of-government financial statements fully meet the information needs of users.

I have just touched on the litany of mismanagement by WorkCover at a practical level, concerning the poor old injured workers, and at a financial level.

The Hon. Ian Macdonald: Can we take this as a submission that will have to be introduced at the end of the year relating to scheme management?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If the honourable member is going to have me make submissions, he will have to sit down and discuss the matter sensibly with me—something he has refused to do so far. We have what amounts to a quick fix at a political level. If the problem is with management, it should be addressed at that level; we should not simply say that we will produce the bill and we do not have to do very much about management. As an analogy: If One.Tel is going down the tube to the tune of \$2 billion, it is a bit like the Government going to Jodee Rich and saying, "Jodee, this thing's \$2 billion down the tubes. What should we do?" and Jodee Rich saying, "Well, if you cut the benefits to all my customers and manage to force them to still stay there, I reckon we could trade out of this problem," and the Government saying, "Beauty, Jodee, we will pass the law to do that thing, just for you." That is what is happening here. Rather than address the problem at its source the Government has cut the benefits, forcing it onto the customer base—the poor old injured workers.

Interestingly, the green slip report, which examines an analogous scheme for motor accidents, so far has not been mentioned in this debate. Obviously, if by using the same system we are achieving the same incredible profits as victims fail to meet their thresholds, the huge profits will be kept by the insurers. That means that WorkCover, regardless of how it manages the situation, will make a fortune and make up its deficit basically by not paying injured people. It is interesting that no mention has been made of changes to the Occupational Health and Safety Act. The best way to manage accidents is to make sure they do not happen. It is all about prevention, which is what the Occupational Health and Safety Act was all about. I am disappointed that amendments to the Occupational Health and Safety Act have not been included among the many poorly researched workers compensation amendments that have been introduced one after the other.

The Opposition has put forward its criticism, but amidst the innovative and entertaining rhetoric of the Hon. Charlie Lynn one could detect an Opposition backdown. The Opposition is not really going to stand up against this proposal, and that is very disappointing. I am disappointed also about the poorly informed contributions of a number of my crossbench colleagues. Basically this bill seeks to remove workers rights. A shorter period of time for decision making is a small concession; I am not sure that making decisions quickly is the solution.

Critical to this bill are the American Medical Association guidelines, which I believe are conceptually and absolutely flawed. There is misplaced nationalism associated with the notion that we simply take the American guidelines and, via a working party, Australianise them. The concept that someone can make an anatomical examination of someone else and determine their fitness to work is basically flawed. Pain cannot be quantified, but pain is a major element in whether an injured worker can work. The concept is flawed yet that is the centrepiece of this bill. I explained this during debate on the motor accidents legislation and suggested an alternative mechanism of quantifying injury as a basis for an intelligent discussion. The 70-odd amendments that I proposed in Committee on the motor accidents legislation received no support from the Government. I have a number of amendments to move with regard to this legislation, but I am not hopeful of getting support.

The lack of reference in this bill to psychological injury also presents a problem. As I said earlier, the Australian Psychological Society guidelines for the assessment of psychological damage need to be considered. The problems in the bill are delays; the non-payment of premiums; poor prevention; the fact that the bill is a shell; the fact that the bill does not deal with the problem of multiple employers, which is increasing with capitalisation of the work force; and of course the American Medical Association guidelines, which are fundamentally flawed. Another aspect that has not been mentioned during debate is the danger to doctors who follow those guidelines. If a doctor examines a patient and decides that there is a certain percentage impairment that results in either the receipt of a fairly derisory sum or nothing at all, there may be some hostility towards the doctor.

Imagine a doctor informing a person who has a \$300,000 mortgage on the truck, "Mate, you are unemployable as of tomorrow. You are unfit to hold a truck driver's licence, and you are going to have a huge problem with debt." The person would say, "You better give me that truck licence, mate, or you'll be dead." Such threats have been made, and orthopaedic surgeons have been killed because of assessments they have made. It is my opinion that doctors conducting these examinations would be at risk because the guidelines will not be conducive to patient happiness. People will not believe they have had a fair go, which is what they want, particularly when they are in an extremely vulnerable situation.

A perfect system needs to be designed. The tragedy of the method used in the political system is that people look to see what is working and then cobble something together; they do not assess the elements qualitatively and scientifically. It might be worth looking at what elements make a good scheme. Obviously, a good scheme would be one that has few claims and good preventive programs. It would have to involve early recognition of accidents, feedback into prevention from an analysis of each accident, good co-operation between doctors, employers and workers, good and prompt treatment, maintenance of wages, and a good assessment of a worker's rehabilitation.

Jobs in a workplace need to be divided up and analysed to determine which tasks can be done by partially fit workers. Often employers do not have that sort of information. No-one has bothered to investigate whether an injured worker can do half a job and someone else can do the other half. Tasks could be reorganised and an injured worker could continue to make a useful contribution. Rehabilitation is necessary to enable injured workers to be placed in jobs. Injured workers who are told that they will never get to more than a certain level of physical fitness need to be analysed to determine their skills. Money should be put into retraining such workers, rather than wasting it. Disputes must be resolved quickly, equitably and cheaply.

I had a patient who was unable to continue with his previous job, but he was quite intelligent. I said to his employer, "This man can work if you get him a different job. Rather than putting money into yet another rehabilitation assessment, why don't you put it into finding him a job?" The insurance clerk on the other end of the phone said, "I am not empowered to do that. I can order rehab, but I can't order retraining; that's not within my guidelines." That is an example of the wooden thinking we are dealing with.

To achieve a more perfect system we certainly need occupational health and safety legislation to improve injury prevention. The availability to employees of claims forms will assist to reduce the number of employers who do not pay their premiums. Doctors must know workplaces and liaise with employers. We need quick decisions on treatment with a maximum amount of self-insurance so that employers have a vested interest in getting the injured worker back to work.

Only big claims should be reinsured. It may well be that employers manage their own workers compensation, and only the more expensive claims should be handed on. A panel of assessors should look at what patients can do and their potential. Perhaps tribunals with salaried advocates and statistics should be used if it is genuinely shown that inefficiencies and costs within the legal system are the problem. However, I have doubts about that, particularly in view of evidence that the Workers Compensation Court is more efficient than most courts. However, that is not saying a hell of a lot.

Whether the commission as provided for in the legislation is a good idea remains to be seen. The fact that the legislation does not allow the separation of the legal system and the political system is a big worry. If the commission is a trial to determine whether the efficiency and effectiveness of the legal system can be improved, that should be stated at the outset, and the commission should be set up as a properly conducted trial rather than what looks like a mickey mouse court set up at the whim of the Minister.

I will move a number of amendments, supported by the Law Society, to give effect to matters I have raised in my speech. Panel assessments, which would replace the American Medical Association guidelines, would replace impairment assessment and expert case assessment. The panel would take into account not only the medical diagnosis and prognosis but also the degree of disability, the potential for retraining and the real employment possibilities, which are important when addressing loss.

The expert case assessment team would consist of a specialist medical practitioner from a discipline appropriate to the injured person's problem, assuming the problem involved only one area, or a psychologist, if the injured person had post-traumatic stress or other stress-related problems; a person who specialises in rehabilitation and retraining, who could come from a number of backgrounds, including medical, physiotherapy and occupational therapy; and a person with expertise in employment and placement, and remuneration of injured and disabled persons.

When the panel becomes aware of an injured person's talent, it could find a job in a field completely different to what the person was doing. If the injured person has a talent, but cannot work manually, the person may be able to use other skills if a bit of lateral thinking were used rather than saying, "Can he go back to his previous employer?" If there were potential for future earnings, that should affect the level of long-term compensation.

A joint report would focus on the injured person in a framework that the assessing body would take into account. Rather than a number of different reports, there would be one format from the case assessment team, which could then be taken into account by the commission, the judge, or on appeal. In other words we would say, "Yes, he has these talents. He cannot do this, but he can do that." There would be a future plan for the life of the injured person. I will move a number of amendments along those lines.

Debate in this Chamber has focused on the need for further inquiries and investigations. I suggest the creation of a workers compensation ombudsman, which could be under the auspices of the New South Wales Ombudsman, but funded separately by WorkCover and appointed for individual advocacy to determine whether injured persons have been well treated. The ombudsman would also prepare in a qualitative fashion a report that identifies problems within the scheme from the point of view of the employee. That report would provide hard data about what happened, and form the basis for future discussions.

It would then be unnecessary for us to go through this endless round of anecdotes that seem to lead to decisions in this House. We would have a qualitative as well as a quantitative report of problems within the scheme. The cost of collating such a report would be far less than the cost of a series of inquiries and expensive experiments. It is also a far better way of doing things. Injuries Australia should be funded as a peak organisation for injured workers.

Reverend the Hon. Fred Nile: Who funds them now?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is self-funded now.

Reverend the Hon. Fred Nile: Who pays for the TV ads?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I do not know who pays for the TV ads. Good luck to Injuries Australia if it can get some money together to put the ads together. Someone certainly needs to speak up for injured workers. After his speech last night, Reverend the Hon. Fred Nile cannot be trusted to speak up for them. The Minister said in this House that Injuries Australia does not have any status, in the sense that he regards unions as the representatives of injured workers. That is all very well. It is true that Injuries Australia receives no Government funding and is trying to run on money from injured workers who, by definition, are a very impecunious group.

Nevertheless, we must face the fact that 75 per cent of workers are not in unions and, therefore, need a body to represent them. If someone can come up with a better suggestion than Injuries Australia I would be glad to hear it. But one has to look at the difficulties the Labor Council has had because it is ideologically and personally tied to the Labor Party, which, historically, represented workers. Whether it does today is quite another question. The Labor Council has had other difficulties dealing with this problem. Perhaps we should look at the resolution of 26 June. I will read it onto the record:

That this meeting of Labor Council affiliates endorses the report given by the Secretary on discussions held with the Premier and other Government Ministers on the Workers Compensation Reform Bill.

The meeting acknowledges that in those discussions a number of issues have been addressed by the Premier, which improve the Bill that was introduced into the Parliament on Tuesday 18th June 2001.

In acknowledging the improvement to the Bill, the Labor Council and affiliates are still opposed to the Bill and the impact of the legislation on injured workers. Labor Council will continue to press the Government and make submissions to the Common Law Inquiry to ensure that the Government adheres to its commitment that injured workers will not be disadvantaged.

The Bill currently before the Parliament is the first stage of the Government's ongoing reform to the Workers Compensation system. This meeting vows to continue the campaign to ensure injured workers maintain their entitlements to fair and just compensation. As part of the campaign we will be calling on the Government to address the issues of employer non-compliance, occupational health and safety and injury management.

The critical issues of thresholds, formulae and Common Law are still outstanding and will be the focus of a targeted campaign of comprehensive submissions to the Common Law Inquiry, lobbying politicians, educating workers and appropriate forms of action to encourage broad community support for the Labor Council position.

Until all outstanding issues are adequately addressed, the Labor Council is not prepared to support the Government reform package.

As a means of monitoring effects of the Bill Labor Council establish a Committee to assess the impact of the new laws and present our findings to the Minister who will also be reviewing the implementation and impact of the legislation.

Tomorrow's Sky Channel presentation will inform all members of Labor Council's ongoing campaign of opposition to the Government's Workers Compensation reform agenda. Labor Council supports any action unions consider appropriate to maximise attendance at that meeting.

The Labor Council calls on the Government to address the outstanding issues which impact upon workers through proper consultation with the trade union movement.

That illustrates that the trade union movement is very, very unhappy about what is going on, but has not actually said, "We call on you to oppose the bill outright." They want to say that this is the first stage of an ongoing process. They want input into parts of the legislation that are still negotiable. Effectively, they are acknowledging that the bill is a shell and that its passage is inevitable. Injuries Australia on the other hand has said, "For God's sake, oppose the bill. It is giving us a very bad deal." That is a clearer statement. That group's focus is much clearer. It is on the side of the injured workers. It does not have to worry about whether demonstrations blockading Parliament House will affect the re-election chances of the Beazley Government. That is not that group's problem.

I believe there should be a peak body that speaks for injured workers. The other group of amendments deals with the fact that all WorkCover claim forms must be in a standard format and be available in post offices and doctors' surgeries, as they are in Victoria. It has been suggested that this would increase the rate of claims. I do not believe that having forms available will mean that people will race to fill them out. According to the Construction, Forestry, Mining and Energy Union [CFMEU] many people in the building industry are underinsured, either because they do not admit to the number of employees they have or they reclassify those employees into lower-risk occupations so that their premiums are lower.

The fact that premiums are paid annually, many jobs are for less than 12 months, and the work force is variable naturally, means that even the most genuine employer will wonder what their mean cost for the year will be and will be reluctant to declare other than the lowest estimate of what their work force would be, for fear that they would have to pay a higher premium than necessary. Collecting the names and times worked and so on would be time consuming, but not impossible in database management systems, given that this information is presumably entered into payroll systems.

The idea of having the form completed by the worker and sent either directly to WorkCover, or to the insurer of the employer, without having to communicate with each other, has the advantage that someone who is not paying premiums or who is underpaying premiums faces the risk that the form will go not to the employer—where, I am afraid, many of them are lost—but to someone else who may then check up on what has been going on. Compliance will be much higher at negligible cost. That idea came from Injuries Australia, which understands what happens if WorkCover is underfunded. That group generally represents the injured worker. It brought that idea from Victoria. I do not believe that the union movement made that suggestion at any stage.

I suggest that doctors should identify the direct employer of the injured worker and liaise with that employer at the first visit, giving some idea of how long that person is likely to be off work and how rehabilitation should be facilitated. It was certainly always my policy to do that with the patient sitting in front of me so that the he or she could see there was no funny business going on; nothing two-faced about it; that the patient's interests were being looked after. I believe that co-operation in rehabilitation and treatment is absolutely critical. If you want to manage things well, you start managing them at the bottom. This legislation is the antithesis of that approach.

The final amendment I propose is the inclusion of psychologists in the groups that may handle cases. They handle a lot of post-traumatic stress claims, which is a very significant injury in these days of bank hold-ups and when people are killed in accidents, and so on. It is very traumatic for those who observe it and they need a lot of help, mainly from psychologists. Cutting psychologists out of the bill and out of compensation is obviously most unfair. I hope the amendments I have foreshadowed, which go some way towards addressing a bill that is fundamentally flawed, will receive the support of honourable members. Without major changes I believe the bill has to be rejected. That is what I propose to do.

The Hon. DOUG MOPPETT [6.14 p.m.]: If it had been my intention to travel around the world during the break—which no doubt would have been to the great satisfaction of journalists on the *Daily*

Telegraph who write salacious articles—I certainly would have used workers compensation as a hallmark to signify to people in other parts of the world the advanced civilisation in which we live in Australia. In my opinion, the concept of a scheme whereby injured workers have their wages maintained for a period of time is wonderful. We need to recognise, of course, that after the first blush of enthusiasm for such a concept, it is necessary that its implementation follow the same high degree of excellence that the concept embarked upon.

I have heard many people describe the workers compensation scheme as a "right". For the sake of more precise definition, I would prefer to refer to it as an "entitlement" to link it with other work-related entitlements, because, essentially, the cost falls on the employer alone. If it were to be a right and we were to sustain in our society that it was a right—similar to the right that we acknowledge for a minimum level of income to sustain the necessities of life—then indeed that responsibility would fall back on the community more broadly.

But it falls entirely on the employer, except in the extreme case—which has never eventuated, but which we are perhaps contemplating now—where, through financial mismanagement, some catastrophic loss might fall upon the Government to remedy. We need to recognise that the burden that falls on employers to fulfil the entitlements of workers in this society of ours, of which I am so proud, are now manifold and they are burdensome. They extend beyond workers compensation to superannuation; to the provision of not only time to have a holiday, but paid holidays, and beyond that a 17½ per cent loading on that holiday so that it can be enjoyed, and any extra expenses that are beyond normal living expenses will be met.

We have sick leave, redundancy payments, protection of workers from the vicissitudes of business activity whereby businesses may fail or may alter their mode of operation and seek to reduce their employment. In those circumstances, the entitlements of workers are substantiated by statutes, but they are a very substantial cost on business. Some honourable members have spoken about the impact that that has on employment levels generally.

The day has gone entirely when somebody who is not highly skilled can be given just an odd job around the place, because, although wages paid to that person may not be great, the obligations that fall on the employer upon engaging that person are such that they act as a deterrent. That is a matter of some regret. It is an inevitable cost, I suppose, of such high expectations of our employers that we hold today. My family still operates in the pastoral industry. I was just looking at the gazetted and circulated list of premium rates that the Hon. Dr Brian Pezzutti has a copy of. The premium in that industry is 12 per cent of wages. We have a single permanent employee and many casuals.

The Hon. Ian Macdonald: There is a high injury record.

The Hon. DOUG MOPPETT: Yes, I will come to that. I will not dwell too long on superannuation because it is not germane to the subject at hand but we now have to pay superannuating of 8 per cent, which will soon increase to 9 per cent. I do not know whether that figure will continue to grow. During the time of the Hawke Labor Government the statutory superannuation system was sold to the public as a benefit in lieu of a wage rise. If I remember rightly, it was introduced at about 2 per cent. That was equivalent to about the size of the wage adjustment that was due. The trade union movement was prepared to forgo the wage rise in lieu of payment by employers into the superannuating scheme. But the rate has now grown to 8 per cent and will soon be 9 per cent. So those two items will add 21 per cent—one-fifth—to what an employer agrees to pay on the engagement of an employee.

I was challenged by the Hon. Ian Macdonald about the high claim rates in our industry. My experience, including the time when my two boys have been running our enterprise, is more than 40 years. In all that time we have made no claim. Despite that, we are bundled in with people who have made substantial claims. To a degree I accept that there has to be a pool out of which these costs are met. Claims history is a factor in calculating premiums but a low claims experience does not significantly ameliorate premiums. Workers compensation imposes substantial burdens. Although there has been argument around the table, it is now generally agreed that the present scheme has substantial unfunded liabilities. There may be some reason for doubting the precise figure of the unfunded liabilities—there has been enough discussion about what that actually means—but I am prepared to recognise that the position of the fund is of the order claimed. So something has to be done about our system of workers compensation.

I will repeat this because it is the guiding principle in what I have to say: I believe that workers compensation is a hallmark of the advanced civilisation in which we live. I would not countenance for a moment any move that jeopardises the overall security provided, albeit that people would argue that my solutions do not

provide security that is as generous as some would require. But I would be in to the last ditch with those who would fight to defend the destruction of the livelihoods of people injured at work through some unfortunate incident. There has been a lot of talk about stakeholders in this debate. I do not like the word. Originally the stakeholder was the person who held the money wagered, the disinterested party between two groups. It is now used to mean the interested parties. I have nominated two interested parties: the employers and employees.

We have come to realise that medical practitioners, lawyers, court officials and a whole heap of people who practise in this area are also interested parties. Their views are significant in this whole equation. But in the end we have to recognise that the public has an interest in these outcomes. They would regard it as part of the Australian way of life that there should be workers compensation. I am sure the general public would demand that the workers compensation scheme be properly run and that the scheme be solvent. But I dare say that if a public opinion poll were taken, a staggering number of people would hold no opinion about workers compensation. I suppose that is simply a reflection of the fortunate fact that it is not everybody's experience to be injured at work.

The vast majority of people go through their lifetime with only minor incidents interrupting their working life, most of which are not related to their work. That does not take away from the immense cost that falls on those who are injured. As the television and other media people refer to it, during the colour and movement of last Tuesday's events most people in the general public were not particularly perturbed. They were going about their business. As with many safety nets in life, people do not appreciate them until they have to call upon them or deal with a claim.

Agreement has been reached on vast areas in the debate, despite all the fulmination and posturing in the early stages. The range of comments in the House has extended from gentle persiflage to quite contumely articles. There have been all sorts of analogies, but I liken the scenes of last Tuesday to the scenes from *Les Misérables*, the wonderful story of Victor Hugo's and the musical, in which some people manned the barricades and other people slipped down through the drains to escape from conflict. It was understandable that passions would be aroused on an issue that is so significant to a wide range of citizens directly affected and those generally affected through the safety net concept. Overriding the whole matter, the saddest aspect is that the measures have been so long in formulation. The Government has been slow to move. It is hard to escape the conclusion that the Government has been in a total muddle ever since the difficulties in the scheme were identified. I am pleased to the extent that at least the Government has been shaken out of the reverie that had descended upon it and paralysed its movement.

Debate adjourned on motion by the Hon. Doug Moppett.

[The Acting-President (The Hon. Henry Tsang) left the chair at 6.29 p.m. The House resumed at 8.00 p.m.]

SYDNEY WATER CATCHMENT MANAGEMENT AMENDMENT BILL

Bill received and read a first time.

Motion by the Hon. Carmel Tebbutt agreed to:

That so much of the standing and sessional orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

SPECIAL ADJOURNMENT

Motion by the Hon. Carmel Tebbutt agreed to:

That this House at is rising today do adjourn until Friday 29 June 2001 at 10.00 a.m.

WORKERS COMPENSATION LEGISLATION AMENDMENT BILL (No 2)

Second Reading

Debate resumed from an earlier hour.

The Hon. DOUG MOPPETT [8.04 p.m.]: Before the dinner break I was talking about the difficulties that the Government found itself in, largely as a result of its tardiness and inactivity over many years in dealing

with a problem that is not of entirely recent origin. Essentially the basic drive of workers compensation is the maintenance of income into a household that might otherwise be adversely affected during the period of injury of the income earner. The workers compensation insurance scheme bears no resemblance to any other insurance scheme. People talk about workers compensation premiums, but it needs to be recognised that the amounts levied on employers are by way of contribution to a fund. At the present time that fund is managed by insurance companies, but it does not have the same elements of risk spreading across a broad range of subscribers that one normally expects of an insurance scheme.

Workers compensation insurance is different from house or car insurance as we know them, but the scheme is absolutely vital to the sense of security of the total work force. Problems have arisen largely from the concept of commutation. Difficulties arise when people believe that the impairment is such that it is advisable for them to seek a lump sum settlement rather than to continue with the benefits that would otherwise be provided for them. Earlier the Hon. Ian Cohen read from a letter written by a solicitor that referred to the range of claims generated by an individual's experience with the slipped disc or prolapsed disc syndrome. I was fascinated to hear the wide range of claims, including loss of sexual performance, difficulties in family life and all sorts of psychological problems.

I was fascinated because I am currently experiencing symptoms of sciatica. Like a lot of people from the bush, I have injured my back and I recently aggravated the injury. At present I am recovering from an episode similar to that referred to by the Hon. Dr Arthur Chesterfield-Evans, in which the sciatic nerve is damaged by the extrusion of the vertebral discs. I know how uncomfortable that is, and I can understand that in some cases it leads to a very great diminution in a person's capacity to perform work. When I was a child I was told that a neighbour had slipped a disc. People talked about that in hushed terms, as if he would never recover and that his working life had come to an end. As I said, I have been through that and there is no reason to assume that someone who suffers from that sort of injury cannot be rehabilitated. I am pleased that one of the objects of the bill is to try to bring about a climate that favours rehabilitation of workers rather than one that, in the pursuit of a maximum possible commutation, leaves the worker in the awkward position of being in the hands of lawyers who advise him how to present himself and how to behave.

Because of court delays often the most important aspect of rehabilitation and medical treatment is unduly delayed, and that is a problem. Some honourable members spoke about three objectives that they hold dear—lower contributions, higher benefits for workers, and no interference or participation by the legal and medical profession in this area. Good luck to those who have that fond aspiration! I believe that in the present circumstances attaining those three goals simultaneously is not possible. I am reminded of an old Russian saying that those who set out to hunt three hares simultaneously usually come home with nothing. We face that grave risk if we seek solutions to fulfil all three of those objectives, because it will be a Sisyphean task. The history of recent changes to workers compensation would bear that out.

I have been fascinated by the reaction of the Labor Party to this current range of reforms because in many ways they are a repeat of the Unsworth reforms of 1987. It is remarkable that those reforms were passed by the Unsworth Government. At that time the major opponent was not the trade union movement—although I am sure there was heated discussion at the time—but the legal profession, which conducted the public campaign. However, it did not get to the point of blockading Parliament House in an attempt to alter the course of the Unsworth Government. There has been considerable debate about fraud on both sides. I would agree with those who think that in the great scheme of things it is not as significant as many would say. I do not think that the crisis we are facing—and I believe it is a crisis—would be averted if the two classes of fraud alleged were eliminated. I read an article in the newspaper this morning about people claiming that the GST would clean up the black market and the cash economy. They would be the people I would approach if I wanted to sell some shares in the Sydney Harbour Bridge!

It has been alleged that on occasions employers are fraudulent, although it is not suggested that it is a widespread practice. Some employers understate their wages and do so deliberately to try to avoid their responsibility. I remind honourable members that one must submit a wages declaration to the relevant company. Although an indication may be given at the beginning of the process when an offer is made for renewal, before the levy is finally determined a declaration must be submitted that is attested to by a chartered accountant. I would be naive to suggest that there are not people who understate their wages, but we should acknowledge the system of policing—the declaration of wages. By and large employers are willing and are regulated so that basically the same wages are declared as those on the income tax form in the normal course of bookkeeping. Therefore, that argument does not offer a substantial solution to the problem. Another suggestion was that employees tend to make fraudulent claims and various professions are in cahoots together. That will always be hard to quantify and it is not the silver bullet that will change everything.

I will relate a personal experience. About 14 to 15 years ago I undertook wool pressing on my property. It is an arduous job and the most costly in the shearing shed. Therefore, I decided the best saving I could make in a difficult time was to undertake to do the pressing. Being not as experienced as I should have been, late in the shearing I operated the door release improperly. It flew open and gave me a severe rap on my hand, which rendered my hand almost senseless. Although I rarely consulted a general practitioner in those days, I did so on that occasion. The doctor looked at my hand and said that it was not too bad. However, his first question was, "How long do you want off?" I am not suggesting he was immoral, but he felt his function was to tick the workers compensation form stating that I had an injured hand and needed a fortnight off. With little thought he said I was entitled to a fortnight off work, with pay. I told him I had consulted him to repair my hand because I wanted to get back to my wool pressing. We need to discourage that type of mental attitude.

I am sure there are more substantial cases and people who hold out to specialise in maximising claims as other experts hold out to the insurance industry or those responsible for the scheme that they can minimise the outcomes. It would be better if we could clear the logjam and allow claims to be largely resolved in an arbitrary way that provides efficiency because at the end of the day resolution must be achieved to the satisfaction of the client. I congratulate the Hon. Peter Breen on some of his ideas because they reflect some of mine. At present far too much pre-eminence is given to workers compensation as a source of redress, and not enough is given to accidents that can occur in and around the workplace that are subject to other forms of insurance. The Hon. Peter Breen made the comparison between a passing visitor who entered a work site and who suffered an injury when a brick fell from the construction site. That injured visitor would have access to better compensation than that of a workman on the site. That is quite wrong.

I keep referring to my own experience because it is often the best guide in these matters. We have public risk liability insurance for a huge amount on our property because many visitors come to the property, such as the Dutchman and the Frenchman who visited recently to watch the shearing being carried out on the property. If a visitor twisted his ankle while walking around the shearing shed he would be entitled to seek compensation for the negligence of the proprietor who failed to ensure that the walkways were safe. Although I think such claims often go beyond the bounds of commonsense, it is nevertheless an avenue for redress. Our common law rights date back to antiquity and the traditions that we have inherited from the British legal system. As to journey claims, if a worker is injured in a motor vehicle accident, that is how it should be classified and that is where the liability should rest. If one of our shearers injures his back, which is quite common, as he walks out of the shed—perhaps he is in a hurry and trips over his esky—perhaps that claim should be assessed differently.

We must ensure that the workers compensation scheme, which exists to support workers who suffer genuine injuries in the workplace, is financially sound. It will be of no use if it is not. We must look at ways of spreading the load and at other forms of insurance. I have mentioned my workers compensation claims experience. I have paid public liability insurance for many years, during which time I have made no claims. So the insurance companies must be enjoying the benefit of a large sum of money that is sitting around somewhere. I hope I never have to make a claim but, if I do, I hope that money will be there. It is no use listening to the quacksalvers and to those who think they can provide an instant solution to the problem. There is no point thinking that those on one side of the argument are all right and those on the opposing side are all wrong. The Auditor-General's assessments of the state of the fund are alarming. I join my colleagues in saying that I would like to understand better how those figures were derived.

I support the idea of holding an inquiry so that laymen may understand that process. We tend to use the argot of the trade and refer to the "actuaries" and "actuarial figures". Most people on the street would not have a clue what those words mean. In the end, we must rely on the experts, but we would certainly benefit from understanding better their assumptions in making these calculations. We know that it is not like a liability on a bank account; no banker is telephoning the manager of WorkCover and asking, "When will you get some income to cover your debts? We are not happy with your account." It is a matter of setting aside and perhaps investing premiums paid in a particular year and ensuring that there is a relationship between those premiums and any subsequent injury claims, which may be settled at an even later stage. Claims must be traced back to the year of premium subscription. This is an important area of public policy and I would love to see this matter investigated further to broaden the community's understanding of it.

We are facing a long Committee stage and we are all bracing ourselves to consider the wide range of amendments that have been foreshadowed. I have a pile of amendments beside me and, at a rough estimate, there appears to be a ream or two. We all hope that the amended bill will not fall between two stools. I hope that we will be left with a working model upon which we can build. This bill is incomplete, and that is unsatisfactory

to many people. It is framework legislation, and significant in-fills will be made by way of regulation. That is perhaps not the best way to present major reform such as this but it is certainly not unprecedented that legislation is passed in anticipation of later regulation, subject to disallowance. The Government's claim that the power rests with Parliament through the disallowance process is something of a second-rate offer. The disallowance process is not the same as a debate in which amendments may be moved. It is an all-or-nothing option, and disallowance depends on sufficient members in either House being persuaded to reject the entire regulation.

We have seen the Government wring its hands and say, "If we lose the regulation in its entirety we will be left in some interregnum which is utterly intolerable", and those who were determined to make sensible amendments to the regulation are almost blackmailed into allowing it to pass. Many parts of the picture are missing, and we must decide in the coming day or days how we will deal with the legislation. It will be a tremendous challenge and we must keep our eye on the ultimate objective. I share with my colleagues the unrelenting desire to ensure that a strengthened workers compensation scheme emerges from this process and that we deal with the deficit that has been alluded to in many quarters. We must recognise soberly that premiums and levies will not come down instantly. That would be like trying to alter the course of a large ship: the man at the helm can turn the wheel but the effect will not be immediate. It will take some time to balance outgoings and subscriptions, and to overcome the problems of existing unfunded liabilities in the scheme.

It is a sad reflection on the administration of this scheme that we have reached the stage where we face this large unfunded liability. It is worth reminding honourable members again that this is not an insurance scheme. What happens is that employers pay a contribution to the fund and, if they have the temerity to make a claim, or one of their employees does, they will find that their premiums will rise steeply in following years and that a large proportion, if not all, of that claim will be recouped from them over a period of years. That is not what anyone wants; they want it to be a scheme where the risk is spread through adequate levies. That would mean that no single person would bear the financial impact of untoward accidents that, sadly, occur even in the best regulated workplaces.

It is sad to reflect, as I mentioned earlier, that those with few claims receive very little relief. It is a shame that, whilst the WorkCover Authority has the backing to order the improved safety of a workplace, when it comes to the carrot rather than the stick there is little incentive for organisations that pride themselves on their safe workplaces. If an unavoidable accident occurs, they will suffer the same penalty as anyone who may be indifferent to safety in the workplace. This is a critical bill. Much rests with each of us in the Legislative Council to make sure that a piece of legislation that was rammed through the lower House—a process that certainly affronted significant sections of the community—is debated fully, and that the foreshadowed amendments are considered. Remember the great army training shibboleth "maintenance of aim".

All sorts of sidetracks will be taken and red herrings introduced, but the Opposition will certainly play its part to make sure that the outcome is a workable scheme that maintains to the highest degree benefits for people in the workplace and that addresses the rates problem generally but, more particularly, addresses the almost intolerable rates in some sections of the industry—which, when they are identified, often surprise people because they do not seem to be particularly dangerous areas. I commend the further consideration of this bill to the House and look forward to the outcome of that process.

The Hon. JOHN JOBLING [8.33 p.m.]: I join this debate briefly. This major piece of legislation has been discussed in great detail and at considerable length. An enormous number of amendments will be moved in Committee, and it will take some time to consider how they will affect the bill. I am sure the Government will ensure that we have adequate time to consider the amendments. Before agreeing to the second reading of the bill, we must make sure that we have considered such important issues as unfunded liability, the actuarial situation, and what will happen if certain changes are not made to the bill. We must ensure that injured workers' rights and entitlements are protected. After all, that is the aim of the bill: it is workers compensation legislation. I doubt that anyone in the Chamber would argue to the contrary.

My concern is the direction we take and what may happen if the bill passes unamended. It is a large bill containing a number of major changes. It attempts to contain the costs of a scheme which, if not contained, will put us in an untenable position. At the same time Parliament needs to be able to consider those changes. Therefore, what I would describe as a reasoned amendment is required. The Opposition has had discussions with the Government in this regard, and I hope that it accepts this proposition. I move:

That the question be amended by omitting all words after "That" and inserting instead "this House declines to give the bill a second reading until such time as the House has had an opportunity to consider a motion for the appointment of a Committee to:

- (a) monitor and review the implementation and operation of the bill as finally passed by the Parliament, and
- (b) such other terms of reference as specified in the resolution of appointment.

The bill will be passed by the Parliament. Item 91 on the notice paper standing in the name of the Leader of the Opposition relates to the appointment of a select committee to inquire into and report on the operation of the workers compensation scheme as established under the Workers Compensation Act and the Workplace Injury (Management and Workers Compensation) Act 1988. That would include, amongst other things, the monitoring, review and implementation of the bill. This action is not designed to obstruct the passage of the bill. It is designed simply to ensure that a committee is appointed to examine the matters and review the administration of WorkCover, the management of claims, the unfunded liability, and the other issues that have been referred to in detail. We would examine the comparison of premiums before and after the changes effected under the Workers Compensation Legislation Amendment Bill 2000 and the premiums proposed under the 2001 legislation.

The committee would comprise a specifically appointed group. Attached to it would be the Clerk of the Institute of Actuaries and or a qualified accountant nominated by the Institute of Chartered Accountants. Thereby a mechanism will be in place to monitor and review the legislation when it is passed. That seems to be eminently fair because, after all, the ultimate place of review is this Parliament. If regulations and amendments are to be made to the legislation, this Parliament will have the opportunity to consider them.

The committee's other terms of reference are set out in item 91 of Private Members' Business. Workers could then be assured of the best legislation possible; legislation that will look after their interests, that will ensure premiums are contained, and that will ensure that the industry is not bankrupted by unexpected happenings. It is for those reasons that I have moved a reasoned amendment to the second reading of this bill.

Ms LEE RHIANNON [8.40 p.m.]: The clear intent of the bill is to reduce the right of injured workers to compensation by limiting their rights to a fair determination of their claims, by increasing the power of WorkCover, and, possibly, by introducing American-style whole-of-body impairment formulas, guidelines and thresholds. The Government seeks to justify the havoc this bill wreaks on the rights of injured workers by arguing that the scheme is experiencing growth in its deficit. The bill is a poorly conceived attempt to balance WorkCover's books. The Government is attempting to balance those books on the backs of some of the most honourable members of our society, and that is why the Greens have such deep concerns about it. Nonetheless, the bill contains a very small number of positive innovations and, as always, the Greens would like acknowledge them.

The Greens welcome, for example, the introduction of provisional liability, which will allow more rapid onset of payment at an earlier phase of the injury cycle and will, we believe, allow the acceleration of the recovery process. Obviously we, and everybody else, welcome that. The long-term outcomes will be beneficial for all parties. However, the overwhelming majority of the provisions in the bill are unjust, unfair and unreasonable. The Greens, therefore, unequivocally oppose the bill. We would expect this type of bill from a Liberal government. It has all the resonances of a Tony Abbott or a Peter Reith. It is well known that those two men have an undisguised dislike for the trade union movement and, indeed, the working class. Working-class Australians have been attacked at every step of the way. Their rights and entitlements have been a particular target of those two people. Let us remember they are rights and entitlements that have been won by collective action.

But what is shocking about the legislation is the appallingly ill-conceived assault on the rights of injured workers that has come from the Australian Labor Party [ALP]. I acknowledge that the Australian Labor Party has proud traditions irrevocably bound up with the birth of organised labour in this country. The Government, through the bill, has completely betrayed those traditions. So direct and surgical is that betrayal that one cannot excuse it as a misguided act of an incompetent and maladroit Minister, who has failed to gain control of his department. So insulting and repugnant is the bill to the average worker that it could not be excused as the work of a government that is totally out of contact with the workers of New South Wales. The bill represents much more, and we need to examine why we have it before us.

The bill represents the Australian Labor Party leadership's premeditated and deliberate breaking of faith with organised labour in New South Wales. How deep that breaking of faith is with its representatives in this place is something that will resonate within the party and the union movement for a long time. We must remember that the ALP was born out of the unions of this country. I used to work for a union known as the Seamen's Union of Australia. I would often hear the old seamen say how their union gave birth to the Labor Party in this State. It was something many of them were proud of. Although people may have been frustrated

with Labor over the years, for decades it was a party of which they were proud. But now workers are frustrated with Labor because of the legislation. They remember when Labor fought for better conditions.

In the 1890s Australia experienced a massive wave of industrial disputes. At that time workers realised that they could have wins by industrial action, but that their wins were not safeguarded. Time and time again fair wins were taken from them. Out of those struggles came the idea to fight for political representation, and that is where the Labor Party was born. People believed that to safeguard their hard-fought gains they needed to get into the Parliament and ensure that their victories were not stolen from them. At the end of the nineteenth century we saw a growth in Labor supporters with a greater commitment to working for parliamentary representation. I do not have the figures, but at its first election members of the Labor Party were elected in double figures. At that time there was extraordinary loyalty to the Labor Party, and that loyalty has been carried down through the decades.

People have a deeply held belief that Labor delivers for the people. I am reminded of that time and time again when I work on polling booths and people talk to me about how proud they are of their party. A person they like to quote, as people do when they are proud of their institutions and remember the history, is a former Prime Minister of Australia, Ben Chifley. He made a very interesting contribution on 12 June 1949 at one of those famous Labor Party conferences of the New South Wales branch. I make this point to underline why so much anger was displayed on Tuesday 19 June. People really believed the Labor Party delivered. These are the sorts of memories people have of the labour movement, and this is what Ben Chifley said:

The job of getting the things the people of the country want comes from the roots of the labour movement.

Ben Chifley went on to speak about the man he had been sitting with at the conference and he said:

I have no doubt that many of you have been doing the same, not hoping for any advantage from the movement, not hoping for any personal gain, but because you believe in a movement that has been built up to bring better conditions to the people.

He was saying that it was that belief in the movement, belief in the Labor Party, that had achieved so much. He continued:

It is a movement bringing something better to people, better standards of living, greater happiness to the mass of the people. We have a great objective: The light on the hill.

Obviously, that is the famous "light on the hill" speech. He was tapping into the great goodwill for the Labor Party that had existed over decades. It was that goodwill that we saw broken on the steps of this Parliament on 19 June. Ben Chifley went on to say:

If the movement can make someone more comfortable, give to some father or mother a greater feeling of security for their children, a feeling that Depression comes there will be work, that government is striving its hardest to do its best. I only hope that the generosity, kindness and friendliness shown to me by the thousands of my colleagues in the labour movement will continue to be given to the movement and add zest to its work.

What a timely comment. It is a pity that Mr Bob Carr, the Premier of this State, who tells us he loves history, did not read that speech before he strode out in such an arrogant way onto the steps of this Parliament.

The Hon. Dr Peter Wong: He loves American history, not Australian history.

Ms LEE RHIANNON: I am reminded by my colleague the Hon. Dr Peter Wong that the Premier has a fascination with American history. Perhaps if the Premier concentrated more on Australian history and Australian labour history he would remember his own roots! Although we had those unfortunate 20-plus years when Labor was in the wilderness, there have been enormous achievements by the Labor Party. One of them was most definitely workers compensation. Time and again when Labor has been in office we have seen gradual improvements in the lot of the working class. When I say that I am reminded of a comment that Labor members in this place have often made to me when ridiculing my past associations with different political parties. They say, "Lee, you don't understand. We are into incremental change. We just work hard in this place to win the small changes and that is what adds up to really delivering for people."

Well, precisely. We do understand those politics. That is why the Greens are saying that the Labor Party has no right to dismantle the workers compensation scheme. Our only right is to maintain and enhance that scheme; we have no right to give it away. That has been the approach of the Greens at all times. However, it is not only the Greens' position. Former Federal Labor Minister Clyde Cameron put it most succinctly in 1982 when he commented on the achievements that had been made. Referring to it as "workman's compensation", he said:

Workman's compensation sounded utopian when it was first proposed. One week's annual leave on full pay seemed utopian when it was first proposed, and payment for periods of sickness was also thought to be utopian.

He was saying that at one time the hard-fought basic rights of workers were ridiculed and were often taken from us by the ruling class. Over the years there have been significant wins by the labour movement, to the point that those things are often taken for granted. People are shocked when they are dismantled, particularly when it is the Labor Party that moves to dismantle them. The Greens believe that that history of the Labor Party, the place from which it takes its roots, is most relevant to the current debate. It helps to explain why there was such anger on 19 June. The historian, John D. Fitzgerald, in a 1915 publication on the rise of the Australian Labor Party commented:

From the black pit of despair into which the workers of all States were plunged there was one ray of hope visible, parliamentary representation.

I want to underline that point: How hard the Labor Party fought for parliamentary representation; how successful it was; how cruelly it has disappointed its followers on this occasion. The Greens party is founded on the principle of social justice. As such, we are committed to the rights of working men and women. We can never accept that the needs of the WorkCover bureaucracy are more important than the lives of employees in New South Wales. That is why we most definitely reject this bill. The Greens do, however, accept that the current scheme is far from perfect. We accept that there could be, amongst other things, better resolution of disputes, improved collection of premiums, faster return to work, better opportunities for light duties for injured workers and, most importantly, a reduction in the frequency and severity of industrial accidents.

This bill achieves none of those outcomes and is unlikely to achieve its stated objective of lower scheme costs. The Minister was so transfixed by the narrow, financially focused advice coming from WorkCover that he and his advisers missed the bigger picture. They missed the fact that real opportunities to reform this bill so that it will work for all parties and reduce the misery of workplace injuries do exist. Let us remember that what is at the heart of this bill is the plight of injured workers. It is a grisly story and, again to our shame, it is particularly bad in New South Wales. I want to share with other members of this House the details of some of the shocking incidents that have happened in the past two years, not far from this Parliament building.

A Sydney formworker was seriously injured when he fell three metres down a lift shaft—a very common form of accident because of the lack of safety provisions on too many jobs—from a temporary work platform suspended over the lift well on a Manly building site. He was stabilised but had suffered severe injuries to his back and his leg. The Wentworth Street site was one of three Manly projects that were closed for safety reasons at the end of May. Unsafe scaffolding, unsafe electrical outlets, inadequate exits and no amenities were some of the breaches found.

Then there was the terrible story of a 20-year-old apprentice bricklayer who tumbled through an inadequately covered penetration at the Royal Prince Alfred Hospital site. That was a Thiess site. The name of that young man was Brent Leadbitter. He suffered head and internal injuries, and a compound leg fracture, and ended up having his leg amputated. I wonder if members have considered what it would be like going to his home to speak to his partner or to his parents to explain why he was in hospital and what was not put in place on that job to ensure that the accident did not happen. One reason these accidents are happening is that subcontractors are being put in a position where they are responsible for themselves. That clearly is making the situation worse for too many workers on the job.

What we hear from more and more of the unions we are working with is that it is often impossible to identify who is responsible. Many unions now have safety officers. I would like to put on the record the fact that that is not something that has been handed to us by parliaments around the country, or by corporations. It is another hard-fought win that we can tick up to the union movement. I pay tribute to one safety officer who works for the Construction, Forestry, Mining and Energy Union [CFMEU] in Sydney because of his years of dedication, and convey some of his comments to the members of this House. On learning what the Government was planning to do, he said:

I feel absolutely devastated. On the eve of the New South Wales Government changing workers comp legislation, John Della Bosca says there are less accidents now. Well, he ought to get out there and talk to some of the devastated families and victims of this carnage.

Brian rings me regularly to tell me about different accidents that he has had to attend; about what it was like when Pat Portlock was lying out on the M5 East for hours and hours in the scorching sun while they made the

decision whether or not to amputate his leg. He told me about the tragedy of Brent Leadbitter who had to have his leg amputated. These are horrendous stories, stories that really should make people think. It is not only construction workers who suffer these problems. They affect workers across the board. Recently, a member of the Maritime Union of Australia [MUA], Rodney Bills, was killed while unloading steel pipes on the waterfront. There have been other accidents on the M5, as well as Pat Portlock's accident. We should remember that that is a government site, and surely one could expect that safety conditions on a government site would be the top of the range—but that has not happened.

Serious accidents have occurred on projects undertaken by the Department of Public Works and Services. Charles Meade was recently unloading a steel tank from a semitrailer at the Narrabeen sports centre. The tank fell off the trailer and crushed his skull, killing him. Reports on the accident were some of the most sickening I have read. Officers from the union had to go to the site. It was very difficult to speak to his family. At the site they could not get a clear answer or find anybody who would tell them what had happened, how it had happened and why it had happened. Such incidents are occurring in Sydney every day. When we work and entertain in this very comfortable environment we should make the effort to remember the hardships that others around us are suffering all the time.

A tragedy befell a young apprentice bricklayer, Michael Jones. He said that will never forget 28 October 1996, when he lost an eye in an accident at work when he was only 18. Under the existing law he could sue his boss for negligence but under the original changes proposed to the workers compensation legislation he would have missed out. He saw that as very unfair. He said that he knew that he would not have a future without compensation because he could not resume all his previous duties. Injured workers have to be in the forefront of our minds when we discuss this legislation. There is no doubt that more time is needed to carefully consider the changes to WorkCover. The Greens are convinced that genuine improvements to the scheme can be achieved only after careful consideration of the range of alternatives and by independent analysis of any proposed changes to determine their impacts on injured workers, employers and the economy of New South Wales.

We strongly emphasise that the impact on the economy of New South Wales has to be assessed. We have met with the Minister, and he has told us about the deficit and the increase of \$1 million a day. But it was never 100 per cent clear. The Minister and his advisers could not answer all our questions. We need an independent analysis so that the Parliament and the people of New South Wales can be confident of what is happening with workers compensation. The importance of workers compensation and the size of the scheme require that far greater time be allocated to the process.

The bill is widely recognised as being flawed. The widespread anger and concern expressed at the extraordinary barricade of Parliament House—the heart of democracy, as the Premier likes to remind us—had a good cause: the bill is unsatisfactory and the process by which it has been introduced also has not been satisfactory. The self-insurers, the trade union movement and even some employers recognise that the bill is a step backwards. The Greens and other crossbenchers and Coalition members have signalled that they have amendments to deal with the range of problems in the bill.

Committee debate will obviously be protracted. It may be difficult, and in our opinion it is unlikely to produce outcomes reflecting the needs of all workers and other stakeholders. A much better approach would be to open the bill to public inquiry. Time and again we have heard from the Minister about his commitment to consultation, but, as I will report to the House later, many groups say they have not been consulted in any meaningful way. That is why the Greens want to open the bill to public inquiry before it is brought into law. Our fear is that, once the bill is passed, undoing the damage will be difficult if not impossible. The time to act is clearly now. Accordingly, I formally move:

That the question be amended by omitting the words "now read a second time" and inserting instead "referred to General Purpose Standing Committee No. 3 for inquiry and report."

2. That notwithstanding the generality of paragraph 1, the Committee examine in particular the following matters:
 - (a) the existing workers compensation scheme and the proposed changes to it in the bill,
 - (b) the options for future reform of the workers compensation system and occupational health and safety in New South Wales,
 - (c) the accuracy and credibility of projections of the scheme's unfunded liabilities published by WorkCover,
 - (d) proposals to improve the rate of compliance of employers in the payment of WorkCover premiums and their potential impacts on the unfunded liability,

- (e) proposals to reduce the rate of industrial accidents in New South Wales and their potential impacts on the unfunded liability,
- (f) adverse impacts on injured workers resulting from changes to the scheme proposed in the bill,
- (g) the performance of the WorkCover authority in discharging its duties, and
- (h) further proposals to reform the scheme to protect the rights of injured workers and to ensure that the scheme is viable and imposes the least cost on the economy of New South Wales.

3. That the committee report by Monday 3 September 2001.

The amendment will be voted on before we vote on the second reading of the bill. Should it be successful, it will refer the bill to General Purpose Standing Committee No. 3 for inquiry and report before the House sits again after the winter break. The proposal has been considered by the Greens most carefully and we believe it offers the best solution to the dilemma that is confronting all parties in this House because of the ill-conceived process by which the bill has been ushered into the House. The amendment would allow the Government to produce new legislation that genuinely reflects the needs of all parties at the beginning of the spring session. Hopefully, at that time it will come forward with a progressive legislative package that will protect the rights of workers. That clearly should be the objective of every member of this House. Time is needed so that we get back on track to that important objective.

The Government has insisted that the bill has to pass now and cannot wait until September, when the House sits again. On a number of occasions the Minister has been challenged to make clear why this is so, including at his media conference on Wednesday 27 June. On no occasion has the Minister been able to explain the rush. At press conferences, in discussions with individual members—from what has been conveyed to me—and in this House we still do not have an explanation. On no occasion has the Minister been able to explain why he needs to ride roughshod over the opposition of almost every group that has looked at the bill. I am not just talking about the unions, I am talking about doctors, surgeons, lawyers, Injuries Australia, the self-insurers, who were in here yesterday explaining how they could run the scheme much more efficiently, and most importantly the rank and file working men and women of New South Wales who will be savagely affected by the bill.

Each of those groups said the same thing: "The Carr Labor Government's so-called workers compensation reforms are half-baked and will not work." Time will tell the degree to which that is true, but surely when so many people are sending such a clear message, the Government should be able to listen. Each of those groups has called for an extended period of consultation to allow for a much-improved package to be brought forward. If the Government is surprised that that call is so extensive it should consider how it went about the process. We have found, as people have come to talk to us, that they are greatly frustrated because they were not included in the consultation process. Yesterday the frustration was evident when I met with a number of organisations. It was extraordinary that all the organisations said the same thing, and I will quote some of their comments that are central to the arguments about consultation. Brian Gething from the Self-insurers Association said:

We at Self-insurers can do it for about 60% less than the scheme itself, and some of us even better than that ... It is WorkCover's management that has got us into this mess and I'd like to see all the notes about guidelines, etcetera removed from the Act because that would just empower them even more.

Terry Farmer from Injuries Australia said:

... the main issue is that we want this bill deferred until further notice ... it takes the right away from injured workers and the fact is that it's too swift and sincere and we've had hardly any negotiation with the Carr Government.

Nick Meagher, President of the Law Society, said:

This Government has closed the door in respect of consultation.

Closed the door! What a way to treat stakeholders in this process. The Law Society said:

This is a 132 page bill. Time is needed for everyone to properly consider what is contained in it for the betterment of the people of New South Wales. So we are asking the Government to defer this legislation so it can be considered by an Upper House committee.

John Dixon-Hughes from the Australian Association of Surgeons had a similar message. He said:

The Association of Surgeons has very grave concerns about the bill. It's got very serious deficiencies and, frankly, those deficiencies, we believe, are due to inadequate and inappropriate consultation over the whole process.

Again, the same theme, the same message of inappropriate consultation. Mr Dixon-Hughes also said:

These deficiencies could be rectified, but they will only cause serious problems as the bill becomes an Act and legislation.

It would be much preferable for those deficiencies to be corrected now and not at the expense of workers later on.

Lyn Shumack from the Psychological Society said:

This piece of legislation was only seen by the Psychological Society last Wednesday. It appears the provisions in there unfairly discriminate against workers who have psychological or mental disorders as a result of their work.

This includes the police, the ambulance, nurses, teachers, tow truck drivers and pilots and many other working people that have psychological trauma as a result of their work.

The guidelines that they're going to use, the American Medical Association guidelines, are inadequate for psychological and psychiatric trauma. They are ambiguous, they are unreliable and there are psychological guidelines developed by the APS which we can use in Australia, developed by Australians and for Australians.

That is a most pertinent comment. As can be seen, there is a clear theme of concern about the lack of consultation. It is interesting that within an hour of the comments being made at a press conference in this place, the Minister for Industrial Relations was again attempting to reiterate how much consultation there had been. Early yesterday afternoon he said:

We've clarified certain points. I think many of the issues that they were concerned about, as of last week, are now much less of a concern to them.

That demonstrates a serious failure and what happens when the Government does not work with people but goes gung-ho and listens only to certain advisers and is unwilling to draw in the stakeholders and work through the differences. Consultation might be the theme that the Minister associates with his work in shepherding this through, but certainly many of the people who have a real interest in the new scheme and will be directly involved in it beg to differ. As we have seen tonight, the Minister is pushing ahead, regardless. One can only conjecture why this has happened; perhaps it is related to his leadership aspirations, although I would imagine that they are in tatters after the anguish he inflicted on branch members.

The Greens are shocked at the number of people from Labor Party branches who have contacted us. Obviously their distress reached a crescendo after the events of last Tuesday. Perhaps what we have seen happening relates to the Minister's incompetence and inability to control his senior bureaucrats at WorkCover, or perhaps the Minister has dug a hole for himself in the Carr Labor Government and does not know how to extricate himself without a massive loss of face and concomitant damage to his leadership aspirations. Honourable members might recall the memorandum of understanding signed between former Premier Greiner and the lower House Independents Ms Moore, Mr Macdonald and Mr Hatton. There is a most important reason why I reflect on that parliamentary history. A key provision of the memorandum was the creation of legislation committees with the resources and power to draft amendments. The memorandum states:

... acceptance by the Government of the proposal that landmark legislation should be released in an exposure draft for community consultation for a minimum of 28 days and if significant changes are proposed to the initial draft a further period of 28 days should be allowed for public comment.

The drawing up of that document was a great achievement, and it is a credit to the Government and to Mr Greiner that he signed off on it; clearly he did not have much choice, but at least he did it. That contrasts with the behaviour of Minister Della Bosca and his colleagues towards the democratic intent of the memorandum which was forced on a government that was on the skids and relied upon the Independents for its survival. I belatedly congratulate the Greiner Government on realising that it had to do it. The memorandum, which is a statement of what ought to be considered as the minimum preconditions of a democratic society, highlights the arrogance and caprice of the Carr Government. It is not the intention of the Greens amendment to the motion that the General Purpose Standing Committee No. 3 inquiry would be an exclusive forum for debate on the future of workers compensation legislation administration.

The Sheahan inquiry, negotiations between the Labor Council and the Government, negotiations involving other parties, and public debate will continue during the course of that inquiry. In fact, this inquiry would be part of, and add, to a broader discourse on how our society takes care of injured workers. Compensation for the adverse effects of an injury sustained in the course of employment is a basic right, won by the struggle of workers in the early decades of last century. It was an extraordinary struggle. As the workers compensation debate has unfolded over the last couple of weeks I have periodically reminded myself of how this important entitlement of workers was achieved. It is a history of which working people can be proud and it

underlines why we, as a Parliament, have no right to dismantle workers compensation in any form; we only have the right to maintain and enhance it where necessary.

As with all benefits won in Australia and elsewhere, workers compensation did not come easily nor without setbacks along the way. It is typical of the forces that shape our society that vested interests seeking to maintain wealth and privilege will always find it easy to insinuate their way into the parliaments and Cabinet rooms of government. This is true of workers compensation, where insurance companies, with their massive profits and consequent ability to purchase political favour, have been able to ensure that it is they, and not the injured workers, who benefit from the scheme.

I will regale honourable members with a story about my grandfather. Unfortunately I never met him but he was a member of the Wobblies, International Workers of the World [WWI]. He instilled a political fervour in his daughter—my mother—and his two sons. In the days of the Depression because they did not have much money they used to walk from their home in Erskineville to Coogee. He used to say to his children when they were very little and walked past insurance company buildings, "Look at those bricks. There's workers blood between those bricks." That story was repeated time and again to his children, his nephews and nieces. It reflects why working people fought so hard to achieve better conditions on the job.

Their fight for workers compensation was a great achievement, but it also allowed some companies to get rich and make huge profits on the backs of workers—and that was reflected in the comments of my grandfather. It is to the great credit of the trade union movement of Australia that we have some of the world's most advanced workers compensation payment regimes. That is because of the militancy and determination of unions and unionists in the past. It is because of their work that we have inherited a society where it is simply assumed that a worker injured at his or her place of employment will be looked after.

That is very much the case with young people these days, who have good facilities in their jobs. They think their employers are paying for their holiday pay, superannuation, long service leave, canteens and gymnasiums because they are being good. However, they often lose sight of the fact that those achievements were won because of continuous struggles over the decades, and workers compensation definitely figured in those struggles. The union movement has a proud history. However, when the union movement has won gains in workers compensation and other areas there have often been attacks from the big end of town—the corporations and daily papers that often do the bidding of the corporate world.

The Hon. Patricia Forsythe: They are not all bad.

Ms LEE RHIANNON: I am not saying that. Earlier I acknowledged the importance of getting the scheme right for employers as much as for workers. However, there is certainly a trend in this country that when gains have been made by working people, they have often been lost or those who fought for them have come under sustained attack or ridicule for what they have achieved. When Premier Lang introduced workers compensation into the Parliament in 1936 the *Daily Telegraph* editorial described it as a spurious political bribe. That paper did its job then, as it does it now, in running down and limiting this most important entitlement that all workers should have.

Long service leave is another achievement that was gained over the years for workers. It was described in an editorial in the *Sydney Morning Herald* in 1951 as scandalous and another batch of industrial handouts. When public holidays in the 1890s were introduced, the *Australian Star* described them as the holiday nuisance. In the 1900s the Employers Federation took on workers' wins, this time targeting holidays. At that time the *Daily Telegraph* reported it by saying that there were "too many holidays—the holiday nuisance". The *Daily Telegraph* has returned to being a campaign paper. One campaign in those days was to eliminate or minimise the holidays of workers. A member of the Employers Federation at that time said he did not believe in holidays at all. That point demonstrates that the entitlements that workers win come under attack time and again. Honourable members should not aid and abet that process but should work towards safeguarding the achievements of workers. The *Daily Telegraph* went further and described holidays as "Satan finds mischief for ideal hands to do." That was how it analysed the dilemma confronting employers at the end of the 1890s.

The Hon. John Ryan: It just goes to show that the *Daily Telegraph* hasn't improved much, has it?

Ms LEE RHIANNON: It is certainly interesting reading. When you read the *Daily Telegraph* you are not sure whether you are reading something out of Governor Macquarie Tower [GMT]. Does it come from the *Daily Telegraph* into GMT or vice-versa? However, it is certainly essential reading for those in this place. We

have also seen sustained attacks on the exemplary campaigns of the union movement to shorten the working week. When I read about these campaigns I thought of the comments of the Hon. Doug Moppett, who said that it is important for people to work. I could not agree more, but the type of work they do and the number of hours they work is also important, otherwise their work is a misery and not something they do with dignity. It is not surprising that the working week has also come under sustained attack from the daily media in this city. In 1926 the *Daily Telegraph* tried to whip up hysteria by describing it as:

... simply a question of the life or death of our industries.

That was another totally over-the-top statement and an attempt to scare people into believing the country could not entertain this advance for the working people as it would mean the end of society as we know it. It was not then and it is not now. Comments such as that reflect where particular interests lie. The newspapers have had much to say over the years about workers compensation. A number of these comments come from an excellent publication entitled *It must be true, it's in the papers* by Paul True. It contains some invaluable material that makes enjoyable reading while reminding us of the difficulties that working people have faced in getting their message across. The daily newspapers have continued the trend of attacking workers compensation and the sustained campaign that has been fought over the years to win and then maintain this entitlement. The *Daily Telegraph* stated:

But it is not a flea-bite compared with what is in store for all classes when the new ... "Workers Compensation Act" comes into force. The "Workers Employment Prevention Act" would be a more accurate title for it ... employers will be compelled to reduce hands wherever they can, with the result that many men will be thrown out of work. And in the industries that do survive ... it is the public who will ultimately have to pay the premium.

Newspapers such as the *Daily Telegraph* not only failed to support the reform but vehemently opposed it. Attitudes such as that from the 1920s and the 1940s emphasise what has been achieved in this area and how much workers have won over the years. We are reminded that workers compensation is definitely a right. These quotes prove that that right was not given to workers by the boss but fought for and won. No-one should give that right away. Workers fighting hard to improve the workers compensation system continued to be ridiculed to the present day. In 1984 hundreds of builders labourers demonstrated inside the insurance companies to get their message across. The workers knew that, in order to get justice for their work mates, they had to down tools and protest in the heart of the companies that were trying to steal their entitlements. The *Daily Telegraph* again did the bidding of the insurance companies, carrying an editorial that stated:

The Builders Labourers Federation yesterday added another sorry saga to its record of industrial strongarm tactics.

There were no strongarm tactics; there was a protest by unionists who knew that the workers compensation system was about to be gutted. They took action in 1984, in 1987 and in 2001. Workers will continue to take action whenever governments of whatever political persuasion attempt to dismantle the workers compensation system. As an aside, it is interesting to note that, after condemning the workers for using strongarm tactics, even the *Daily Telegraph* was forced to concede that there might be some justice in the union's claim and some reason for the workers' actions. Although the newspaper carried an entire editorial criticising the union's tactics, it did not devote even a sentence to an alternative view. There was acknowledgement of the problem and some understanding of why workers were concerned, but ultimately the newspaper returned to the practice of ridiculing them for taking a stand to protect workers compensation.

Workers compensation in this State dates back to 1910, and there were incremental improvements in the system over 91 years until the events of 1987 when, I am sorry to report, another Labor Government got up to its old tricks. In 1984 the Workers Compensation Commission was disbanded and replaced with the State Compensation Board and the Compensation Court. The board took over administration and licensing functions while the court continued to exercise judicial functions. Commissioners were appointed to the court and given the power to hear cases. By 1985 the problems with workers compensation were becoming more evident, and the whole sorry saga unfolded in 1987.

A few members in this place will remember how badly it played out for Labor. Within a year of making the changes, Labor was out of government. It was not the periodic change of government that we see in this country when voters become tired of one major party and swap their allegiance to another: it was a major rout of the Labor Party in its heartland. Seven Labor Ministers and many Labor members in areas such as the Hunter lost their seats in the March 1988 ballot. One of those Ministers, Mr Debus, was resurrected by the voters and returned to this place to serve once again as a Minister. I watched him walk into Parliament on Tuesday 19 June with his colleagues the Minister for Juvenile Justice and the Deputy Premier and I wondered what he was thinking.

The Hon. John Della Bosca: You must have been deluded.

Ms LEE RHIANNON: I do not know why the Minister would say that.

The Hon. John Della Bosca: Refshauge wasn't with them.

Ms LEE RHIANNON: If I have made a mistake, I stand corrected. I certainly saw Mr Debus and I wondered how he felt at that moment. Like many of his colleagues, he walked with head bowed. As I stood with many of the picketers, watching through the fence, I wondered what thoughts were going through his head and whether he remembered the destruction of 1987 and 1988 caused when a previous Labor Government under Premier Unsworth made drastic changes to workers compensation. The Workers Compensation Act 1987 repealed the 1926 Act and put in place a radically different workers compensation scheme. The 1987 Act, as amended, now forms the basis of the statutory scheme in New South Wales. The most notable feature of the 1987 Act was that it removed the right of a worker to make common law damages claims against his or her employer. How extraordinary that when a conservative government was elected it chose to put back in the Act those common law requirements. A similar story unveiled in the 1990s in Victoria, but I will leave that story until later. In 1989 the Coalition Government amended the workers compensation legislation. The two most notable changes were the re-establishment of the role played by the Compensation Court and the restoration of common or rights.

The Hon. John Della Bosca: Why did they do that?

Ms LEE RHIANNON: Probably for a similar reason that Mr Bracks in Victoria did it. We realise that common law has its problems, but it is only part of the story and it should not be removed.

[Interruption]

No, you are not answering the question, Minister. Why did Mr Bracks actually campaign?

The Hon. John Della Bosca: I will ask him next time I am talking to him.

Ms LEE RHIANNON: That would be sensible, because he won an election on it and there is widespread understanding in Victoria that workers have lost out badly. Commissioners were reincorporated into the court structure and they now form a second adjunctive tier. In the early 1990s a number of legislated amendments to the 1987 Act were largely beneficial in nature from an injured worker's point of view. The surplus had grown significantly because of much stronger return to work rates than anticipated. Over the years we have seen ups and downs with the management of workers compensation. It is unfortunate that we find ourselves in this extraordinary situation because there has not been accountability, transparency and meaningful consultation from the Government and, in particular, the Minister.

Before I leave the history, I will give a few more details about what happened in 1987. It is interesting how history repeats itself at times—unfortunately, often people do not learn the lessons. In 1987 a Labor Government had been in power for a number of years. On the whole that Government was bringing forward a number of good measures, but it certainly lost the plot when it came to workers compensation. The workers got angry at that time. When one reads the newspaper reports of that time one sees that what happened then is similar to what happened in June this year when tens of thousands of workers gathered on Macquarie Street. They were angry with what the Government was doing at the time. That anger was not forgotten when Labor went to the ballot box in 1988. I remember Labor's defeat very well. There had been a number of tragic massacres and I was campaigning on gun control, which also figured in the election.

When the Labor Party lost the election in 1988 it grappled to understand what had gone wrong. It gave its position on gun control as the reason it had lost the election—it avoided analysing what had gone wrong. The gun lobby was powerful at the time and the argument was, in part, hatched by the pro-gunners to claim glory and extend their power, but it was also hatched by Labor leaders who would not face up to what had gone down. On many issues, not just workers compensation, Labor had moved away from what it was supposed to be about. When a party moves away from its heartland issues, sooner or later it will catch up with it at the ballot box. As I said, that was well and truly shown in 1988. It was the worst decimation that Labor had faced in this State since the Lang era. I often wonder whether Labor is concentrating on its electorate. I want to say "Hello! Are you at home? Do you really care? Have you not learned anything from your own history? Are you thinking about the people of this State?"

Labor's supporters and voters will take only so much abuse. We know that they have a high pain threshold—which we have seen time and time again—but it can come to a point when that threshold is reached on the fundamental issue of workers rights to compensation for injuries and death that occurs when working for their livelihood, and when the profits of the boss are becoming paramount for their elected representatives. What is happening in the public is momentous, and all the Government is doing is playing it tough. The Government might get the headlines, the good spin and appear to be in control, but members of the Labor Party have to ask themselves: At what cost? They should remember their history. The toll is huge. Recently a number of people have said to me that it must be good for the Greens as it is getting more members. I have said in other debates that that is true but it is not good for the fabric of Australian society, which is being shattered by the momentous changes being wrought by this workers compensation legislation. We do not believe it is a happy day for anybody, irrespective of their party.

Supplying a level of security for every member of society lies at the very heart of social justice. The Greens are committed to building and maintaining those values that give us the generosity and openness to look after those individuals and households who, as a result of an industrial accident, have lost a part of, or completely, their ability to continue to work, or who have suffered pain. That sense of social inclusion which ensures that the injured are cared for also lives at the heart of trade unionism, where the rights and freedoms of the individual are guaranteed by the collective commitment of the entire workforce. Workers compensation—like unemployment benefits, national health insurance and the aged pension—is an essential ingredient of a just society in which the vulnerable individual is cared for with the same concern as the wealthiest and most powerful and where the injured worker is given the same standard of care as the best paid corporate executive. That is when we have social justice. Earlier I read from the famous speech of a former Prime Minister—the one known as the light on the hill—because it was the essence of the Australian Labor Party and what we believe people refer to when they say how much that party means to them.

The Hon. Ron Dyer: Point of order: The dissertation of Ms Lee Rhiannon on Labor history and political trends in New South Wales and Australia, while interesting, would appear to have little, if anything, to do with the legislation currently being debated—that is, the Workers Compensation Legislation Amendment Bill (No 2). I respectfully ask you to direct the honourable member to return to the bill currently under consideration.

The Hon. Duncan Gay: To the point of order: I may be mistaken but when the Hon. Ron Dyer was making his point of order, it appeared that someone on the Government back bench had a radio was on because I can hear a voice but not see anyone.

Ms LEE RHIANNON: To the point of order: Early in my speech I clearly established the history of workers compensation, and that history obviously is linked with Labor Party and union history. I am establishing an argument that I have put time and time and again that the duty of this Parliament is to maintain and enhance the workers compensation system, not to dismantle it. It is an argument that I am gradually establishing as I move to handle the bill in detail.

The DEPUTY-PRESIDENT (The Hon. Tony Kelly): Order! Although the standing orders require the contributions of members to be relevant to the question before the Chair, during debate on the second reading of a bill members may, and often do, make wide-ranging contributions. No point of order is involved.

Ms LEE RHIANNON: It has been pointed out to me that I inadvertently moved to amend the Minister's second reading speech instead of his motion. I apologise for that error. While I would like to amend much of his speech, the standing orders do not permit me to do so. Therefore, I move:

That the question be amended by omitting the words "now read a second time" and inserting instead "referred to General Purpose Standing Committee No. 3 for inquiry and report."

2. That notwithstanding the generality of paragraph 1, the committee examine in particular the following matters,
 - (a) the existing workers compensation scheme and the proposed changes to it in the bill;
 - (b) the options for future reform of the workers compensation system and occupational health and safety in New South Wales;
 - (c) the accuracy and credibility of projections of the scheme's unfunded liabilities published by WorkCover;
 - (d) proposals to improve the rate of compliance of employers in the payment of WorkCover premiums and their potential impact on the unfunded liability;

- (e) proposals to reduce the rate of industrial accidents in New South Wales and their potential impact on the unfunded liability;
- (f) adverse impacts on injured workers resulting from changes to the scheme proposed in the bill;
- (g) the performance of the WorkCover Authority in discharging its duties; and
- (h) further proposals to reform the scheme to protect the rights of injured workers and to ensure that the scheme is viable and imposes the least cost on the economy of New South Wales.

3. That the committee report by Monday 3 September 2001.

Despite the role played by workers compensation in protecting injured workers, the bill does massive damage to the rights of workers in at least five different and substantial areas. First, the bill attacks the basic natural justice rights of workers whose claims for compensation are disputed. The bill appropriates much greater powers to WorkCover in disputing and refuting claims. Further, it replaces the Compensation Court with a commission that does not have the rules, independence or form of a proper and independent judicial system. New section 354 specifies the procedures before the commission. While the proposed reduction in formality and technicality might empower workers and potentially reduce costs, the complete absence of the rules of evidence could severely disadvantage workers. That is the most crucial issue and one to which the amendments we shall move in Committee devote particular attention.

New section 354 (6) allows the commission to make a determination without any formal hearing or conference. That is extraordinary. That means a claim can be resolved without the parties being heard or seen by the commission. This is a direct affront to the concept of natural justice on which this society has been built. It is important to understand that procedural fairness does not just happen; it does not just suddenly appear from nowhere. It is established and maintained by a strict set of rules that include the rights of all parties to be heard. This bill seeks to deny those rights. That strict set of rules is one of the things being dismantled by this legislation, and it is the reason the Greens have spoken so strongly against this legislation and worked so strongly towards ensuring it does not go forward in its present form. A further example of the way in which the bill seeks to undermine these rights is the appointment of office holders in the commission without tenure. Clause 2 of schedule 5 makes clear what the Carr Government has in mind: a commission made up of appointees who are beholden to the Minister for reappointment after seven years or less for the presidential members and five years for other members. Irrespective of who the Minister may be—

The Hon. John Della Bosca: You don't like the present one?

Ms LEE RHIANNON: It is nothing personal at all. We do not have any problem with the Minister personally; this proposal just puts everything into the hands of one person. I am sure that on his better days the Minister would realise how unwise it is. The tenure of judicial appointees is central to the protection of their independence from government interference. That is one of the basic tenets of our society. It is another of the great successes that we, as the civilised society we like to call ourselves, have achieved and established over the years. This is a key component of the way in which our society has maintained an independent and fair-minded judiciary. Like workers compensation, that is something we would fight hard every inch of the way to protect.

Minister Della Bosca and the Carr Government are choosing a new direction based on officers of the commission who are beholden to the Government for their continued employment. Clearly that is the most undesirable outcome. What does this mean for the type of decisions being made by the commission? The answer is stated clearly in the objectives of the commission. New section 367 states that the commission is to provide a fair and cost-effective system for the resolution of disputes, that is, when determining a dispute the commission must make sure that the costs are not too great for WorkCover. To make things absolutely sure, this section also requires the commission to have regard to this objective in exercising its function. That is, the Carr Labor Government seeks to create a commission that is bound to minimise the costs of workers compensation payouts and is appointed on limited terms.

The intention is clear: the rights of injured workers are to be sacrificed to the cost drivers of the scheme. Reading this bill one can almost see the performance indicators that will be used to determine the reappointment of the commissioners. This is where we believe we are moving into dangerous territory. The Greens argue that only an independent court-like commission can protect the rights of those who appear before it. Again, that is one of those fundamentals that we will work to protect at all costs. It is basic to the way this society has managed itself over the last several centuries.

This is basic to the way in which this society has managed itself for the past several centuries. But it appears that the management of WorkCover, the Minister and his staff, and the Carr Labor Government now

reject this most fundamental idea. That is one of the most extraordinary aspects of this legislation. It is not only in the appointment of the officers of the commission that the natural justice rights of workers are being compromised. The rules of the court are to be determined by the Minister, and this is an unheard of attack on the independence of the commission and a direct humiliation of any holder of the office of president of the commission.

Rights of appeal are severely limited, and unnecessary punitive cost barriers are erected. For example, appellants need to win on appeal at least \$5,000 more than the original amount awarded, and 20 per cent more than the original amount, before being deemed to have won the appeal and thus be eligible for the payment of their costs. Even where the appeal determined that the original amount was insufficient, but the cost barrier has not been exceeded, appellants must carry their own costs. This provision of the bill would raise the cost bar to discourage genuine and well-founded appeals. It is quite unclear how the \$5,000 figure would be applied in the case of weekly benefits. In fact, this bill leaves the injured worker whose award is inadequate without access to a fair and independent appeal process.

As the bill is currently drafted, all appeals will be dealt with by bureaucratic review, instead of by a proper hearing. The ability to appeal a decision is an essential component of the basic protections that our society uses to prevent the abuse of power. That is the nub of the matter. This dismantling of workers compensation rights allows an abuse of power. Without appeal mechanisms, there is no check on the abuse of power. This goes back to the point of order taken by Mr Dyer earlier. My point is that the bill seeks to treat the determination of compensation of injured workers in a way that is entirely alien to the Australian tradition. That is why earlier in my speech I went into aspects of the history of the Australian Labor Party, the union movement and the struggle for workers compensation to establish that very point.

There are many more ways in which the bill seeks to undermine the basic rights of natural justice, including decisions made without any statement of reasons; the placing of arbitrators under the direction of the registrar, and not the president, who at least would have some semblance of judicial independence; and the limitation of the right of appeal on a point of law to those questions which are "novel and complex". It is an affront to the sense of fairness that is so intrinsic to Australian society that the natural justice rights of injured workers are to be so savagely curtailed. Should this legislation reach the Committee stage in its current form, the Greens will be moving amendments to restore many of those rights.

The second way in which the bill damages the rights of workers is the probable adoption of the American-style tables of impairments, which will form the heart of the formulas, thresholds and guidelines that we understand are to be used to assess the whole-of-body impairment of a worker. This will set the statutory payments and also, subject to the outcomes of the Sheahan inquiry, will be used in threshold tests to determine a worker's access to common law damages.

While the current table of disabilities is far from perfect, the proposed whole-of-person approach is profoundly flawed. Over the past few months I have been at a number of workplace meetings dealing with this workers compensation issue. I have found a great depth of understanding about the proposed changes, as well as a great deal of anger. I have to say that it is on the issue of a whole-of-person approach that there has been particular anger. The new guidelines are to be based on the fourth and fifth editions, I understand, of the American Medical Association's guides, with some fiddling at the edges. But this is truly absurd. Both the fourth and fifth editions clearly state that they are not designed for, nor should they be used for, this purpose. I know that is a statement that has been made time and again to the Government, but we really need to say it again. It is absolutely absurd because both the fourth and fifth editions say most clearly that they are not used for, nor should they be used for, this purpose. I quote from the fourth edition at page 1/5:

It must be emphasised and clearly understood that impairment percentages derived according to these Guides criteria should not be used to make direct financial awards or direct estimates of disabilities.

I read that once again for emphasis, because we are having trouble getting this point across: "should not be used to make direct financial awards or direct estimates of disabilities". When the Minister responds to all of the speeches that have been made on the second reading of the bill, I would be really interested to hear his comment on that particular point. As I have said, this is a matter over which there has been anger, for there is a clear understanding that this bill is fundamentally flawed, and it is on this matter that there is a deafening silence from the Government. But I stay with the same theme. A similar, but stronger statement is made in the fifth edition. Here, the Minister, the staff and their bureaucrats at WorkCover clearly did not understand, or clearly decided that they would fudge it. The Minister, his staff and WorkCover are steaming ahead with a proposal to do exactly that: to use these guidelines, or some cobbled together derivative of them, to make direct financial awards. That is just not good enough.

The Minister has darted and weaved on this issue from the beginning of the process. As the inconsistencies of this approach have become increasingly apparent, the Minister has promised layer upon layer of fix-ups. In the end, we will have a system that is inconsistent, unjust and unfair. Yet again, it will be the workers of New South Wales who will suffer from the Minister's inability to accept that the initial advice he was given from WorkCover to go with the American Medical Society tables was flawed. Honourable members of this House who are considering supporting this bill should be fully aware that the guidelines are referred to throughout the new scheme. Every payment, every determination, every commutation, every interim payment, every threshold, every treatment of a worker will depend on these guidelines. If that is not the case, Minister, please tell us, because everything we have read and heard indicates that that is where we are heading—and it is into dangerous territory. Yet these guidelines are nowhere to be seen at the moment. To vote for this bill is to vote for the Minister's promise that the guidelines will be fair and consistent in dealing with the range of workplace injuries.

The history of dealing with the Government on this legislation, and many other issues, shows that promises are not good enough. We have to see the ink dry on the page before we can have any confidence that it will serve the interests of all the people of New South Wales. It is true that those parts of the guidelines that relate to impairment are to be subject to sections 40 and 41 of the Interpretation Act 1987, which would give the House the opportunity to disallow them. However, this is much less than it seems. Our ability to reject the guidelines will be tempered by the knowledge that if we do, there may be no guidelines in place, and the Government knows that is how it will play out. There will be inevitable pressure to accept the guidelines on a further promise from the Minister that they will be improved next time round. We have been down that track; we know the tactics and we know how it plays out. It is really not a fair option.

Given the nature of whole-of-person impairment assessment, it may not be possible to produce fair and reasonable guidelines. A vote for this bill may be a vote for the Government's impossible dream. More likely, it will support WorkCover's certain nightmare. The guidelines are so fundamental to the bill that they must be incorporated as a provision in the bill that is subject to committee debate and possible amendment, as is the case with the other provisions of the bill. I have listened to many speakers in the debate, and I have noted that it is one of their central concerns. We are debating, and will soon be asked to vote on, legislation that, in so many aspects, is only a shell. At the very least the guidelines should be available and tested before we are asked to pass laws that would allow their use.

It is absurd that the entire scheme is being changed from the promise of an untried and untested theory. The legislation should be delayed at least until the credibility of the guidelines have been tested thoroughly. The Greens would support the following scheme for testing before passage of the bill: first, the guidelines, including formulas and thresholds, should be published and discussed widely among doctors, workers, unions and all stakeholders. Surely, that is not too much to ask. Second, paper trials should then be conducted to ascertain the existence of any anomalies, injustices and inconsistencies, and modifications should be made subsequently to rectify them.

The Hon. John Della Bosca: Would you support it if we did this?

Ms LEE RHIANNON: We have been asking to negotiate. This is why we want to sit down with the Minister. The result should be reviewed against the existing scheme to determine how the changes would affect the outcome. Third, limited live trials should then be conducted and an assessment made using the proposed guidelines in parallel with the existing table of disabilities guide. Again, modification should be made to rectify inconsistencies, and retrials should be conducted if major changes have been effected. I note the Minister said, "Now we're talking". I hope that was a positive comment and an indication that he is open to negotiation on this most important issue. A scheme such as this should be a cost-effective way of ensuring that proposed changes to assessment are appropriate, just and fair.

This is not, however, the Government's way at the moment. Maybe it will change. The Government prefers instead the bulldozer approach—that is what we have to date—by which changes are rammed through with little regard for the massive body of expert opinion that says they will not work. There is a cloud over the fundamental soundness of whole-of-body impairment approach. No regard will be paid to the importance of the impairment to the person's ability to function in his or her work life or personal life. This seems to ignore a basic fact of life. If a person loses a limb, for example, the degree to which that limb is important would be a function of his or her employment, personal life and habits. To reduce this to a simple table of numbers is to ignore the complexities of each individual. Further, this algorithmic approach to impairment ignores and belittles the ability of doctors to make a professional judgment.

Accepting legislation based on such an approach is throwing the lives of injured workers and their households into a large experiment, the outcome of which is completely unknown. This is yet another reason for delaying the bill for further consideration. The third key flaw in the bill is the way in which it seeks to severely limit claims for psychological and psychiatric injuries. This is particularly punitive for workers who are regularly exposed to dramatic situations, including ambulance drivers, police, teachers and nurses. These workers put their hearts and souls on the line every time they go to work. They risk exposure to critical incidents that can leave them severely incapacitated for many years. They do so not for any particularly impressive remuneration, and not even for social recognition of the difficult work that they perform for our society.

Despite this level of commitment and despite the importance of their work, the Carr Labor Government is seeking to limit significantly the level of WorkCover support available for people who sustain such injuries. The bill makes artificial distinctions between primary and secondary psychological injuries. This will simply open the floodgates for litigation to determine what is primary and what is secondary. Surely, that is a ridiculous situation in which to place this State. As the distinction is arbitrary in many cases, some workers will be in the invidious position of being forced to choose whether their primary injury is psychological or physical. In effect, these workers would be asked to pick a box. That is not the way to run any workers compensation scheme. The failure of the Minister's proposals to deal fairly with psychological and psychiatric injuries is a measure of how little regard has been paid to the needs and concerns of workers in drafting this so-called reform to the scheme.

The fourth area in which the bill is deficient is the way in which employees will be subject to the decision of WorkCover-appointed doctors rather than judges as to the degree of permanent impairment. As with the lack of independence of the commission, to which I have already referred, this will jeopardise the ability of a worker to receive a fair payout. WorkCover-appointed doctors, the continuity of whose income depends upon remaining in favour with WorkCover, are unlikely to be impartial. They are exposed to a perverse incentive to understand the degree of permanent impairment. Once again I am seeing frowns and shaking of the head from the Minister, so again I will have to explain why we have a problem. This is unfair and unjust.

Like so many other parts of the bill it confuses questions of law, fact and medicine to the advantage of WorkCover and the disadvantage of the worker. Surely, there should be a defining line. That is no way to improve the workers compensation system. If it disadvantages the worker, surely a Labor Government should see that there is a problem and should be at least willing to reconsider. This approach discredits the entire medical profession. By placing a few of its members in this invidious position, all doctors are discredited. There is another way in which the bill violates traditions of fairness in this country. Despite the protestations of the Minister, many provisions of the bill are retrospective. Since I have been in this place I have found that retrospectivity often gets people quite excited. It is an area in which there has been considerable disagreement about where it sits with version two of the legislation.

Retrospectivity is still alive and well. I hope that the Minister gives consideration to, reflects upon, and responds to these issues when he replies to this debate. Proposed part 18C, provisions consequent on enactment of Workers Compensation Legislation Amendment Act 2001, provides that an existing injury is to be assessed under the new arrangements, including the new guidelines. There are many more provisions in this part of the bill. Proposed part 18C is almost entirely about retrospectivity. It is about specifying the way in which existing injuries are to be transferred to the new arrangements. That violates a basic precept of the rules of law. It is a breach of faith with workers and it is breach of faith with society. As I said earlier, that is why there has been such consternation about this bill.

I mentioned earlier that I had spoken at many protest meetings about workers compensation. At those meetings workers were informed by union officials and members of various organisations attended the meetings to speak about their concerns. One of the most moving meetings I have attended was a meeting that was held at the new Westfield building at Hornsby—a huge structure in which it takes a long time to find your way around. It had some interest for me as well as the direct issue of workers compensation because a good friend of my son, Seth, an apprentice, was about to finish his apprenticeship. Seth was proud and excited about the fact that he was about to complete his apprenticeship. He and a number of other apprentices who were sitting at the front of the crowd were moved when Pat Portlock came onto the stage.

For the benefit of those honourable members who do not remember Pat Portlock, he is the man that I mentioned earlier—a man about whom many honourable members would have heard. In January he spent hours and hours lying on his back as he had been crushed by a crane. Eventually, the only way that rescue workers could get him out from underneath the crane was by amputating his leg. He walked onto the stage in a pair of shorts and a pair of gym boots. He had only one leg; he had a piece of iron in one boot. I could see that the

young men were quite startled by what they saw. Pat proceeded to speak to them about how the injury had happened and about his present life. I found it incredibly moving. He said that it did not make a heap of difference to his life now, but it meant a great deal to him when he was younger.

He spoke directly to young apprentices and warned them about how careful they needed to be when they were at work. He told them why they needed to fight every inch of the way to safeguard workers compensation in this State. He said that he remembered the attempt in 1987 by a Labor government to dismantle the workers compensation scheme. He said that he was shocked that, once again, a Labor government, which had clearly not learned the lessons of history, in his words was again trying "to reduce workers compensation benefits". Pat has addressed meetings all over New South Wales and he has participated in many protests. He related an incredibly powerful story about why all honourable members must consider most carefully what they are doing.

On 19 June—that extraordinary day—a decision was made by many fellow workers. That issue has already been debated on two occasions in this House. In debate on that issue some honourable members expressed anger about the forming of that picket line in any shape or form. Even those honourable members who were angry about that incident and who disagreed with the forming of the picket line should consider why it was formed. Tuesday 19 June was indeed an extraordinary day. Having had a long association with the labour movement in this State and having had an interest in it, I have to say that, if I had been told a year ago that the Labor Council organised a picket anywhere I would have been surprised, but I would not have believed anybody if they had told me that a picket line was being held outside Parliament House.

It is worth reflecting on the fact that it happened as it shows where debate was at. Certain Labor members have been telling people that it was really about internal fights within the union movement and that is why members of the union were protesting outside Parliament House. The issue of workers compensation had been solved and it was really just union members flexing their muscles. If honourable members are sucked in by that, all I can say is that we will have a few unfortunate years in this place. Life is much more complex than that. Last Tuesday we saw a real reflection of the sorry state of this Labor Government. I need to refer to that incident on 19 June and to how it played out because it is most directly linked to the issue that we are debating. It showed that, in many ways, the leaders in this Government do not have the courage of their convictions.

Some people who spent the night in Parliament House insisted on their fellow members undertaking a most risky operation by walking into Parliament House. As time passed on the morning of Tuesday 19 June, protocols were put in place relating to how the protest should proceed when members of Parliament attempted to come into Parliament House in the afternoon. Everybody knew that sooner or later it would get to that point. There were some ugly scenes on that day. Members of Parliament could have used a clear route to obtain access to Parliament House. On Hospital Road where the majority of people were located, tag teams were formed and there were practice runs, or dry runs, of what would occur when members of Parliament attempted to enter Parliament House.

Protocols were in place and the majority of police were clear about how it would play out. There would have been disturbance to the public but protesters would not be hurt, police would not be hurt and distress would be kept to the minimum. There was nothing unusual in that. It has happened before when protests have been held and, in this instance, it could easily have been effected. One of the most extraordinary sights that I saw on that day was a number of Labor members being herded up Macquarie Street by a line of police. Later we established that the Premier, Mr Carr and his Minister for Police, Mr Whelan, had taken the decision to proceed in that way. I found it most extraordinary.

This issue was raised at a recent estimates committee hearing. I questioned the Minister about how that decision was made. He attributed the decision to bring members of Parliament into Macquarie Street, where no protocols were in place and where it was not expected, to Assistant Commissioner Dick Adams, a regional commander and the police officer who was in charge on that day. During the estimates committee hearing, after the Minister had given his answer that the police officer in charge on that day was Assistant Commissioner Mr Dick Adams, I asked him about his own role. Despite the fact that I asked him the same question on more than four occasions the Minister refused to give a direct answer. I said, "I am asking you as Minister: What role did you have in making the decision about what entrance members of Parliament, including yourself, would use to come into this building on Tuesday around 2 o'clock?"

The Hon. Michael Egan: What has that got to do with the estimates?

Ms LEE RHIANNON: It has a great deal to do with the estimates because there were so many police officers employed on that day. I am sure the Treasurer would be interested to know that in respect of the M1 and

S11 rallies I asked how many police were present, because it involved a waste of money. I thought the Treasurer would have been concerned about that. We know that these protests will conclude more quickly if the police do not become aggravated and simply exercise their duty of care to the people of New South Wales. I asked the Minister that question and, after talking at length about the events surrounding breaking the picket, I got an answer from the Minister that was not straightforward. All the Minister could say was, "I cannot see the relevance of this to the budget papers." The Minister also stated, "I said it was an operational decision made by the police. I am not a police officer."

The Minister could not give a clear answer, which I thought most significant. It helped to clarify what had happened on that fateful day. As I did in respect of an earlier debate, I want to place on the record the fact that on occasions members of this Chamber have ridiculed my attitude to the police, saying I have no regard for the police at all. I raise issues about police operations when police step outside their duty of care to the people of New South Wales. I wish to take this opportunity to put on record why I have complained, and will continue to complain, about police actions when they abuse their power.

The statement of values on the Police Service web site clearly spells out that each member of the Police Service is to act in a manner which places integrity above all, upholds the rule of law, preserves the rights and freedoms of individuals, seeks to improve the quality of life by community involvement in policing, strives for citizen and police personal satisfaction, capitalises on the wealth of human resources, makes efficient and economical use of public resources, and ensures authority is exercised responsibly. Overall I saw that last Tuesday. Some people have remarked, because they saw certain things on television, that I was caught up in some of the events on Macquarie Street, as were some of my staff. We were most definitely part of the picket, but we did not want to be squashed in a police operation.

That is what happened to me and to so many other people. One member of my staff ended up with bruised ribs and a damaged knee, because of the way that operation, under the direction of Assistant Commissioner Mr Dick Adams, was executed. No funnel was left open. There was no point of escape for people who wanted to move out of the operation being undertaken by police. That was so dangerous for so many people. Although the members were pushed into Parliament and were behind the Macquarie Street fence, according to Mr Adams the operation was still not over. He then brought his horses in. That was extraordinary and I understand that the Police Association has complained to the Police Service about it.

There was nowhere left for people to go. On the east side of Macquarie Street there was a line of police, so you could not get on to that footpath. On the other footpath there were police or it was packed with members of the public. It was a dangerous and frightening situation as the horses swept up and down Macquarie Street in two separate operations. I repeat that that was not necessary. We know from the Maritime Union of Australia [MUA] protests and pickets in 1998 that the protocols can work most effectively. But we saw many dangerous operations on that day. I understood that Labor Council liaison officers and police on the site had arrangements about how members could come into Parliament, but once the Premier and the Minister for Police decided that they had to have a show of strength, a show of power, they pushed ahead.

What made it so extraordinary is that they put people at risk in so doing, and the Premier did not even have the guts to go and join his own members. A few things really stood out at that picket on that day. I have to say the Premier's actions were at the top of the list of concerns. If members of this House wonder why I am going into detail, it is because the events on that Tuesday, and the extent to which people were willing to come here and join a picket, should not be dismissed or ridiculed by members of this House. As I said, even if they disagree with the protest, surely they could reflect quietly on events and think that there must have been extraordinary depth of feeling for us to have ended up not merely with a picket but with a Labor Council endorsed picket.

I have heard here and at other times comments about the CFMEU. A lot of people tagged the CFMEU and a number of newspaper reports identified the CFMEU as instigating the picket. The Premier and a number of Ministers have blamed the CFMEU for the picket. That is a real cheap shot, particularly at a time when we know there is a push by the Federal Coalition Government to set up an inquiry or royal commission into the CFMEU. They need a bit more dirt, as governments do, and are trying to link that organisation with the so-called attack on democracy. Someone thought that was a clever spin to come up with, but it was far removed from the mark.

The CFMEU has held protests about workers compensation and they have been huge—tens and tens of thousands of people. If they had stacked on the protest, it would have been a big one; the CFMEU does not do

things by half measures. How the events of last Tuesday unfolded was only with partial involvement of the CFMEU. That was one of many unions. When I read of the attacks on the CFMEU, I asked the State Secretary, Andrew Ferguson, what the story was about because there were so many stories going around. He said that the CFMEU was not represented at the Monday planning meeting for the protest on workers compensation. On the Tuesday morning of the protest, and I saw it for myself, initially there were no contingents present from the CFMEU. Only Andrew Ferguson and a couple of staff members were present.

It was only after the Labor Council issued a call for support that the decision was made by the workers to close down three building sites and join the protest. Interestingly, one site was the Sydney Conservatorium of Music. Workers at that construction site decided to join the protest. It certainly was a highlight when the workers from those jobs marched to Parliament House, having downed their tools to come and join the picketers. As well as members of the CFMEU, members of the Shop, Distributive and Allied Employees Association [SDA] joined the picket line, together with the Finance Sector Union [FSU], the Australian Miscellaneous Workers Union [AMWU], and a whole range of workers.

The story that Parliament was under siege by the CFMEU is one of the unsavoury sidelines to the story on workers compensation. It appears that a few people within the Labor Government were hoping to settle some old scores and perhaps help the Coalition Government out with a few internal battles of its own. This was most definitely a Labor Council picket. Time and again as we sought information from different unions they would refer us back to Labor Council officers. We found it a bit frustrating at times to be continually referred to Labor Council officials. It was definitely a Labor Council picket that was successfully executed with great courage.

The Hon. John Della Bosca: Were you an honorary official for the day?

Ms LEE RHIANNON: I was not an official, I was not a marshall. I was there as a concerned—

The Hon. Peter Breen: I got permission from you to go in.

Ms LEE RHIANNON: I will correct the Hon. Peter Breen. He said he got permission, but it was permission from the picket, not from me. It was a most successful day. I was there as a member of the PSA, as a person who is concerned about workers compensation. Not everyone there was a member of a union, but the majority of people were proud to be in a union. Not many proud members of the Australian Labor Party were there on that day. Central to the day is the role of the Premier. His posturing about parliamentary democracy is the issue that made people so angry. That fateful salute that he gave on the steps of Parliament House is something he will live to regret. His actions did so much damage to democracy. The fate of democracy on that day has been bandied around a great deal, but the damage to democracy was done in the Chambers of the upper House and the lower House on that day.

If democracy is the issue the Premier is concerned about, surely he should be concerned that the people of New South Wales are in such pain and anguish about workers compensation. Surely he should be on the case of the Speaker, who immediately adjourned the sitting on that fateful Tuesday. I understand that the presiding officers of the Federal Parliament have said that such action would not happen in any other Legislative Chamber in Australia. Premier Carr's actions evoked memories of other Premiers—Liberal leaders, in fact—ones that the current Premier would prefer to keep his distance from. But the similarities run deep, and what we learn from history is relevant to this debate. Premier Kennett is one of the Premiers that Premier Carr has such a similarity with. Premier Kennett is remembered for his arrogance and his attempt to abolish the common-law component of workers compensation in Victoria.

The anger we saw in the recent protests over common law in this State was so similar to what happened in the late 1990s in Victoria. That spilled over into the election of 1997. I know the New South Wales Labor Government does not have a fond feeling for its Victorian counterpart, but surely it could learn a few lessons from south of the border. The Bracks Government campaigned on this issue in the election. It campaigned for the restoration of common law. Extraordinarily, the lesson seems to have been lost on the New South Wales Premier. One can only conclude that this is where arrogance leads.

The Premier's role also resonated strongly the actions of another New South Wales Premier, who also put the safety of the public at risk. I am talking about former Premier Bob Askin. The photo of Premier Carr on the steps and his infamous salute, the raised fingers, the arrogance smirk—all those actions that he will regret—will haunt and hound him for years to come in the same way that that arrogant statement "Run over the bastards" of Mr Bob Askin haunted him for so long.

The similarity struck me as I watched Assistant Commissioner Dick Adams. I understand he has a military background, and what I saw on the day, the way he was directing the police, makes me think that he might prefer to still be in the military, or that he likes to use his police as he once might have used his troops. Seeing the Premier on the steps of Parliament House reminded me so much of October 1966, not far from here at what is called Whitlam Square, when Premier Bob Askin said, "Run over the bastards." That was such an affront to public safety, and that is similar to what we saw on 19 June.

I know the Premier loves American history. Perhaps he would have been interested in entertaining LBJ while he was here. Poor LBJ had such problems getting it right. In a speech he referred to Mr Askin as the mayor, to Mrs Askin as Lady Bolte—the wife of the then Premier of Victoria—and to the *Sydney Morning Herald* as the *Sydney Morning World*. Perhaps that is one way to show the Premier that American history is not everything it is cracked up to be. So, the Bob and Dick show of 19 June 2001, and the disgraceful disregard for public safety, had unpleasant similarities to the Bob and Norm show of Friday 21 October 1966. I refer to the then Commissioner of Police, Mr Norman Allen, who manhandled people. I understand that Mr Dick Adams did not do that himself; he just ordered his police officers to do it.

The Hon. Ron Dyer: Point of order: Standing Order No. 85 provides in part:

The President or the Chairman of Committees may call the attention of the House or the Committee to continued irrelevance or tedious repetition on the part of a Member, and may direct such Member to discontinue his speech ...

With the necessary change to "her", I suggest that that standing order may well apply now. Ms Lee Rhiannon regaled the House earlier this evening with a potted history of the Australian Labor Party. She has moved on to a detailed analysis of the demonstration outside last Tuesday, and she is now dealing with interesting historical events, such as the activities of the Askin Government and the Kennett Government in Victoria. The relevance of these events to this bill escapes my understanding. I respectfully suggest that the honourable member be invited to discontinue her continued irrelevance and tedious repetition.

Ms LEE RHIANNON: To the point of order: When the Hon. Ron Dyer summarised my speech he failed to acknowledge that I was giving a very detailed explanation of the bill, and that was in the context of the historical setting that I have outlined. As I said on the previous point of order the honourable member took against me, I have raised these issues, which I acknowledge are wider than the bill, because they give political relevance to the issues at hand. They are relevant.

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Order! It is correct that the standing orders refer to members being tedious, repetitious and irrelevant. This has been a long speech but there is no point of order. However, I draw the honourable member's attention to the fact that she must always try to be relevant to the bill.

Ms LEE RHIANNON: The bill contains many attacks on the rights of injured workers that the Greens will attempt to amend in Committee. They include inappropriate use of regulations when legislation would be more appropriate and the granting of numerous powers to WorkCover that will only exacerbate the existing problems with the scheme. The bill also fails to address the real problems with the scheme. It is a litany of lost opportunities. We understand that it is now common practice for principal contractors to pay much lower premiums than they should. The CFMEU construction division has identified a number of mechanisms used by unscrupulous employers to evade payment, including failure to hold a policy, understatement of the number of employees, understatement of wages, and nomination of incorrect tariff categories.

Further, it appears that avoidance of premium payment obligations is also widespread in these industries. Mechanisms include folding companies with high experience-based premium ratings, and liquidating a company to avoid payment and then recreating the same or very similar corporate entity under a different name. This is often referred to as operating Phoenix companies. These practices have a devastating effect on employers in these industries who comply with their obligations. In a competitive tendering environment the employer who fails to comply has a massive cost advantage. Further, these practices are costing WorkCover hundreds of millions of dollars each year, which is a massive contribution to the alleged deficit. Despite these costs and disadvantages, the bill does nothing to enforce compliance, does not increase penalties, does not empower WorkCover inspectors and does nothing to address Phoenix companies.

A second lost opportunity is the failure to address occupational health and safety issues in a meaningful way. Our failure on occupational health and safety will result in 313,000 injured workers more than we should have over the next 50 years. According to the National Occupational Health and Safety Commission database,

in 1998-99 New South Wales had 8.1 injuries per 1,000 of population. Victoria on the other hand had only five injuries per 1,000 of population during the same period. Compared with the national average, New South Wales had 6,265 more accidents than it should have had. Over a 50-year period this amounts to 313,000 workers who will be injured in New South Wales and who, if we could hold our injury rate to the national average, would not be injured.

While some of this excess may be explained in terms of different mixtures of types of industries, there is no doubt that New South Wales is lagging behind the national average in terms of dealing in a meaningful way with occupational health and safety. Additional investment in reducing the rate of injuries not only would reduce human misery but also could contribute to the financial health of the scheme. The Government has consistently ignored the advice of so many people on this issue. Surely meaningful consultation would not have hurt.

I turn to the justification given to the package. WorkCover, through its mouthpiece the Minister, is claiming a compensation deficit of \$2.18 billion. The Premier bleated in the lower House about the deficit growing at \$1 million a day. Premier Carr and Minister Della Bosca have bought into the *Yes, Minister* "It's time to kick the worker" school of deficit management. First, it is important to understand what the term "deficit" means. It does not mean "loss"—the scheme makes a profit. It does not mean "debit"—WorkCover's assets are growing at an extraordinary rate. For the sake of *Hansard* I have to say that the Minister is smiling broadly, but I will not read anything into it. "Deficit" is purely an actuarial term. It refers to the residue that would result if the scheme were wound up, but the winding up would be at 31 December 2000 with all assets sold to pay for future costs of existing claims in respect of accidents that occurred prior to that date.

The deficit is a forecast, not an actual figure. As such, its size is highly sensitive to a range of parameters, including interest rates and the future cost of existing claims. All of these are only assumptions, and slight variations can lead to massive variations in the size of the projected deficit. Further, the scheme in its current form, from an actuarial perspective, is just under three years old. The scheme is far from stabilised. In fact, actuaries will say that forecasts cannot be made with any degree of accuracy without a large base of experience, which this scheme simply does not have. Thus the Minister has embarked on what can only be called a panic response to a set of highly rubbery figures.

Such is the nature of the Government's propaganda machine that the Government feels confident that if it repeats like a mantra the figure of \$2.18 million, and if the Premier says in a serious tone that the scheme is losing \$1 million a day, the rest of us will believe it is true. We have seen it ourselves. The crossbenchers have had powerful presentations with the figures flashing on the screen time and again. The Greens are not arguing that all is well with WorkCover; I have already said it is not. Many of us have said that time and again. We know that major improvements can be made. Careful monitoring of the scheme's financial position is required. However, the Greens cannot accept the wholesale slaughter of injured workers' rights based solely on these figures.

I want to comment on the Minister's promises. With this bill, the Minister and the Carr Labor Government have treated the working men and women of Australia appallingly. I have already alluded to the management of the picket line. Most alarming has been the way in which the Labor Government has sought to bring into disrepute the representatives of organised labour. An example of this was the way in which the Minister's second reading speech failed to conform to the agreement that the Labor Council described in its briefing note of 26 June. It specifically says that the Government has agreed to the president being a judge and that the appointment of the deputy presidents will be made by the Governor and be subject to tenure. As I said earlier, tenure is crucial to maintaining the independence of the commission, but it is not mentioned anywhere in the bill.

The Labor Council and the workers it represents clearly have been duded. Even if this crucial issue had been mentioned in the second reading speech, it is important to understand that the bill limits the tenure of the president and the deputy presidents. Whatever the Minister said in his speech would be irrelevant to the final outcome unless the bill is amended in Committee. The Greens will move amendments to give effect to the Minister's promise to the Labor Council. It is a great shame that the Minister did not have the courage to move amendments. Again, we would ask the Minister to explain this in his speech in reply. The second area on which the Minister has duded the Labor Council relates to representation before the commission. The briefing note of 26 June states:

The Government confirmed the intent of the bill is to allow workers to be heard and represented by a solicitor or agent before the commission. This would include written and oral submissions. The Minister indicated this clarification would form part of his second reading speech.

The Minister indicated no such thing in his second reading speech. The best he offered to workers appearing before the commission is the assistance of another person to tell their story before the appeals panel. The Minister, along with members of this House, knows full well that there is a big difference between assistance in telling a story and legal representation. If the bill is not amended it will leave uninjured workers appealing against the original decision without the basic protection of representation. The Minister has duded the Labor Council and the working men and women of New South Wales. The Greens will do everything they can to correct this in Committee. We definitely urge honourable members to join with us in trying to make an honest man of the Minister. One day he might be honest John.

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) [11.00 p.m.], in reply: The content of this debate is not new. We can, as honourable members have chosen to, look at events back in 1925. Our statutory scheme dates back to legislation introduced by the Lang Government in 1925. It was a much more advanced system of workers compensation than the Acts of 1910 and 1916 referred to in the second reading debate. It made insurance by employers compulsory, it covered occupational diseases, it introduced journey claims and it established a Workers Compensation Commission, with a District Court Judge as chairperson, to handle claims. The Minister for Labour and Industry, Jack Baddeley, said:

By having a specialised tribunal of this nature, the delays and inconvenience which exist under the court system will be obviated. The commission system has been in successful operation in 34 of the United States of America for many years and there is no reason why its benefits should not be extended to New South Wales.

He further said:

By removing compensation cases from the atmosphere of the court, the Government is satisfied that there will be greater expedition in the hearing of disputes. They will be settled with far less friction than at present, and the operation of the tribunal will be greatly to the benefit of both the employers and the workers.

First, I note that the speaker anticipated hostility to the importation of American ideas to Australian jurisdictions—something we still live with in this workers compensation debate. Secondly, and probably most importantly, I note the emphasis on expedition, on putting the resources of workers compensation into satisfying benefits to employees, rather than complications in process. So the original intention and basic principles of the scheme we have today, on which New South Wales became a world leader, were laid down: maximising benefits and minimising formalistic process, retaining fairness but minimising formalistic process. Conservative Opposition leader, Sir Thomas Bavin, a predecessor of the Deputy Leader of the Opposition, saw the bill as a "non-party measure". He then proceeded to speak for two hours criticising aspects of the bill. He saw it as an onerous burden on industry guaranteed to create unemployment. Bavin and his conservative colleagues saw compensation proposals leading to the demise of friendly societies. They believed that workers would no longer seek their own insurance. In the debate Sir Thomas Bavin said:

It will diminish the incentive for men to help themselves and it is going to throw all these burdens on industry when properly they should not be a burden on industry at all.

Of course, in line with the Hon. Dr Brian Pezzutti, they opposed the whole idea of journey claims. In fact, conservative MPs had the horrors about journey claims. The hypothetical example quoted and easily refuted by the Government was a case in which a worker on his way home from work dropped into a hotel for a couple of beers; when he came out of the hotel he walked under a tram and then claimed his horrific injuries against his employer. Given that Sir Thomas Bavin was an advocate of early closing of hotels, this was an unusual example. Despite the promise of bipartisan support, Lang only pushed the bill through the Legislative Council by adding 25 new members to our Chamber. Unfortunately, we are no longer in a position to do the same.

A little later, in 1929, the conservatives were back in Government. Bavin, the critic of the original bill, was now the Premier. He amended the workers compensation legislation; he redefined the word "injury" and ceased payments to some workers already receiving compensation under a Broken Hill scheme for tuberculosis sufferers. To make the Hon. Dr Brian Pezzutti of the world happy, the Bavin Government abolished journey claims and declared that a worker had to be absent from work for seven days before he could claim. Jack Lang described this bill as "one of the most callous measures that has ever been submitted to any Parliament". Lang labeled Bavin's Government a cold-blooded crew. This is the proud record of the predecessor of the modern Coalition. I understand that many Opposition members, like the Hon. Dr Brian Pezzutti, oppose journey claims. Let me tell the House how they came back into the legislation. It took until 1942 when the McKell Government introduced amendments to the Workers Compensation Act.

The Hon. Duncan Gay: Point of order: The Minister is speaking in reply to debate on the bill. Nowhere in the bill is there a reference to journey claims. I ask you to request the Minister to return to the leave of the bill.

The Hon. JOHN DELLA BOSCA: To the point of order: The issue of journey claims has been mentioned a number of times in debate on this bill. It is an appropriate part of my reply to the debate.

The Hon. Richard Jones: To the point of order—

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Order! I will not hear any more contributions to the point of order. There is no point of order. The Minister has latitude in his reply. Journey claims have been mentioned in the second reading debate.

The Hon. JOHN DELLA BOSCA: Members of the Opposition and the cross benches who point to union unrest over WorkCover forget the history. That is not surprising; it is not their history. Labor members are unashamedly the political wing of the trade union movement. In 1891 the union movement spawned the infant Labor Party to address workers grievances by peaceful means.

The Hon. Charlie Lynn: In 1891?

The Hon. JOHN DELLA BOSCA: Yes, that is exactly the date. Ms Lee Rhiannon spoke in glowing terms of Ben Chifley and the massive support he received from the Labor movement. She needs to do a little more study about the Labor movement. Then she will learn that the trade unions faced many major battles during the time of the Chifley Government. Chifley came under savage criticism from the unions over his handling of the 40-hour week proposal. His action of sending troops into the coal strike earned the ire of many unionists. In his time Chifley came under much attack from the rank and file Labor movement for his attempt to nationalise the banks. However, he acted. In many respects history has proved that Ms Lee Rhiannon's romantic images of the practicalities of government are inappropriate to political debates such as the workers compensation debate. We do not need to go back too many years—

The Hon. Dr Brian Pezzutti: You have been defaming me.

The Hon. JOHN DELLA BOSCA: Why? I have not!

The Hon. Dr Brian Pezzutti: At no stage in my speech did I refer to journey claims, and you know that.

The Hon. JOHN DELLA BOSCA: It is important that members of this House understand that the scheme's deficit is real, it is huge and it must be brought under control. On Wednesday night the Hon. Rick Colless demanded to know why the Government would not agree to an independent actuarial assessment of the situation. I can assure the honourable member that Tillinghast-Towers Perrin is not part of the Government, nor is Trowbridge Consulting or PricewaterhouseCooper. All three firms, which are experts in this field, have examined the scheme.

The Hon. Charlie Lynn: This sounds like a boring speech written by a dull staffer. I ask that the Minister speak from the heart on this very boring issue and not rely on a dull, boring staffer.

The DEPUTY-PRESIDENT (The Hon. Janelle Saffin): Order! The honourable member will resume his seat. There is no point of order. We can be as boring as we like in this House.

The Hon. JOHN DELLA BOSCA: I will desist from being boring. It is just ridiculous to say that the Government wants its own version of HIH. The only sensible point made earlier by the Hon. Charlie Lynn was that there is a very real problem. It would be easy to do nothing about this problem and so much easier if we did not have a deficit that is growing every day. The last valuation of the scheme shows a projected deficit rising to \$2.18 billion, up from \$1.16 billion in June 2000. Tillinghast-Towers Perrin calculated the deficit by looking at current trends and claim numbers, the type of claim payments, claim duration, inflation and return payments. It examined which factors are trending better or worse in their earlier projections and adjusted projections accordingly.

The actuarial projections by Tillinghast-Towers Perrin are a breakdown of what the future costs for 2000 will be. Essentially it means that the premiums collected this year have to pay for everyone insured this

year and who will require payment for the next, say, 30 years. If they do not collect enough premiums this year to cover those claims for people who are injured this year and will require ongoing care, and keep doing that for a few years, we will end up with a giant multibillion dollar problem, a real problem. Pretending that it does not exist is just not an option. The December valuation showed some good news. Claim numbers were down and with it the amount expected to be paid in weekly benefits and lump sums.

If claims went down one would expect that costs would be down, but they were not. The drop in claims was more than offset by increasing use of common law and commuting weekly benefits to lump sum settlement. Deterioration in the economic climate and a projected decrease in investment returns and current premiums collected do not cover the scheme's costs. The Hon. Rick Colless does not believe what those organisations, Tillinghast-Towers Perrin and PricewaterhouseCoopers, have said, but I am sure that the Leader of the Opposition can reassure him about the reality of the deficit.

Claims for this year's projected legal costs are based on legal costs for statutory no-fault benefits and legal costs for common law cases. Because settlements are made as one lump sum inclusive of legal costs, WorkCover's estimates for legal costs for common law is difficult—a point correctly cited by Reverend the Hon. Fred Nile. Added together, legal costs for the statutory and common law scheme are about 19 per cent of the scheme's projected \$2.18 billion liability: one dollar in five blown on legal costs! As I have informed the House, legal costs in both areas are projected to increase because there is evidence of more people going to common law, more disputes, and more protracted disputes in the statutory scheme. The recent explosion in common law claims will, no doubt, erode that figure further. I am sure that the Sheahan inquiry will be able to tell us more about problems with common law. However, there are examples that I am happy to share with the House to illustrate the concerns of the Government.

In a statutory scheme a worker recently filed a claim for a loss of hearing. The matter was finalised in November 1996, three years and three months later. The worker received \$30,000 and the legal costs were estimated at \$58,800—\$20,000 more than the worker received. Another injured worker received some of his settlement in August 1992. The common law claim was not notified until October 1996 and was settled in September 1997. The worker received damages of \$30,000, and legal costs for the injured worker were estimated to be \$45,000—again the lawyers got 50 per cent more than the worker. A worker lost partial use of his left arm in July 1994. Three years later the worker received \$46,400, and legal costs were estimated to be \$55,000.

A worker who suffered permanent impairment of the back in 1996 received common law compensation four years later. The worker received \$80,000 and his solicitors received \$40,000. The worker suffered an injury to her upper arm in 1988 and finally received a common law settlement 10 years later. The worker received an \$85,000 settlement, and of that \$42,625 was paid in legal costs to the worker's solicitor—the solicitor got a few dollars more than the worker. Another worker received a payout for psychological injury of \$120,000 in compensation four years after the injury, and \$80,000 of that was paid to the worker's solicitors.

A worker received multiple injuries in 1988 and the matter was finally settled seven years later. The worker received an award of \$130,000 and it was estimated that the legal bills for the matter were \$150,000. Another worker who received a permanent impairment to the neck in 1993 received common law compensation three years later. The worker received a settlement of \$154,000, of which \$137,000 was paid in legal costs.

I could read many more examples onto the record. However, I will not do that, because I appreciate that the hour is late. I could give many examples of the common law in the statutory scheme, where the system is failing on two points: protracted delays and unbelievable costs, sometimes two or three times the worker's award. That absurd situation cannot be tolerated. The deficit has been canvassed a lot in this debate, and the deficit has occurred simply because the system is not serving the interests of injured workers. It continues to be characterised by delays and the absurd situation of the process costs being more than, often twice as much as, the awards to the injured party.

The Hon. Patricia Forsythe explained how simple things used to be. Indeed, things used to be a lot more simple, and that is part of the reason why changes need to be made. It is a simple fact of life that relationships between employers and employees are now very different from what they were two or three generations ago when the workers compensation system was first conceived. It is important that we make changes that will invent a culture more appropriate to the modern workplace in occupational health and safety responsibilities of workers and obligations of employers.

The Hon. Ian Cohen made an interesting contribution. He discussed at great length the concerns of the trade union movement. One can make a decision to scream at people in demonstrations, to tell people what they

want to hear, but there are some stark options when one contemplates what should be done to make the system work better for people. Do we slash workers' benefits? Do we significantly increase premiums and penalise employment? Or do we attack the cost of the system and take the political pain required when that is done?

What we do is attack the cost within the system. The Government chose not to increase payments to process costs; it chose to increase workers' benefits by at least \$50 million, hold premiums and attack the very expensive ancillary costs. The Greens should understand that timber workers are still working because this Government was able to negotiate the regional forest agreements. The agreements were not as a result of demonstrations and pamphlets, but the results of getting in and trying to fix the problem.

The Hon. Ian Cohen made several points in the debate that were just plain wrong. He said that the legislation requires greater than 25 per cent impairment from an injury. The Hon. Dr Peter Wong made a similar assertion, saying that the proposed thresholds that workers must reach before they can go to common law were extremely high. The thresholds have been referred to the Sheahan inquiry; they are not in the bill. The Hon. Ian Cohen cited the use of the American Medical Association guidelines, as did his colleague Ms Lee Rhiannon. Again, they are plainly wrong.

I also assure the Hon. Dr Peter Wong that the American Medical Association guidelines will not be introduced, as this bill makes clear. The Government and the Labor Council have agreed to a process of scrutiny for the WorkCover guidelines. Guidelines are already in place in most Australian States and in the Commonwealth. There is nothing new in the concept: Brian Howe introduced them into the Commonwealth in the Comcare scheme in 1988. The Hon. Ian Cohen cited an advertisement by the Australian Plaintiff Lawyers Association which claims the scheme's assets have risen from \$3.7 billion to \$6.8 billion. That would be good news, except that liabilities have increased by an even greater amount and have increased to \$9.1 billion as at December 2000.

The Hon. Charlie Lynn: This is not your best speech.

The Hon. JOHN DELLA BOSCA: I thank the Hon. Charlie Lynn for his critique. It is very helpful. Ms Lee Rhiannon drew the attention of honourable members to a number of matters during her lengthy address. It is very important for me to respond to those points so that honourable members might consider them. First, she asserted that in some way this bill discriminates against those workers or employees who suffer psychiatric and psychological injury. In fact, that is not the case. The current statutory scheme does not provide at all for people who have psychological and psychiatric illness. Indeed, those people are obliged to resort to common law to make a claim. For the first time ever, psychological and psychiatric illness will be recognised in a statutory workers compensation scheme. So Ms Lee Rhiannon is wrong. The honourable member made a fundamental error—the type of error made by many sincere people who think they are doing people a favour by running round and creating a great deal of misinformation about this legislation. Ms Lee Rhiannon referred to lawyers as stakeholders several times during her speech. I point out that, in this system, lawyers are not stakeholders. The only people who are stakeholders are the workers and the people who pay for the system: the employers. The lawyers are service providers and at the moment they are not providing a very good service. It is very expensive.

The Hon. Charlie Lynn: Are you going to do a critique on every speaker, or just Ms Lee Rhiannon?

The Hon. JOHN DELLA BOSCA: No I am not, but it is good manners to address the critical points. The self-insurers are unusual bedfellows for Ms Lee Rhiannon to choose. On the whole, they are the larger corporations. The views of the honourable member on injury management and self-insurance are matters that the honourable member should consider carefully. She should discuss those matters, especially some of the policies, with some of her contacts in the union movement, because there is a range of self-insurers from some very good injury managers who simply use the 26 weeks as a means of making their injured workers redundant and then discard them. A great deal of misinformation has been circulated about this debate, but at least there has been an admission from most quarters that we face a major problem with regard to the workers compensation scheme. Doing nothing is not an option.

The Government has a strategy and a clear plan to enhance the statutory scheme to make it a more attractive option for workers. There is no point in pretending that the premium dollar can be extended further than its limits. It will only go so far. It can pay for injured workers, or it can pay for lengthy processes and service costs. In relation to this issue, the union movement and the Government are faced with a clear choice. We cannot have our cake and eat it. We need to make a choice between worker benefits and an elaborate

process. We can have either, but we cannot have both. The bill before the Legislative Council offers to protect benefits and enhance them, but it cuts back on the process. Ms Lee Rhiannon mentioned the very sad case of an injured worker, Mr Pat Portlock.

The Hon. Charlie Lynn: Others spoke about that, too.

The Hon. JOHN DELLA BOSCA: I know that. I know that the honourable member asked me about it. Ms Lee Rhiannon mentioned the tragic case of Pat Portlock, who was severely injured in a crane accident. This is, of course, a sad and dreadful case. He has addressed many meetings. His case has been used by critics of this bill and its predecessor. The facts are that Pat Portlock would get at least \$12,000 more under the new system and he would get his money faster. He also would get weekly benefits and his medical bills would be paid, as well as all the entitlements he has currently. If he wanted to prove a negligence case against his employer, he would also be able to take a case to common law. There are no barriers for someone with injuries as severe as those suffered by Mr Portlock to embarking on a common law case. I have to ask: Why does Ms Lee Rhiannon want Mr Portlock to get less money? Why does she want him to wait longer? Why does she want dueling doctors, solicitors and barristers adding to his unfortunate injuries?

The Hon. Dr Brian Pezzutti: You have not told us about the Treasury managed fund.

The Hon. JOHN DELLA BOSCA: I could tell the Hon. Dr Brian Pezzutti about everything, but the hour is late. I thank all honourable members for their contribution to the debate. It has been a most enlightening one. In the context of this bill, the last few weeks have been both harrowing and exciting. I am sure that at the end of our deliberations, the workers of New South Wales will have a much better workers compensation system and a basis for addressing important issues in relation to occupational health and safety.

The PRESIDENT: Order! The question is that this bill be now read a second time. The Hon. John Jobling has moved a reasoned amendment and Ms Lee Rhiannon has moved an amendment to refer the bill to General Purpose Standing Committee No. 3 for inquiry and report. I will put the question on the reasoned amendment moved by the Hon. John Jobling first. If this amendment is agreed to, the amendment of Ms Lee Rhiannon becomes inadmissible. If the reasoned amendment is negatived, I will then put the question on the amendment of Ms Lee Rhiannon.

Ms Lee Rhiannon: Madam President, I raise a point clarification. I understood that my amendment would be put first. I am just seeking clarification of why this is the situation.

The PRESIDENT: The amendment of the Hon. John Jobling will be put first because it was moved first during the debate and because it applies to an earlier part of the original motion. I will put the original question as amended, or not, according to the decision of the House.

Amendment by the Hon. John Jobling agreed to.

The PRESIDENT: As the amendment of the Hon. John Jobling has been agreed to, the question relating to the amendment of Ms Lee Rhiannon need not be put.

The Hon. Michael Gallacher: Madam President, may I seek clarification? Are we not proceeding to the order of the day? We cannot proceed to the second reading. We must be going to the order of the day.

The PRESIDENT: I must first put the original motion as amended by the Hon. John Jobling.

Motion as amended agreed to.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders

Motion by the Hon. Michael Gallacher agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 91 outside the Order of Precedence, relating to appointment of a select committee to inquire into and report on the operation of the workers compensation system in New South Wales, be called on forthwith.

Order of Business

Motion by the Hon. Michael Gallacher agreed to:

That Private Members' Business item No. 91 outside the Order of Precedence be called on forthwith.

WORKERS COMPENSATION SELECT COMMITTEE

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.30 p.m.]: I move:

1. That a select committee be appointed 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 Workplace Injury Management and Workers Compensation Act 1988, including:
 - (a) the administration of the WorkCover Authority,
 - (b) the management of claims by the insurance companies,
 - (c) the extent of the unfunded liability,
 - (d) an industry by industry comparison of premiums before and after the changes made under the Workers Compensation Legislation Amendment Bill 2000 and the proposed premiums following the 2001 legislation, and
 - (e) monitoring the implementation and impact on premiums of the Workers Compensation Legislation Amendment Bill (No 2) 2001.
2. That the committee be assisted by a permanent reference group consisting of one actuary qualified to practise in New South Wales, nominated by the Clerk of the Institute of Actuaries and one accountant qualified to practise in New South Wales, nominated by the Institute of Chartered Accountants.
3. (1) That, notwithstanding anything to the contrary in the standing orders, the committee consist of 5 members, comprising:
 - (a) 2 Government members nominated by the Leader of the Government,
 - (b) 2 Opposition members nominated by the Leader of the Opposition,
 - (c) 1 crossbench member or Independent member, to be Chair, nominated by agreement between the crossbench and Independent members. In the absence of any agreement the representation on the committee is to be determined by the House.
- (2) Nominations for membership of the committee must be made in writing to the Clerk of the House within 7 days of the passing of this resolution.
4. That, notwithstanding anything to the contrary in the standing orders, the time and place for the first meeting of the committee be fixed by the Clerk of the House.
5. That, notwithstanding anything to the contrary in the standing orders, the committee is to elect a Chair and a Deputy Chair at its first meeting. The Deputy Chair is to act as Chair when the Chair is absent from a meeting of the committee.
6. That the committee have leave to sit during any adjournment of the House, to adjourn from place to place, to make visits of inspection within the State, and other States and Territories of Australia with the approval of the President, and have power to take evidence and to send for persons, papers, records and things, and to report from time to time.
7. (1) That, should the House stand adjourned and the committee agree to any report before the House resumes sitting, the committee have leave to send any such report, minutes of proceedings and evidence taken before it to the Clerk of the House.
- (2) A report presented to the Clerk is:
 - (a) on presentation, and for all purposes, deemed to have been laid before the House,
 - (b) to be printed by authority of the Clerk,
 - (c) for all purposes, deemed to be a document published by order or under the authority of the House, and
 - (d) to be recorded in the Minutes of the Proceedings of the House.
8. That on receipt of a request from the Committee for funding, the Government immediately provide the Legislative Council with such additional funds that the committee considers necessary for the conduct of its inquiry.
9. That the committee report by Thursday 1 November 2001.

Amendment by Reverend the Hon. Fred Nile agreed to:

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

1. General Purpose Standing Committee No. 1 have the following functions:
 - (a) to monitor the financial position of the workers compensation scheme under the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998, and
 - (b) to monitor and review the implementation and operation of the Workers Compensation Legislation Amendment Bill 2001 (No 2), as finally passed by the Parliament,
 - (c) to investigate and report on the efficiency of the operation of the workers compensation system and the administration of the WorkCover Authority,
 - (d) to monitor the impact on premiums of the bill.
2. That the committee be authorised to engage the services of:
 - (a) an actuary, who is a member of the Institute of Actuaries of Australia, and
 - (b) an accountant, who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants,

for the purpose of advising and assisting the committee, as the committee thinks fit, in relation to the committee's functions.
3. That the committee:
 - (a) provide interim reports to the House each 3 months, and
 - (b) finally report to the House by 30 June 2002.
4. Nothing in this resolution authorises the committee to investigate a particular compensation claim.

Motion as amended agreed to.**WORKERS COMPENSATION LEGISLATION AMENDMENT BILL (No 2)**

The PRESIDENT: Order! Earlier today the House agreed to a reasoned amendment on the second reading of the Workers Compensation Legislation Amendment Bill (No 2) to the effect that the House declines to give the bill a second reading until such time as the House has had an opportunity to consider a motion for the appointment of a committee to monitor and review the implementation and operation of the bill as finally passed by the Parliament, and such other terms of reference as specified in the resolution of appointment. As the House has now had an opportunity to consider a motion and to make a reference to General Purpose Standing Committee No. 1, it is in order for the Minister to move a motion to restore the second reading of the bill to the notice paper.

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

That the order of the day for the second reading of the Workers Compensation Legislation Amendment Bill (No 2) be restored to the business paper.

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) [11.32 p.m.]: I move:

That this bill be now read a second time.

The House divided.

Ayes, 33

Mr Breen	Mr M. I. Jones	Mr Ryan
Mr Colless	Mr R. S. L. Jones	Ms Saffin
Mr Della Bosca	Mr Kelly	Ms Tebbutt
Mr Dyer	Mr Lynn	Mr Tingle
Mr Egan	Mr Macdonald	Mr Tsang
Ms Fazio	Mr Moppett	Mr West
Mrs Forsythe	Mrs Nile	Dr Wong
Mr Gallacher	Reverend Nile	
Miss Gardiner	Mr Obeid	
Mr Gay	Mr Oldfield	<i>Tellers,</i>
Mr Harwin	Mr Pearce	Mr Jobling
Mr Johnson	Dr Pezzutti	Mr Primrose

Noes, 3

Ms Rhiannon
Tellers,
 Dr Chesterfield-Evans
 Mr Cohen

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

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) [11.39 p.m.]: I move—

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

The PRESIDENT: Order! The Minister has the call. We are still dealing with the bill.

The Hon. Dr Arthur Chesterfield-Evans: I would like to move an instruction to the Committee of the Whole.

The Hon. Duncan Gay: We are not in Committee of the Whole yet.

The Hon. Dr Arthur Chesterfield-Evans: That is not correct. I move, according to contingent notice:

That standing orders be suspended to allow the moving of a motion forthwith that it be an instruction to the Committee of the Whole that it have power to consider an amendment relating to the appointment of a workers compensation ombudsman.

The Hon. JOHN DELLA BOSCA: Point of order: I believe I had the call some minutes before the Hon. Dr Arthur Chesterfield-Evans—

The PRESIDENT: Order! The Minister certainly had the call.

The Hon. JOHN DELLA BOSCA: And I have not yielded.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: If we are to have the Committee of the Whole, I was keen to have the opportunity to introduce my amendment—

The PRESIDENT: Order! If the Minister does not yield, he retains the call.

The Hon. JOHN DELLA BOSCA: I move:

That consideration of the bill by the Committee of the Whole stand an order of the day for the next sitting day.

Motion agreed to.

INSURANCE (POLICYHOLDERS PROTECTION) LEGISLATION AMENDMENT BILL**Second Reading**

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [11.42 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

On 21 May the Treasurer announced that the Government would establish a Policyholders Protection Fund (PPF) and would introduce legislation to impose an Insurance Protection Tax. He said that initially, the Policyholders Protection Fund would be used to meet claims under compulsory third party motor vehicle insurance and home owner warranty insurance policies issued by the HIH group of companies. However, in the event of the insolvency of another insurer in the future, the Fund could be used to meet claims under the same classes of policy issued by that insurer.

On 29 May, cognate with the Budget, the Treasurer introduced the Insurance Protection Tax Bill into Parliament. The Bill imposes a tax on the total annual premium income of insurers operating in New South Wales. The tax will raise up to \$69 million annually, to be paid by insurers in proportion to their share of premium income earned in the State.

The Government does not relish the role it is playing. It was forced to take this action because of the failure of the national regulator of insurers, the Australian Prudential Regulation Authority (APRA) to adequately supervise the operations of the HIH group of companies.

Some commentators have suggested that the Government should not take the action it has. It has been suggested that, by stepping in with the Fund and the tax, that the Government will send the wrong message to industry, namely that if a company fails, the Government will tax its competitors to fund compensation for the failed company's clients. It is suggested that by taking this course the Government will encourage companies, particularly insurance companies to act imprudently, safe in the knowledge that the Government will pick up the pieces.

As a general rule, where normal commercial activity is involved, the Government agrees that Governments, the public and competitors should not be expected to intervene and pick up the pieces of a corporate collapse. People who engage in such businesses should do so in the full knowledge and expectation that they can gain or lose.

However, the collapse of the HIH group of companies does not fall within this general rule. Insurance, along with banking, is subject to prudential supervision and regulation by the Commonwealth Government. Business would be much harder to conduct if people were not able to have confidence in the integrity and safety of these institutions. Consequently, when there is a failure of the prudential supervision framework, as there was in this case, governments must respond quickly and effectively.

As well as providing that insurers will each contribute to the Insurance Protection Tax revenue in proportion to their share of business in New South Wales, the Insurance Protection Tax Bill provides that insurers cannot recover the tax directly from policyholders. This is in part in recognition of the fact that, with the demise of the HIH group of insurance companies, the remaining insurers will have an opportunity to increase their share of the market. It also recognises that the insurance industry must accept its share of the burden imposed on the community by the failure of the regulatory system.

There are two final points I would like to make about the Insurance Protection Tax before turning to this Bill.

Firstly, while the Bill prohibits the tax from being directly passed on to policyholders, the Government recognises that insurers may seek to indirectly recover some component of the tax from policyholders.

Second, the Treasurer acknowledges the tax is not the ideal solution to the problem. The Government is keen to work with the industry to find the best solution. It stands ready to amend or even repeal the tax in the event that any practical alternatives are proposed by the insurance industry.

The Insurance (Policyholders Protection) Legislation Amendment Bill 2001 establishes the administrative framework for the Policyholders Protection Fund. The Fund will be used to provide compensation to beneficiaries of home warranty insurance. Initially, it will apply to policies issued by the HIH group. The Treasurer can extend it to cover policies issued by other insurers who become insolvent.

The funds raised by the Insurance Protection Tax will be appropriated into the Policyholders Protection Fund, a Special Deposit Account. In addition to the tax revenue, the fund will receive money advanced from the Consolidated Fund to meet the claims from compulsory third party and home owner warranty insurance claims.

The Government has contributed \$50 million up front to start paying claims. In addition, it will loan money to the Fund while the tax is insufficient to meet claims on the Fund. These loans will be repaid to the Consolidated Fund when revenue from the tax catches up with claims on the Fund. The Government will not be able to have any revenue from the Insurance Protection Tax repaid from the Policyholders Protection Fund to the Consolidated Fund. This is designed to ensure that the revenue from the Insurance Protection Tax can only be used for the purpose of compensating compulsory third party policyholders and beneficiaries under home owner warranty insurance policies issued by insurers declared insolvent by the Government.

A framework already exists in the Nominal Defendant scheme administered by the Motor Accidents Authority to provide compensation to holders of compulsory third party motor vehicle insurance policies if the Government declares an insurer insolvent. This Bill ensures that the Nominal Defendant scheme will receive money from the Policyholders Protection Fund to pay compensation in relation to policies issued by the HIH group, or by any other insurers the Treasurer includes in the Fund.

Currently, there is no suitable framework for this sort of a Fund to apply to home warranty insurance. The Bill creates this framework. It establishes the Building Insurers' Guarantee Corporation and the Building Insurers Guarantee Fund, to be administered by the Department of Fair Trading. Consumers who were beneficiaries under HIH policies issued in accordance with the Home Building Act 1989 will be indemnified by the State to the extent the consumer would have been entitled to recover under the policy. Builders and developers will be prevented from claiming on the State indemnity.

One area of uncertainty that has arisen following the HIH collapse relates to the ability of builders, who hold unexpired annual HIH policies of insurance, to continue to issue certificates of insurance under those policies.

Anecdotal evidence suggests that there may be builders who have mistakenly issued certificates under annual policies after 15 March 2001, and, in particular, 22 May 2001, which was the date on which the Minister for Fair Trading formally withdrew HIH's approval to offer Home Warranty Insurance. In these circumstances the Government is concerned that, through no fault of their own, both builders and consumers are potentially exposed to adverse consequences in trying to rely on such certificates. Therefore, as a safety net, this Bill will both validate the use of those certificates and ensure that consumers who wish to make a claim under them have somewhere to turn for compensation. As I am sure Honourable members will appreciate, this measure is designed to protect builders and consumers who may have entered into residential building contracts, in good faith, during this period of great uncertainty.

Accordingly, the Bill provides that, where a certificate of insurance has been issued under an unexpired HIH annual policy after 15 March 2001 and on or before the date of introduction of this Bill, that insurance will be treated as meeting the requirements of the Home Building Act and any subsequent insurance claim will fall within the Government's rescue package.

In addition, the Bill clearly states that any certificate of insurance which is issued under an unexpired HIH annual policy after the introduction of this Bill, will not meet the requirements of the Home Building Act. Accordingly, any subsequent insurance claim under that certificate will not fall within the Government's rescue package.

In the absence of the Government's rescue package, claimants under home warranty insurance policies would have a claim against the provisional liquidator. The Bill provides that, in return for providing the indemnity, the Government will receive from claimants an assignment of their rights to claim against the provisional liquidator. Funds recovered from these assignments will be used to reduce the cost to Government and the insurance industry of the rescue package.

The Building Insurers Guarantee Corporation will also have the right to seek recovery against builders responsible for defective work and to claim against bank guarantees lodged by builders. Funds recovered from these sources will also be used to minimise the net cost of the rescue package.

The rights of recovery to be given to the Building Insurers' Guarantee Corporation are similar to the rights of recovery already possessed by the Motor Accident Authority.

The Bill provides for a means of compensation for New South Wales's consumers who would otherwise have limited avenues for seeking compensation in the winding up of the HIH group. By giving certainty to home building insurance arrangements, the Bill also provides a solution for the home building industry in New South Wales, which has suffered in the wake of the collapse of the HIH group.

I commend the Bill to the House.

The Hon. JOHN RYAN [11.42 p.m.]: The Opposition does not oppose the legislation. Some of the issues outlined in the bill were discussed during debate on the Appropriation Bill, and cognate bills, and on behalf of the Opposition I will now address a few further matters. Firstly, I believe that there has been enough political point scoring on the collapse of HIH Insurance, and that it is therefore best that to avoid that. It is fair to say that the Treasurer should be congratulated to some degree on acting decisively and quickly with regard to the mess that occurred following the HIH collapse.

I believe that in partisan politics we sometimes lose sight of the fact that all wisdom does not reside on one's own side of the Chamber, and I accept that the Treasurer has had an active interest in this matter and has pursued it in a number of fields. However, in response to the claims by the Treasurer and the Premier that the Commonwealth should have acted as quickly as the Treasurer acted, one can only say that that statement might have been a little rash. The situation in New South Wales is a great deal easier to predict and calculate with regard to the two forms of insurance the New South Wales Government has to look after, that is, the motor accident insurance scheme and the home warranty insurance scheme.

Both of those forms of insurance have a claims history that is much longer and easier to predict because both of them are statutory insurance schemes that have been reasonably closely supervised by governments for years. That might be contrasted with the situation facing the Commonwealth, which is dealing with matters such as the life insurance market and professional indemnity insurance schemes, which are obviously a lot more difficult to predict. It must be said that the Commonwealth Government needed to exercise some caution before it started to bankroll a scheme that was open-ended and the exact costs of bailing out that scheme were unknown.

In the Treasurer's enthusiasm to act, there is another reasonable question to ask, and that is whether his scheme will be cheaper for policyholders than the alternative scheme that was suggested by the insurance industry. As I recall, the insurance industry proposed a 1 per cent levy on other insurance policies, but in particular the motor accident insurance scheme. I agree with the Treasurer that the insurance industry was being generous with policyholders' money. The industry was planning to implement that scheme without the industry necessarily making a contribution towards the bail-out from the mess. To that extent, I agree with the Treasurer that it is absolutely imperative that the insurance industry make some contribution to the bail-out, because the industry is in part a beneficiary from the taxpayer or insurance policyholder bail-out of the scheme. Nevertheless, I do not know whether adequate consideration was given to whether the Treasurer's scheme was more transparent and, therefore, likely to have a lesser impact on policyholders than the insurance scheme.

The head of the Insurance Council of Australia, for example, has made the claim that as a result of the Treasurer's introduction of the scheme, insurance policies may increase by some 4 per cent to 6 per cent, which, of course, would reap revenue hundreds of millions of dollars greater than the amount the Treasurer proposes to raise through this tax. The problem is that where an insurance policy is increased, insurance policyholders will have no idea whether they are simply paying an additional amount on their insurance policies to adequately make up for the impost proposed by the tax or whether they are simply being exploited in the market.

That is not easy to tell when you are paying to make up for a tax the impact of which, under the terms of this bill, is deliberately hidden, as opposed to perhaps the more transparent scheme that the insurance industry was proposing, which was a short-term levy. People would have known what the levy was and how much it involved, and would have been able to pressure insurance companies to remove the tax when the task was completed. It is not that I do not have some sympathy for the Government becoming involved; I simply think that more time would have been valuable so that people could work out which of the two alternatives might have been cheaper. As it is now, the public will never know and the Opposition expresses concern about that.

I want to put forward two arguments as to why the insurance industry should participate in the bail-out. I do so because I do not know that I have heard these arguments advanced adequately in the debate. I know that I will probably become one of the insurance industry's least popular members of Parliament. Nevertheless, I notice that the industry continues to write to me and to invite me to functions such as its annual dinner. Whilst I believe in the private enterprise system and in encouraging industry, I nevertheless do not believe that I am so captured by the industry that I should not be able to comment independently on its activities.

The bail-out, whether it is funded by taxpayers or policyholders, will enhance the commercial value of the product insurers are selling. Insurers are essentially selling a product called security. The fact that the community steps in to bail out a mess like the collapse of HIH means that one thing that insurance companies do not have to do is to convince members of the public who think it is no longer worth paying insurance premiums because the insurance company might go broke that they do not have to worry about countering that problem. The bail-out helps insurers sell their product and enhances the security of the product that insurers are offering.

Secondly, the remaining insurers in the market gain a benefit from the temporary reduction in competitive pressure that has been caused by the collapse of the defaulting insurance company, HIH. In fact, it gives insurers a market opportunity, because they are able to secure more clients. It also gives insurers a favourable climate in which to bring forward premium increases. As I am sure the Treasurer will agree, insurers have made every bit of the opportunity that has been presented by that situation. A survey conducted by the company Deloitte Touche Tohmatsu and J. P. Morgan indicated that some insurers have increased their insurance premiums by amounts of up to 20 per cent. There is no doubt that one of the reasons insurers have been able to get away with such an increase in insurance premiums is the uncertainty of the market situation created by the collapse of such a major player, HIH.

I agree with the Treasurer: the insurance companies should help to bail us out of this mess. I am not sure how that can best be achieved. I do not have any special wisdom in that regard. We do not know whether the Treasurer's scheme will be better than some alternative, but I sincerely hope that it does not give insurers yet another opportunity to exploit the market. The Opposition is also concerned about whether the tax will continue in perpetuity. We took a step towards reducing that possibility by cutting from three to five years the time frame for review of the scheme. I thank the Government for supporting our amendment. However, new section 16B (3) (d) states:

The following is to be paid from the Fund ... any other money required by law to be paid from the Fund.

That means that if the Treasurer introduces a provision in the budget that requires money to be paid from this fund into the Consolidated Fund, this fund will become a tax. Honourable members should recognise that fact. I

have two detailed questions for the Treasurer relating to the terms of the bill. I refer the Treasurer to new section 103I, which says that builders are not indemnified under this scheme. New section 103I (2) (a) states:

... the builder to which the policy relates is not entitled to the indemnity ...

I would like an explanation as to why builders cannot claim under this scheme. If they were legitimate claimants under the previous scheme, I see no reason why they should be specifically excluded now. Many builders are small insurers whose livelihoods may depend upon their claiming on a policy. For example, I would be concerned if subcontractors who were covered under the old scheme are excluded from this scheme. They are taxpayers too, and they deserve to derive some benefits from this legislation. I am interested to know why they are being excluded, and to what extent. I also refer the Treasurer to new section 103K, which sets out a series of procedures by which the Guarantee Corporation can approve the handling of claims. The new section states:

Without limiting subsection (3), the Guarantee Corporation may approve as part of those procedures ... the requirement that a claim be made in a particular way ... the requirement that a claim be made within a particular time ... the requirement that the claimant provide particular information, and ... the requirement that the claimant verify any information by statutory declaration.

This bill is intended to indemnify people who would have had a legitimate claim under the previous scheme. One would think that such people would make that claim under the usual conditions set down by an insurance company. I am interested to know why the Government believes it is necessary to set out a special series of claiming conditions that apply only to this scheme, given that the bill says:

... the State must indemnify every person who is entitled to recover an amount under a compulsory contract of insurance entered into under Part 6 ...

This scheme covers insolvent insurers, so what is the special purpose of this new section? I hope that the Treasurer will be able to answer those two specific questions. I accept that he may have to take them on notice and provide answers on the notice paper if Parliament is prorogued. The Opposition supports the bill.

The Hon. MALCOLM JONES [11.54 p.m.]: I oppose the Insurance (Policyholders Protection) Legislation Amendment Bill. In his second reading speech in the other place, the Minister for Fair Trading, Minister for Corrective Services, and Minister for Sport and Recreation said:

Some commentators have suggested that the Government should not take the action it has. It has been suggested that, by stepping in with the Fund and the tax, the Government will send the wrong message to industry, namely that if a company fails, the Government will tax its competitors to fund compensation for the failed company's clients. It is suggested that, by taking this course, the Government will encourage companies, particularly insurance companies, to acting imprudently, safe in the knowledge that the Government will pick up the pieces.

I agree absolutely. By introducing another tax to solve the problems caused by the HIH Insurance collapse, the Government is transferring the costs from HIH either to policyholders who prudently insured their assets and liabilities or, if that cannot happen—and I am sure that it can—to company shareholders. Such people are not responsible for the problems of HIH. The shareholders are at arm's length from the HIH troublemakers. Similarly, insurance policyholders have acted in a prudent and wise manner. If the community wishes to take possession of the HIH debacle, the bail-out funds should come from consolidated revenue. The cost should not simply be transferred to others who are being selected against in this manner. The Minister continued:

... I acknowledge that the tax is not the ideal solution to the problem.

He has got that right. The Minister went on:

The Government is keen to work with the industry to find the best solution.

I agree with that. He said further:

It stands ready to amend or even repeal the tax in the event that any practical alternatives are proposed by the insurance industry.

In the meantime, we should use consolidated revenue funds if the Government feels that the community is demanding to own the problem. It should not whack this rushed legislation through Parliament in an attempt to transfer the charges to innocents.

The Hon. John Ryan: What about the taxpayers? They are just as innocent.

The Hon. MALCOLM JONES: If the taxpayers, through the Government, deem that they should own the problem, let it be on their heads. The Government is transferring liability to people who are at arm's length from the problem and who have had no say in the matter. I oppose the bill.

Reverend the Hon. FRED NILE [11.57 p.m.]: The Christian Democratic Party supports the Insurance (Policyholders Protection) Legislation Amendment Bill because it seeks to achieve a good objective: assisting policyholders who no longer have insurance coverage as a result of the collapse of the HIH Insurance group. I agree with the Hon. Malcolm Jones that there is a degree of unfairness in the operation of this legislation. The bill refers to the HIH group of companies. As I have said before, policyholders should confirm that they are not affected by the collapse of HIH. People who do not have policies with HIH might think they have nothing to worry about. I was one of those people, until I realised recently that I am insured with CIC Insurance, which is part of the HIH group. Thankfully, I recently received a letter from the Allianz Australia Insurance Group—I played no role in this—to say that I had been transferred to that company, which will now service my policies. The HIH group comprises FAI Insurance and CIC, among others, and I urge people to check their policies. Perhaps the Department of Fair Trading should issue some warnings or notices about that.

I have met with representatives of NRMA Insurance who agree with what the Hon. Malcolm Jones said, that is, that the HIH group in a sense has become insolvent because it tried to undercut more prudent insurance companies to win a larger share of the market. HIH has become bankrupt and the companies that have operated prudently, in the words of Hon. Malcolm Jones, are now obliged to make good its losses. That does not seem to be fair, but I understand the Government's objective. In relation to this legislation, the Treasurer said in the General Purpose Standing Committee No. 1 hearing:

I hope that they are right, and I have given them an undertaking that if it does turn out to be an overestimation we will introduce legislation to reduce the tax on insurance companies.

I hope the Treasurer will keep that in mind. He continued:

I do not think there is any doubt that part of the cost be borne by policyholders. Rather than taking the suggestion that it should be a levy on policyholders, my intention in imposing a tax on insurance companies is to ensure that the insurance companies bear some of the costs.

Based on that statement, we can be fairly certain that not all of the tax will be passed on to policyholders. NRMA Insurance legal advice is that if the board of directors were even to discuss whether to pass on that tax, they would be breaking the law. They cannot even think about it, let alone speak about it, because of the strict controls under the Corporations Law. Many people think that the tax can be passed on; but reputable companies will obey the law. The Government needs to bear that in mind.

The Hon. RICHARD JONES [12.01 a.m.]: Reverend the Hon. Fred Nile should remember the parable of the wise virgins. The virgins who saved their oil did not have to give any to those who had used theirs. This legislation goes against that parable. As the Hon. Malcolm Jones said, insurance companies that were prudent are being penalised. There is some comfort for the shareholders of those companies that are bearing the burden, because if they are insured and the company goes down the tube they will get similar treatment. I wonder which will be the last company left to bear the burden ultimately. I wish to direct a comment to you, Mr Deputy-President, the Hon. Johnno Johnson. For the first four years of my time in this Chamber you held the office of President of the Legislative Council. This may be the last time I will refer to you as Mr Deputy-President in this House. We will miss you when you go.

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [12.03 a.m.], in reply: I thank honourable members for their contributions and generally for their support for the bill. The Hon. John Ryan raised a number of issues, two of which I will deal with; I will come back to the third when I get further advice. First, he referred to new section 16B (3) (b), which refers to money to be paid from the fund, which includes any other money required by law to be paid from the fund. I am told that that will ensure that if there is any legal obligation on the fund to pay any moneys, it can be paid from the fund. For example, if financial institutions duty had not been abolished from 1 July next, obviously there would be an obligation in certain circumstances to pay financial institutions duty. That subparagraph will cover those sorts of situations. However, I would not envisage that that subparagraph could in any way enable money to be siphoned into consolidated revenue. I would have thought an amendment to the legislation would need to occur. Under this legislation, as I understand it, that cannot occur.

The second matter raised by the Hon. John Ryan related to new section 103I (2) (a). I am advised that the compulsory element of both the former Government's scheme and the current private insurance regime is that insurance is provided only to consumers. Accordingly, the Government's rescue package only covers that compulsory element. In other words, it provides assistance to consumers. The third issue the honourable member raised related to new section 103K. I am advised that it is not intended to abridge any rights that people currently have. It is simply a machinery matter. If the honourable member wants any further information, I am

sure I will be able to obtain it for him. I thank honourable members for their contributions to the debate, and I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

HEALTH CARE LIABILITY BILL

Second Reading

The Hon. MICHAEL EGAN (Treasurer, Minister for State Development, and Vice-President of the Executive Council) [12.07 a.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.

In introducing the Health Care Liability Bill 2001 I wish to make some general preliminary remarks by way of background before addressing the detail of the Bill.

When the representatives of United Medical Protection advised its membership late last year that premiums for medical indemnity cover would rise by 8 per cent and that a further "call", the equivalent of a full year's additional premium was to be paid either as a lump sum or in instalments over five years, doctors ranging from non-procedural general practitioners to specialists working in high-risk areas were both dismayed and angered.

Their dismay and anger is understandable because prior to UMP's announcement, it is clear that doctors were being advised by UMP that no such impost would occur.

UMP has advised that the call was prompted by a significant revision upwards of its claims cost exposure for outstanding claims and a significant increase in the number of new claims.

Since UMP's announcement last year, the medical profession has been in turmoil.

The high cost associated with medical indemnity premium increases, effectively adding a 20 per cent increase each year for the next five years, is further compounded by the uncertainty as to whether UMP will be required to make further calls on its members in future years.

In New South Wales United Medical Protection is a near monopoly provider.

UMP is a discretionary mutual with a captive insurance company called AMIL. Through AMIL, UMP provides insurance cover to a majority of its members on a claims made basis up to \$5 million per annum. Payments in excess of \$5 million are discretionary.

An indeterminate number of doctors, including some regarded as poor risks, are covered only on a discretionary basis.

What this means is that UMP, like other medical defence organisations, manifests itself in large part as a self-regulating club rather than an insurance company which is subject to prudential regulation and scrutiny by APRA.

Because of what seems to be historical practice, and unlike some other Medical Defence Organisations, United Medical Protection does not fully bring to account as a liability that part of its exposure and potential liability under its discretionary arrangements, similar to what is known in the industry as IBNRs (that is, claims incurred but not reported).

These particular matters may relate to incidents going back 20 years.

If they are not transparently accounted for and acknowledged by the UMP Board as a potential liability, is it any wonder that organisations such as the AMA, governments, individual professional associations and colleges have been demanding a full and open inquiry into the activities of the Medical Defence Organisation and its true financial position.

As part of the Government's Bill which I will detail shortly, the Government will require UMP, and indeed any indemnity organisation operating in New South Wales, to be more transparent and more accountable not only to its membership but to the people of New South Wales.

I consider it to be entirely appropriate that I use this opportunity to call on other jurisdictions in Australia to do exactly the same thing.

The calls that there is a crisis in medical negligence are not new.

In November 1995 the Commonwealth Government released the Tito Report regarding Compensation and Professional Indemnity in Health Care.

Much of Fiona Tito's report remains relevant today.

For example, issues such as structured settlements for the catastrophically injured are still unresolved and remain as urgent today as they were in 1995.

The Commonwealth must inevitably act to provide relief in this regard. They simply need to clarify a tax law.

Equally, issues around law reform, compulsory insurance, improvement in quality and risk minimisation and greater transparency within Medical Defence Organisations remain.

However, until last year's dramatic events the indemnity landscape was relatively calm.

Whilst premiums were growing, particularly for higher risk groups, most States and Territories, including New South Wales, had developed strategies of one form or another to assist these more high-risk specialty areas.

For example, in 1999 in New South Wales the Government's Treasury-Managed Fund [TMF] liability arrangements were extended to underpin the work of sessionally paid obstetricians for their services to public patients in the public hospital system. The cost, including for reinsurance, of providing this cover, has escalated to a current cost of \$24 million for the year commencing February 2001. Further increases in this cost are anticipated well above CPI because of the cost of claims and attendant reinsurance costs in the obstetrics area.

It is important to note that this multimillion dollar taxpayer funded cover was provided on the understanding that it would control the growth in obstetrics premium payments.

Two years later, the growth in obstetrics premiums continues unchecked.

The passage of this legislation will not change the Government's commitment to the TMF coverage for sessionally paid obstetricians.

However, as the Chairman of the New South Wales Medical Services Committee explains in his correspondence to me:

"The injection of expenditure of even very large sums of money by Government to subsidise indemnity insurance for medical practitioners, either directly or indirectly, would, at best, only have very short term benefit and in the medium and long term such an injection of funds would escalate costs and the consequence of those rising costs".

In other words, simply picking up the tab and paying the doctors' premiums at the taxpayers' direct expense will not work. More fundamental tort law and industry reform are required.

Another contributing factor to escalating premiums is the recent trend that has seen the unravelling of the traditional cross-subsidy that exists between low-risk and high-risk medical practice.

Traditionally, the premiums of the relatively small number of doctors practising high-risk specialties such as obstetrics and neurosurgery have been supported by inflating the premium payments made by the lower risk end of medicine, for example, non-procedural practitioners.

Whilst in an era of economic rationalism, such practices may not be fashionable, they have had the desirable effect of constraining costs of high-risk services, effectively keeping services like obstetrics and neurosurgery available in our health system.

If the cross-subsidy did not exist, actuarial analysis makes it clear that a typical obstetrician or neurosurgeon would simply be unable to afford to pay their premiums—estimated by UMP for neurosurgeons to be in excess of \$200,000 per annum. In other words, wiping out all but the most lucrative practices in the busiest parts of this State and, without any doubt whatsoever, removing obstetrics services and neurosurgery services from large parts of metropolitan Sydney and everywhere in rural and regional New South Wales.

Such an outcome from unravelling the cross-subsidy is unthinkable and totally unacceptable to the general community. Yet there is clear evidence that it is happening.

For example, the Minister for Health has received advice that one particular regional New South Wales obstetrician was recently quoted in excess of \$132,000 for their indemnity cover.

Some indemnity providers have effectively gained New South Wales market share by focussing on the low risk, shorter "claims tail" end of the market forcing retreat from the practice of cross-subsidisation and effectively exposing the high-risk "longer claims tail" specialties to higher premiums and, as a consequence, the community to a real risk of a total reduction in health services.

The combination of these two facts—the sharp increase in premium payments and the 100 per cent call, together with the cherry-picking and consequent unravelling of the cross-subsidy—means the Government will act to protect the community by establishing a stronger regulatory framework around the medical insurance and indemnity industry in New South Wales.

Since November last year every rural, regional, metropolitan and national media outlet has carried stories about the medical indemnity crisis.

In the overwhelming majority of cases which have been reported, the Government is satisfied that the concerns are real.

The Minister for Health could show you literally hundreds of press clippings, media statements and items of correspondence which detail the distress of communities as diverse as Mudgee and Marrickville, Cowra and Coonamble, Tamworth and Tweed, Murwillumbah and Mullumbimby, Glen Innes and Gunnedah, Nyngan and Nowra, to name but a few, as their doctors alerted their communities about their inability to continue practising unless there was major structural reform to the circumstances surrounding medical negligence claims.

What is more distressing are the several dozen letters of resignation that the Minister has received from country doctors who presently operate in our public hospital system.

If anyone believes that this is just an Australian Medical Association [AMA] beat up—even though some claims fall into that end of the spectrum—they need only read the clippings or understand that these doctors who tendered their resignations are deadly serious.

The challenge for this Parliament is to determine whether we can unite to protect those communities, especially country communities, by maintaining the medical services that they presently receive.

The fact that the Government announced a substantial package of reform to medical negligence which is now reflected in this Bill has seen every doctor who tendered their resignation withdraw it.

All the doctors who walked off the wards have returned on the understanding that the Government has a package that deals with their needs.

They expect the Parliament to give it support.

If not, the Minister expects that they will resign and, this time, they are unlikely to return.

As many members in the other Chamber have identified, as they represent their constituencies—many of them members of the National Party in rural electorates—they want their doctors and they want the Parliament to do what is necessary to underpin their service.

Importantly, the doctors want this package too.

For example, Dr D. J. Browning, an obstetrician and gynaecologist, wrote to the Minister on 13 March 2001 and said:

"I should like to take this opportunity of applauding your initiative in the reform of medical litigation".

Dr David Molloy, Chairman of the National Association of Specialist Obstetricians and Gynaecologists, wrote on 25 May 2001:

"Well done, on the initiatives that the New South Wales Government is taking in the difficult area of Medical Defence Reform".

I can even quote the New South Wales AMA President Dr Michael Ridley from his monthly column in the May edition of the AMA's Journal, *The NSW Doctor* :

"The AMA (NSW) is delighted that the Minister for Health has taken the bit between his teeth and introduced the Bill for Tort Law Reform to the Parliament".

Even Kerry Phelps, the Federal AMA President has written in a letter dated 27 February 2001:

"The Association is very encouraged that the NSW Government is now actively pursuing this goal ... In this context the AMA strongly supports the NSW proposal."

Finally, Dr Michael Hollands the Chairman of the Committee of Chairman, New South Wales State Committees of Medical Colleges, wrote on 27 February 2001:

"We have considered the package proposal. It sounds a very positive contribution and hopefully will lead to reduced premiums".

It is important to note in the last quote that Dr Hollands refers to "we", because that committee represents a tremendous range of colleges including the Royal Australian College of Surgeons, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, and the Royal Australian College of Physicians, including the Division of Paediatrics.

However, it also fair to point out that some parts of the medical profession are not satisfied with the extent of the Bill. Some say we do not go far enough.

For example, some members of the medical profession want me to establish a regime where, in cases of negligence, they do not wish to be judged by the court system but by their peers.

That is not acceptable to the Government because it is not acceptable to the community.

It can be dealt with in one word—Chelmsford. Back then, peers of the Chelmsford practitioners regarded deep sleep therapy as acceptable practice.

Equally, some doctors simply want the State Government to pay for their insurance premiums.

They say that this occurs in other States, but what they do not say is where such arrangements exist in other States they exist on the basis that other doctors are part-time employees of the public health system and not Visiting Medical Officers [VMOs], that is, independent contractors as is the case in New South Wales.

The fact is all staff specialists in New South Wales, that is, employed senior specialists, have their public practices covered by the State.

VMOs, as independent contractors to the public health system, have historically paid their own indemnity cover as is obviously the case for any other contractor in any other industry sector.

I can advise the House that offers have been made to various specialty groups for them to change their status from contractor to employee.

Those offers have been rejected usually on the grounds of the doctors desire to maintain their independence and autonomy, and the higher rates of VMOs. As one doctor in Tamworth made clear: "I want my cake and eat it too". In other words, I do not want to be part of the system as an employee but I want you to pick up the tab as if I were.

Equally, that position is unacceptable to the Government because it is unacceptable to the community.

Finally, there are those who say simply extend the Treasury Managed Fund beyond the present cover for sessionally-paid obstetricians.

This option is simply unsustainable as evidenced in my earlier remarks and by the comments I have earlier referred to by the Chairman of the New South Wales Medical Services Committee, Professor Geoff Duggin.

Yet it is an option that the New South Wales Opposition seems determined to pursue.

There are any number of public statements where the Opposition Leader has been willing to commit between 1 and 2 per cent of the New South Wales Health budget—somewhere between \$77 million and \$154 million to pick up the tab for doctors.

Given the evidence of Professor Duggin and others, such a position lacks credibility and is hardly worth mentioning other than to note the fact that it totally avoids the real issues around the shape and nature of the industry, the law, and practice improvement.

Finally, there are those in the medical profession who object to the Bill because it requires compulsory insurance.

In this day and age there is absolutely no justification for a doctor to not carry professional indemnity cover.

"Going bare" as occurs in a minority of cases will no longer be acceptable in this State. Consumers will be fully protected.

The Government intends to legislate, by way of this Bill, to make professional indemnity insurance a condition of registration.

The Medical Board will have the power to suspend a doctor if satisfied he or she does not have the requisite professional indemnity insurance cover.

Practicing without insurance will be unsatisfactory professional conduct.

Other states such as Victoria have already introduced similar requirements.

The Government makes this requirement because it is what the community expects.

I now turn to the detail of the Bill.

The Health Care Liability Bill introduces a legislative reform package relating to compensable personal injuries claims arising from the provision of hospital and medical care. The package is aimed at facilitating:

- access to fair and sustainable compensation by consumers;
- the reasonable distribution of costs of compensation for the severely injured across the medical indemnity industry;
- the sustainability of medical indemnity costs;
- the orderly and sustainable growth in claims;
- the continued provision of a full range of specialist medical services to the NSW community; and
- a community that is better informed about the cost and developing trends in health care personal injury claims.

The Attorney General and the Minister for Health, through their respective Departments, have collaborated closely on the review of health care liability issues and the development of the Bill.

The review of health care liability has involved, in its early stages, a public call for submissions and, in its later stages, debate and discussion in the forum of a reference group of relevant stakeholders and experts, including legal, actuarial and industry expertise.

The need for the introduction of the reform package has arisen as a consequence of escalating medical indemnity premiums. This has been caused by a number of factors:

- the increasing size of medical negligence claims, particularly the larger claims;
- the need for some medical indemnity organisations to build reserves to meet unfunded liabilities incurred in past years but not yet reported as claims;
- the development of the practice within the medical indemnity industry of risk rating by specialty group and consequently setting differential premiums based upon those ratings.

These factors have in turn contributed over the last decade to escalating indemnity premiums, which are becoming unsustainable for some medical groups such as specialist obstetricians, general practitioner obstetricians and neurosurgeons.

The Bill introduces a sensible and balanced set of measures. Whilst Part 2 of the Bill limits indemnity costs for providers of certain hospital and medical services and their insurers, this is counterbalanced by strong public interest offsets for consumers in Part 3 and the much improved prospect that the community will continue to receive a full range of specialist services.

Part 1 sets out the objects of the Bill and the relevant definitions. Clause 3 makes clear that the Bill seeks to achieve significant cost containment through limitations on damages for non-economic loss, commonly referred to as general damages, for less serious claims, whilst preserving principles of full compensation for the care of the severely injured.

Part 2 of the Bill introduces a number of measures aimed at restoring sustainable indemnity costs through reform of the law of damages as it relates to health care personal injury claims.

In the interests of both the medical profession and the community, Part 3 establishes a regulatory scheme requiring doctors to be insured, approving the type of insurance they are to have and setting conditions with which medical indemnity insurers must comply.

Part 2 will only apply to fault-based personal injury actions which arise from the provision of health care by certain health care providers. These include medical practitioners who have approved professional indemnity insurance and public health organisations, which of course are the major employers of medical practitioners in their public hospitals and other facilities. The practice company structure is commonly used by medical practitioners to conduct their individual private practices and is to be included within the definition of "medical practitioner". It is intended to cover the situation of a doctor who conducts his or her practice through a practice company structure.

Damages awarded in claims against those doctors who are covered by professional indemnity insurance will be subject to the limitations on damages under Part 2. Once Part 3 of the Bill commences, the limitations will apply to claims against currently practising doctors who have approved professional indemnity insurance. Medical indemnity companies indemnify both currently practising doctors and those doctors who have retired or otherwise ceased practice at the time a claim is brought against them. As one of the primary objects of this Bill is to keep the costs of medical indemnity sustainable, Part 2 will also apply to claims against doctors who have retired or otherwise ceased practice provided they are indemnified under a professional indemnity insurance arrangement in respect of the relevant injury or death.

However the Bill is not intended to apply to the damages liabilities of the larger entrepreneurial medical service corporations who may employ or otherwise contract with a number of doctors for the purpose of carrying on their business. Nor is the Bill intended to apply to corporations that are not in the business of providing medical or related services, but happen to employ doctors for purposes such as attendance on staff. These corporations are well able to cover their insurance costs as part of their overall commercial operations and pricing structures. Implementation of the legislation will be carefully monitored to identify any attempt by large commercial corporations to exploit the definition of "practice company" in order to bring themselves within the definition of "health service provider".

Other public liability claims, such as "slip and fall" cases arising from occupiers' liability, will not be covered by the Bill and hence health service providers will not be placed in a preferential position vis-a-vis other owners or occupiers of premises. Damages awards made under the Fair Trading Act 1987 or the Anti-Discrimination Act 1977 and workers' or victims' compensation will be unaffected by the Bill.

Pursuant to clause 5 (3) of the Bill, Part 2 will not apply to legal claims where legal proceedings have already been initiated before the commencement of the legislation. It will, however, under clause 5 (2) apply to claims in respect of personal injuries whether sustained before or after the commencement of Part 2. This is necessary if the reform package is to have an impact in the shorter term on the cost of indemnity cover. Claims experience in the health care area indicates that significant time elapses between the time of injury and the time a claim for compensation is made. This is particularly so in the case of large claims. For example in a severe birthing injury it is not unusual for the injured person to have attained their majority before they make a claim. If Part 2 of the Bill were not applied to existing injuries where no claim has yet been initiated, the impact of the legislation on indemnity costs would be delayed for some years.

The actuarial assessment commissioned by the Department of Health estimates that applying the Bill only to injuries occurring after its commencement will defer any significant savings from the introduction of the threshold and assessment table for non-economic loss for 12 to 18 months, and any significant savings from the changes to the discount rate and interest on damages for five years or more.

Such delays are clearly untenable if the current medical indemnity crisis is to be effectively addressed.

Immediate cost containment and the direction of that saving to support indemnity cover for the higher risk specialties is necessary in order to stem the drain of practitioners from these high risk areas of practice and ensure the future supply of these essential specialist services to the whole community.

Clause 6 also contains the power to prescribe awards of damages to which part or all of Part 2 is not to apply. The implementation of the legislation will be carefully monitored and any unintended or inappropriate application of Part 2 will be addressed through this regulation making power.

Clause 9 of the Bill will fix the maximum weekly rate for damages for loss of earnings at net \$2,603, which is the rate applicable under the motor accidents scheme. This weekly cap will be indexed in line with the mechanism applying under the motor accidents scheme.

The fixing of this rate will strike a balance between certainty for the medical indemnity industry and the rights of consumers of health care who sustain compensable injuries. Clause 10 is intended to remove the speculative element of future loss of earnings claims by having those damages determined strictly in accordance with the most likely future prospects of a plaintiff before the injury.

It is noted that in a minority of cases involving claimants with very high incomes, those with net earnings of over \$2,603 per week, this measure will result in an overall reduction in the amount of damages they can receive. However, high income earners are far better placed than the average person to protect their income through insurance and other such measures.

Members will be aware that when awarding lump sum damages to a plaintiff to compensate them for future losses the Court discounts that lump sum. This discount is calculated for the relevant future period in recognition of the fact that the plaintiff has the immediate benefit of the lump sum and can invest it and earn a return over that period. The discount rate on lump sum damages applying under both the motor accidents and workers compensation schemes is 5 per cent. This is 2 per cent higher than the discount rate applying at common law. Furthermore, where discount rates for common law actions have been set by statute in other Australian jurisdictions, I am advised they have ranged from 5 to 7 per cent. Accordingly, under clause 11 of the Bill it is proposed to bring the discount rate for medical and hospital claims into line with the rate applying under those New South Wales statutory schemes.

The care burden placed upon relatives by a severely injured family member is recognised in damages awards. The Bill retains compensation for gratuitous attendant care and has not sought to introduce a cap on the level of damages that can be awarded for these services. It does seek, however, to better clarify what gratuitous attendant care should be compensable. Clause 12 of the Bill provides that domestic, nursing or other gratuitous attendant care services intended to alleviate the consequences of an injury are not compensable unless:

- the court is satisfied that they are reasonably necessary,
- the need for them has arisen solely because of the injury, and
- they would not have been provided to the claimant but for the injury to which the claim relates.

The intention of clause 12 is to ensure that damages awards are not inappropriately inflated by including compensation for what is merely an incident of an ongoing family relationship. The fact that a husband or teenager now does half the washing up or helps around the house should not attract a claim for thousands of dollars in compensation. Such household contributions are, in this day and age, part of the mutual "give and take" of any family relationship. Whilst in the interests of the severely injured and their families the Bill has placed no monetary cap or threshold on damages for gratuitous attendant care, commonsense and restraint should prevail in determining what gratuitous services should be compensated.

The Bill will also introduce reforms to the area of non-economic loss, or general damages. Damages for non-economic loss, although by their nature intangible, recognise the temporary or permanent loss of amenity of life of the injured plaintiff. Where statutory limits on such damages have been introduced, they have been aimed at reducing the inappropriate growth in this component of damages awards. Notwithstanding the intangible nature of non-economic loss damages, there should be some consistency in their award.

The Bill will achieve this by fixing the maximum non-economic loss damages for the most serious cases at \$350,000, which it is broadly agreed is around the current maximum for a most extreme case. Under clause 14 this figure will be appropriately indexed to ensure fairness to plaintiffs while providing certainty to indemnity organisations.

Under clause 13 the maximum non-economic loss damages that may be awarded is only to apply in a most extreme case to ensure that smaller claims do not grow disproportionately and approach the maximum level.

Clause 13 of the Bill also introduces a threshold of severity in terms of non-economic loss, relative to a most extreme case, which a claim must reach before non-economic loss damages may be awarded. If a case achieves this threshold of 15 per cent severity, non-economic loss damages are to be awarded in accordance with an assessment table based on section 79A of the Motor Accidents Act 1988. This involves a sliding scale for the assessment of non-economic loss for the less serious cases, being those cases where the severity of the non-economic loss is assessed as between 15 per cent and 32 per cent of a most extreme case.

Where the severity of the non-economic loss is assessed as above 32 per cent severity the plaintiff will receive the full proportion of non-economic loss relative to a most extreme case.

Scaling down in the lower range but above the threshold has been introduced for two reasons. First it will achieve a saving that can be redirected to sustain the compensation costs for the severely injured. Secondly, it will offset some of the upward creep that inevitably occurs in assessing the severity of claims when a threshold for non-economic loss is introduced, as was the experience in the Motor Accidents scheme.

Whilst clause 13 does substantially affect the compensation entitlements of those with less serious injuries in an effort to contain the overall costs of medical indemnity, it has been done with the overall intention of preserving full compensation, including the very significant costs of care, for the severely injured. The actuarial assessment of this measure is in the order of a saving of 6 per

cent in incurred costs for damages and 4.2 per cent in incurred costs for legal costs, a significant amount that can be redirected to sustain the escalating costs of compensation for the severely injured.

The types of cases affected by the introduction of the threshold would include claims for non-economic loss for light scarring or for repairable dental damage when inserting anaesthetic equipment. Claims for non-economic loss where post-operative recovery has been less than smooth or where there has been a failure to identify a foreign body, provided there is no lasting impairment, would also be likely to fall below the 15 per cent threshold.

The types of cases that may be subject to a discount in respect of non-economic loss because they fall in the 15 per cent to 32 per cent range will include those cases involving less severe, but ongoing, impairment such as a misaligned fracture that compromises movement to some degree or nerve damage of a less serious nature during surgery. More severe scarring cases may also fall within this range, although it is noted that in cosmetic surgery and other cases, depending upon the representations made to the patient before surgery, a Fair Trading claim may also be available. Furthermore, those who are most seriously injured will not be affected by these changes.

Clause 15 provides that no interest is payable on non-economic loss damages. This is similar to the provisions of the motor accidents compensation scheme. The rationale is that non-economic loss damages provide compensation for a loss, which has no "real and direct" monetary value, and hence awards of interest on such amounts are not warranted.

While reforms to the law of non-economic loss, or general damages, might reduce the amount of compensation available to some injured plaintiffs, it is important to note that these damages are not compensating plaintiffs for any actual financial loss.

If a court determines in any particular case that interest is payable on damages for economic loss up to judgement, it is to apply the principles for the calculation of interest ordinarily applied in any personal injury claim, with the exception of the actual rate of interest. For example under these well-established principles a court cannot give interest upon interest. Whilst some damages for economic loss may be referable to the whole period from the date the cause of action arose to the date of judgement, other damages for economic loss will be referable to only part of that period. Accordingly, similar to the Motor Accidents scheme, where a court is satisfied interest is payable on any damages for economic loss it is to be calculated from the time when the loss to which the damages relate is first incurred until the date of determination.

Clause 15 (3) of the Bill specifies the relevant rate of interest as the Commonwealth Government 10-year benchmark bond rate applying on the first business day of January or July in each year, or another prescribed rate. This rate will be applied for the relevant six month period in which the date of determination falls. This provides for an interest rate on relevant damages which is referable to a prevailing market rate for conservative risk free investments, achieves some further reduction in incurred costs and is simple to administer.

Like the motor accidents scheme, Clause 16 enables damages in a health care claim under the Compensation to Relatives Act to be reduced where there has been contributory negligence on the part of the deceased person.

The awarding of exemplary or punitive damages by a court occurs rarely. The public policy underlying this class of damages is to sanction the defendant through an additional pecuniary penalty. While awards are extremely rare they are still a factor that is considered in actuarial assessments used in setting premiums, particularly at the reinsurance level.

Since the development of the common law on exemplary or punitive damages there has been significant legislative development of the statutory mechanisms for lodging complaints against and disciplining health professionals.

In circumstances where there is a need to discipline the defendant, there are now better targeted methods of doing so under the Health Care Complaints Act 1993 and the Medical Practice Act 1993. Accordingly clause 17 of the Bill will abolish exemplary and punitive damages for health care claims.

The second range of measures introduced by the Bill will improve access by health care consumers to compensation. I am sure all honourable members will agree that any responsible medical practitioner should ensure they have proper liability cover for their professional services, both in their own interest and, more importantly, in the interests of their patients. Part 3 of the Bill requires registered medical practitioners to be covered by approved professional indemnity insurance unless exempted by the Act or regulations.

Under clause 20 approval is to be by way of ministerial order published in the Government Gazette. The Bill provides the flexibility to approve both insurance and discretionary indemnity cover.

Consultation with key stakeholders on the kind and extent of insurance cover that will be required, and whether it should include discretionary arrangements, is already under way. Both medical defence organisations which offer a discretionary product and insurers which provide an insurance policy are being consulted, as are the medical profession and consumer groups. That said, there will be certain basic requirements in relation to the approval of indemnity insurance which will be considered:

- the level of cover must be adequate to cover claims by the severely injured, and
- it must provide adequate run-off cover for practitioners retiring or otherwise ceasing to practise in New South Wales.

Whilst there are advantages and disadvantages to each type of cover, a key deficiency in discretionary cover is the absence of Commonwealth prudential regulation of the discretionary defence organisations. In the wake of the HIH collapse it is clearly imperative that as part of any overhaul of its insurance regulation, the Commonwealth must be prepared to undertake prudential regulation of both medical indemnity insurers and defence organisations in the public interest. The Minister will be strongly advocating this position to my Commonwealth and State counterparts.

Doctors employed in the public health system will be exempt from the mandatory cover requirement in respect of their employment as they are already adequately covered by the New South Wales Government through the Treasury Managed Fund

arrangements. It is envisaged that the regulations will also exempt other practitioners to the extent they are already adequately covered through employment or like arrangements. Doctors who undertake activities in an area with no risk of personal injuries claims would be another possible class of exemption.

Professional indemnity insurance will be a condition of registration. The Medical Board will have the power to suspend a doctor if satisfied he or she does not have the requisite professional indemnity insurance cover. Practising without indemnity insurance (unless exempted by Act or regulations) will be unsatisfactory professional conduct.

Whilst comprehensive prudential regulation must properly be a matter for the Commonwealth, it has become apparent that some industry specific regulation at State level is required. Regulation will be aimed at improving industry transparency, and ensuring that the savings achieved through Part 2 are directed to sustaining compensation costs for the severely injured. This will in turn place downward pressure on the premiums of those medical groups at higher risk of such claims. Part 3 of the Bill provides the regulatory mechanisms for achieving these reforms.

As well as approving professional indemnity cover for medical practitioners the relevant Minister will, by order, be able to impose the conditions that an insurer must comply with. Clause 21 sets out mandatory conditions in relation to data collection and reporting by insurers.

In the past there has been a lack of transparency about the claims experience of medical indemnity organisations and the costs associated with meeting those claims.

Whilst respecting that this information is of commercial value the Minister is determined that insurers who wish to operate in the New South Wales medical indemnity market must be prepared to provide data which can be published on an aggregated and hence de-identified basis to help inform both the profession and community about:

- the costs of the various components of personal injury compensation including legal costs, as distinct from the costs of other activities in which the organisation might engage.
- developing trends in personal injury claims against practitioners.

The measures contained in Part 2 of the Bill will provide greater certainty and sustainability in relation to claims costs for the medical profession and medical indemnity industry. They too must play their part in ensuring a sustainable and comprehensive system of indemnity cover for all practitioners.

Clause 21 imposes mandatory risk management obligations on medical indemnity insurers. They have an important role to play in maintaining and improving standards in the medical profession in the interests of improved service delivery and the containment of costs.

Clause 22 will enable other conditions to be imposed under a ministerial order. Possible types of conditions contemplated are set out in clause 22. Conditions imposed under this section will have three primary aims:

- ensuring that the savings achieved through the measures in Part 2 of the Bill are directed to where they are needed, namely supporting the costs of compensation for the severely injured with high care needs
- stabilising premiums for those higher risk procedural specialties which are currently experiencing rapidly escalating premiums
- ensuring medical indemnity insurers operate to appropriate standards.

Consultation has already commenced with all stakeholders, including industry, in developing the details of these conditions.

It is envisaged that those insurers wishing to provide approved insurance will be required to offer cover to a full range of specialty groups.

Possible mechanisms to ensure the effects of the cost containment measures under Part 2 are directed to where they are needed include specifying rate relativities between different specialty groups, and arrangements to ensure all insurers bear their fair share of the cost burden of large claims. An expert actuarial consultancy has been commissioned to properly inform the development of appropriate mechanisms.

It will be a condition for insurers operating in the New South Wales medical indemnity market that they comply with safeguards against the arbitrary withdrawal of insurance cover. It is envisaged that insurers will be required to develop appropriate review processes before implementing any decisions that may adversely affect an individual practitioner's continued insurance cover. This could involve linkages to the Medical Board's performance review system. Proactive risk management programs and reasonable guidelines for claims management will be other issues under scrutiny in developing requirements which insurers must comply with.

The potential sanction for any medical indemnity provider who fails to comply with the requirements of an insurance regulation order will be exclusion from the New South Wales medical indemnity insurance market for a specified period. This exclusion will be by way of ministerial order under clause 24. The Bill ensures procedural fairness to an insurer against whom a prohibition order is contemplated. A prohibition order may do one of two things.

First, it may prohibit an insurer from providing approved insurance at all. Second, it may prohibit an insurer from providing cover to newcomers but will not prevent it from renewing cover for existing customers.

Breach of a prohibition order by a corporation carries a penalty of up to 400 penalty units for a first offence and 800 penalty units for a subsequent offence. Appropriate compliance powers are included in Part 4.

There is an obligation on the relevant Minister to notify the Medical Board of a prohibition order. The Medical Board must in turn notify practitioners. Clause 24 of the Bill ensures individual practitioners will not be left high and dry as a consequence of the making or breaching of a prohibition order. Their insurance cover will not be annulled by the making or breaching of an order or affect an insurer's liability to them.

Members will agree that proper professional indemnity cover is something all health professionals must responsibly consider. Clause 25 of the Bill provides a power to require other registered health professional groups to be covered by professional indemnity insurance. Further consideration is needed as to which other professional groups should be subject to this requirement. Detailed consultation would also need to take place with a particular profession before any indemnity requirement were applied to the profession, or to any group within it. However other health professions are not experiencing the dramatic escalation in premiums that some medical groups are. Accordingly, at the current time, it is not proposed to provide a regulatory power in respect of indemnity cover for other health professionals beyond the simple requirement to have it.

Part 4 of the Bill provides protection from liability for doctors and nurses who voluntarily render medical assistance at the scene of an accident or other emergency. These good samaritans, acting in good faith, can render assistance safe in the knowledge that at some point in the future they will not become the victims of their own good deeds through medical negligence claims.

Part 5 of the Bill deals with a number of miscellaneous but important matters. In particular clause 28 of the Bill relates to the situation where damages are awarded against a party who is not a health care provider within the meaning of the Bill and, because the injury or death is caused in part by the health care provider, that other party is entitled to claim contribution towards those damages from the health care provider.

To ensure the integrity of the provisions of Part 2, the health care provider's contribution is to be determined in accordance with ordinary principles for apportionment of responsibility amongst tortfeasors and calculated in accordance with the provisions of Part 2.

One of the primary purposes of the Bill is to address escalating premiums for medical practitioners. It is not to shift the compensation cost burden from medical practitioners to other health practitioner groups, thereby driving up their indemnity costs and causing a crisis in their premiums. To ensure that other health practitioners, who may be joint tortfeasors with health care providers covered by Part 2, are not unfairly penalised through the operation of clause 28, subclause (3) operates to ensure they do not have to bear the difference between a doctor's contribution, which is limited by the Act, and what the doctor would have had to contribute under the general law.

Schedule 1 to the Bill amends the Private Hospitals and Day Procedure Centres Act 1988 to enable adequate insurance or other liability cover to be prescribed and imposed as a licence condition. That Act is currently the subject of a detailed review. In the course of that review consultation will occur with stakeholders on the making of a regulation in relation to compulsory liability cover. The Bill also enables regulations to be made which can apply Part 2 to licensees of private health facilities by including them in the definition of "health care provider". As part of consultation on the question of insurance requirements for licensed facilities, consideration will be given to whether it is appropriate to include some or all licensed facilities in the definition of "health care provider".

Finally it is essential that the implementation of this legislation be closely monitored. The Bill contains a mandatory review clause with a report of the review to be tabled in Parliament.

A number of medical groups have argued that the courts make determinations of negligence in adverse medical events where doctors have committed no real fault. They argue that the law of negligence should be codified through legislation. The most common suggestion for codification is to define negligence by reference to a breach of a standard of care accepted by a responsible body of medical opinion. The Government does not share this view.

The High Court has held that negligence is ultimately a question for determination by a court having considered all the relevant expert medical evidence brought by both the plaintiff and defendant. In cases where medical treatment is at issue, what a responsible body of medical opinion would regard as a reasonable standard of care will generally be the standard applied by a court in determining whether a doctor has been negligent. However, the court must retain the ultimate discretion for those cases where it determines that prevailing medical opinion is inconsistent with a reasonable standard of care.

The medical profession does not always get it right. One just has to look at Chelmsford. Deep sleep treatment practised at Chelmsford private hospital was accepted by a significant body of medical opinion and doctors continued to refer their patients for this treatment for many years.

Whilst prevailing medical opinion will generally be determinative of whether a doctor has negligently treated a patient, the ultimate discretion to determine this question will remain with the court in the interests of safeguarding the community.

Furthermore medical paternalism has long ceased to be acceptable. In the interests of consumers it must be for the court, not the medical profession, to determine what it is reasonable for patients to be told by their doctors when recommending particular treatment.

A court, not the profession, must decide in any particular case whether the patient received adequate advice and disclosure of risks of treatment to enable them to make an informed choice about whether to proceed with that treatment.

The High Court established this principle in the case of *Rogers v Whittaker* and it should stand. Mrs Whittaker had the right to know that there was a risk, albeit very small, that if she went ahead with the elective treatment recommended by her doctor she could end up completely blind. She never got that choice and she ended up blind, not because the treatment was negligently performed but because the treatment itself carried an inherent risk which she was never told about.

However the Government does support a better approach to the handling of expert medical evidence in medical negligence cases. A comprehensive solution to the medical indemnity problem also involves non-legislative measures. Already there have been

some excellent initiatives in the Supreme Court with the establishment of a professional negligence list, compulsory mediation powers and guidelines in train for the handling of expert evidence. The Attorney General's Department will be consulting with the Chief Judge of the District Court on possible improvements in the way medical negligence cases in that jurisdiction are handled. Compulsory mediation and guidelines for handling expert evidence will be included in this discussion.

In addition the Judicial Commission will be asked to develop judicial education programs specifically covering medical and hospital practice to facilitate a better understanding of medical practice and an improved appreciation of the range and type of contexts in which doctors practise.

Quality improvement within the medical profession is also an important part of reducing claims risk. The NSW Government has already introduced groundbreaking reform with amendments to the Medical Practice Act to establish the performance review system. The NSW Ministerial Advisory Committee on Health Care Quality has also initiated a range of programs aimed at improving the safety and quality of clinical care.

Specifically, The Framework for Managing the Quality of Health Services in NSW was endorsed for implementation in February 1999. All Area Health Services throughout the State have now formed Quality Councils as committees of each Area Board and are developing systems for monitoring and managing the quality of care that is delivered at the clinical level.

These systems include the implementation of initiatives such as:

- Peer or clinical review
- Mortality and Morbidity review
- The effective use of clinical quality of care indicators
- Sentinel event management
- Review of complaints data
- Ad hoc audits
- Retrospective patient chart review

NSW Health, in collaboration with the State Medical and Nursing Colleges, the Health Care Complaints Commission and the Australian Council on Healthcare Standards, has developed the Clinicians' Toolkit for Improving Patient Care. This resource provides a practical guide to clinicians on how best to undertake these activities to ensure that the greatest benefit is achieved for the patients they treat. The aim is to identify systemic issues that need to be addressed to ensure that the care provided to consumers is safe, effective, appropriate, consumer focussed, efficient and accessible.

NSW Health, with the NSW Council on Quality in Health Care, has recently developed a Statewide Patient Safety strategy. This strategy will develop a system wide approach for identifying, monitoring and reporting episodes of "unsafe care" or adverse events in NSW health services. A major component of the strategy will be the mandatory reporting of sentinel events and frequent incidents at a state level for action and state wide system change.

Further, significant advances have been made in NSW in relation to applying the results of research into how human factors impact upon the clinical workplace.

NSW Health has supported the development of a program on Human Error in Medicine for conduct throughout public health services. Ongoing roll-out and evaluation of the program will take place over the next twelve months. The course has been developed by a group of very dedicated NSW clinicians, a surgeon, two anaesthetists, a psychologist, a physician and an ex Qantas pilot. This is a course developed by clinicians for clinicians and is a significant step in the process to improve patient safety in NSW.

NSW Health, in collaboration with the NSW Council on Quality in Health Care, has also been conducting a very comprehensive education program for clinicians and managers. This process has been assisted by the expert advice and skills of the eminent Dr Brent James from the U.S.

The Minister has also recently announced the establishment of the NSW Institute for Clinical Excellence. The activities of the Institute will be focused on providing health care professionals with better skills to ensure that health care is safer, more appropriate, more effective and more consumer focussed. As well as having a strong education and training role, the Institute will provide support to area health services and others in improving health care, and in assisting clinical groups charged with the responsibility of implementing the health reforms the Minister outlined.

The Australian Council on Safety and Quality in Health Care has now been formed and is working to develop national strategies for improving patient safety and quality. This is being done in collaboration with all the states and territories and NSW is taking the lead role in developing a number of these initiatives. NSW Health has also provided a significant level of funding to this body and will continue to do so over the next 5 years at least.

Area health services and other public health organisations will continue to work closely with clinicians through a number of quality initiatives to benefit doctors and patients.

Nor does reform end here. Both the Premier and the Minister for Health have written to the Prime Minister and the Commonwealth Minister for Health, respectively, urging them to review immediately the Australian Taxation Office's treatment of structured settlements. Clause 18, providing for structured settlements by agreement, is modelled on the structured settlement provision in the motor accidents legislation.

It has been inserted in anticipation that the Commonwealth Government will finally see the benefits, to both it and severely injured plaintiffs, of altering the tax treatment of structured settlements to make them a viable proposition for plaintiffs.

Furthermore under the auspices of the Australian Health Ministers Council detailed work is continuing on reform proposals that can be implemented by all States and Territories. These include:

- a sustainable framework for future care costs for the severely injured; and
- national standards for the medical indemnity industry.

I commend the legislative reform package before you as a reasonable and balance set of measures aimed at achieving:

- fair and sustainable compensation for consumers of health care who are injured through the fault of health care providers
- sustainable premiums for the medical profession
- the continued viability of a full range of health services for the community
- improved transparency and accountability of the medical indemnity industry.

The Government's Bill has received broad support from the Health community.

Doctors all over the state have withdrawn their resignations.

They have gone back to work in the expectation that this parliament will support them.

The countless meetings and discussions with all players in this debate have produced a package which is sensible and workable.

It has received the support of all the professional medical colleges and the Federal AMA, and countless other individuals and organisations.

It is fair to say that the Government should reasonably be able to expect bipartisan support for this Bill if the statements made by numerous members of the Opposition over recent months are to be taken seriously.

In their press release of 13 February 2001, none other than the Leader of the Opposition, Kerry Chikarovski, and the Shadow Attorney General, Chris Hartcher, had this to say :

"At the moment the health system is in crisis. The insurance problem is about looking after the patients, not about funding lawyers. The Government must back the doctors and the patients and resolve this immediately".

We know that since February, the resignations have been withdrawn, the crisis has been abated ... for the time being.

The Minister agrees with the Opposition that this is not about funding lawyers, it is about making some choices about backing the doctors and the patients, and it is about doing so immediately.

The reason the doctors have withdrawn their resignations and averted a February crisis is because of the Government's legislative package.

This is the one they want.

This is the one that we have collaborated with them about.

This is the one that the Leader of the Opposition and the Shadow Attorney General and the Opposition will need to vote for if they want to hold true to their February statement that we must back the doctors and the thousands of patients who need their support.

The Minister could also add to that list of opposition calls to support the doctors and the patients, the Member for Orange, the Member for Murrumbidgee, the Member for Lachlan and the Member for Bega.

Perhaps most importantly, the Minister can add to that list the several representations he has received from the Leader of the National Party and Member for Upper Hunter, George Souris.

Each of their items of correspondence identifies the problem.

Each item of correspondence backs the doctors and the need to preserve services ... especially in the bush ; and

Each item of correspondence backs in the Government's Bill.

In the end though, it is a question of choice.

A choice between medical services in the bush or no medical services for country, towns and rural communities.

For example, it's about the 1500 mothers each year in Lismore and their right to have an obstetrician or GP attend to their needs.

It's about the 250 mums in each year in Moree and their right to have adequate obstetric care.

It's about the 200 mums every year in Young and their right to know when they present to their hospital in labour there will be an obstetrician or GP to care for them.

It's about 230 expectant mothers every year in Mudgee - expectant of adequate obstetric care when it is their time to deliver their baby.

Indeed, it's a choice between the 87,000 children born in this state every year who may need the services of an obstetrician against the 850 individuals who lodge a claim for medical negligence with their lawyers ... noting of course that less than ten percent of those claims actually find their way to the courtroom for determination, with the vast majority settling by negotiation.

But it is not just about obstetrics.

It's about mum, dad and the kids happily on their way to their annual holiday up the Coast becoming victims of a terrible road accident and having certainty of access to the finest neurosurgical care this State can offer.

It's about the young uni student with the rest of their life ahead of them being confronted with the diagnosis of a brain tumour and knowing that world class care is there when he or she needs it.

A choice between whether we want to see medical undergraduates trained to practice in high-risk specialties or see the continuation of the steady decline in enrolments as is presently the case.

Finally, there are those who would argue that this is a choice between the doctors and the lawyers or the rights of an individual versus the rights of communities to maintain medical service.

These are hard choices. They are choices that rightly belong in a parliament for debate and decision.

The Government has made its position clear.

It supports the rights of communities to have medical services.

It maintains the rights of individuals to pursue their rights against negligent doctors.

It underscores the rights of this parliament to choose.

I commend the Bill to the House.

The Hon. Dr BRIAN PEZZUTTI [12.07 a.m.]: This bill has a long history. Professional indemnity insurance claims against doctors and other medical professionals started to increase rapidly in 1991-92 and became such a significant issue for general practitioners who provided specialist-type services in country New South Wales, such as obstetrics and anaesthesia, that the previous Government, in which I was Parliamentary Secretary to the Minister for Health, set up a rural doctor settlement package, which included a grant to country doctors to cover basically the difference in the cost of insurance for general practice and the procedure. That situation held. Specialist rates were climbing and incomes were reasonable. Negotiations were then undertaken on the specialist medical officers rate for visiting medical officers, which in effect accommodated the change. However, rates began to rise, and when the current Government came to office the honourable Andrew Refshauge in January 1997, the silly season, initiated what he called a review.

He put out a simple discussion paper calling for submissions on the issue. Many submissions came in but nothing happened. I then convened a meeting in the Parliamentary Dining Room of all the major professional indemnity insurers with the Hon. Jeff Shaw—who was Attorney General and who obviously should have had carriage of this bill—and the Hon. John Hannaford. With so many people coming and going that evening we decided things had to move forward. At the end of the meeting the Attorney General asked the professional indemnity insurance companies to have discussions with the bureaucrats in the Attorney General's Department. At the urging of a number of my colleagues I continually approached Jeff Shaw, but all he would say in response to questions in the House was that there was some movement but it was all too difficult. The matter just stumbled on.

Honourable members would recall the following headlines in various newspapers during that time: "Specialist revolt over rising expenses" and "Hospital records to go on record". While litigation costs were increasing, ever-increasing numbers of people were putting their two bob's worth into the system. What has driven the Minister to take this step? About a year ago he had to institute payments for professional indemnity insurance and put money into the Treasury Managed Fund to cover specialist obstetricians in Sydney and across New South Wales who were visiting medical officers to pay the professional indemnity insurance costs for public patients. However, although \$24 million was put into the Treasury Managed Fund over a couple of years, the professional insurance rates for obstetricians did not change. The indemnity insurance companies took the view that they did not have to subsidise them any further and that this was the real rate.

The Minister was faced with losing the two specialties with high litigation and high payout costs, that is, neurosurgery and obstetrics. The Minister's speech is very clear. He wants to ensure that neurosurgical and obstetrics services continue to be provided in the New South Wales public hospital system. To achieve that result, under this legislation he has basically taken control of the rates to be charged and is requiring all doctors to take out insurance. I have no objection to that because that is a fact of life. The rates will be modified to

enable him to set the relativities between them. Whilst he will be able to reduce the rates for neurosurgeons, who, as specialists go, are not particularly well paid—they are not one of the high earners—their rates will be able to come down, as will obstetrics rates.

The Minister will be able to set the rate to which United Medical Protection [UMP] and other insurers will comply. He will tick off their compliance, reporting, background, economic position and so on, and then indicate what relativity he wants from them. This means he can further diminish the differences so that some people will pay more, but he will be able to bring the rates down to an affordable level for the 32 specialist neurosurgeons we have in this State. Again he will control the rates for obstetricians, another speciality that does not have large numbers. However, by reducing these rates other rates may well rise.

Having regulated the rates, the actuaries within those companies will then set the actual dollar figures to cover the costs and payouts as well as make some profit and, most importantly, provide for those cases that cannot be settled straightaway—cases in which there is a delay to enable the patient's condition to stabilise and for appropriate decisions to be made. Another important aspect of this legislation, apart from giving some certainty to services for patients in the public hospital system, is that the Minister will encourage settlement of matters in the District Court, which may deal with matters involving claims up to \$750,000. Of course, common law rights remain within the system, but the claim must get over a certain barrier before going to common law. Fifty per cent of claims for negligence, which must still be proved—unlike the workers compensation statutory scheme—must exceed the threshold before they proceed.

It is clear from statistics given to the Joint Committee on the Health Care Complaints Commission, which inquired into the reporting of medical incidents, that more than 50 per cent of claims settled for more than \$200,000, which is far below the cap applied by the Minister. The Minister has set maximum economic loss figures consistent with the current Motor Accidents Act but has also set up new figures for pain, suffering and non-economic loss, drawing from the wording of the legislation and the table from the old third party Act. The maximum cap in that instance is \$350,000, which is not ungenerous, but its application is complicated and I certainly do not pretend to understand it. However, given the assurance of the Minister I gather that it is drawn from court experience. Of course, all these matters will go to court and be subject to court approval.

Most settlements are certainly in the low range. Only a small number go into the higher range. This situation has been reached because over time insurers have made provisions for actual claims, but it became obvious that one had to take account of claims that had not actually been made and make some assessment of them. Consequently, when UMP, which covers more than 90 per cent of doctors in New South Wales, took on that task it included the IBNRs—incidents but not reported—in the calculations for the estimation. It is clear that that gave them a liability or an exposure of a large amount of money. As a result New South Wales doctors were suddenly asked to pay double premiums over a period of five years.

That was the trigger for the instability, the rising costs, the threats of people walking out—and people actually walking out. In this State we have 32 neurosurgeons. One position is unfilled and another is filled by someone from overseas on an area-of-needs basis. We have had 15 doctors in training in New South Wales over a five-year period. The last two doctors to come off the training program went to Victoria where the insurance rates are lower and the risk of litigation is lower. In New South Wales we have higher rates of litigation, higher payouts, higher costs, greater risks and more stress. As the Minister will tell you, many of our neurosurgeons are aged over 50 and a number of them will retire in a few years time. If they retire before they are 60, which is what the insurance companies suggest and recommend, we will need to replace four in the next four or five years.

If we do not fix this problem, we certainly will not be able to entice those coming off the scheme to stay in New South Wales. This is what has driven the Minister in his urgent desire to maintain the health service. He has not been generous. I am not in a position to judge the actuarial figures, but in January the Opposition sought a review and asked for opinions, and this has driven the Minister further. On 27 February the Minister announced in this House with great aplomb what he was going to do after we dropped our discussion paper.

It has taken since February to get this measure before the House. That indicates hard negotiations between the department and the various doctor groups and specialist groups, nationally and internationally, to ensure that these measures are fair and meet the stated objectives. The aim was to control the level of costs of the scheme, to ensure that people who are injured where negligence is involved receive fair compensation, but which caps some of the non-economic and economic losses caused by injury. I do not know whether the Minister has the balance right, because I have not been a party to the process.

The Opposition planned to move amendments to the bill in respect of damages for non-economic loss, to reduce the damages threshold from 15 per cent to 10 per cent, and to make it consistent with provisions relating to motor accidents. However, I received instant advice from the director-general, for which I am grateful, that such an amendment would have reduced the savings proposed by the bill from 15 per cent to 4 per cent, with a consequent reduction in savings in premiums across the board from 12 per cent to 3 per cent. Nobody would believe that there will be a drop in premiums. The hope is that premiums generally at least will stabilise and that some of the higher premiums will be able to be reduced.

A major interest of mine, held over many years, is the reduction of the number of claims by reducing the number of injuries. To that end the Minister has set up a system for the mandatory reporting of incidents. That is not quite in accord with the recommendation of the Committee on the Health Care Complaints Commission. However, we have not seen the detail of the system. Importantly, the Government has known precisely the nature of these sorts of claims because it owns the Treasury Managed Fund. A large proportion of the payouts in this State associated with professional indemnity insurance result from incidents in the public hospital system involving doctors, nurses and so on where negligence is involved and the insurance company proposes settlement.

I assume the position is the same as that of UMP: that of the people who could sue, only 4 per cent in fact do; that 30 per cent of the people who sue discontinue their actions, and that 40 per cent arrive at some sort of settlement, leaving a very small number who argue, with some of those getting nothing at all, and about 50 per cent winning when they go to court. I went through this process recently and fortunately was successful; I got judgment against the plaintiff. It is neither a cheap or unstressful process to go through. The Minister will set up the Institute of Clinical Excellence, which will receive many of these incidents from the insurance companies. The Minister somehow will protect those from discovery, so that there can be careful analysis of every reported incident. The Minister must allocate adequate moneys.

This system is modelled on the United Kingdom's National Institute of Clinical Excellence, which I have visited. I met with people there as part of a visiting team that included the member for Peats, Ms Marie Andrews. Those people collect the information but do not analyse it. We need to make a critical analysis of the those incidents so that one can take risk management steps to correct any problem. I note evidence before the committee indicating that the Department of Health started to do this six months ago, after the committee started its inquiry. The Minister will persist with this provision. As long as it is protected from litigation and there is full disclosure, this provision has enormous potential to reduce injury and make the practice of medicine safe, whilst reducing the number of adverse outcomes. I congratulate the Minister. He will need to put a fair bit of money into the funding of the system, and I hope he will do so.

I ask again the same question that I asked in debate on the workers compensation legislation: What is the Treasury Managed Fund's exposure? We discovered that UMP's exposure was some \$900 million, which caused UMP to have a call. I would like to know the extent of the exposure of the Treasury Managed Fund and whether it was treated in the same way as was UMP by its accountants and economists, which prompted that body to have a call, which in turn caused us to have to pay the normal premium twice in one year.

There is a lot that one could say about this. It is not a local phenomenon. I have reports that premiums in the United Kingdom are trebling and that in Ireland the incidence of litigation and the cost of insurance have more than trebled. The United States of America has been through all this and is persisting. We are simply becoming more litigious. There is no doubt about that. But, by the same token, one cannot sue without reason; one has to show negligence. I hope that the court process that the Minister is promising is the same as that applying in the Supreme Court, which has a specialised list and a buildup of experience among the judges in respect of these matters. The Minister intends that the Judicial Commission will have a training program for judges so that at least they will understand how medicine works, how the body works, and how simple physiology works.

The Hon. Michael Egan: For whom?

The Hon. Dr BRIAN PEZZUTTI: The Minister is setting training programs for judges, so that they may at least understand more about how medicine is practised, and so on. This has been fairly successful in the Supreme Court.

The Hon. Michael Egan: Would they have any idea whether an injury had occurred as a result of negligence?

The Hon. Dr BRIAN PEZZUTTI: That is a matter being argued before them. They are intelligent people, and they can make a judgment. The Minister proposes that judges better understand more about the human body and how the practice of medicine works in the State, so that they may make better judgments. I am not saying that they are not making good judgments; I merely say that is what the Minister is proposing. This is a matter that has been subjected to criticism over a long time.

There have been a large number of meetings about this. Recently I attended with the Society of Anaesthetists a continuing medical education program about risk management. I am aware of the enormous input, nationally and internationally, to try to make the processes more certain and to limit liabilities and the likelihood of injury. People want to go to hospital, have their treatment and come out of hospital having received proper treatment. There will always be some adverse outcomes. That cannot be avoided. Some of those outcomes are known, such as if you receive chemotherapy your hair will fall out and there will be an increased risk of infection. But the hope of curing the cancer makes it worthwhile taking the risk, and patients can be warned about the risks.

But where a patient has an adverse outcome that results in serious disability, then compensation is payable, and should be payable. One insurance company said, as was quoted in the lower House by one of my colleagues, that the insurance companies are there to defend doctors if they can be defended and to pay compensation if compensation is due. Those are the principles that Australian insurers work by. Importantly, the Minister has indicated that he will take steps, presumably through regulation, to ensure the bona fides of insurers. We cannot have people from interstate coming into New South Wales to do cherry picking; they must cover the broad range of people, so that one insurance company does not end up with all the difficult people to insure, and so on. We accept in good faith that the Minister can do that by regulations, which apparently will be drafted by the end of the year.

In my opinion this legislation is overdue. The Opposition will be withdrawing all but one amendment. It will, however, pursue the amendment which seeks a review of the scheme after one year and a report back to Parliament six months after that. There is much more I would like to say about this seminal issue of fairness, which is also an issue of ensuring practice. It is of no use to try to sue a neurosurgeon because he was not there. The Minister has taken those steps. Indeed, he has been forced to take those steps because of the likelihood of loss of neurosurgical and obstetric services in particular. I conclude by saying that anaesthesia in this country, and in this State in particular, has the lowest incident rate, the lowest mortality rate and the lowest serious injury rate anywhere in the world, by a factor of at least three.

The Hon. Michael Egan: Why is that?

The Hon. Dr BRIAN PEZZUTTI: It is for a number of reasons: the training program is good; the equipment we operate is good; the college has been working with State governments and private hospitals to ensure that a standard of equipment is provided; the standard for assistant nurses has been carefully analysed; anaesthetists are not as expensive in Australia as they are in many other countries; our mortality and our morbidity, which we have been tracking—except for a very short period when Laurie Brereton was Minister and he changed the Act, as the honourable member probably remembers—are very openly analysed together with incidents and deaths under anaesthesia in particular, coincidentally with the Coroners Court; feedback from the profession to the profession from incident reporting and analysis has taught us an awful lot; and, more importantly, striving for excellence, which anaesthetists in this State have demonstrated over a long period.

The value of that is not that anaesthetists feel warm and cuddly, but that people in this country are safer than people in any other country in the world when they have anaesthetic. I have a report from Michael Kirby, Chief Justice of the High Court, which talks about the Dutch reducing their incidence of bad intubation from 7 per cent to 2 per cent. My goodness! If we had a poor intubation record of 2 per cent in this country we would nearly triple our death rates in almost one week. I would love to say a lot more. I have been collecting this material for four years. I commend the bill to the House.

The Hon. Dr PETER WONG [12.31 a.m.]: I support the Health Care Liability Bill. I congratulate Minister Craig Knowles on introducing the bill. I also congratulate the Opposition on supporting it. In the past year or so the media has been reporting on a medical indemnity crisis in New South Wales. However, the inevitable crisis has existed for at least the past two or three years, if not more. It was well known among medical circles, if not the general public, that medico-legal cases would escalate alarmingly and follow the trend in the United States of America. To avoid getting into a legal wrangle, doctors either openly or subconsciously practise defensive medicine, often at great cost to the taxpayers. However, despite doctors exercising better

patient care, continuing education and adopting numerous safeguards, medico-legal cases are increasing. Australia is approaching the United States of America: at least one in two doctors will face a lawsuit in his or her career.

For those in the high-risk categories, such as obstetricians, neurosurgeons and cosmetic surgeons, it is not uncommon to face a lawsuit every few years. The increase in the number of medico-legal cases and larger claims, the need for indemnity organisations to build larger reserve to cover unfunded liabilities, and aggressive advertisements by lawyers to sue doctors compounded the present crisis. Rising professional indemnity insurance premiums and the need for reform is not new. However, both Federal and State governments have put it into the too-hard basket. Although I applaud the Government for taking the initiative, I cannot ignore the fact that the bill is only one step towards resolving the problem. Furthermore, this step is taken only after New South Wales biggest indemnity insurer, United Medical Protection, recently had to call up the equivalent of one year's premium, after assuring the medical fraternity last year that the organisation was in a healthy state.

The prospect of further significant premium increases has angered many doctors, which has caused threats by visiting medical officers to withdraw their services from country hospitals. Among this group of doctors are obstetricians and gynaecologists, who are doing an excellent job serving rural communities in our State. However, as much as the bill is a great improvement on the previous situation it is still a stopgap measure. With the collapse of HIH, United Medical Protection alone carries an extra liability of \$56 million. Furthermore, unlike insurance companies, medical defence organisations are not regulated by the Australian Prudential Regulation Authority. Therefore there is constant risk for the long-term survival of at least some of the medical defence organisations. It is doubtful how much the bill can do about the downward trend in medical indemnity insurance. No doubt it will at least slow down the rate of escalation. At the same time it will ensure that rural communities continue to receive appropriate medical services to which they are entitled.

I congratulate the Government on many initiatives in the bill, such as the reform of non-economic loss damages, the introduction of compulsory indemnity cover for medical practitioners, mandatory requirements on insurers to maintain and report on specific claims data, and protection from liability of good samaritan doctors and nurses who voluntarily and, in good faith, lend assistance in an emergency. I note that the bill is very much supported by the rural community, as mentioned earlier by the Hon. Dr Brian Pezzutti. I support the Minister's comment in his second reading speech when he said:

Indeed, it is the choice between the 87,00 children born in this State every year who may need the services of an obstetrician against 850 individuals who lodge claims for medical negligence with their lawyers noting, of course, that less than 10 per cent of those claims actually find their way to the courtroom for determination, with the vast majority settling by negotiation.

It is not just about obstetrics. It is about mum, dad and the kids happily on their way to their annual holiday up the coast becoming victims of a terrible road accident and having the certainty of access to the finest neurosurgeon care this State can offer. It is about the young university students with the rest of their lives ahead of them being confronted with the diagnosis of a brain tumour and knowing that world-class care is there when they need it. It is a choice between whether we want medical undergraduates trained to practise high-risk specialties or the continuation of the steady decline in enrolments, as is presently the case.

With the increases in indemnity insurance it is no wonder that many obstetricians have given up obstetrics to concentrate on gynaecology only. Many general practitioners are changing profession, intending to change profession or leaving the country. It is interesting to note who is against the legislation. Yes, you have guessed, the lawyers are against it. Some complaints by the lawyers are quite valid. For example, as mentioned by Mark Richardson of the Law Society of New South Wales:

And it has failed to explain why it has chosen to reform the field by directing its energies against the "soft targets", namely the injured, and shied away from dealing effectively with the field's underlying problem, the health care liability providers structural difficulties.

He also rightly expressed the society's concern about the lack of consultation, which now seems to have become a trademark of this Government. I note that the Medical Consumers Association raised a similar point. But some claims made by the Law Society of New South Wales and the Australian Plaintiff Lawyers Association are outrageous. I intend to make some brief comments about them. The Law Society briefing to the crossbenchers started with the statement, "The Health Care Liability Bill 2001 will do more harm than good", which would indicate how unbiased they are on this issue. It seems that the Law Society cares much more about money than the provision of medical care. The Law Society said:

Failed sterilisation cases are common. As a result of failed sterilisation, a child may be born.

It then went on to say how much less the payout would be. Failed sterilisation is common, and the risk is often explained to patients prior to surgery. Failed sterilisation, therefore, is not really true medical negligence. Is it

illogical that anyone should be compensated when the risk is known and explained? Yes, but in this country we compensate them. Another example from the Law Society states:

Many cases involve unnecessary further surgery. An example would be a retained IUD.

Again, a retained intra-uterine device [IUD] happens from time to time. For example, sometimes the IUD will adhere firmly to the uterus, sometimes it retracts completely into the uterus after insertion, and sometimes the string breaks during removal. Again, lawyers expect payment for acceptable and well-known risks. Is it really fair to penalise doctors for these known risks? I refer to another example, one that I am sure the Deputy-President and Reverend the Hon. Fred Nile will regard with alarm. The Law Society said that the failure to recommend termination of pregnancy was also classified as medical negligence. I place on the record that, so far, I have not recommended any termination of pregnancy. Perhaps my medical indemnity insurance will go up in the future, with the help of the Law Society.

[Interruption]

That is how ridiculous it has become. Doctors can be sued if they do not recommend termination of pregnancy. The Australian Plaintiff Lawyers Association [APLA] has made many totally misleading statements. Let me quote one such statement to the House. A briefing paper sent to me on 20 June 2001 states:

APLA opposes capping general damages.

The briefing paper also states:

In practice, the maximum awards for general damages are about \$300 to \$350,000 for the most profoundly damaged plaintiff. Such damages would only be awarded in very severe cases such as quadriplegia or brain damage.

To that point the statement is totally correct. However, the Australian Plaintiff Lawyers Association does not tell you what other damages are likely to be awarded at the same time. No doubt the Hon. Peter Breen is aware of that sort of situation. Let me tell honourable members about the second part of the story. This hypothetical case, which was written by two groups of lawyers, was published in a recent medical journal. The article states:

"A" is a 6 year old girl with a high IQ and intelligent siblings. She is likely to have a successful career. "A" undergoes a surgical procedure but due to medical negligence she suffers severe brain damage resulting in severe mental and physical disabilities. She is confined to a wheelchair and requires 24-hour care. Her life expectancy is normal.

Honourable members might ask how much compensation would she get. She would get \$350,000 in general damages, as mentioned by the Australian Plaintiff Lawyers Association. Honourable members might say that that is not a lot. I agree. But she will also get economic loss of \$2,603 per week for 45 years, with a 5 per cent discount and 50 per cent vicissitudes, which amounts to \$2,102,800. In addition, there will be out-of-pocket expenses and future expenses. The total figure is \$12,884,900. By comparison, under the old scheme she would get about \$2 million less. Similarly, a 40-year-old man who lost his finger, who had limited use of his left hand and was no longer able to work would still get \$641,840 instead of \$881,310 as calculated by the authors in the article. The Minister said in his second reading speech:

Clause 3 makes it clear that the bill seeks to achieve significant cost containment through limitations on damages for non-economic loss, commonly known as general damages, for less serious claims, while preserving principles of full compensation for cases of severe injury.

APLA also suggests that honourable members should not support clause 27, the good samaritan provision. The reason given by APLA is as follows:

There are no cases where a doctor has been sued and held liable in a situation contemplated by the Act. The common law already provides this immunity for doctors.

This provision will have little, if any, impact upon premiums.

As this clause is a good gesture, if nothing else, to encourage doctors to be good samaritans, and as lawyers have not been affected, why would APLA tell honourable members not to support it? Do lawyers intend to sue doctors one day when they try to be good samaritans? Similarly, APLA considers that abolishing exemplary and punitive damages is unnecessary. At the same time it states:

No exemplary or punitive damages have been awarded in NSW in medical negligent cases.

Would the abolishment of exemplary and punitive damages not help to slow the trend of indemnity insurance at no loss to lawyers? I accept that in some circumstances the doctor concerned should be punished. However, the Minister said in his second reading speech:

In circumstances where there is a need to discipline the defendant there are now better targeted methods of doing so under the Health Complaints Act 1993 and the Medical Practices Act 1993.

On a positive aspect, the APLA has pointed out the many deficiencies of the present medical defence organisations [MDOs]. As I mentioned earlier, regulatory scrutiny has been lacking. The MDOs have not been monitored by insurance industry regulators, including the Australian Prudential Regulation Authority [APRA]. Furthermore, only in recent years have some medical defence organisations started to include their incidents incurred but not reported liabilities in their financial statements.

The present bill partly addresses my concern about MDOs. Clause 21 sets out mandatory conditions in relation to data collection and reporting by insurers. Obviously that is not satisfactory. Furthermore, the bill is silent about a regulatory body and does not address issues such as structured settlements of claims by the severely injured. The Minister implied in his second reading speech that this was a Commonwealth matter. I share the Government's concern. The legislation cannot be delayed any longer, otherwise many people in rural communities will not be able to receive the proper care they deserve. I therefore support this legislation.

The Hon. JENNIFER GARDINER [12.46 a.m.]: The production of this bill at this time is symptomatic of a tired, unresponsive and arrogant Government. For years the Carr Government has been aware of a looming crisis in the medical profession over the matter of the growing burden of professional indemnity insurance premiums upon medical professions and some specialities in particular.

Other State governments in the same time frame have acted in various degrees. The Carr Government sat on its hands. It was only because doctors, particularly obstetricians and anaesthetists, in country New South Wales were so worried and fed up with the lack of action, especially when their premiums started to increase drastically and they were expected to continue to pay them, that they started to withdraw their professional services and threatened to quit.

Because the Liberal and National parties applied pressure by widely circulating a discussion paper on the issue, the Minister for Health, Mr Knowles, announced at the beginning of this parliamentary term that he would introduce a bill such as this. The Minister for Health used the latest jump in the premiums, imposed in particular by United Medical Protection, and a host of threatened resignations and withdrawals from health services by doctors as his belated trigger to act. Months ago he tried to deflect criticism about his inaction—his reviews of matters pertaining to this issue but no action—by announcing that there would be a legislative package. It has finally turned up in the last week of the budget session of this Parliament.

The crisis in our rural and regional health services in particular is illustrated by the list of communities from which doctors have threatened to resign or have resigned but have subsequently withdrawn those resignations, given the prospect of legislative reform. For example, in the south of the State, four doctors in Wagga Wagga decided they had had enough. Several doctors in Queanbeyan similarly decided to withdraw their services. Another batch of doctors at Cooma and four doctors at Yass withdrew their services. On the South Coast, three doctors at Batemans Bay and another three at Moruya decided they could not continue to practice under their prevailing financial burdens.

In the Far West a doctor in Nyngan decided to do the same thing. The north and the north-west of the State was badly affected by this crisis. In Armidale, one doctor decided to withdraw. In Tamworth five doctors withdrew, in Glen Innes another three doctors withdrew, in Inverell one doctor withdrew and in Gunnedah four doctors withdrew. The Central West was also badly affected. Four doctors in Orange decided to call it quits, as did another two in Bathurst and three or four doctors in Lithgow.

Other doctors in Cowra and Young were in the same predicament. On the North Coast at Murwillumbah, four doctors decided to withdraw their services; at Byron Bay there were three and at Mullumbimby there were five. Doctors in Coffs Harbour and Macksville also decided to join the protestors. The slow reaction of the Carr Government to another simultaneous crisis in our rural and regional health services reminds me of the sudden rush of blood to the head of the Minister for Health, Mr Knowles, when the Auditor-General delivered a totally damning report about the New South Wales Ambulance Service. Mr Knowles rocked up to the Ambulance Officers Union Conference and said he had had a "gutful" and, as his main response, wiped out the board of the Ambulance Service, appointed his mate—former Premier Mr Unsworth—as the chair

and left the voice of country New South Wales off the new mini-board altogether. Problems in the Ambulance Service had surfaced for years, but the Carr Government was in denial until the Auditor-General produced his report.

The same applied with indemnity for liability for negligence with the rising temperature over the whole issue amongst the medical profession. The Opposition does have some serious reservations about aspects of this bill, as outlined by my colleague the Hon. Dr Brian Pezzutti. We are not convinced that this bill will result in reduced premiums, although the Government maintains that that is one of its main objects. As has been the case with much of the debate over the Government's workers compensation legislation, there is a great void when it comes to supporting data that would give those of us on this side of the House confidence that this legislation will indeed have that desirable outcome. We on this side of the House want to see the cost of premiums reduced—or at least stabilised, as the Hon. Dr Brian Pezzutti noted a few moments ago—so that patients, particularly those in country New South Wales, continue to have access to specialists.

The idea that women in towns with a substantial population—such as Cowra, a town with good medical and hospital infrastructure—would be left without obstetricians because of the slothfulness of the Carr Government in addressing this crisis, is absolutely appalling. Yet that was the fate of that town that loomed earlier this year. My National Party colleague the member for Orange, Mr Russell Turner, convened a meeting to allow the Cowra community to give voice to its anxiety about the withdrawal of its obstetrics and anaesthetist services. That would have meant that local women would have had to travel to Bathurst or Orange to have their babies. The resulting public meeting, which I attended, was the largest held in Cowra, on any issue, for many decades—possibly ever.

One of the pregnant women at the meeting that night said there was no way she was going to go to Orange to give birth; she would rather, as she put it, give birth on her laundry floor. Another woman asked, "What does it take to get this Minister for Health, Mr Knowles, and the Premier, Mr Carr, to act on this important issue? Would it help if I gave birth on the Premier's desk?" These women were appalled and angry in equal measure. The people of Cowra resolved to join with other similarly affected communities to get action. Hence, the Carr Government, which has been ducking this issue for years, started to raise the priority given to its so-called review of the issue and get cracking on producing some legislative package.

I have absolutely no doubt that the resolution of the packed meeting at the Cowra Services Club that night upped the ante in this debate. That community is to be congratulated on demonstrating such massive support for its doctors, as are the district's families who wanted to continue to have access to obstetricians and other specialists close to home. That is a perfectly reasonable aspiration and it is almost unthinkable that we started this new millennium with many country communities fearing that they were about to see a retreat to some dim, dark age at the hands of the dithering Labor Government. The Labor Government could not give a damn about women in labour!

It is not merely the National Party and the Liberal Party that are unconvinced about particular aspects of this bill. I note that in his second reading speech, which was incorporated in *Hansard*, the Leader of the Government made special mention of the very strong representations made by members of the parliamentary National Party on this issue. We appreciate that acknowledgement of our efforts on behalf of country communities on this issue over a period of time. But today—after this bill was introduced—it was revealed that one of Tamworth's obstetricians and gynaecologists has resigned because of the cost of professional indemnity insurance. That means that by August, because another obstetrician in that city has also resigned and a third is to retire, obstetric and gynaecological services will be halved. The doctor who resigned during debate on this bill has an indemnity insurance premium of \$41,000, that is due to increase to \$90,000. That doctor, who is Director of Obstetrics and Gynaecology at Tamworth Base Hospital, has quit to go interstate to a health service that will pick up the indemnity premium.

The obstetrician who has resigned in Tamworth in recent days said that the insurance premiums represents one-third of her business costs. With another of the obstetricians in that city due to retire within weeks, that will leave only two in the capital of the north and north-west of New South Wales—an extremely worrying situation for Tamworth and for the whole region. However, because some doctors have indicated that they will withdraw their resignations on the promise of the passage of this belated legislation through this House, the Opposition will not oppose the bill, even though, as I said, we have some reservations about it. The Opposition has served notice, however, that the legislation will be revisited if need be. That will definitely need to occur if today's example in Tamworth is ongoing or is repeated elsewhere in New South Wales.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [12.56 a.m.]: I am pleased to have an opportunity to speak to this debate on the last occasion that you will occupy the chair, Mr Deputy-President, the

Hon. John Johnson. I pay tribute to the good work you have done over many years. Medical negligence is certainly a problem, and I must confess that, as a medical practitioner, I approached this bill with mixed feelings. The problem from the medical perspective is very clear. The problem from the point of view of plaintiffs who need a reasonable amount of restitution to put their lives back together is also quite acute. In my experience there is some medical negligence, but if one looks at the number of mistakes doctors make, compared with any other profession, I think doctors do quite well.

Anyone who has ever tried to get a rattle or leak in a car repaired would have to say that in terms of a competent result, the medical profession does very well. However, I have worked with doctors who are not competent and who appeared not to learn from their mistakes. There would be a few cases where intervention through quality control could have made a big difference. In my experience, system failure was a far greater problem than actual negligent decision making. Perhaps someone thinks a message has been conveyed to a doctor who is gowned up and busy on another problem; the seriousness is not transmitted with the message; the message comes back that the doctor has been informed and will come as soon as he can; time is wasted and there is a bad outcome.

That can happen because of a systems failure. Obviously the more complex and inter-related that hospital systems become, the more complicated the chain of information. Responsibility becomes diffuse and there is greater danger of making a mistake. The complexity of the medical system leads to greater dangers. In my career I have had some great wins, and there have been some losses, which I will not talk about this evening. One has to recognise that if one plays for high stakes there are big wins and some losses. If a doctor has to pay for his losses, he should get credit for his wins. If someone lives an extra 40 years because of excellence in medicine, that is very good. If, because of some mistake, a person is impaired for 40 years—

The Hon. Richard Jones: Or dies.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: —or dies, although dying is a good deal cheaper than being disabled, one cannot necessarily be funded to keep that life going by doing good. So in a sense the mistakes are always noticed and the successes are taken as the norm, and that is not necessarily a real reflection of the efforts made. The bottom line is that people will be damaged. Relatively few sue. Ironically, if one keeps good doctor-patient relations, one is sued a good deal less, irrespective of the outcomes. That is something one always has to remember—that, in the end, the interpersonal contact is very important.

If one is doing a difficult job with high stakes there is some stress, and the doctors are protesting over the increased premiums. Obstetricians are often held to blame for a suboptimal outcome in a birth, whether or not there was negligence in the delivery. Some babies are born suboptimal even with the best delivery techniques, and there is always the temptation for a judge, seeing a pot of money from medical insurance and an injured baby, to put the two together to do good, without necessarily being certain that the obstetrician's negligence was the problem.

A child's opportunity in life should not turn on whether the obstetrician was negligent or fate was a little fickle, and the outcome came from the genes or the environment in the uterus. It might be said that anaesthetists sometimes take the rap for surgeons as they have to keep the patient alive irrespective of what happens at the other end of the table. Orthopaedic surgeons are always dealing with trauma, often at difficult hours and with few resources and supports. A relatively small number of people in professional situations is being asked to take on the burden of society's treatment failures. There is quite a small pool of people who provide the huge amounts of money necessary to support the current system.

The Hon. Duncan Gay: Do you know what you are talking about? Do you realise what you are saying?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am sorry that you do not. There are acute problems in medical insurance. The poor record of United Medical Protection is a problem. It has grown rapidly by taking over other medical protection organisations and merging them, so it has a virtual monopoly. Its lack of provision for cases incurred but not reported [IBNRs], is a problem. It has not collected adequate premiums. Changes in the legal system mean that waiting times between the injury occurring and going to court have been compressed, so the income from the premiums has less time to compound before the payouts are necessary. So there have been some problems which are not entirely related to the increase in lawyers and the increase in suing, although there have been some. There have also been some changes in the expectation of the medical profession to get perfect outcomes more frequently.

The crunch will come when the doctors, faced with this premium, will not continue to practise. At a personal level I can understand that. My premiums are at a lower level. For the doctor who makes less than \$20,000 from his practice the premium is about \$2,500, but suddenly I got a letter saying it doubled overnight. That means that to keep my hand in I would almost be making a loss by merely paying my premium. There has been a cross-subsidy from general practice to the more high-risk professions. Increasingly, doctors are going to protest at cross-subsidies, and increasingly that will put a premium load on the high-risk professions, such that those professions will simply stop practising—as the obstetricians, anaesthetists and some orthopaedic surgeons are threatening to do.

The solution is to find more money from other sources, and I do not think that is unreasonable. We desire a support system for people who are injured. The question is how to pay for that. Either those people who are involved in making those high-stakes decisions have to pay for it or we have a society in which the weak are protected and everyone is willing to pay for such a society. It is interesting that the Treasurer is interjecting, because I believe he is doing less than he can for the disabled. Yet he is asking where the money is going to come from. Perhaps we should reduce the benefits or increase the premiums.

Obviously the most important thing is to lessen the number of mistakes. I ask the Minister for Health what he is doing to reduce the incidence of mistakes. Efforts in quality control are not contained in this legislation. It must be said that they do exist. Considerable progress has been made in quality control, and that is very important. The data collected in my time working in hospitals was dependent on the registrars who did not want to make their bosses look any worse than other bosses, and the data always seemed to me to be somewhat euphemistic and incomplete. There is a report on incidents. As the Hon. Dr Brian Pezzutti said, the changes were modelled on the British National Institute of Clinical Excellence. There are better counselling procedures through the medical board for doctors who are seen to be practising suboptimally, and procedures through health care complaints.

There is continuing education through most of the colleges but Australian practitioners do not have to be re-examined as those in the United States do. So there are important quality control mechanisms. Another aspect of quality control is the response when accidents occur. The choice is to cut benefits or raise premiums. Doctors are jacking up so it is not possible to raise premiums. Therefore the Government has decided to cut benefits. I believe that we should look at people who are disabled through medical negligence in the same way that we look at people who were born disabled or who became disabled on the roads. Then, irrespective of the cause, we have to decide the level of human dignity we want to extend to people who for some reason have suffered a disability or disadvantage.

In the Law Society submission, which basically was keen to maintain or increase benefit levels, there was no analysis of this issue. The argument was that people need this much benefit so the premiums have to be this high. Because of the lack of commitment by both major parties to universal health care, the level of Medicare funding has declined against the consumer price index by about 40 per cent since Medibank was introduced. The Medicare rebate simply is not keeping pace so there is a move toward private insurance to maintain service levels. As the premiums continue to increase, the doctors are jacking up. The plaintiff groups are looking at the issue in terms of people approaching the courts with injuries rather than looking at the whole issue of how our society treats its disabled people. That is the context in which we have to consider the issue.

I am not saying that the mistakes of doctors should not be noticed and that influence should not be brought to bear on them at a corrective or punitive level. That moral judgment has to be made in some cases to achieve a good outcome for society. We should look at the issue more broadly than in the context of the bill. We should consider who should pay for the type of society that we want. At present we are at the extreme of looking at individual cases and who is to blame, but we should look at the broader question of what sort of society we want and what we can do to achieve it. Perhaps when greed is good, time passes into history; when the urge to privatise and private wealth are mollified, we will go back to thinking about the group rather than the individual. Perhaps the pendulum will swing back and a more just society will come as the values of society change. As part of this, rather than cutting benefits we will deliver a better life to the disabled and the impaired instead of blaming people and charging them as a way of dealing with the problem. We will spread the burden a little more widely, which is as it should be.

The Hon. RICHARD JONES [1.14 a.m.]: Approximately 6,000 iatrogenic deaths occur each year in New South Wales alone, which is about 10 times the road death rate. Many are through negligence, unavoidable surgery or other causes.

The Hon. Dr Brian Pezzutti: No, that is not true.

The Hon. RICHARD JONES: Unfortunately, it is true. These deaths have to be borne in mind when considering the consequences of the Health Care Liability Bill. The bill changes the way damages are calculated for civil personal injury claims, introduces compulsory indemnity cover for medical practitioners, and introduces regulations relating to the kind and extent of professional indemnity cover. Many concerns have been raised in relation to the bill by organisations such as the Law Society, the Australian Plaintiff Lawyers Association, the Carers Taskforce Australia and the Consumer Alliance Network. There has been little consultation on the bill. The Law Society stated:

The Government has failed to clearly and independently demonstrate to Parliament:

the financial and structural need for reform of the health-care liability field;

why such reform should focus on reducing compensation;

how such reform will address the field's long-term difficulties; and

why it has chosen to reform the field by directing its energies against the "soft targets", namely the injured, and shied away from dealing effectively with the field's underlying problem, the health-care providers' structural difficulties.

The Consumer Alliance Network added:

The preparation process of the Bill has been dishonest. There was no "white" or discussion paper issued for public information, consumption and input. Relevant reports and documents have been concealed by the Health Department.

The "Report on Reference Group Meetings on Draft Health Care Liability Bill" of 30 March 2001 prepared by the Public Interest Advocacy Centre, PIAC, and the Maternity Alliance said:

... the Department of Health and Attorney General's appointed a committee to look at indemnity in 1996 ... another committee was formed in 1999 and a report from those discussions has been prepared for the Minister. The report has not been published. PIAC and the legal contingent argued that the report be made available to committee members. Karen Crawshaw [of New South Wales Health] agreed to take this up, but reported to the second reading that it will not be made available.

She noted and stressed that the Government had already decided on a course of action.

This appears to be in stark contrast to an undertaking given by the Minister to the Public Interest Advocacy Centre. It said:

When the Minister, Craig Knowles, addressed our *Patient perspectives on medical error* forum this week he gave an undertaking to take consumer views seriously.

The bill that the Government is determined to push ahead with requires a 15 per cent threshold to be met in order to provide for damages for non-economic loss. It has been argued in many quarters that this is too high and will prevent patients recovering damages for pain and suffering. I am aware that the Opposition intends to move amendments in accordance with the ones moved in the other place, although I believe there has been a change of heart on one of the amendments. In the belief that the amendment will be beneficial to consumers I will support it. In addition, concerns have been raised stating that these reforms will effectively abolish common law rights. The Consumer Alliance Network said:

... the wholesale destruction of injured patients common law rights to fair and adequate compensation for injury caused by negligent and or incompetent medical treatment.

The group lends its support to an inquiry. It said:

To base legislation, not on an open independent public inquiry to ascertain the truth, but on a lobby of powerful groups, whether medical, legal, or insurers, and their vested interests will not only result in bad law but a complete denial of due process and democratic principles.

In addition to lack of consultation and concerns in relation to common law, the reforms are also accused of not dealing with the main financial problems of the system. The Australian Plaintiff Lawyers Association stated:

The Government is intending to take away the legal rights of injured patients in New South Wales in circumstances where independent review of the financial position of United Medical Protection clearly gives rise to serious questions about the adequacy of its insurance and reinsurance arrangements.

A solicitor working exclusively in the area of medical negligence added:

There is no "crisis" in medical negligence litigation. There is, however, a problem with the way many MDOs [medical defence organisations] have been conducting their businesses: in secret and badly.

The New South Wales Parliamentary Library Research Service paper "Medical Negligence and Professional Indemnity Insurers", which refers to the lack of detail in relation to medical defence organisations, stated:

The paucity of data about medical negligence claims, and the lack of transparency in the financial affairs of MDOs makes it difficult to understand the precise nature of the relationship between the current level of indemnity premiums, medical negligence, and the Government's reforms.

An important aspect of health care reform which does not appear to be addressed in this legislation is the rate of patients who suffer as a result of avoidable medical errors. Recently an article in the *Sunday Telegraph* stated:

More than 19,000 patients were victims of botched or complicated operations in NSW public hospitals in just one year ... NSW recorded Australia's highest number of surgical and medical misadventures in 1998-1999. On average, one in every 100 NSW public hospital patients ended up as a victim of mistakes by doctors or further complications.

A letter from the Consumer Alliance Network published in the *Sun-Herald* in response to those figures stated:

Surely this scandal should be a major priority for the AMA and its president? The proposed legislation will do nothing to address this unacceptable situation. It will exacerbate the problem.

Finally, the retrospectivity of the bill is unfair and should be addressed, but it will not be addressed as I understand the Hon. Peter Breen will not now move his amendment. APLA states:

Such retrospectivity harshly and unfairly takes away the present and existing rights of people who have been injured as a result of medical negligence.

Given the seriousness of the issues raised in opposition to this legislation, I urge honourable members to give their fullest consideration to the effects that passing this legislation will have on the citizens of New South Wales.

The Hon. PETER BREEN [1.20 a.m.]: I do not pretend to know much about this issue but, I have received many submissions from various lawyers, the Plaintiff Lawyers Association, Blessington Judd and Marsdens. Also, the crossbench has been briefed by the Plaintiff Lawyers Association. The Hon. Dr Peter Wong, in his comments, reminded me that when we were briefed by the Plaintiff Lawyers Association he went quite ballistic, and I was wondering whether they would ever come back again. The honourable member raised a very good point—that is, a number of doctors in New South Wales, especially country New South Wales, earn less than \$50,000 a year and cannot afford to pay large increases in premiums. At the other end of the scale, a number of specialists enjoy very high incomes but some of them must work for two or three months a year to pay their premiums before they start to get in credit. So it is a difficult problem and it reflects the bigger problem in society of the big gap between those who do quite nicely and those who struggle. Since at least April, lawyers, through their law cover organisation, have been notifying members that this legislation is on the table and would be debated, and on that basis they have been making various submissions.

The Hon. Dr Brian Pezzutti: And cleaning out their drawers to make sure they have got their notices in.

The Hon. PETER BREEN: That is the point of my proposed amendment, and I thank the Hon. Dr Brian Pezzutti for drawing that to my attention. It is a bit tough when people have been advised about certain legal positions based on the law. Young people in particular have been told, "Look, don't worry, you have six years to make a claim." Under the statute of limitations people have six years from the time of injury to make a claim for negligence. If people have been advised that way and suddenly this law is introduced, it is a bit unfair on those who have received that advice. The purpose of my amendment is to correct what I see as an unfair aspect of the legislation. While the Hon. Dr Peter Wong was happy to attack the lawyers over the situation relating to damages, he spoke as if the lawyers themselves were to receive the damages. I do not think that is quite fair. If the honourable member were injured as a result of medical negligence I am sure he would be the first to ask for his full entitlement to damages, not just pain and suffering but future economic loss, loss of wages, care, all those kinds of things.

[Interruption]

But the Hon. Dr Peter Wong spoke as if all these damages were somehow going to the doctor.

The Hon. Dr Peter Wong: Do you mean lawyers?

The Hon. PETER BREEN: That is right but the damages are going to the patient; the lawyer brings the claim only for the benefit of the patient.

The Hon. Dr Peter Wong: Lawyers encourage patients to lodge a claim.

The Hon. PETER BREEN: The Hon. Dr Peter Wong and I do not agree about that. The honourable member will recall that the crossbench was also briefed by an organisation called the Consumer Alliance Network, which included the Medical Consumers Association and various people, including Barry Hart, who was a victim of Chelmsford. Those people had serious concerns about this bill. Their concerns relate particularly to the fact that the Health Department is largely responsible for the drafting of the bill, according to them. They say that consumers of medical services are being denied access to proper compensation and remuneration for their injuries. In relation to retrospectivity, an email of 22 June from Blessington Judd states:

The bill affects existing ... claims. This will have particular effect for children ...

That is a problem.

The Hon. Dr Brian Pezzutti: But if you file it before—

The Hon. PETER BREEN: Often people are not in a position to file a claim; they do not expect it to come up so quickly or for various other reasons. Another problem raised by Blessington Judd is that, according to them, the legislation is unconstitutional. The email states:

The High Court of Australia has held that federal legislation that retrospectively removed common law rights amounted to an acquisition of property without just compensation ...

However, Blessington Judd fails to understand that the New South Wales Government, under its constitution, has the power to acquire property without payment on just terms. It has never been the law in New South Wales that the Government must pay on just terms. So these threats of challenges in the High Court—

The Hon. Duncan Gay: That's not true.

The Hon. PETER BREEN: What is not true?

The Hon. Duncan Gay: There is just terms legislation.

The Hon. PETER BREEN: There is just terms legislation but it can be revoked at any time. Unless my information is incorrect, it is in the Constitution that the Government can acquire property and there is no provision for payment on just terms. I think that is the law. Another point I want to make about these claims is that according to a news report dated 27 June the Plaintiff Lawyers Association is planning to take the New South Wales Government to court over the new health laws it claims are unconstitutional and violate human rights. The report states:

At least six QCs and other barristers, some from interstate, will take the case against the Health Care Liability Bill to the New South Wales Supreme Court.

I know nothing about that; I am simply repeating what is in the newspaper. I am concerned that we are rushing this legislation through early in the morning seemingly without proper examination of the implications of what is happening with United Medical Protection.

The Hon. Dr Brian Pezzutti: All the Government's legislation is like that.

The Hon. PETER BREEN: Yes, but United Medical Protection is in an untenable position, according to the *Australian Financial Review*. According to reports in the *Australian Financial Review* of 19 and 22 June, United Medical Protection [UNP], which is the largest provider of medical indemnity insurance, will lose approximately \$56 million through the collapse of HIH. United Medical Protection has not calculated its solvency levels in the event of this loss. That means that we are rushing through legislation which is designed—and let us not mince words—to prop up UMP. If this legislation does not work and UMP goes belly up—like HIH, CIC or FAI—where will the money come from?

The Hon. Dr Brian Pezzutti: Exactly!

The Hon. PETER BREEN: In view of that solvency question and in view of the threat of litigation from these lawyers, it seems unreasonable to rush the legislation through at this hour of the morning. There is nothing more I can add. I ask honourable members to consider my proposed amendment to the bill, at least to give the bill some balance in relation to outstanding claims.

Reverend the Hon. FRED NILE [1.28 a.m.]: The Christian Democratic Party supports the Health Care Liability Bill. We agree with the Government's proposition that we are facing an urgent situation. This bill is required to make professional indemnity insurance compulsory for medical practitioners, regulate the manner in which the insurers provide that insurance, and protect medical practitioners, nurses and certain other health practitioners from any civil liability when voluntarily providing health care to injured persons in an emergency.

We know that a number of doctors have had to pay high premiums—virtually double premiums this year—and a number of doctors have tendered their resignations. A number of doctors who walked off the wards in our hospitals have agreed to return on the basis of this legislation going through. The doctors expect members of Parliament to support the bill. If we do, and the bill is passed, the doctors will not resign. However, if the bill is not passed they will resign and it is unlikely that they will return. That affects towns in country areas, especially where women are due to have babies. The people are desperate for professional medical care. One neurosurgeon had to pay a premium of \$200,000 per annum—that is ridiculous! We do not know the background of why that happened. We have to deal with reality and we believe that the bill is necessary. Apparently this bill will upset some people who are making claims for problems that they have experienced in hospital, or by a doctor. Hopefully, they will be able to achieve some measure of justice for their claims. I believe that the Government has a responsibility to ensure that medical services are available to all people in New South Wales, and this bill will help to ensure that.

Ms LEE RHIANNON [1.31 a.m.]: The Greens have several concerns with this bill. While we recognise that premiums have been rising for medical practitioners, we question whether this bill is the best way to go about addressing the situation. The Greens recognise and acknowledge that many rural communities are suffering a loss of medical services due to rising premiums. The Greens consider that this is a very serious problem and we are committed to a solution. But, once again, we question whether this bill represents the best way forward. It is generally agreed that one aspect of the worsening plight of medical practitioners is the unwinding of cross-subsidies between different categories of practitioners. Obstetricians, in particular, stand to suffer from the unwinding of cross-subsidies with a corresponding loss of services. Medical insurers are cherry picking, so to speak, the industry, choosing to focus upon the more profitable categories of practitioner at the expense of specialists such as obstetricians. The Greens believe that a better way of approaching this issue would be to address the unwinding of cross-subsidies.

The Greens support some aspects of the bill. For example, we welcome the long overdue moves to require United Medical Protection [UMP] to be more transparent and accountable. But it is this very lack of transparency and accountability that again leads us to question the direction of the bill? How do we know that UMP is managing the system properly, or that many of the problems could not be solved by improving the operation of that organisation? Despite the rising premiums, the problems that practitioners are experiencing, and the loss of services in rural areas, the approach that this bill encapsulates is the wrong way forward, because it unacceptably erodes the rights of the real victims—those who have suffered from the mistakes of the health professionals.

Let us not lose sight of the fact that the real victims are those who have gone to a hospital, or to see a doctor, assuming that they will be made well, but end up seriously injured or even worse. The bottom line here is that the system must operate in the interests of the people. The Greens say that the problems of the system should be fixed, but never at the expense of the real victims. The victims of medical negligence are innocent of any wrong and deserve full and proper compensation. The Greens are very concerned at any proposals that would abolish or restrict people's legal rights. What is more, the bill seeks to act retrospectively, eroding the legal rights of the victims who have already suffered injury.

I understand that the Hon. Peter Breen will move an amendment to address this element of retrospectivity, and the Greens will support that amendment. The Greens are a small party, but a growing party, and we do not have complete expertise on all issues. We do not have, or claim to have, all the answers on this issue. But the Greens know that it is not acceptable to erode the legal rights of innocent victims who have suffered a grievous wrong. I understand that there are a large number of alternative reform proposals that have been put forward but, for some reason, have not been adopted by the Government. We would like to hear an explanation of why that is the case. The Greens will also support the amendments proposed by the Opposition which, I understand, will reduce the draconian aspects of the bill. We look forward to hearing the debate in the Committee stage.

The Hon. EDDIE OBEID (Minister for Mineral Resources, and Minister for Fisheries) [1.35 a.m.], in reply: I thank all honourable members for their contributions, and I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Clause 5

The Hon. PETER BREEN [1.36 a.m.]: I move the Reform the Legal System amendment:

Page 7, clause 5, lines 6 to 14. Omit all words on those lines. Insert instead:

- (2) In its application to such awards, this Part applies only to an award of damages that relates to an injury received, or to a death resulting from an injury received, after the date of assent to this Act.

In New South Wales a number of claims for serious injuries are outstanding. People would have been under the impression for some time that because of the statute of limitations they had six years from the date of injury, or operation, or whatever led to the problem, in which to make a claim. They have not been in any rush to go ahead and file proceedings or lodge their claim. That is the advice that they have been given and with which they complied. It is difficult to know how many there are, but I am told by the Hon. Dr Brian Pezzutti that the number of people who do sue for medical negligence is about 4 per cent of the number entitled to sue.

The Hon. Dr Brian Pezzutti: I explained the methodology.

The Hon. PETER BREEN: Yes, he explained the methodology. We agreed that that would be about 700 people a year. I would not have a clue how many of those claims might be outstanding at this time. Honourable members can be certain that people in the community have claims under the existing law as a result of injuries or misadventures in a hospital or as a result of treatment, and they expect their claims to be met. As a result of this legislation being passed tonight, they will have their claims seriously reduced in many aspects, particularly in damages.

The Hon. Dr Brian Pezzutti: A prospective settlement.

The Hon. PETER BREEN: Yes, a prospective settlement, and also a verdict if they win at a hearing. People's rights ought to be preserved and the purpose of my amendment is to preserve their position. There cannot be many of them, but even if there is only one, that person needs the proper protection of this amendment. I ask honourable members to support my amendment.

The Hon. Dr BRIAN PEZZUTTI [1.40 a.m.]: The Opposition does not support this amendment. Clearly, there has to be some certainty in this process. Therefore, for this scheme to work as at the date of proclamation there has to be a clean cut-off date for liability. Obviously the legislation will not be proclaimed for at least three or four months. The lawyers will be cleaning out their drawers because it applies only to actions which were commenced before the legislation is proclaimed. That will give some certainty. I will explain some of the magical figures that the honourable member referred to. The report refers to approximately 18,000 adverse incidents associated with medical treatment. Of those 18,000 medical incidents, it is said that only 4 per cent were the subject of legal action. The number of adverse incidents was looked at and the number of people who sued, and that was how the figure was worked out. But, of course, many of the incidents are unexpected and are not due to negligence. If the percentage of incidents involving negligence was taken, that report would not apply. The Opposition cannot support the amendment because it would place the certainty of the scheme at risk.

The Hon. EDDIE OBEID (Minister for Mineral Resources, and Minister for Fisheries) [1.42 a.m.]: For the same reasons, the Government will not support the amendment.

Amendment negatived.

Clause 5 agreed to.

Clauses 6 to 12 agreed to.

Clause 13

The Hon. Dr BRIAN PEZZUTTI [1.41 a.m.]: I will not move amendments Nos 1 and 2 which have been circulated in my name. I will give brief reasons for not moving the amendments. The Opposition was keen

to make this bill more consistent with the Motor Accidents Authority legislation, because this is what this bill is modelled on, except that it has a great deal more common law in it. Therefore we examined the wording of the clause, which is very complex. The wording does not relate to any injury which can be measured. It simply states that no damage may be awarded as a payment for non-economic loss unless the severity of the non-economic loss is at least 15 per cent. The Opposition sought to make that 10 per cent to make it consistent with the Motor Accidents Authority legislation. When we referred to the Motor Accidents Authority legislation, we realised it had to be more than 10 per cent; it had to be 15 per cent because it goes in steps of 5 per cent for disability and the severity of the disability.

That is why the Opposition will not persist with the amendments: we could not assess it. When we gave an indication of our intentions in the lower House, the director-general and the Minister sent a copy of a letter, which I am happy to table, to the Opposition. It is an assessment which indicates that if the Opposition were to persist, the external actuaries, PriceWaterhouse Coopers, projected that claims costs, if the amendment were to be adopted, would be reduced from the previously advised 15 per cent to 4 per cent, and the impact on the projected reduction in members' subscriptions due to torts reform would be from the previously advised 12 per cent to 3 per cent. Because of that advice and because the whole aim is to try to keep costs down, the Opposition, having no other way of checking those figures, has to take the word of the Government and the actuary that that is the case. For that reason, the Opposition will not persist with the amendments.

Clause 13 agreed to.

Clauses 14 to 35 agreed to.

Clause 36

The Hon. Dr BRIAN PEZZUTTI [1.44 a.m.], by leave: I move Opposition amendments Nos 3 and 4 in globo:

No. 3 Page 26, clause 36, line 26. Omit "5 years". Insert instead "1 year".

No. 4 Page 26, clause 36, line 28. Omit all words on that line. Insert instead:

Parliament within 6 months after the end of the period of 1 year.

(4) If a House of Parliament is not sitting when the Minister seeks to table the report, the Minister may present copies of the report to the Clerk of the House concerned.

(5) The report:

(a) on presentation and for all purposes is taken to have been laid before the House, and

(b) may be printed by authority of the Clerk of the House, and

(c) if printed by authority of the Clerk, is for all purposes taken to be a report published by or under the authority of the House, and

(d) is to be recorded:

(i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and

(ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

The Opposition takes the view that it should not be necessary to wait five years before the position is reviewed. The Opposition believes that it should be reviewed after the first year and that within six months of the period of one year a copy of the report should be sent to the House so that the House can discuss it, if necessary. This obviously is not timed for an election period: it will be well after the election of 2003. But the Opposition expects that the Government will review it so that it can fine tune the provisions and make changes, if necessary. The Opposition believes that to leave the legislation in place for five years before a review takes place and before the Parliament gets to see the review is far too long.

The Hon. EDDIE OBEID (Minister for Mineral Resources, and Minister for Fisheries) [1.45 a.m.]: The Government supports both amendments.

Amendments agreed to.

Clause 36 as amended agreed to.

Schedule 1 agreed to.

Title agreed to.

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

ADJOURNMENT

The Hon. EDDIE OBEID (Minister for Mineral Resources, and Minister for Fisheries) [1.48 a.m.]: I move:

That this House do now adjourn.

BROADWATER COGENERATION FACILITY

The Hon. IAN COHEN [1.48 a.m.]: Once again, I draw to the attention of the House the Broadwater cogeneration plant, which is, at the present time, a sugarcane plant. This is part of a plan to trial the use of native forest resources for wood-fired power stations. A plant has been given the go-ahead at Condong in northern New South Wales by the Tweed Shire Council. I hope that the Government will advise that an environmental impact study [EIS] is needed, particularly in the light of the facts that unsustainable timber resources are involved and that the Tweed Shire Council, which has no idea, has given the go-ahead for this mill in Condong without discovering where the fuel supply for the plant will come from.

The reason I raise this issue again is that a study has been conducted by Mr Peter Barnes of PBA Pty Ltd, consulting engineers. A peer review has been carried out on the assertions made by Mr Barnes, who has examined the relative carbon dioxide emissions of wood-fired power station. The net CO₂ output and power costs of the Forest Protection Association's proposal for a stand-alone 30 megawatt wood-fired power station were compared to the incremental costs and CO₂ effects of getting the same extra amount of power from an existing coal-fired power station in the New South Wales Hunter Valley.

The abnormal live-Excel format of this report makes all data and calculations quite transparent, inviting specific numerical comment by interested parties. Real CO₂ to atmosphere is computed by CO₂ net emissions equal to CO₂ output minus CO₂ uptake in metric tonnes per year, then CO₂ build-up equals CO₂ net emissions in megatonnes after some years. Each year total CO₂ uptake increases as plantation areas expand as a result of more native forest clearing. Finally, a harvest area is reached where uptake equals emissions and CO₂ balance is almost attained. The plausible plantation area required is up to 822,000 hectares or 800 square kilometres.

For the base case analysis the actual power generation is only 13 megawatts when averaged over the full year. The Forest Protection Association's 280 ktpa fuel demand seems understated at 280 ktpa for Broadwater's 30 megawatt biomass power station proposal. Forest rotation age is 25 years. The realistic power station project life cycle is taken as 80 years. The wood power station is credited CO₂ uptake by regrowth of plantations on native forest areas logged for fuel. The coal power station does not plant trees and, therefore, gets no CO₂ uptake credits.

I will now outline base case results for the same power quantity. While on native forest fuel the wood power station causes five times the CO₂ output of a coal power station. This is due mainly to the largely irreplaceable huge loss of carbon bank when an old native forest is clear-felled and by the rather low generating efficiency expected for a relatively low-cost wood power station. According to the Kyoto report year 2010, wood power will give seven times the net CO₂ build-up of coal power. By the end of its 80-year life cycle wood power leaves a permanent 23,000,000 tonnes CO₂ build-up. This is nearly three times the CO₂ emissions of a coal power station for the same amount of electricity or five times if the coal power station company tree plants and harvests 25 per cent of the wood power station harvest area per annum.

With eternal life the wood power station takes 240 years to break even with coal on CO₂ build-up. That is hypothetical as coal and wood will probably be superseded by true green technologies within 100 years. Thus in theory, burning native forest wood might eventually become better than coal for climate change, but far too late for our Kyoto report card in 2012 and probably never, due to end-of-life power station closures.

Realistically, for power supply, native forest wood is not CO₂ neutral; it is far worse than coal. In relation to the economics, this basic study shows the proposed 30 megawatt wood power station is not competitive. The true unit cost of wood power minus c/kWh is found to be five times the cost of incremental coal power. The total costs of the wood power stations are \$20 million more than the equivalent incremental coal power costs. Inevitably, such cost differences will be met by direct or indirect public subsidies to each small wood power station.

INTERNATIONAL JUSTICE FOR JANITORS DAY

The Hon. IAN WEST [1.52 a.m.]: Friday 15 June was International Justice for Janitors—or Cleaners—Day. That day of action has been organised globally since 15 June 1990, when striking city janitors and supporters were brutally beaten by police during the Century City Los Angeles police riots. In Australia and in New South Wales the day's actions and events were organised to promote strategies to improve the lot of workers in the cleaning industry. For a long time cleaners have been the silent army of workers who take to our schools, hospitals, offices, industrial estates, hotels, motels and other establishments every day of the year, at all hours of the day and night, to clean up our mess. The work they perform in ensuring safe, clean, hygienic and healthy working and learning environments is invaluable.

I would like to congratulate the cleaners and the union—the Liquor, Hospitality and Miscellaneous Workers Union—for a successful day of celebration. I thank them for their continuing efforts to ensure proper acknowledgment, remuneration and recognition for the work that cleaners do. While members in this House are probably asleep, cleaners are at work all hours of the morning and night. They play a vital role in ensuring that our workplaces and public places are safe, hygienic and environmentally friendly for the upcoming day's work and events.

That is why, in one sense, cleaners are the invisible work force. The work they perform goes unnoticed by the majority of people. They are mostly women from non-English speaking backgrounds, they are often from migrant communities, and many are recent arrivals to Australia. In many ways, their work is taken for granted by those people. We take for granted the fact that our living and working environments will not be cluttered by yesterday's refuse.

However, cleaners certainly are not taken for granted by some contract cleaning employers, who go to extraordinary lengths to ensure that their work forces are ignorant of their industrial rights. A key problem for many cleaners who work in city office blocks is the fact that many shady, fly-by-night operators target persons with English literacy, numeracy and financial difficulties. The reason for that is that it is so much easier to exploit their work force and not comply with minimum award standards. In so doing, these contractors are able to bid lower than other responsible employers and thereby win cleaning contracts. These shonks scour ethnic communities for their work forces because they hope that a work force made up especially of new immigrants who are unaware of their award rights will not complain and will accept the harsh working conditions. If injured, the worker on many occasions receives no workers compensation and no rehabilitation, and does not have the opportunity to return to the work force.

The experience in Australia is mirrored worldwide. In many countries, a large number of cleaning workers are migrants who do not yet enjoy their full rights in their new societies where they live and work. Often these new residents are worried about exercising their full rights because of the abuse and exploitation they have suffered at the hands of employers in the past. We are all too familiar with the horror stories of sweat shops, workers making garments for Speedo and shoes for Nike, and so on. But many cleaners face the same situations without the same public profile. Shonky cleaning contractors prey on a wide variety of Australian workers. I should like to quote a cleaner at Belmore industrial estate, Novel Suhendra, who said last week at the International Day Of Cleaners:

I have not been long in Australia and that's why I need the union because it gives me information about working conditions. If I am in the union I can campaign to get good wages.

Unions in Australia are very, very good in helping workers. Unions in Indonesia don't have the power and just can't get results.

I look forward to helping to find a way to assist in eradicating, wherever possible, employers in both the public and private sectors who exploit for profit newly arrived Australians and others with literacy and numeracy problems at the expense of cleaning and working standards in New South Wales.

GLENWORTH VALLEY MUSIC FESTIVALS

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [1.58 a.m.]: I wish to detail to the House a situation I view most seriously. A local council in New South Wales has, in my view, overstepped the

mark with regard to approving development applications, and in doing so has ignored sections of the local community. The council I take issue with is Gosford City Council, and the development applications I refer to relate to the approval and operation of music festivals in Glenworth Valley. I have raised this matter before in this House, and, on behalf of residents affected by these music festivals in Glenworth Valley, I have written innumerable representations to the Minister for Local Government and his successor, the Ombudsman, and the Independent Commission Against Corruption, but all to no avail. Gosford City Council has now taken the situation to new heights. I will come to that in a moment, but first I would like to outline to the House the history of the music festivals that have been held in Glenworth Valley.

In April 1998 the council gave approval for a one-off music festival to be held. That festival took place between Christmas and New Year 1998. In January 1999 further approval was granted for two festivals to be held in October and December that year. In November 1999 an application was submitted to renew the approved period for a further 12 months. The council approved the application in February 2000. In October 2000 a further application was submitted, which was later approved in December, to renew the approved period for another 12 months. In December 2000 yet another application was lodged and approved in February this year to vary the conditions of consent for the festivals. Approval was granted initially for a one-off festival, yet the council has approved extension after extension of that original approval. At its meeting on 5 June the council yet again granted approval for the festivals to continue in the Glenworth Valley for any 72-hour period, excluding Christmas Day, with a maximum of three events per year for a three-year period.

I have been in contact for several years with neighbours of the property where the festivals are held. These people are not wowsers, whingers or party poopers; they are simply people who want to maintain their quality of life in a semi-rural area. They have real concerns about the impact of these events. The road to the Glenworth site is not a highway and is not designed for heavy vehicle use. It is a country road, and it is showing wear and tear as a result of the constant use associated with these events. Preparations for the festival begin at least two weeks prior to the event and the clean-up takes from a week to 10 days. In effect, these people must put up with increased traffic flow and noise for up to a month at a time—and now it will happen three times a year.

The other problem that has emerged in recent time concerns the use by festival patrons of a paddock right next door to my constituents' home for parking and camping. The original development applications lodged with the Gosford City Council covered an area of the Glenworth Valley property that is removed from the home. The paddock next to the house was never included in the original development application. The adjoining paddock has been used as a camping and parking area, and this has led to reduced privacy and increased noise and rubbish for residents.

It does not take a rocket scientist to figure out that the use of the Glenworth Valley for these music festivals is not compatible with the surrounding land use. This is a semi-rural area. Gosford council stands condemned for its actions in this case. It appears to have taken little or no notice of the concerns of neighbouring residents, and it continually rubber-stamps applications approving more and more events in Glenworth Valley. It seems more concerned with voting to give councillors \$40,000 motor vehicles than looking after residents. I have written again today to the Minister for Local Government and Minister for Urban Affairs and Planning to alert them to my concerns and to those of my constituents. However, I do not hold out much hope for a successful outcome based on the responses that I have received in the past from the Government on this matter. Enough is enough. The residents of the Glenworth Valley deserve better than having a continual music festival literally in their backyards.

PUBLIC ASSETS SALES

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.03 a.m.]: Tonight I raise an issue that is of great concern to the Australian Democrats: the sale of public assets to fund government expenditure programs. I have spoken about this matter several times before, but I must tell honourable members about a recent worrying moment. During the General Purpose Standing Committee No. 2 estimates hearing with the Minister for Health last Wednesday the Minister responded to a question from the Hon. Richard Jones about the sale and relocation of New South Wales Health facilities from Rozelle Hospital—which is known as Callan Park—to Concord hospital. This involved the sale of foreshore land. The Minister made an interesting comment. He said that there were plenty of precedents for selling public land and assets and directing the proceeds to budget expenditure. He then referred to:

... the relocation of the children's hospital at Camperdown to the children's hospital at Westmead; relocation of the Royal Women's Hospital at Paddington to the Royal Women's Hospital at Randwick; relocation of Rachel Foster Hospital to a new bone and joint facility at Missenden Road; and any number of others you might remember in history.

The Government thinks that selling land—which lasts for ever—to buy buildings that last 30 to 50 years is a routine method of financing. The Government destroys the permanent for the relatively transient, and regards that as normal budget activity. The Department of Health owns land in Douglas Street, Redfern, near the Rachel Forster hospital site that apparently will also be sold. It is to be sold as residential 2B to maximise the price to be obtained, despite the fact that the local council wants to buy it for a park in view of increasing urban density in that area. The same is happening in education. The Building the Future document has outlined the amalgamation and sale of several public schools in inner Sydney, the proceeds of which will be channelled back into the department's budget. Once an asset is sold, it is gone for ever. Once a public asset is sold to the private sector, public ownership is lost for ever. The government plans to sell the Hunters Hill, Maroubra, Marrickville, Vaucluse and Chatswood school sites. In summary, the three principal social institutions to which I have referred—schools, hospitals and green open space—should all remain in public ownership.

If there is no demand for schools in the short term, perhaps the Government should sell 30-year leases, but even that period is a long time. Woolwich Public School was sold, there has been no real increase in development in Hunters Hill area, and Hunters Hill primary is overcrowded, yet the Government still wants to sell the high school across the street. It has learnt absolutely nothing. As most buildings only last 30 years, if they were leased the Government would get a fair percentage of the value. As the city consolidates, the land will be needed and could then be reused. If Hunters Hill High School is any guide, where postwar sheds have been used for 50 years unchanged, I imagine that after 30 years the brick buildings on the site could still be used. The danger is that the Government could at any time during a lease sell the rest of the site. There would be a focused lobby group seeking such a lease, and the Coalition would support privatisation. The Government does not have a commitment to long-term goals.

The other alternative is to sell bonds. It has been very unfashionable to increase public debt by selling bonds but much of the existing public infrastructure was built by selling bonds to the public. Sydney house prices have doubled, or more, in the past decade, and interest rates are now at a record low. That means that the average citizen who owns a house has a huge equity against which they can borrow. If people borrow against that equity to buy bonds, even at low rates, they could use as a tax deduction the difference between the borrowed equity and the value of the bonds purchased. That would support quite high levels of infrastructure development. The amount of equity of a large high school, particularly in the inner Sydney area, if channelled into bonds would give a solid base for a building program.

The cost of a child in a private school is about \$12,500 a year. Parents who want to keep their child at a public school could support interest payments on a borrowing of \$100,000 for half the sum of having their child in a private school. That may well be an option in some inner-city schools that are trying to maintain their building programs. Neither of those two options are my preferred choice but they may be better than a sale option. Those options need to be canvassed before selling land. Perhaps some of the groups that are trying to save schools may negotiate with the department for a better outcome than through the Building the Schools program. That also applies to hospitals.

MEMBERS OF PARLIAMENT RESPONSIBILITIES

The Hon. AMANDA FAZIO [2.08 a.m.]: As honourable members may be aware, an article appeared in today's *Daily Telegraph* entitled "MPs chasing the sun in winter". That article was compiled following a number of phone calls to available members of Parliament yesterday afternoon. If they chose not to return the call, they were not reported. If they were already away on a trip, they were not reported. If they stated that they would be undertaking parliamentary duties in New South Wales, in the main, they were not reported. I am concerned that the article will give members of the public a false impression of the role and responsibility of members of the Legislative Assembly and the Legislative Council. Many honourable members will be undertaking parliamentary work during the winter recess, either by working regularly in their offices, working on parliamentary committees or undertaking other parliamentary duties.

In response to the question about whether I would be going on trips during the winter recess, I advised Justin Koek from the *Daily Telegraph* that I would be representing the Government at the re-opening of the newly refurbished School of Arts building in Tenterfield on 21 July, which is a major event in the Centenary of Federation, given that is where Sir Henry Parkes gave his Federation Oration in 1889. I also advised that I would be undertaking work with the social issues committee and as part of that work I would be travelling to Coonamble and other towns in the west of the State. Of course I understand that this would not be very newsworthy, but I believe that the article would have offered a more balanced view if some reference had been made to members of Parliament responding to their questions by advising that they would be working during the winter recess.

If I had been travelling for private reasons during the recess, I would have been travelling in New South Wales and in particular to my duty electorates, which offer many attractions for family holidays. In drawing attention to these attractions I will not detail the national parks, many of which have been established by the Carr Government, with reserved areas and features of natural beauty for generations to come. In the Myall Lakes electorate, Forster-Tuncurry offers beautiful beaches. Houseboats can be rented to cruise Wallace and Myall Lakes, and the area also has golf courses; Tobwabba Aboriginal Gallery; Keepsake Cottage, which is housed in the old Fazio family home; arts and crafts, a Bicentennial coast walk, a skateboard facility located in Vincenzo Fazio Park; and the Curtis vintage car collection.

At Possums Brush you can go horse riding, visit the local art gallery or nip over to the coast and visit the lavender garden at Diamond Beach. At Copeland you can try your hand at gold panning when you visit Mountain Maid Goldmine. At Gloucester you can visit the folk museum or one of the many lookouts or take a scenic flight around the district. Just north of Bulahdelah you can see the "grandis", which is the tallest known tree in New South Wales at over 80 metres. In Tamworth, the country music capital, you can visit the Golden Guitar, which has a wonderful mineral collection on display; the handprints of fame; the regional botanic garden; and the PowerStation Museum. Goddard's agricultural museum and Gilroy's Butterfly World are worth seeing with its hundreds of antique farm machines on display. Top off the visit with a trip to lookouts as the view is great on a clear night.

Gunnedah offers the Water Tower Museum and the Rural Museum, and is the home of one of the healthiest koalas colonies in New South Wales. Lake Keepit State Recreational Area is only 30 kilometres away and offers a variety of aquatic sports as well as picnic facilities and some of the best angling for golden and silver perch, murray cod and catfish. Take a scenic drive through Nundle and enjoy the Lantern store-gallery and an historical hotel, see the fine arts, antiques and cottage craft, and do some goldmining and trout fishing. Detour to Werris Creek and visit the railway museum and elegant railway station. Detour to Walcha and see its innovative sculpture program, especially those on the main roundabouts in town. Walcha has a small regional gallery and a local history centre that received \$20,000 in funding from the New South Wales Government.

Heading north the New England Highway passes Thunderbolt's Rock, and then reaches Uralla, where you can stop at Thunderbolt's grave and also take time to peruse one of the best second-hand bookshops in New South Wales. The University of Armidale has a lot to offer. Historic Saumarez homestead is open for inspection as well as the folk museum and the New England Regional Art Museum. Armidale has many restaurants and restored hotels in which to relax before visiting the Museum of Antiquities at the university. Glen Innes is the home of the Celtic Festival every May at the Standing Stones. It is home also to Highwoods, which is a delightful garden and home displaying large varieties of native and exotic trees and shrubs. The Land of the Beardies History House is one of the biggest folk museums in country Australia. There are plenty of local craft and art shops to see as well as fossicking and fishing to do.

In Inverell, the sapphire city, there is a draught horse centre, honey farm, transport museum, pioneer village and plenty of opportunities for fossicking. Gwydir Grove olive centre can be visited and you can travel down to Tingha to the Wing Hing Long Heritage Emporium. Honourable members are probably aware of the connection of Peter Allen to the town of Tenterfield. His grandfather's saddlery has been retained and, as I already indicated, the School of Arts has been restored. Tenterfield is known as the birthplace of our nation and this year has many special events to celebrate the Centenary of Federation. When offered this range of family friendly activities, why would anyone want to leave New South Wales during the parliamentary winter recess or at any other time? I am more than happy to spend my recreational time with my family exploring the wealth of interesting places in this State. I urge all honourable members who have the time to do the same.

SCHOOL SECURITY

The Hon. PATRICIA FORSYTHE [2.13 a.m.]: Earlier this week I informed the House about issues dealing with school security. I draw the House's attention to a report prepared in 1983 for the then Minister for Education, the Hon. Ron Mulock. The report resulted from a committee inquiry chaired by John Lambert and makes a number of findings that should be drawn to the attention of the House as they are as relevant today as they were in 1983. In a letter to Mr Mulock John Lambert said:

The Committee found its task to be most challenging. Investigations were necessary not only into matters relating to the physical security of schools, but into the related social and legal context in which vandalism occurs.

It went on to say:

While it is not possible to quantify the effects upon the educational programs provided for students, or upon the morale of teachers, or upon the public image of our schools, they are unquestionably of even greater significance than the monetary costs.

I make that point because the impact on schools of vandalism, fires and graffiti undermines what teachers do in our schools. We have to take this issue more seriously. The committee met on 11 occasions between the end of 1982 and the middle of 1983, and produced more than 50 recommendations. Many of those recommendations have been enacted, but some are still relevant today. It was the work of that committee that brought to prominence the introduction of electronic surveillance for schools. I suspect that those who sat on that committee would be surprised today to discover that contracts that have been let in response to electronic security are for 25-minute responses rather than the 15-minute responses of the 1980s and 1990s. That means fewer guards protecting more schools, and as a result less response.

One of the most important issues—apart from acknowledging that greater parent and community participation in schools is to be encouraged as a means of securing greater commitment by the committee towards the security of school premises—is that the report said that the community should be encouraged to use school grounds and facilities for recreational and educational purposes. The committee also made a significant finding in relation to the morale of teachers affected by vandalism. I highlight this because even this week there was an incident at a school in western New South Wales.

The report talked about the provision of more secure parking areas at schools for teachers and their cars and said that the department should undertake a review of procedures to ensure that adequate compensation is provided within a reasonable time for teachers whose personal property is damaged or stolen from school premises or while a teacher is on official duties. Recommendation 21 was that the Department of Education and Training should undertake a review of current regulations regarding compensation for damage to teachers' cars while parked within school grounds. Without drawing too much attention to the incident this week, because it involved a young student with significant problems, I can say that a teacher at a school in country New South Wales had their car jumped all over as part of a serious incident. I imagine that teacher will wait a long time for compensation.

The report went on to speak about what schools need to be aware of, what happens when a person is apprehended, the nature of the penalties they receive, and the need for them to understand the connection between the damage that has been done and the penalties that flow, and the clear message given to young people. The report spoke also about the need to ensure the provision of static guards—that is, guards at schools where appropriate—and to undertake a review of schools where there has been considerable vandalism.

I bring this report to the attention of the House because it is still relevant today and it contains many important recommendations, among the 53, that the Government ought to take note of. It may be in the Government's best interests to do a comparison with the Victorian system of electronic surveillance, one that is not departmentally owned. It should consider some of the benchmark systems that provide interesting reading compared with what we have.

Motion agreed to.

House adjourned at 2.18 a.m. Friday until 10.00 a.m. Friday 28 June 2001.
